

<b>Title: NON-DISCRIMINATION AND ANTI-HARASSMENT POLICY</b>	
<b>Purpose:</b>	To prohibit and prevent discrimination, harassment and retaliation based on a person's protected class and establish procedures for handling complaints of employment discrimination.
<b>Issued by:</b>	Administration-Equal Opportunity Office
	<b>Date:</b> July 31, 2023
<b>References:</b> Civil Rights Act of 1964, as amended, Titles VI and VII; Hawaii Revised Statutes, Chapters 76, 368, 371, 378, 489, and 515; Equal Pay Act of 1963, as amended; Age Discrimination in Employment Act of 1964, as amended; Pregnancy Discrimination Act of 1978; Title II of the Genetic Information Nondiscrimination Act of 2008; Americans with Disabilities Act of 1990, as amended; Americans with Disabilities Act Amendments Act of 2008; Rehabilitation Act of 1973, as amended, Sections 503 and 504; Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, Section 402; Revised Charter of the City and County of Honolulu, Sections 6-1102 and 6-1112; Revised Ordinances of Honolulu, Articles 1-11 and 1-17; Administrative Directives Manual at Subject No. 440; Rules of the Director of Human Resources; Chapter 2, Section 2-8.	

**I. COVERAGE**

This policy covers and is applicable to all employees regardless of pay level or position, whether civil service, exempted from civil service, regular or temporary appointment, under a personal services contract, or a volunteer, as well as individuals under consideration for City employment.

**II. POLICY**

- A. The City is committed to a discrimination-free environment in which all applicants and employees are treated with respect and dignity. Each individual has the right to apply for and work in an atmosphere that promotes equal employment opportunities and prohibits discrimination.
- B. The City prohibits all forms of discrimination against any employee or applicant for employment on the basis of a classification protected under federal, state, or local law. The classes that are protected from employment discrimination ("protected class(es)") covered by federal, state and local law include.<sup>1</sup>

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<sup>1</sup> The City prohibits discrimination of all classifications protected by employment discrimination law, whether or not listed herein.

- Age
  - Ancestry
  - Arrest and court record
  - Breastfeeding/expressing breast milk
  - Citizenship
  - Color
  - Credit history or credit report<sup>2</sup>
  - Disability
  - Domestic or sexual violence victim status
  - Gender identity or expression
  - Genetic information or refusal to submit to a genetic test
  - Income assignment for child support
  - Marital status
  - Military and veteran status
  - National Guard or Reserve participation
  - National origin
  - Politics
  - Pregnancy, childbirth or related medical conditions<sup>3</sup>
  - Race or ethnicity
  - Religion
  - Reproductive health decision
  - Sex
  - Sexual orientation or transgender status
- C. The City, its departments and agencies (hereinafter collectively referred to as “departments”), through its management and supervisory personnel, have a responsibility to prevent acts of employment discrimination, including harassment,<sup>4</sup> whether committed by supervisors, agents, other employees, or non-employees.
- D. The City does not condone or tolerate discrimination or harassment in the workplace, or retaliation against employees or job applicants for asserting their rights to be free from discrimination, including harassment. Violations of this policy by any employee will result in appropriate, responsive, and corrective action. Misconduct does not need to rise to the level of unlawfulness to be prohibited or for responsive action to be taken under this policy. Appropriate, responsive, and corrective action may include discharge, if appropriate.
- E. Each department head or appointing authority shall adopt and enforce this policy. An Equal Employment Opportunity (EEO) officer shall be designated by the department head or appointing authority of each department and agency. Absent a specific written designation of a department’s EEO officer, the department’s administrative services officer shall be the department’s EEO officer. The departmental EEO officer shall assist the department head or appointing authority with ensuring equal employment opportunity and compliance with this policy. Departments may establish policies and procedures in addition to, but consistent with, this policy upon review and approval of the Director of the Department of Human Resources (DHR).

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<sup>2</sup> Unless the information in the individual's credit history or credit report directly relates to a bona fide occupational qualification. HRS § 378-2(a)(8).

<sup>3</sup> HRS § 378-1.

<sup>4</sup> This policy addresses harassment prohibited under federal, state and local employment discrimination laws. Allegations of harassment not based on membership in a “protected class” are not covered by this policy and may be raised under the Respectful Workplace Policy found in the Personnel Manual at Reference VI-4 or other provisions applicable to workplace conduct.

### III. **DEFINITIONS**

**Terms used in this policy are intended to be defined and have meaning as generally and commonly understood in the context of unacceptable workplace behavior, to include:**

- A. **Discrimination** is an act which either denies or confers privileges on the basis of a person's membership in a "protected class." Decisions regarding employment, including recruitment, hiring, placement, training, promotion, compensation, benefits, transfers, layoffs, discipline, termination, etc., must be based on valid non-discriminatory reasons.
- B. **Harassment** is a course of unwanted conduct based on a protected class, which has the purpose or effect of adversely affecting the terms or conditions of an individual's employment. Harassment is usually behavior that is repeated over time; however, some acts may be so severe in nature that they only need to occur once or twice to rise to a level of discriminatory harassment.
- C. **Retaliation** is an adverse action that is taken by an employer because an employee (including a former employee) or a job applicant asserted their right to be free from discrimination or harassment by, among other things, witnessing, reporting or complaining of discrimination or harassment; participating in an investigation or lawsuit relating to a claim of discrimination or harassment; or opposing discrimination.
- D. **Sexual Harassment** means unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct or visual displays of a sexual nature. The City's Sexual Harassment policy is found in the Personnel Manual at Reference XIV-1.

### IV. **RESPONSIBILITIES**

#### A. **Individuals**

All employees must refrain from engaging in conduct that could be considered disrespectful or constitute discrimination or harassment as defined in this policy. Conduct prohibited by this policy can include, but is not limited to:

1. Making an employment decision that treats individuals or groups of individuals differently based on their protected class;
2. Giving an advantage or disadvantage in an employment benefit, term, or condition to an individual or group of individuals based on their protected class;
3. Engaging in verbal, visual or physical conduct which is derogatory, or denigrates, mocks, or otherwise insults an individual or group of individuals based on their protected class;
4. Making demeaning or stereotypical comments, jokes, slurs, or other offensive commentary to or about individuals or groups of individuals based on protected class characteristics;

5. Displaying images, graphics, pictures, and other content, including through electronic transmission, that are harassing or offensive to a protected class.

## **B. Managers and Supervisors**

1. Managers and supervisors represent the employer to subordinate employees. Therefore, each manager and supervisor is accountable for the proper conduct of all employees under their supervision, including preventing discrimination, harassment and retaliation, as well as taking measures to stop such conduct should it occur. A manager or supervisor shall not knowingly permit a subordinate officer or employee to engage in conduct prohibited by this policy.
2. Failure by a manager or supervisor to perform their duties consistent with this policy may be cause for disciplinary action against the manager or supervisor. Managers and supervisors may be held to a higher standard of conduct and accountability.
3. Managers and supervisors shall communicate this policy and the avenues available for resolution of discrimination issues at the worksite to all employees. Managers and supervisors must guard against the various forms of discrimination, including harassment and retaliation, which might potentially occur within their area of responsibility.
4. Managers and supervisors shall ensure that their department head or appointing authority and EEO officer are informed of all complaints alleging protected class discrimination and that complaints are responded to appropriately. Results of any investigation of a complaint under this policy shall be reported to the department head or appointing authority and acted upon promptly and effectively.
5. Departments, through their supervisors and managers, shall ensure compliance with all procedures of this policy. Actions or inactions by managers and supervisors with respect to responsibility under this policy will be evaluated to ascertain the extent of efforts taken to control alleged acts of discrimination, including harassment and retaliation. Failure by managers or supervisors to prevent and/or take action against discriminatory conduct may be cause for disciplinary action. Managers and supervisors may be held to a higher standard of conduct and accountability with regard to their own acts or failing to prevent discrimination, including harassment and retaliation, in the workplace.

## **V. COMPLAINT AND INVESTIGATION PROCEDURES**

### **A. Making a complaint**

1. Any employee who feels subjected to protected class discrimination, including harassment or retaliation, should promptly make a complaint to their immediate supervisor or, in the alternative, the next higher level supervisor, the department head or appointing authority, departmental EEO officer, or the City's Equal Opportunity (EO) office.
2. An individual under consideration for City employment who feels they have been subjected to protected class discrimination, including harassment or retaliation, should promptly make a complaint to the alleged offender's immediate supervisor,

department head or appointing authority, departmental EEO officer, or the City's EO office.

## **B. Complaint**

1. Each department shall respond to allegations of protected class discrimination, including harassment and retaliation, whether made verbally or in writing.
2. When appropriate, immediate corrective action (e.g., separating an alleged harasser from the victim or implementing temporary environmental or workflow changes) shall be taken by the department in response to a complaint.
3. An investigation may be necessary if immediate corrective action cannot be taken or when the alleged conduct may be subject to possible disciplinary action. When an investigation is necessary, it will be initiated by the alleged offender's department head or appointing authority, or, if the director is the alleged offender, by the City's EO Administrator.
4. All complaints of protected class discrimination, including harassment or retaliation, will be reported by departments/agencies to the City's EO office. Departments/agencies shall maintain a log of all complaints received including the disposition and provide the log to the EO office upon request, and at least once annually.

## **C. Investigation**

1. If deemed necessary, the investigation<sup>5</sup> of a complaint shall be conducted in an unbiased, fair and discreet manner with appropriate safeguards to maintain confidentiality and protection from embarrassment.
2. The alleged offender shall be allowed to respond to the complaint.
3. A report of the findings of the investigation will be prepared.
4. The department head or appointing authority of the accused individual(s) and/or the subject of the investigation will, after reviewing the report of investigation, make a recommendation for disposition of the matter and corrective action, if any.
5. All investigative reports and recommendations for corrective action, if any, will be submitted to the EO Office for review and approval. Should disciplinary action be recommended by the department head or appointing authority, the EO Office will consult with the Labor Relations Division of DHR and inform the DHR Director of the proposed discipline before responding to the corrective action recommended by the department head or appointing authority.
6. Written notice of the completion of investigation and relevant findings shall be provided to both the complainant and accused.

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<sup>5</sup> Investigations may be deemed necessary by management and initiated without a specific complaint.

7. A complete confidential record of the investigation shall be maintained by the department of the accused for future reference and proceedings consistent with terms of applicable collective bargaining agreements in effect.

## **VI. DISCIPLINARY AND OTHER ACTIONS**

- A. After an investigation, an officer or employee who is found to have engaged in conduct prohibited by this policy will be notified in writing of the investigation results, warned not to engage in repeat of or similar conduct, directed not to retaliate against the victim, complainant or anyone involved in the investigation; and if deemed warranted, will be appropriately disciplined.
- B. Any disciplinary action shall be determined in accordance with standards applicable to the employment relationship and on a case-by-case basis.
- C. All disciplinary actions, prior to implementation, shall be reviewed by Labor Relations Division and the DHR Director. Approval by the City's EO Administrator of the disposition and recommended responsive action is required before proposed disciplinary or other action is taken by the department head or appointing authority.
- D. All disciplinary actions shall be in accordance with civil service rules or applicable collective bargaining agreement. Due process procedures shall be adhered to when imposing any discipline in accordance with this policy.

## **VII. CONFIDENTIALITY**

- A. While complete confidentiality cannot be guaranteed, complaints made under this policy will be handled as confidentially as possible. Generally, the complaint and/or the results of relevant fact-finding may require that information be revealed to the following:
  - Complainant and accused;
  - Any officer or employee investigating a complaint;
  - The relevant department head or appointing authority;
  - Designated staff of the City's EO office;
  - DHR Director;
  - Witnesses to the alleged prohibited conduct; and
  - Any other person to whom revealing information is necessary to conduct an appropriate investigation.
- B. Witnesses and others involved in the investigation shall be advised to maintain confidentiality of the incident and investigation, as appropriate.
- C. Because investigations sometimes necessitate that potentially defamatory statements be repeated, absolute confidentiality shall not be promised; however, the investigation is to be conducted professionally and as discreetly as possible, with disclosures made only when necessary.

## **VIII. RETENTION OF COMPLAINT AND WRITTEN REPORT OF INVESTIGATION**

Reports of investigations of complaints shall be retained by the department EEO officer for at least five (5) years after the alleged offender or subject terminates service as a City employee, unless specific terms of a collective bargaining agreement contain different complaint and investigation retention provisions applicable to the report. Thereafter, such report and supporting documentation, or material about the complaint and investigation that is permissibly retained by the department, shall be forwarded to the City's EO office for retention.

## **IX. FURTHER ACTION WHERE AN INDIVIDUAL IS NOT SATISFIED BY MANAGEMENT'S RESPONSE**

Complaints of protected class discrimination, including harassment and retaliation, may also be filed with applicable state or federal agencies. These agencies have their differing jurisdiction over protected classes and strict timeframes within which complaints must be filed.

- A. The Hawaii Civil Rights Commission (HCRC) receives complaints that allege a violation under Hawaii Revised Statutes Chapter 378. Complaints must be filed with the HCRC within 180 calendar days of the alleged discrimination.
- B. The Federal Equal Employment Opportunity Commission (EEOC) receives complaints alleging a violation of federal employment discrimination laws. Complaints must be filed with the EEOC within 300 calendar days from the date of the alleged discrimination.

It is strongly encouraged that any individual who feels that he/she/they is the subject of discrimination in the workplace first seek internal remedies before utilizing outside agencies. Internal resolution is a good first step because it can result in a timely and responsive remedy. Filing an internal complaint does not extend the filing deadline of the HCRC or EEOC.

## **X. NON-RETALIATION**

- A. There shall be no retaliation or discrimination against an employee or applicant who has complained of protected class discrimination, including discriminatory harassment, conducted an investigation of a complaint, or acted as a witness during an investigation of a complaint. Retaliatory conduct is illegal and constitutes a separate violation of laws and rules. Any retaliation or discriminatory action should be reported immediately by the individual and shall be dealt with promptly and effectively by management.
- B. An employee who retaliates against another employee, witness, investigator, or individual under consideration for City employment shall be disciplined in accordance with applicable provisions of this policy or other appropriate disciplinary action authorized by law, ordinance or rule. If the employee is covered by a collective bargaining agreement, the disciplinary action against the employee shall comply with such agreement.

**XI. FOLLOW-UP**

- A. Follow-up inquiries shall be made by the department EEO officer and supervisory or managerial personnel to ensure that discriminatory conduct has not resumed and retaliation has not occurred. If inquiries reveal such occurrences, they shall be appropriately dealt with by management. Management shall notify the DHR Director and the City's EO office of the occurrence(s) and applicable corrective action taken.
- B. Even where the results of an investigation are inconclusive, the situation shall be monitored and reviewed by the department EEO officer, supervisors and managers, for the purpose of ensuring that the complained of problem has been resolved.

**XII. COMMUNICATION OF POLICY INFORMATION**

The content of this policy shall be communicated to all employees, including supervisors and managers, through normal departmental channels and may be posted on employee bulletin boards. This policy should also be posted where applications for City employment are accepted. This information shall be discussed with new employees during departmental orientation and, from time to time, in departmental staff meetings. Widespread dissemination of this information and ongoing compliance with this policy is expected.

**XIII. CONFLICT WITH COLLECTIVE BARGAINING AGREEMENTS**

If there is any conflict between this policy and an applicable collective bargaining agreement, the provisions of the collective bargaining agreement shall supersede any requirement under this policy unless doing so would violate a federal, state or local law.