

Management Committee

Meeting date: April 25, 2018

For the Metropolitan Council meeting of May 9, 2018

Subject: 4-2-1 Discrimination, Harassment and Inappropriate Behavior Policy Update

District(s), Member(s): All

Policy/Legal Reference: 4-2-1 Discrimination, Harassment and Inappropriate Behavior

Staff Prepared/Presented: Aaron Koski, Acting Director, Office of Equal Opportunity 651-602-1426

Division/Department: Office of Equal Opportunity/Regional Administration

Proposed Action

That the Metropolitan Council approve updates to the Discrimination, Harassment and Inappropriate Behavior Policy

Background

Policies must be presented to the Council for approval and adoption. OEO is updating Council policies regarding protected class complaints to ensure all related Council policies dealing with personnel issues are complimentary, clearly communicated and compliant with all related laws and regulations.

Rationale

This policy is closely related to the over-arching policy 4-2 Affirmative Action and Equal Opportunity policy. This policy has not been updated since inception in 2005.

- The policy ensures all forms of discrimination harassment and inappropriate behavior will not be tolerated.
- The policy promotes employees to report discrimination, harassment and inappropriate behavior to management of the Office of Equal Opportunity.
- The policy has been updated advance of the upcoming Council-wide sexual harassment awareness and training

Thrive Lens Analysis

This item supports equity through ensuring the Council has policies that do not discriminate against job applicants, employees, and customers of the Twin Cities metropolitan area.

Funding

Not applicable

Known Support / Opposition

There is no known opposition to the policy update. The policy and associated procedural changes have been reviewed by Council stakeholders including the Office of General Counsel and Human Resources

POLICY – DISCRIMINATION, HARASSMENT, AND INAPPROPRIATE BEHAVIOR

Section/Number: 4-2-1	Total Pages: 4
Dept. Responsible: Office of Equal Opportunity	Effective Date: 9/11/1998
Special Note: Supersedes all previous policies regarding discriminatory harassment and inappropriate behavior	Last Revision Date: 1/12/2005
	03/16/2018
Last Review Date: 03/16/2018	
Revision No. 2	

I. Policy

It is the policy of the Council to provide a work atmosphere and deliver public services in a manner that is free of discrimination, harassment, and inappropriate behavior.

Discrimination, harassment, or inappropriate behavior in all Council-related events~~the employment setting~~ based on the protected classes of race, color, creed, religion, national origin, sex, marital or public assistance status, sexual orientation (which includes gender identity), genetic information, disability, age, or membership or activity in a local human rights commission will not be tolerated. ~~The term “employment setting” includes all events.~~

Discrimination, harassment, or inappropriate behavior in the provision of public services on the basis of a protected class will not be tolerated.

Job applicants, employees, Council members, Commission members, Council Advisory committees or advisory Board members, Council Task Force members, contractors, vendors, business partners, volunteers, and customers are prohibited from discriminating, harassing, or exhibiting inappropriate behavior towards others in the performance of Council-related business or while on Council property.

Retaliation against an individual who reports a suspected incident of discrimination, harassment, or inappropriate behavior or who cooperates in an inquiry or investigation is prohibited. Any person who is found to have violated this provision of the policy will be subject to corrective action up to and including discharge.

II. Purpose of policy

- A. To ensure all forms of discrimination, harassment, and inappropriate behavior will not be tolerated.
- B. To encourage employees to report discrimination, harassment, and inappropriate behavior to management or the Office of Equal Opportunity (“OEO”) staff.

III. Background and reasons for policy

- A. To educate Council employees about what constitutes discrimination, harassment, inappropriate behavior, and retaliation, recognizing that



prevention is the best tool for safeguarding the workplace from discrimination, harassment, inappropriate behavior, and retaliation.

- B. To identify the protected classes covered by federal, state, or local law against discrimination and harassment in employment and public services.

Definitions:

- A. **Discrimination** is the practice of treating a person or group unfairly or denying rights based on a protected class that would otherwise be granted.
- B. **Protected Class** is a group of people who share a characteristic that qualifies for protection from discrimination. There are 13 protected classes recognized in the State of Minnesota: race, color, creed, religion, national origin, sex, marital status, public assistance status, sexual orientation (which includes gender identity), genetic information, disability, age, or membership or activity in a local human rights commission.
- C. **Discriminatory harassment** is verbal or physical conduct or communication that shows hostility, disrespect, or disfavor toward an individual or group based on a protected class or Council policy. Discriminatory harassment involves actions or comments that are unwelcomed and may include one of the following:
 - 1. Submission to such conduct or communication, whether explicit or implicit, is made a term or condition of employment or access to public services; or
 - 2. Submission to or rejection of such conduct or communication by an individual is used as a basis for decisions affecting that individual's employment or access to public services; or
 - 3. Such conduct or communication has the purpose or effect of:
 - a. Creating an intimidating, hostile, or offensive work environment or atmosphere in which public services are provided; or
 - b. Substantially interfering with an individual's work performance or use of public services; or
 - c. Otherwise adversely affecting employment opportunities or access to public services.
- D. **Inappropriate behavior** is conduct or communication based on a protected class that is hostile, derogatory, offensive or exploitive, but may not be so severe or pervasive as to constitute harassment.
- E. **Retaliation** includes any adverse action taken against an employee for filing a complaint or supporting another employee's complaint under Council policy and/or federal and state law.

Types of Discriminatory Harassment

- 1. **Sexual harassment** includes the following unwelcomed behavior: sexually motivated physical contacts, sexually motivated verbal or written statements, physical and verbal sexual advances, requests for sexual favors, and other verbal, written, or physical conduct of a sexual nature. The victim as well as the harasser may be of any gender. The victim does not have to be of the opposite sex.
- 2. **Gender-based harassment** includes verbal or physical conduct or communication that is hostile, derogatory, offensive or exploitive, but not of a sexual nature, relating to the gender of another individual or group.
- 3. **Sexual ~~o~~Orientation harassment** includes hostile, demeaning, offensive or exploitive verbal or physical conduct or communication relating to the sexual or gender identity of an individual or group.
- 4. **Racial harassment** includes hostile, offensive, degrading or exploitive verbal or physical conduct or communication relating to the race or color of an individual or group.

5. **National ~~o~~Origin Harassment** includes hostile, offensive, degrading or exploitive verbal or physical conduct or communication relating to the national origin of an individual or group.
6. **Disability harassment** includes hostile, derogatory, offensive or exploitive verbal or physical conduct or communication relating to the disability of an individual or group. It includes behavior that undermines any reasonable accommodation provided by the Council that enables an individual with disabilities to compete for or perform a Council job or to utilize Council services. It covers actions such as tampering or interfering with assistive devices used by an individual, improperly denying a request for a reasonable accommodation, failing to respond to an accommodation request, and focusing on someone's disability rather than ability when making employment decisions (for example, e.g. promotion, hires, transfers).
7. **Age harassment** includes insulting, intimidating or demeaning verbal or physical conduct or communication relating to the age of an individual or group. It includes negative characterizations or stereotypes of an individual or group based on age.
8. **Religious harassment** includes antagonistic or denigrating verbal or physical conduct or communication relating to the religious beliefs or affiliation of an individual or group. It includes applying unwelcomed, undue pressure on others to subscribe to a particular religious belief or to join a particular religious group.

Examples

The following behavior and communication may constitute discrimination, harassment, or inappropriate behavior when directed towards any member of a protected class. These examples should not be construed as an all-inclusive list of discrimination, harassment, or inappropriate behavior.

1. Physical

- a. Threatened, actual, or attempted assault
- b. Touching, kissing, or grabbing
- c. Coerced physical contact or attempts to engage in such contact
- d. Intentional brushing against someone's body
- e. Blocking a person's path

2. Verbal

- a. Sexual propositions and cat-calling
- b. Offensive jokes about traits related to a protected class
- c. Sexually Ssuggestive, insulting, or vulgar comments
- d. Derogatory characterizations of a person's or group's ability based on a protected class
- e. Comments or inquiries about a person's sexual behavior
- f. Explicit or implicit promises of preferential treatment for submitting to or tolerating harassment or offensive behavior

3. Non-verbal

- a. Sexually ssuggestive or insulting sounds or gestures
- b. Leering and staring
- c. Displaying or bringing into the work place derogatory, intimidating or sexually suggestive material or items.

IV. Accountability

- A. The Office of Equal Opportunity is responsible for enforcing this policy.
- B. All Council officials and employees will be held accountable for treating one another and their customers and clients with courtesy, dignity, and respect and for complying with this policy. Any employee found, through an inquiry or investigation, to have engaged in discrimination, harassment, inappropriate behavior, or retaliation while in the performance of their job, while on Council property, or while conducting Council business, shall be subject to corrective action up to and including discharge.
- C. Council members must immediately notify the Chair, Regional Administrator, or Deputy Regional Administrator upon learning of possible discrimination, harassment, inappropriate behavior, or retaliation.
- D. Managers and supervisors are responsible for creating a non-discriminatory work environment and will be held accountable for taking prompt and appropriate action when aware of possible discrimination, harassment, inappropriate behavior, or retaliation. Managers and supervisors must notify their directors, managers, and the Office of Equal Opportunity of such behavior. Failure to do so may result in corrective action up to and including discharge.
- E. An employee who believes that he or she has been subjected to or witnessed discrimination, harassment, inappropriate behavior, or retaliation is encouraged to notify a supervisor or a manager and the Office of Equal Opportunity.

Related Policies and Procedures:

- 4-2 *Affirmative Action and Equal Opportunity Policy*
- 4-2-1a *Discrimination Complaint Investigation Procedure*
- 4-2-2 *Disability Management Policy*
- 4-6e *Respectful Workplace Procedure*

Revision/Review Tracking

Date	Revision No.	Review Only – No changes
1/12/05	1	
3/18/18 12/19/17	21 22	