



## 2.02 PROHIBITION AGAINST WORKPLACE HARASSMENT, DISCRIMINATION AND RETALIATION

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### Workplace Harassment, Discrimination and Retaliation Prohibited

It is the City's policy to prohibit workplace harassment, discrimination and retaliation on the basis of protected status. Protected status includes race, color, religion, gender, marital status, familial status, national origin, age, mental or physical disability (as defined by the Americans with Disabilities Act and state law), sexual orientation, gender identity, source of income, protected veterans' status or other protected status under applicable law.

The City of Portland is committed to creating a respectful and professional work environment that is free of harassment, discrimination, and retaliation, and that promotes employment opportunities.

Workplace harassment, discrimination, and retaliation manifests in the workplace in two primary ways:

1. In forms of harassment, discrimination, and retaliation that violate state and federal laws; and
2. In forms of inappropriate conduct that may not violate the law, but which violate this City rule because the conduct is not conducive to creating a respectful and professional work environment for employees.

This rule covers both types of behavior. The intent of this rule is to prohibit conduct that is unlawful and also to prohibit and stop other inappropriate conduct based on protected status before it rises to the level of unlawful discrimination, harassment, and retaliation.

Employees are expected to talk with their supervisor, other managers, the Human Resources Business Partner (HRBP) assigned to their bureau, Bureau of Human Resources (BHR) staff or the Bureau of Human Resources Employment and Outreach Office in the Workforce Recruitment Training if they experience harassment, discrimination, and/or retaliation regardless of its origin. Supervisors or managers receiving such complaints shall take appropriate corrective action to stop the harassment, discrimination and retaliation.

Harassment, discrimination, and retaliation are prohibited in the workplace or in any work-related setting outside the workplace. Every employee shares the responsibility for bringing to the City's attention conduct that interferes with providing a work environment free of harassment, discrimination, and retaliation.

### Who is Covered by this Rule?

This Rule covers all elected officials, employees, interns (paid or unpaid), volunteers and applicants for employment with the City of Portland, as well as contractors providing services to the City of Portland such as outside vendors or

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consultants. Contractors providing a service to the City should be notified of this rule.

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## Definitions

**The definitions in this rule are designed to be consistent with the City’s goal of creating a respectful and professional work environment. Therefore, these definitions not only define unlawful conduct but also define inappropriate conduct prohibited by this City policy.**

**Harassment:** Inappropriate verbal or physical conduct, which may include conduct that is derogatory or shows hostility towards an individual, related to the individual’s protected status. The intent or consent of the persons engaging in the inappropriate conduct, or whether the person toward whom the inappropriate conduct is directed is aware of it, does not matter.

**Sexual Harassment:** Is a specific type of harassment, which includes unwanted sexual advances, requests for sexual favors, and other sexually oriented verbal or physical conduct. It may also include situations where:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
2. Submission to or rejection of such conduct is used as a basis for employment decisions affecting such individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance, or creating an intimidating, hostile, or offensive work environment.

**Sexual Abuse:** Sexual abuse, a form of sexual harassment, that involves Any actual, attempted or alleged criminal sexual conduct of a person by another person, or persons acting in concert, regardless if criminal charges or proceedings are brought, which causes physical injuries and/or mental anguish. Sexual abuse also includes actual, attempted or alleged: sexual molestation, sexual assault, sexual exploitation or sexual injury.

**Discrimination:** Unequal or different treatment of an individual in any personnel action on the basis of protected status.

**Retaliation:** Conduct that would likely deter an individual from reporting or supporting a claim of harassment or discrimination may constitute retaliation. The City will not tolerate retaliation against any individual who reports discrimination or harassment, testifies, assists, or participates in any manner in an investigation, proceeding or hearing, regardless of the outcome of the complaint. Retaliation can occur even if the underlying complaint of harassment or discrimination is not substantiated. Examples of retaliation towards an individual include demotion, suspension, failing to hire or consider hiring, failing to treat impartially when making employment related decisions, or assigning the individual the least desirable jobs. Retaliation may also include more subtle forms such as shunning by co-workers.

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**Examples of Prohibited Inappropriate Conduct**

This list of prohibited inappropriate conduct is meant to give some examples of inappropriate behavior and is not a complete list of conduct prohibited by this rule.

**Verbal or Physical Conduct**

1. Use of epithets, innuendos, names, comments, foul language or slurs regarding an individual's protected status, either in written or oral form.
2. Jokes, pranks or other banter, including stereotyping, because of protected status.
3. Physical touching or contact with any intimate body part including but not limited to breasts, buttocks, hair, neck, lips, legs, thighs and feet, such as pinching, kissing, grabbing, patting or neck massages/rubs.
4. Unwelcome physical touching or contact, such as unwelcome hugs or touches.
5. Using sexual innuendoes, sharing racist, sexist, or sexual stories, making suggestive comments, making suggestive gestures, suggestive actions, sexual propositions, requests for sexual favors, graphic commentaries, suggestive or insulting sounds; and refusing to take "No" when requests for social interaction or dates are refused.

**Written or Graphic Material**

Written, visual, oral, gestures, graphic, or other material directed toward a person on the basis of protected status.

6. This rule prohibits inappropriate language, jokes, written or graphic materials in the workplace or work-related setting. Inappropriate materials placed on walls or elsewhere in City premises or circulated in the workplace is prohibited; this includes sending inappropriate jokes or other written or graphic materials via e-mail, the internet, by fax, cell phone, mobile data computer or any other electronic means, or downloading this material from the internet.
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**Religious Accommodation Required**

The City is committed to providing a reasonable accommodation of an employee's sincerely held religious beliefs and practices unless such an accommodation would create an undue hardship. A reasonable accommodation may include allowing the employee to use vacation or other appropriate leave for a holy day or other religious observations; wearing religious clothing in the workplace to the extent it does not conflict with other legitimate bureau rules regarding uniforms and safety gear; and such other accommodation as may be reasonable to provide. The [Request for Religious Accommodation Form](#) can be found in the Forms section on the BHR Website.

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**Disability Accommodation  
Required**

The City is committed to providing a reasonable accommodation that will allow an employee with a disability to perform the essential functions of their job unless such accommodation would create an undue hardship. The Job Accommodation form can be found in the Forms section on the BHR website. Also see [HRAR 2.01, Equal Employment Opportunity \(EEO\) Affirmative Action](#).

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**Manager/Supervisor  
Expectations**

Managers and supervisors shall enforce this rule and maintain a productive, respectful, and professional workplace. Managers and supervisors must take immediate action to stop and prevent discrimination, harassment, or retaliation where they know or have reason to know that it is occurring. Tacit approval of harassment, discrimination, other inappropriate conduct, and/or retaliation by, for example, laughing and treating a situation as a joke, failing to take action or advising an employee not to complain, is prohibited.

Managers and supervisors are responsible for ensuring that notes, comments, posters and other materials on walls, bulletin boards or elsewhere in the workplace, that are derogatory or show hostility toward an individual or group because of protected status are removed, and that oral forms of derogatory, harassing or hostile media, such as music, are not permitted in the workplace. Managers and supervisors are expected to educate and remind employees about the impropriety of these items as well as the inappropriateness of jokes, slurs, or other negative verbal comments that violate this rule. Managers and supervisors are also responsible for educating employees that the use of City owned equipment, including but not limited to vehicles and electronic devices such as computers, telephones, mobile phones, tablets, photocopiers, or faxes for any of these purposes is also prohibited.

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If a manager or supervisor receives a complaint from a City employee, an applicant, a member of the public or a contractor about harassment, discrimination, other inappropriate conduct, or retaliation in a City worksite, or if a manager or supervisor observes or becomes aware of conduct that potentially constitutes potential discrimination, harassment, other inappropriate conduct or retaliation in a City worksite, they shall contact the Human Resources Business Partner, ~~or Site Team~~Employee Relations Manager, or Employee Relations Supervisor to report the complaint or conduct as soon as possible, but no later than two working days after receiving the complaint or becoming aware of the possible discrimination, harassment or retaliation. ~~Human Resources Business Partners are required to report instances of potential sexual abuse to the City's Risk Manager as soon as possible but no later than two working days following discovery.~~

Managers and supervisors are expected to contact human resources personnel **even if** the person making the complaint requested that it be kept confidential or if the person toward whom the inappropriate conduct was directed is not aware of it. Managers and supervisors should inform an individual making a complaint that strict confidentiality may not be feasible.

Any supervisor or manager who is aware of, or based on the circumstances should be aware of, possible harassment, discrimination, other inappropriate conduct, and/or retaliation, or and who condones it by action or inaction, will be subject to disciplinary action.

Human Resources personnel who receive information of potential sexual abuse are required to report the information to the City's Risk Manager as soon as possible but no later than two working days following discovery of the information.

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### **What Should Employees Do?**

1. Not engage in discrimination, harassment or retaliatory conduct in violation of this rule.
2. If you believe you are being subjected to conduct that violates this rule: tell the offender to "stop it!" Say it firmly, without smiling or apologizing. However, Nothing prevents you from filing a complaint because you did not tell the offender that their behavior is unwelcome or ask the offender to stop.
3. Promptly file a complaint using the procedure below if you are the recipient of harassment, discrimination or retaliatory conduct prohibited by this rule. If you are witness to prohibited conduct, you are encouraged to bring that information to the attention of a supervisor or to Human Resources staff. Employees are not required to follow any supervisory chain of command in filing a complaint or reporting possible violations of this rule.

Nothing in this Rule is intended to restrict an individual's right to file a complaint with the Bureau of Labor and Industries or the Equal Employment Opportunity Commission, or to file a grievance under a union contract. However, notifying a union steward or other union official does not constitute filing a complaint with the City under the complaint procedure outlined below.

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**Internal Complaint Process**

Any individual who feels they have been the recipient of prohibited discrimination, harassment, retaliation and/or other conduct prohibited by this rule is encouraged to notify the responsible person(s) of the inappropriateness of their conduct.

**Who to Contact**

A current City employee is encouraged to discuss such concerns with their immediate supervisor. This will provide the supervisor with an opportunity to review the concerns of the individual. If the employee does not feel comfortable discussing the concerns with their immediate supervisor, the employee should contact:

- their supervisor's manager; or
- their bureau director; or
- Bureau of Human Resources staff; or
- the Bureau of Human Resources [Workforce Recruitment Training Employment and Outreach Office](#) (formerly the Diversity, Outreach and Employment Resources Office and the City Diversity Development/Affirmative Action Office).

A non-City employee such as an applicant, a member of the public or a contractor may contact the specific bureau where the alleged harassment, discrimination, retaliation, or other inappropriate conduct occurred or file a complaint with the Bureau of Human Resources Employment and Outreach Office.

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**Investigation**

Bureaus investigating a complaint should follow the procedure outlined in [Attachment A](#). (The attachment is a procedure only and is not part of the binding Human Resources Administrative Rule).

When appropriate, the individual who receives the complaint may discuss options for informally resolving the complaint with the complainant.

All complaints must be thoroughly and promptly investigated. The individual making the complaint and the accused shall be notified of the results of the investigation and whether action will be taken. Retaliation will not be tolerated.

Immediate action may be required in situations where prohibited harassment, retaliation, or discrimination has occurred.

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**External Complaint Process**

An external discrimination complaint is defined as any complaint of discrimination filed with a court or a state or federal enforcement agency. External discrimination complaints are handled by the Risk Manager and the City Attorney's Office. Any employee who receives a copy of notice of an external discrimination complaint shall immediately forward that complaint to the Risk Manager. The Risk Manager will ensure that the BHR Employment and Outreach Office, the City Attorney's Office, and the bureau involved are apprised of the complaint. The Risk Manager and City Attorney's Office are responsible for issuing any communications regarding the complaint.

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**Confidentiality**

All information received in connection with inquiries, or with the filing, investigation, and resolution of workplace harassment, discrimination, and retaliation complaints is treated as highly sensitive. Employees authorized by the

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City to receive and investigate complaints are required to maintain confidentiality to the extent possible. It is expected and anticipated that all parties involved in complaints will observe the same standard of sensitivity. It is emphasized that this practice is in the best interest of all parties; however, absolute confidentiality cannot be guaranteed.

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**Training**

The City will provide training on this Rule to all City employees upon hire and every three years thereafter.

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**Complaint Resolution**

The Director of Human Resources, in cooperation with the bureau manager and Commissioner-In-Charge, and the City Attorney's office shall have the authority to settle a discrimination complaint in accordance with the City Code.

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**Complaint Procedures**

**Important Notice to All Employees:** Employees who have experienced conduct they believe is contrary to this rule have an obligation to take advantage of the complaint procedure included in this rule. An employee's failure to fulfill this obligation could affect their other rights. Every employee shares the responsibility for bringing to the City's attention conduct that interferes with providing a work environment free of harassment, retaliation and illegal discrimination.

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**Administrative Rule History**

Adopted by Council March 6, 2002, Ordinance No. 176302  
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Revised April 25, 2016  
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Revised January XX, 2019

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## **ATTACHMENT A**

### **Investigation Steps**

The responsible person investigating the complaint will complete the following steps:

1. Evaluate the complaint.
2. Determine whether there is reason to believe prohibited discrimination or harassment may have occurred.
3. When appropriate, the individual who receives the complaint may discuss options for informally resolving the complaint with the complainant.  
This is not a required first step.
4. Document the action and resolution efforts taken and then communicate the results to the complainant, to appropriate management personnel, and to the alleged offender.
5. Where corrective action is considered to be appropriate, communicate that fact to management personnel who will determine the appropriate corrective or disciplinary action in accordance with the administrative rule on discipline and any applicable collective bargaining agreement.
6. Consistent with applicable rules and collective bargaining agreements, in determining the appropriate corrective action the responsible manager will consider:
  - o the severity of the conduct
  - o position/authority of the alleged offender
  - o number/frequency of encounters
  - o relationship of the parties
  - o conduct of complainant
  - o effect of action on complainant, and
  - o effect of action on the work environment
7. If necessary, the responsible manager will take remedial action reasonably calculated to end discrimination, harassment, retaliation or other conduct that violates this rule.