



2.02 PROHIBITION AGAINST WORKPLACE HARASSMENT, DISCRIMINATION, RACISM AND RETALIATION

Workplace Harassment, Discrimination and Retaliation Prohibited

It is the City's policy to prohibit workplace harassment, discrimination, racism and retaliation based on protected status. Protected status includes race, color, ethnicity, religion, nonreligion, 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, inclusive, equitable, and professional work environment that promotes equal employment opportunities and is free of harassment, discrimination, racism and retaliation.

Employees are expected to talk with their supervisor, other managers, the Human Resources Business Partner (HRBP) assigned to their bureau, or Bureau of Human Resources (BHR) staff if they experience harassment, discrimination, racism and/or retaliation regardless of its origin. Supervisors or managers receiving such complaints shall take appropriate corrective action to stop the harassment, discrimination, racism and retaliation, and report the incident to BHR as required in this rule.

Harassment, discrimination, racism and retaliation are prohibited as follows:

1. in the workplace;
2. in any work-related setting outside the workplace; or
3. when off-duty conduct creates a sufficiently negative work environment based on protected status. (See examples below).

By way of illustration only, and not limitation, off-duty conduct that would likely create a sufficiently negative work environment based on protected status is a text message to a co-worker where the sender calls the recipient of the text a racial epithet.

Every employee shares the responsibility for bringing to the City's attention conduct that interferes with a work environment free of harassment, discrimination, racism 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 consultants. Contractors shall be notified of this rule.

Definitions

The definitions in this rule are designed to be consistent with the City's goal of creating a respectful and professional work environment. However, definitions alone do not capture

the City's policy without examples. Accordingly, this rule relies on the examples included throughout. These examples are provided to illustrate the definition of a term but are not intended as the only examples of conduct that may violate this rule.

Definitions with Examples of Prohibited Conduct

Harassment:

The City strictly prohibits harassment based on protected status. 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.

By way of illustration only, and not limitation, such prohibited harassment includes:

- racial or ethnic slurs, epithets, and any other offensive remarks;
- jokes, pranks or other banter, including stereotyping;
- whether written, verbal, or electronic, threats, intimidation, and other menacing behavior; and
- inappropriate verbal, graphic, or physical conduct; sending or posting harassing messages, videos or messages via text, instant messaging, or social media which have a nexus to the workplace; and other harassing conduct based on one or more of the protected statuses identified in this policy.

Sexual Harassment:

Sexual harassment is a specific form of harassment which includes a broad spectrum of conduct. It 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.

By way of illustration only, and not limitation, some examples of unacceptable behavior include:

- unwanted sexual advances;
- offering an employment benefit (such as a raise, promotion or career advancement) in exchange for sexual favors, or threatening an employment detriment (such as termination or demotion) for an employee's failure to engage in sexual activity;
- visual conduct, such as leering, making sexual gestures, and displaying or posting sexually suggestive objects or pictures, cartoons or posters;
- sending or posting sexually-related messages, videos or messages via text, instant messaging, or social media;
- verbal abuse of a sexual nature, graphic verbal comments about an individual's body, sexually degrading words used to describe an individual, and suggestive or obscene letters, notes or invitations;

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- welcome or unwelcome 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; and
 - physical or verbal abuse concerning an individual's gender, gender identity or gender expression.

Discrimination:

The City is committed to prohibiting discrimination in the workplace. Discrimination is the unequal or different treatment of an individual in any personnel action based on protected status.

By way of illustration only, and not limitation, examples of discrimination may include:

- making employment decisions, such as, promotional decisions, hiring decisions, discharge or layoff selections based on a protected status;
- using stereotypes or assumptions about a protected status for the purpose of employment decisions;
- denial or exclusion from information/meetings that could impact successful job performance based on protected status; and
- collusion with another person to either treat someone negatively based on protected status.

Racism:

Racism is a form of discrimination and/or harassment. The City prohibits racism in the workplace.

By way of illustration only, and not limitation, examples of racism may include:

- commenting that a Black employee is "so articulate" or referring to a Black employee as "you people"; and
- Racial slurs, racist jokes or cartoons, racial stereotypes, paraphernalia like swastikas or nooses, or singing along to racist song lyrics.

Retaliation:

The City prohibits retaliation against those who engage in protected activities. Protected activity may include but is not limited to the following: complaining or threatening to complain about alleged discrimination, racism or harassment against oneself or others; resisting sexual advances or intervening to protect others; and requesting reasonable accommodation for disability or religion. 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.

By way of illustration only, and not limitation, examples of retaliation may include:

- Any adverse employment action including disciplining or terminating an employee for filing a claim of harassment, racism or discrimination;

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- Ostracizing or excluding a complainant from a work-related meeting or conversation;
 - Spreading malicious gossip or rumors about a coworker for filing a complaint of discrimination, racism or harassment; and
 - Scrutinizing work or attendance more closely than that of others without justification.
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Religious Accommodation

See [Human Resources Administrative Rule 2.06 for reasonable employment accommodations, including religious accommodations.](#)

Disability Accommodation

See [Human Resources Administrative Rule 2.06 for reasonable employment accommodations, including disability accommodations.](#)

Manager/Supervisor Expectations

Managers and supervisors shall enforce this rule and maintain a productive, respectful, inclusive, and professional workplace.

Managers and supervisors who know or have reason to know that discrimination, harassment, racism or retaliation may be occurring must do the following:

- 1) Take immediate action to stop it; and
- 2) Report the incident to BHR as required below.

Implied approval of harassment, discrimination, racism, 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.

A “complaint” as used in this subsection is given its ordinary meaning. It means that an employee is bringing information forward or protesting something that is affecting their work environment, and the substance of the complaint involves protected status.

If a manager or supervisor observes or becomes aware of conduct that likely constitutes harassment, discrimination, racism, retaliation, or other inappropriate conduct discussed under this rule or receives a complaint from a City employee, an applicant, a member of the public or a contractor about harassment, discrimination racism, , or retaliation they shall:

- 1) Contact the Human Resources Business Partner or Employee Relations Manager as soon as possible, but no later than two working days after observing or becoming aware of conduct or after receiving the complaint that likely constitutes discrimination, racism, harassment or retaliation; and
- 2) Upon receipt of a complaint, the receiving manager or supervisor shall provide the complainant with a copy of this rule.

Managers and supervisors are not expected to determine that a 2.02 violation has occurred before contacting BHR. When in doubt, managers and supervisors should always err on the side of contacting BHR within two working days.

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 prohibited 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.

Managers and supervisors are responsible for ensuring that the following are not permitted in, and are removed from, the workplace: notes, comments, posters and other materials on walls, bulletin boards or elsewhere in the workplace, and media that reflect harassment, discrimination, racism or retaliation. 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 electronic devices such as computers, telephones, mobile phones, tablets, photocopiers, or faxes for any of these purposes is also prohibited.

Any supervisor or manager who is aware of harassment, discrimination, racism, and/or retaliation and fails to report it or condones it by action or inaction will be subject to disciplinary action.

What Should Employees Do? All employees, managers and supervisors are advised to document incidents of workplace harassment, discrimination, racism or retaliation, as well as take the following action:

- 1) Not engage in discrimination, harassment, racism or retaliatory conduct in violation of this rule.
- 2) If you believe you are being subjected to conduct that violates this rule and feel comfortable doing so: 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 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, racism or retaliatory conduct prohibited by this rule. If you witness 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. You may go directly to Human Resources.
- 4) Employees who believe they are being subjected to conduct that violates this rule are encouraged to take advantage of the City's [Employee Assistance Program, as provided under HRAR 10.02](#).

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

Oregon law requires the City to notify all employees that anyone who intends to sue the City for violation of state law must provide tort claim notice within 180 days of the alleged violation of the law. If timely tort claim notice is given, a [complaint alleging an unlawful employment practice as described in ORS](#)

659A.030, 659A082, or 659A.112 must be commenced not later than five years after the occurrence of the alleged violation.

This policy includes conduct that is not prohibited under state or federal law and is enforceable as a City policy but is not intended to create a legal right of action that does not exist under state or federal law.

Internal Complaint Process

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;
- their bureau director; or
- Bureau of 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.;

Oregon law requires the City to investigate complaints submitted within four years from the date that the workplace harassment, racism or discrimination occurred. The City encourages employees to notify the City promptly so that it can act quickly to address the issue, and to bring forward any complaints the employee may have regardless of when the conduct occurred.

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, racism, retaliation, occurred or file a complaint with the Bureau of Human Resources.

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. .

BHR will follow-up with the complaining employee not less than every three months for one year after receipt of the complaint to ensure that the harassment, racism, or discrimination has stopped, and the complainant has not experienced retaliation. The complainant may, at any time, request in writing for BHR to stop following up on the complaint.

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

Confidentiality

All information received in connection with inquiries, or with the filing, investigation, and resolution of a workplace harassment, discrimination, racism or retaliation complaint is treated as highly sensitive. Employees authorized by the 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. A person who believes that they have been the victim of workplace harassment may voluntarily disclose information regarding the incident of workplace harassment.

As required under State law, the City may not require or coerce an employee reporting a violation of this policy to enter into a nondisclosure or non-disparagement agreement; however, an employee may voluntarily request to enter into such an agreement with City and will have seven days after executing the agreement to revoke any such agreement.

A nondisclosure agreement refers to a contract by which the parties agree not to reveal information with others outside of their arrangement.

A non-disparagement agreement refers to a contract by which the parties agree not to make negative statements about the other(s).

Training

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

Notice

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.

Administrative Rule History

Adopted by Council March 6, 2002, Ordinance No. 176302
Effective April 5, 2002
Revised July 28, 2003
Revised July 1, 2004
Revised July 9, 2007
Revised October 19, 2010
Revised November 4, 2011
Revised December 4, 2013
Revised April 25, 2016
Revised February 15, 2018
Interim Rule Revised September 30, 2020

ATTACHMENT A
BHR Investigation
Steps

The HR Business Partner investigating the complaint will complete the following steps:

1. Evaluate the complaint.
2. Determine whether there is reason to believe prohibited discrimination, racism 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, racism or other conduct that violates this rule.
This may include but is not limited to:
8. Check in with the complaining employee at least once every three months after receiving the complaint for one year after initial receipt of the complaint, unless the complainant requests no further check-ins in writing.
9. Investigation files related to violations of this policy shall be retained under the City's electronic file storage system and retained in accordance with the required records retention schedule.

