

**SUBJECT: PROHIBITED HARASSMENT AND/OR DISCRIMINATION POLICY****Purpose**

The City of Madison's vision is Inclusive, Innovative, and Thriving. The City of Madison is committed to equity, diversity, inclusion, and equal employment for all. Our policy is to be welcoming, safe, and fair to all employees and members of the community. The goal of our policy is for the work environment to be free of harassment, discrimination, and retaliation. To that end, this policy will be liberally construed and strictly enforced.

**Covered Behaviors**

We expect all employees to treat their colleagues and members of the public in a welcoming, fair, respectful, and equitable manner. The following behaviors are prohibited under this policy: discrimination, harassment, retaliation, hazing, quid pro quo or other types of sexual harassment, micro-aggressions (subtle acts of exclusion), and creating a hostile work environment due to protected class. See the APM 3-5 Resource Guide for definitions of these behaviors as well as a full list of protected classes.

**Scope**

This policy applies to the delivery of city services and the official interactions between city employees as well as community members. This policy applies to all employees delivering city services: permanent, seasonal, temporary, contracted, lead-workers, supervisors, managers, and Department/Division Heads. It also applies to our clients, independent contractors, visitors, and vendors who have interactions with the City and our customers. This policy applies to conduct that occurs at the workplace and at any location or on any platform that can be reasonably regarded as an extension of the workplace, including but not limited to the use of a telephone, voicemail, text messages, and any social media or online platforms.

**Consequences for Violating APM 3-5**

City employees: engaging in any types of prohibited conduct (bullying, discrimination, harassment, intimidation, micro-aggressions, retaliation, etc.) could result in disciplinary action being taken against the offender, up to and including discharge from City employment. Violations of this policy are also considered violations of APM 2-33 Rules of Conduct and will result in progressive discipline when appropriate.

Corrective Action Panel: When allegations under this policy are Sustained, the Department Head (or the Mayor if the Respondent is a Department/Division Head) will receive a debriefing from the investigators. Within 10 business days after this debriefing, the Department Head or Mayor will schedule a meeting with the Corrective Action Panel (ensuring the investigators are not a part of this panel) made up of the Directors or designees from the Office of the City Attorney, Human Resources, Department of Civil Rights along with the Department's assigned Deputy Mayor. The Corrective Action Panel will make recommendations about the corrective action based on the policy violation. The ultimate decision on discipline rests with the Department/Division Head or the Mayor. If the recommendation of the panel is unanimous, or if a majority of the panel has the same recommendation, and the Department Head or the Mayor issues less severe corrective action than what the panel recommended, they must document in writing the discipline they issued, why it differs from the panel's recommendation, and send it to the director of Human Resources and the Department of Civil Rights, as well as their designee that was a member of the panel. Within 5 business days after meeting with the Corrective Action Panel, the Department Head or Mayor must issue the corrective action to the employee that violated the policy and submit the final corrective action plan to the Department of Civil Rights Director and the Director of Human Resources.

**Non-City Employees:** If it is found that a client, independent contractor, visitor and/or vendor has engaged in behaviors that violate this policy, actions must be taken to protect the City of Madison employee. If a mandatory reporter witnesses or becomes aware of violations of this policy by a non-city employee and do not report the incident or take measures to protect the employee, they may be in violation of this policy.

Consequences for a non-city employee found to violate this policy will vary depending on the job type of the employee and severity of the incident. Some examples of consequences could include: requiring a client to receive service from a different staff member or location, ending a contract with an independent contractor or vendor, or prohibiting a visitor from returning for a period of time or indefinitely. All decisions regarding consequences for non-city employees should follow written internal policies developed by a department. These policies must be approved by the Department of Civil Rights and Office of the City Attorney. If a department does not have such written procedures approved, the department must consult with the Department of Civil Rights and the Office of the City Attorney before making a decision on a case by case basis.

### **Filing a Complaint**

**Reporting a Complaint:** All City employees are strongly encouraged to report any violations of this policy. Complaints shall be filed within three hundred (300) days of the alleged violation. If there are repeated incidents that demonstrate a pattern of behavior, the most recent incident should have occurred in the previous 300 days from date of filing a complaint. The Department of Civil Rights Director and/or Affirmative Action Manager, after approval from the Office of the City Attorney, may waive the 300-day time restriction if they believe it is warranted given the severity of an incident. No employment or disciplinary action will be taken against any employee who makes a good faith complaint even if the investigation fails to substantiate any or all allegations of the complaint. No employee may file a complaint in bad faith. Employees who witness a violation of this policy can also file a complaint. At their option, employees may file their complaints with any of the following:

- a. Any lead-worker, supervisor, or manager *(Not necessarily their own lead-worker, supervisor, or manager.)*
- b. Any Department/Division Head
- c. Human Resources/Labor Relations
- d. The Department of Civil Rights
- e. The Mayor's Office *(especially if the complaint is against a Department/Division Head, an Alderperson, DCR staff, or a Mayoral staff person.)*

No person may require an employee to file a complaint with them. No person may prohibit an employee from filing their complaint with any other person or department. No employee shall be discouraged from filing a complaint under this policy. Prohibiting or discouraging an employee from filing a complaint under this policy is itself a prohibited behavior subjecting the individual to investigation and possible discipline under this policy.

**Complaint Form:** The Department of Civil Rights shall create and distribute a complaint form to facilitate the recording of complaints and to promote the uniformity of information gathered in response to such reports. The form shall also capture the resolution to the matter which the complaining employee requests. However, no one can be forced to use the complaint form. Complaints may be made verbally, electronically, or in writing. The recipient of a verbal complaint shall document the allegations in writing.

**Anonymous Complaints:** Anonymous complaints may be filed at any time, and the Department of Civil Rights will implement a procedure for making such claims to be codified in the APM 3-5 Resource Guide.

### **Safety Assessment**

If, at any time during the complaint analysis or investigation, investigators feel the emotional or

physical safety of any employee is at risk, the Department of Civil Rights will work with the Department Head, Employee Assistance Program, and Human Resources to assess the need to move the alleged offender or to take other measures to provide for a safe and secure workplace environment. The Complainant should not be reassigned if at all possible. If there are severe enough safety concerns, complainants may be kept anonymous at the discretion of the Department of Civil Rights.

### **Investigation Procedures**

All employees are required to cooperate fully with any investigation into alleged violations of this APM. Investigations under this policy are confidential. Any employee discussing any part of the investigation with another City employee except, where appropriate, their personal attorney, Union, or Association representatives, may be in violation of City policy and subject to discipline, up to and including termination of employment. Legal, Union and Association representatives are strictly prohibited from sharing information from a confidential investigation with anyone else.

Written acknowledgement of receipt of a complaint must be forwarded to both the appropriate Department/Division Head (or to the Mayor if the Respondent is a Department/Division Head) and the Department of Civil Rights within 24 hours if received during business hours on a work day and by the following work day if received after business hours on Friday or on the weekend. Failure to follow this timeline may be a violation of this policy.

If the complaint alleges a violation of both this policy and other City policies/procedures, the relevant agencies will work together to investigate and resolve the matter. If the Department of Civil Rights determines the complaint alleges a violation of other City policies/procedures, the Department of Civil Rights will refer the complaint to the appropriate agency for investigation.

Investigations must follow the investigation procedures set out in the APM 3-5 Resource Guide.

Investigators: After receipt of the complaint, the Department of Civil Rights will have fifteen (15) days to assign investigators. After consultation with the appropriate Department/Division Head, the Department of Civil Rights will appoint the investigators who will conduct an immediate investigation into alleged violations of this policy. If none of the appointed individuals are a member of the Respondent's Department/Division, the Department/Division Head will appoint someone from the department/division to assist the investigators with department specific information including Department organization, policies, procedures, etc. relevant to the investigation. In the case of complaints involving sworn law enforcement and firefighters, the Department of Civil Rights will assist the lead investigators from those agencies. Investigations of complaints filed under this policy must be given the highest priority. Such investigations should be promptly initiated and swiftly completed.

Complaints Regarding the Conduct of Elected Officials Involving City Employees: The City has a legal obligation to investigate complaints against elected officials. Accordingly, elected officials of the City of Madison are covered as Respondents under this policy. However, any discipline for sustained violations of this policy against an elected official are conducted pursuant to the statutory authority set forth in the Wisconsin Statutes recognizing the most effective remedy for such violations are those belonging to the electorate - i.e. the power of the ballot box. Any person receiving a report or a complaint alleging a violation of this policy by an elected official shall forward such information to the Department of Civil Rights Director and the Human Resources Director who shall then jointly conduct a prompt, thorough and fair investigation into such allegations as set forth in the Resource Guide. The Department of Civil Rights Director, the Human Resources Director in consultation with the Office of the City Attorney shall, upon completion of their investigation, issue a public report in compliance with sec. 19.356, Wis. Stats., redacting such information as required under Wisconsin's Public Records Law.

Confidentiality Protected: A high degree of confidentiality is necessary to foster effective

resolutions to complaints filed under this policy. Wherever possible, complaints are to be maintained and processed in a manner that can protect confidentiality of all parties within the boundaries of federal, state and local laws. These prohibitions shall not apply to communications between a City employee and their chosen representative/personal attorney.

### **Roles and Responsibilities**

Department/Division Heads: Department/Division Heads must take affirmative steps to ensure equal employment opportunities and a welcome, fair, and equitable culture for all City employees. While such affirmative management will take many forms, the following steps are required under this policy:

1. Circulate this memorandum to all employees, at least once a year and review this policy with all lead-workers, supervisors and managers at least once each year.
2. Ensure all new hires are trained on the policy within 45 days of hire or at the earliest date that training is available.
3. Ensure all supervisors and lead workers receive refresher training on the policy.
4. Ensure supervisors and lead workers are following these procedures and are accountable to their roles and responsibilities below.
5. Ensure all employees receive refresher training on the policy on a regular basis set forth by the Department of Civil Rights in the APM 3-5 Resource Guide.
6. Ensure staff members assigned to investigations by the Department of Civil Rights are made available to complete the investigation in a timely manner.
7. Issue corrective action following the guidelines set out in the Resource Guide no later than 10 days after the Corrective Action Panel meeting.
8. Forward a copy of the corrective action (written warning, suspension, performance improvement plan, last chance agreement, etc.) taken to the Department of Civil Rights. If the corrective action is a verbal warning, the Department/Division Head will prepare a memo so stating and forward that document to the Department of Civil Rights.

Mandatory Reporters Under This Policy: Department Heads, Managers, Supervisors, and Lead-Workers are held to a higher standard of conduct and are expected to serve as role models by demonstrating their commitment to this policy in their everyday conduct. Lead workers, Supervisors and Managers (including Department/Division Heads) are mandatory reporters under this policy. Any mandatory reporter who fails to take appropriate action upon observing an act prohibited by this policy, or who fails to take appropriate action upon receiving knowledge of a possible violation of this policy is subject to investigation for violating this policy and is subject to discipline up to, and including, termination. Lead-workers, supervisors, and managers are required to:

1. Fully cooperate with the Department of Civil Rights Investigations.
2. Take all complaints and allegations seriously and maintain confidentiality.
3. Take appropriate action, which may include immediate intervention, when they observe conduct that violates this policy.
4. All mandatory reporters are required to promptly notify both their Department/Division Head and the Department of Civil Rights, in writing, of all instances of known, observed and/or reported acts which may indicate a violation of this policy. Notification must take place within 24 hours, during business hours on a work day and by the following work day if after business hours on Friday or on the weekend. In addition to the behaviors described in this policy, mandatory reporting also includes acts such as hate crimes, sexual contact, stalking, and battery. When an employee reports an act(s) that could constitute criminal activity, mandatory reporters should contact the Office of the City Attorney who will handle any reporting to law enforcement after consultation with Human Resources and the Department of Civil Rights. If the complaint concerns the Department/Division Head, the lead-worker, supervisor, or manager should refer the complaint to the Mayor's Office or the Department of Civil Rights.
5. Offer the Employee Assistance Program when appropriate.
6. Recuse themselves when a conflict of interest is apparent or suspected in an investigation.

Department of Civil Rights: The Department of Civil Rights is the lead administrative unit under this policy. Its representatives function as a resource for all City employees, including managers and supervisors. The Department shall develop and provide training and education programs for all employees, including specialized training for mandatory reporters, to help promote this policy and the goals embodied therein. The Department of Civil Rights shall work with the City Attorney's Office when necessary and shall confer with Human Resources, the Employee Assistance Program, and the Mayor's Office regarding sensitive cases. The Department of Civil Rights is responsible for the following:

1. Administering the City of Madison's discrimination, harassment, and retaliation investigation process including, but not limited to, conducting fair and impartial investigations of violations under this policy and providing consultation to City Department/Division Heads, mandatory reporters and employees to help ensure compliance with this policy, State and Federal employment laws and best practices.
2. Provide training, guidance, and consultation for all agencies and levels of leadership for the City of Madison.
3. Assign complaint investigators, with recommendations from the Department/Division Heads.
4. Provide information regarding the investigation to Department/Division Heads at the conclusion of investigation.
5. Provide a copy of the investigative findings to the Office of the City Attorney for review prior to the investigators reporting the findings to the Department Head, Complainant and Respondent.
6. Maintain a tracking system for all complaints filed and investigations.
7. Conduct workplace discrimination, harassment, and retaliation investigations and climate assessments when applicable.
8. Review this policy at least every four (4) years in consultation with Human Resources and the Office of the City Attorney.

Mayor's Office: The Mayor's office may contract with an outside third party to conduct an investigation under this policy if needed. The Mayor shall be responsible for developing and implementing any corrective action plan for their staff members or Department/Division Heads found to be in violation of this policy within 10 days of receiving the results of the investigation, and may consult with whomever they desire in that process.

The Mayor's Office shall be responsible for appointing an investigator for any complaint made against the following:

1. Department/Division Heads
2. Mayoral Staff
3. Department of Civil Rights Staff



Satya V. Rhodes-Conway  
Mayor

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