



## **ANTI-DISCRIMINATION, SEXUAL AND OTHER UNLAWFUL HARASSMENT & RETALIATION FOR CITY OF MIAMI GARDENS EMPLOYEES**

The City of Miami Gardens is committed to a workplace environment that is free of sexual and other types of unlawful harassment and retaliation. Sexual harassment, other unlawful harassment and retaliation is unlawful under Title VII of the Civil Rights Act of 1964, as amended and the Florida Civil Rights Act, as amended. As a matter of City policy, sexual or other unlawful harassment occurring in the course of any business, employment or program activity at the City is prohibited.

### **PROHIBITION OF UNLAWFUL HARASSMENT**

The City is committed to maintaining a work environment free of harassment on the basis of race, religion, color, national origin, ancestry, disability, marital status, medical condition, sexual orientation, gender, age, or any other protected status under federal, state or local law, ordinance or regulation applicable to the City.

Any such harassment of any individual in the course of any business, employment or program activity at the City will not be tolerated.

This policy provides complaint procedures to assist the City in its efforts to implement this policy. Individuals who know of harassment, or believe that they have been harassed are expected to utilize the complaint procedures outlined herein.

The City is committed to promptly and thoroughly investigating all complaints of harassment. If, after a thorough investigation, it is determined that inappropriate harassment has occurred in violation of this policy, the offender will be subjected to immediate and appropriate disciplinary action, up to and including termination.

This policy applies to all City full-time, part-time, intermittent and seasonal employees; including supervisors, managers, directors, executives, and where applicable, City Officials (including elected officials as well as members of advisory boards, committees and task forces), as well as independent contractors, vendors, suppliers, contractor, subcontractors, agents and/or anyone else representing the City.

### **PROBIBITED CONDUCT**

All conduct which constitutes harassment as set forth in each successive section is a violation of this policy and therefore strictly prohibited.

### **SEXUAL HARASSMENT**

Sexual harassment in any form is prohibited. Sexual harassment may occur even when the intended target of the conduct is not offended, as others may find the conduct to be intimidating, hostile, or offensive. The City's policy prohibits all types of sexual harassment whether or not the intended target

finds the conduct to be unwelcome. Definitions and examples of sexual and harassment are provided below.

## 1. Sexual Harassment - Definition

- a. Sexual harassment is defined as unsolicited and unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature. All sexual harassment is prohibited and a violation of this policy when:
  - i. Submission to such behavior is made explicitly or implicitly a term or condition of an individual's employment; or
  - ii. Submission to, or rejection of, such behavior by an individual is used as a basis for employment and/or business decisions; or
  - iii. Such behavior otherwise has the purpose or effect of unreasonably interfering with, or otherwise creating an intimidating, hostile, or offensive employment environment.
- b. Sexual harassment does not refer to behavior or occasional compliments of a socially acceptable nature. It refers to behavior that is unwelcome, that is personally offensive, and that lowers morale and therefore interferes with work effectiveness.

## 2. Sexual Harassment - Examples

The following are examples of conduct which may constitute sexual harassment:

- a. Verbal: Sexual innuendoes, vulgar and/or sexually suggestive comments, jokes of a sexual nature, sexual propositions, lewd remarks threats, and requests for any type of sexual favor (including repeated, unwelcome requests for dates).
- b. Nonverbal: The distribution or display of any written or graphic material, including calendars, posters and cartoons that are sexually suggestive or show hostility toward an individual or group because of sex; suggestive or insulting sounds; leering; staring; whistling; obscene gestures; content in letters and notes, facsimiles, email, photos, text messages, Internet postings, etc., that is sexual in nature.
- c. Physical: Unwelcome, unwanted physical contact, including but not limited to touching, tickling, pinching,

patting, brushing up against, hugging, cornering, kissing, fondling; blocking normal movement, or interfering with work; and forced sexual intercourse or assault.

- d. Using a City computer to access any content that contains material of a sexual nature.

Normal, courteous, mutually respectful, pleasant, non-coercive interactions between employees, that is acceptable to and welcomed by both parties, is not considered to be harassment, including sexual harassment.

### 3. Sexual Harassment - Categories

Sexual Harassment is typically categorized as follows:

- a. Quid Pro Quo

Quid pro quo (this for that) harassment occurs when submission to harassment is used as the basis for employment decisions. Employee benefits such as raises, promotions, better working hours, etc., are directly linked to compliance with sexual advances. Therefore, only someone in a supervisory capacity (with the authority to grant such benefits) can engage in quid pro quo harassment.

- b. Hostile Work Environment

Hostile work environment, occurs when the harassment creates an offensive and unpleasant working environment. Hostile work environment can be created by anyone in the work environment, whether it is supervisors, other employees or customers. Hostile work environment consists of but is not limited to verbiage of a sexual nature, unwelcome sexual materials or unwelcomed physical contact as a regular part of the work environment. Texts, emails, cartoons or posters of a sexual nature, vulgar or lewd comments or jokes, or unwanted touching or fondling all fall into this category.

### OTHER UNLAWFUL HARASSMENT

In addition to inappropriate sexual harassment, the City also prohibits harassment on the basis of race, color, creed, religion, national origin, ethnicity, age, gender, pregnancy, marital status, veteran status, disability, sexual orientation or any other protected status under Federal, State or local law, ordinance or regulation applicable to the City. Any verbal or physical conduct of an offensive or harassing nature and which is based upon or directed toward any individual based upon any of these characteristics will not be tolerated. Such prohibited conduct includes, but is not limited to:

- a. Derogatory, critical, offensive or uncomplimentary jokes, comments, displays, posters, other written materials based upon another's race, color, creed, religion, national origin, ethnicity, age, gender, pregnancy, marital status, veteran status, disability, sexual orientation or any other protected status under Federal, State or local law, ordinance or regulation applicable to the City.
- b. Any physical conduct taken against another individual because of his or her race, color, creed, religion, national origin, ethnicity, age, gender, pregnancy, marital status, veteran status and disability, sexual orientation or any other protected status under Federal, State or local law, ordinance or regulation applicable to the City.
- c. Teasing or making fun of another individual's ethnicity, accent, cultural or religious beliefs or practices, mental or physical disabilities or medical limitations and other similar characteristics.

### BULLYING

Conduct which is considered bullying may constitute harassment, and therefore is prohibited under this policy. Bullying is defined as repeated inappropriate behavior, either direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment.

Bullying may be intentional or unintentional. However, it must be noted that when an allegation of bullying is made, the intention of the alleged bully is irrelevant, and will not be given consideration when meting out discipline. As in sexual harassment, it is the effect of the behavior on the individual that is important. The City considers the following types of behavior examples of bullying:

- a. **Verbal bullying:** Slandering, ridiculing or maligning a person or his or her family; persistent name calling that is hurtful, insulting or humiliating; using a person as butt of jokes; abusive and offensive remarks.
- b. **Physical bullying:** Pushing, shoving, kicking, poking, tripping, assault or threat of physical assault, damage to a person's work area or property.
- c. **Gesture bullying:** Nonverbal threatening gestures; glances that can convey threatening messages.
- d. **Exclusion:** Socially or physically excluding or disregarding a person in work-related activities.

In addition, the following examples may constitute or contribute to evidence of bullying in the workplace:

- Persistent singling out of one person.
- Shouting or raising voice at an individual in public or in private.
- Using verbal or obscene gestures.
- Not allowing the person to speak or express himself or herself (i.e., ignoring or interrupting).
- Personal insults and use of offensive nicknames.
- Public humiliation in any form.
- Constant criticism on matters unrelated or minimally related to the person's job performance or description.
- Ignoring or interrupting an individual at meetings.
- Public reprimands.
- Repeatedly accusing someone of errors that cannot be documented.
- Deliberately interfering with mail and other communications.
- Spreading rumors and gossip regarding individuals.
- Encouraging others to disregard a supervisor's instructions.
- Manipulating the ability of someone to do his or her work (e.g., overloading, underloading, withholding information, assigning meaningless tasks, setting deadlines that cannot be met, giving deliberately ambiguous instructions).
- Inflicting menial tasks not in keeping with the normal responsibilities of the job.
- Taking credit for another person's ideas.
- Refusing reasonable requests for leave in the absence of work-related reasons not to grant leave.
- Deliberately excluding an individual or isolating him or her from work-related activities, such as meetings.
- Unwanted physical contact, physical abuse or threats of abuse to an individual or an individual's property (defacing or marking up property).

#### HARASSMENT COMPLAINTS AND RESOLUTION PROCEDURES

- a. All personnel are responsible for ensuring compliance with this Sexual Harassment and Other Unlawful Harassment and Retaliation

policy, and maintaining a workplace that is free of discrimination, harassment and retaliation. Utilization of this complaint resolution process will in no way be used against the employee nor will it have an adverse impact on the individual's employment status.

- b. While reporting such incidents may be a difficult personal experience, allowing harassment activities to continue will most certainly lead to less desirable outcomes. For that reason, employees are expected to utilize this procedure. However, filing groundless and malicious complaints is prohibited, and constitutes an abuse of this policy, subjecting the employee to disciplinary action up to and including termination.
- c. The City will seek internal resolution of any and all complaints of harassment thoroughly and expeditiously. The complaint procedures referenced in this policy shall be followed to address all complaints which arise in the workplace alleging sexual harassment, unlawful harassment and/or retaliation.
- d. Any employee who believes he/she has experienced, been subjected to or witnessed harassment and/or retaliation has an affirmative obligation to immediately report it to either their supervisor, their Department/Office Director, the Human Resources Director or the Assistant City Manager. Employees who witness discrimination, harassment or retaliation and fail to report it are subject to disciplinary action, up to and including termination.
- e. If a supervisor or manager becomes aware that harassment or discrimination is occurring, either from personal observation or as a result of an employee coming forward, the supervisor or Department/Office Director should immediately report it to the Human Resources Director.
- f. Employees are not expected to report complaints to the person they believe is harassing, discriminating or retaliating against them. However, in such cases, employees are expected to report the harassment, as follows:
  - i. If believed harasser is the employee's immediate supervisor, the employee should report the complaint to their Department/Office Director.
  - ii. If believed harasser is the employee's Department/Office Director, the employee should report the complaint to the Human Resources Director and/or Assistant City Manager.
- g. A person who feels harassed, discriminated or retaliated against may initiate the complaint process by filing a written and signed complaint with the Human Resources Director and/or Assistant City Manager.

## INVESTIGATION PROCEDURES

All investigations will be conducted in a fair and impartial manner. The City will investigate all complaints of harassment as follows:

- a. All alleged violations of this policy will be investigated by the Human Resources Director, or designee.
- b. Upon receiving the complaint or being advised by a supervisor or manager that violation of this policy may be occurring, the Human Resources Director or Assistant City Manager will notify the City Manager and review the complaint with the City's legal counsel.
- c. Within five (5) business days of receiving the complaint, the Human Resources Director, or designee will:
  - i. Notify the person(s) charged [hereafter referred to as "respondent(s)"] of a complaint; and
  - ii. Initiate the investigation to determine whether there is a reasonable basis the alleged violation of the policy occurred.
  - iii. Take steps to immediately stop any offending conduct while the investigation is ongoing to include staff reassignment, administrative and/or discretionary leave, when applicable.
- d. During the investigation, the Human Resources Director or designee, will interview the complainant, the respondent and any witnesses to determine whether the alleged conduct occurred.
- e. Investigation of a complaint will normally include conferring with the parties involved and any named or apparent witnesses. The investigation may also entail reviewing pertinent documents, e-mail communications, social media pages, photographs, telephone records and/or any other relevant physical evidence.
- f. Within 30 business days of the complaint being filed (or the matter being referred to the Human Resources Director) the Human Resources Director or designee, will conclude the investigation and submit a report of findings to the City Manager, unless more time is needed under the circumstances.

## COMPLAINT DISPOSITION AND REBUTTAL PROCEDURES

- a. Within five (5) business days after the investigation is concluded, the Human Resources Director will meet with the complainant and the respondent separately in order to notify them in person of the

findings of the investigation and to inform them of the action being recommended by the Human Resources Director.

- b. If it is determined that harassment or discrimination in violation of the City's policy has occurred, the Human Resources Director will recommend appropriate disciplinary action. The appropriate action will depend on the all relevant factors, including:
  - i. The severity, frequency and pervasiveness of the conduct;
  - ii. Prior complaints made by the complainant;
  - iii. Prior complaints made against the respondent;
  - iv. The quality of the evidence (first-hand knowledge, credible corroboration etc.)
- c. All investigations will conclude as one of the following:
  - i. Substantiated - A finding that the complaint is substantiated means that the allegation is valid because the preponderance of the evidence standard has been met.
  - ii. Unsubstantiated - A finding that the complaint is unsubstantiated means that although the allegation may have happened, there is not a preponderance of the evidence to prove the alleged violation occurred.
  - iii. Unfounded - A finding that the complaint is unfounded means the allegation of harassment was found false, no harassment or discrimination in violation of this policy occurred, the complaint presented had no reasonable basis, the investigation did not reveal evidence to support violation of the policy occurred.
- d. In addition to one of the above findings, if the investigation concludes potentially problematic conduct is revealed, preventative action may be taken.
- e. The complainant and the respondent may submit statements to the Human Resources Director challenging the factual basis of the findings. Any such statement must be submitted no later than five (5) business days after the meeting with the Human Resources Director in which the findings of the investigation is discussed.
- f. Within ten (10) business days from the date the Human Resources Director meets with the complainant and respondent, the City will review the investigative report and any statements submitted by the complainant or respondent, discuss results of the investigation with other staff as may be appropriate and decide what action, if any, will be taken.



- g. The Human Resources Director will report the final decision to the complainant, the respondent and the appropriate management assigned to the Department/Office(s) in which the complainant and the respondent work, when appropriate. The City's decision will be in writing and will include a finding of fact and a statement for or against disciplinary action. If disciplinary action is to be taken, the sanction will be stated.
- h. Any employee found to have violated the City's Anti-Discrimination, Sexual and Other Unlawful Harassment & Retaliation policy will be subject to disciplinary action, up to and including termination.
- i. The City may also require remedial training concerning the City's policies and procedures relating to unlawful harassment and retaliation, and any other measure determined to be necessary for the effective enforcement of this policy.

#### INTERFERENCE/OBSTRUCTING HARASSMENT COMPLAINT INVESTIGATIONS

Attempts to interfere with the outcome of an investigation and/or obstruct a harassment complaint covered under this policy are strictly prohibited and will not be tolerated. This includes any attempt to threaten, coerce, dissuade or otherwise cause a complainant to withhold testimony or evidence in the course of an investigation. Such prohibited activity is subject to disciplinary action, up to and including termination.

#### CONFIDENTIALITY

During the complaint process, while the information received will remain confidential, the privacy of the individual(s) cannot be guaranteed in every instance. Their privacy will be protected to as great a degree as is legally possible. In addition, any notes or documents written by or received by the person(s) conducting the investigation will be kept confidential to the extent possible and according to any existing State or Federal Law.

#### ANTI-RETALIATION

The City of Miami Gardens is committed to conducting business in accordance with the highest ethical and legal standards. There is a concern that employees may not report actual or potential wrongdoings if they feel they will be subject to termination, harassment, or other forms of retaliation for reporting their concerns. Therefore, this non-retaliation statement is incorporated as part of the Anti-Discrimination, Sexual and Other Unlawful Harassment & Retaliation policy to encourage employees to report concerns through their chain of supervision, to the Human Resources Director or Assistant City Manager.

##### 1. Retaliatory Conduct

It is a violation of this policy for any individual to retaliate against

an employee for engaging in protected activity as follows:

- i. Filing a complaint of harassment; or
- ii. Pursuing a complaint of harassment under this policy; or
- iii. Reporting having witnessed an incident or having knowledge of harassment under this policy; or
- iv. Participating with an investigation regarding a claim of harassment under this policy; and/or
- v. Otherwise assists with or conducts an investigation under this policy.

Even if the prior protected activity alleging wrongdoing is deemed unfounded or unsubstantiated, retaliatory adverse actions are unlawful. This includes past claims made against former employers.

## 2. Adverse Action

It is a violation of this policy to subject an employee to adverse action for engaging in protected employment activity under this policy. Adverse actions do not include petty slights and annoyances, such as stray negative comments in an otherwise positive or neutral evaluation, "snubbing" a colleague, or negative comments that are justified by an employee's poor work performance or history. The following may be considered retaliatory adverse action under this policy.

- i. Employment actions such as termination and denial of promotion; or
- ii. Other actions affecting employment such as threats, unjustified negative evaluations, unjustified negative references, or surveillance; and/or
- iii. Any other action such as an assault or unfounded civil or criminal charges that is likely to deter reasonable people from pursuing their rights.

## 3. Covered Individuals

The following individuals are covered through this provision of anti-retaliation in the workplace.

- i. Individuals who have opposed unlawful practices, participated in proceedings, or requested accommodations related to employment discrimination based on race, color, sex, religion, national origin, age, or disability under this policy; and/or

- ii. Individuals who have a close association with someone who has engaged in such protected activity also are covered individuals. For example, it is illegal to terminate an employee because his spouse participated in employment discrimination litigation.

#### 4. Reporting Acts of Retaliation

An employee, who believes he or she has been subjected to retaliation on the basis of having filed a complaint or having participated in an investigation, must immediately report it pursuant to the complaint process outlined herein.

#### 5. Disciplinary Action

Any employee determined to have retaliated against another individual in violation of this policy will be subject to disciplinary action, up to and including termination.