

Personnel Rule 1.1 – Workplace Harassment

1.1.0 Authority

SMC 4.04.050 and subsequent revisions thereto, Rule-making Authority

SMC 4.80.020 and subsequent revisions thereto, Affirmative Action Plan—Policy

SMC Chapter 14.04 and subsequent revisions thereto, Fair Employment Practices Ordinance

Council Resolution 30291 and subsequent revisions thereto, Workplace Harassment Policy and Investigation Procedures

Mayor's Executive Order Affirming All Employees' Right to a Workplace Free from Harassment

Title VII, Civil Rights Act, 42 U.S.C. 2000e, et seq.

RCW 49.60, Discrimination—Human Rights Commission

1.1.1 Definitions

- A. "Administrative reassignment" shall mean the removal of an employee from the workplace without loss of pay, paid leave or benefits, authorized by the appointing authority when the employee is the cause or subject of, or otherwise significantly affected by an active investigation related to alleged violations of personnel rules, City ordinances, or state or federal laws or regulations, or an investigation intended to determine the employee's fitness for duty.
- B. "Appointing authority" shall mean the head of an employing unit authorized by ordinance or City Charter to employ others on behalf of the City, or a designated management representative. The term includes and can be used interchangeably with department head, department director, superintendent, or chief.
- C. "Elected official" shall mean the Mayor, City Councilmembers, City Attorney, and all Municipal Court Judges whether elected or appointed.
- D. "Harassing conduct" shall mean but is not limited to epithets, slurs, and negative stereotyping; threatening, intimidating or hostile acts; or written or graphic materials that denigrate or show hostility or aversion that is placed on walls, bulletin boards, electronic bulletin boards, e-mail or otherwise placed or circulated in the workplace; when such actions or materials are related to or directed at an individual or group because of race, color, religion, creed, sex, sexual orientation, gender identity, national origin, ancestry, age, disability, marital status, families with children status, veteran status, or political ideology.
- E. "Harassment" shall mean verbal or physical conduct toward an individual because of his or her race, color, religion, creed, sex, sexual orientation, gender identity, national origin, ancestry, age, disability, marital status, families with children

status, veteran status, or political ideology, or that of his or her relatives, friends or associates, when such harassing conduct has the purpose or effect of unreasonably interfering with an individual's work performance or otherwise adversely affects an individual's employment opportunities. The term includes sexual harassment.

- F. "Harassment complaint" shall mean any oral or written complaint alleging an incident or incidents of harassment made by an employee to a management representative, or any information obtained by a management representative indicating that harassment has occurred or may be occurring in the workplace.
- G. "Management representative" shall mean any individual working at or above the level of supervisor or crew chief who is responsible for directing the work of employees and who exercises independent judgment with respect to the direction of such work. The term includes human resources representatives, strategic advisors, and departmental equal employment opportunity officers, but excludes individuals employed in the City's Alternative Dispute Resolution Program.
- H. "Regularly appointed employee" shall mean an individual with a probationary, regular or exempt appointment to a position of City employment.
- I. "Retaliation" shall mean adverse job actions taken against an employee because he or she has complained about harassment, given a statement about harassment, participated in a harassment investigation, or supported a harassment complainant.
- J. "Sexual harassment" shall mean unwelcome advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting the individual; or 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. Sexual harassment includes, but is not limited to, sexual comments, innuendoes, displays or jokes, unwelcome invitations to sexual activity, unwelcome physical contact, pressure to engage in sexual activity as a condition of employment or promotion, and sexual assault.

1.1.2 Application of this Rule

- A. The provisions of this Rule apply to regularly appointed employees.
- B. For regularly appointed employees who are represented under the terms of a collective bargaining agreement, this Rule prevails except where it conflicts with the collective bargaining agreement, any memoranda or agreement or understanding signed pursuant to the collective bargaining agreement, or any established and recognized practice relative to the members of the bargaining unit.
- C. This Rule does not apply to individuals who are hired under the terms of a grant that includes provisions that conflict with this Rule. These individuals are subject to all applicable federal, state and City laws.
- D. This Rule does not apply to individuals hired by the City on a temporary, intermittent, or seasonal basis, or for a work schedule of fewer than 20 hours per

week, nor does it apply to individuals hired under contract to the City. These individuals are subject to all applicable federal, state and City laws.

- E. This Rule does not apply to employees of City departments that have alternative internal investigation procedures established by ordinance unless the affected employees are not subject to such internal investigation procedures.
- F. Appointing authorities may establish written policies and procedures for the implementation of this Rule to facilitate the management of the personnel system within their employing units, provided that such policies and procedures do not conflict with the provisions of this Rule.

1.1.3 Nondiscrimination

It is the policy of the City of Seattle to provide a work environment for its employees that is free from discrimination and promotes equal employment opportunity for and equitable treatment of all employees. Harassment of an individual is illegal conduct and a violation of this Rule. The City of Seattle will not tolerate harassment of its employees by co-workers, supervisors, managers, officers of the City or from non-employees conducting business with the City.

1.1.4 Making a Harassment Complaint

- A. Employees shall promptly report to any management representative any allegations or complaints of harassment. Where the complaint is against an elected official, it shall be filed with the Seattle Office of Civil Rights, the Ethics and Elections Commission, the Washington State Human Rights Commission, or the Equal Employment Opportunity Commission. Reporting a harassment complaint to or discussing a complaint with a management representative will result in an investigation.
 - 1. Employees may make informal inquiries about legal rights and agency procedures to the Seattle Office of Civil Rights, the Washington State Human Rights Commission, and the Equal Employment Opportunity Commission. Such inquiries do not constitute a harassment complaint.
 - 2. Employees may seek confidential assistance, counseling and referral through the City's Employee Assistance Program. Contacting the Employee Assistance Program for assistance, counseling and referral does not constitute a harassment complaint.
- B. A harassment complaint may be oral or written. Where possible, it should include the date(s) the incident(s) occurred, name(s) of the individual(s) involved, name(s) of witness(es), and a description of the incident(s). It may also include a statement of the desired remedy.
- C. Employees have the right to consult with or file a harassment complaint with the Seattle Office of Civil Rights, the Washington State Human Rights Commission, or the Equal Employment Opportunity Commission, or to pursue other legal action, in addition to their rights under this Rule.

- D. Retaliation against an employee who brings a complaint of harassment, reports allegations of harassment, or participates in an investigation of a harassment complaint is prohibited and shall not be tolerated.

1.1.5 Investigating Harassment Complaints

- A. A management representative who is told or otherwise becomes aware that harassment may be occurring is obligated immediately to report the allegation or complaint to the alleged harasser's appointing authority.
 - 1. The appointing authority shall, as soon as practicable, notify the alleged harasser that he or she has been named in a harassment complaint and that it will be investigated.
 - 2. The appointing authority shall, as soon as practicable, assess the need to relocate either or both the complainant and the alleged harasser to another work unit, or to place either or both on administrative reassignment. The complainant shall not be given work or placed at a work site that is, in the judgment of the appointing authority, in any way less desirable than his or her current position and work site.
- B. The appointing authority shall designate a qualified City investigator or contract with an independent investigator to immediately commence an investigation of the complaint. If either the complainant or the alleged harasser raises a reasonable objection to the investigator assigned, the appointing authority shall attempt to reassign the investigation.
- C. The investigator shall complete his or her investigation as promptly as possible while ensuring that the investigation is fair, complete and impartial. It shall be the City's objective to complete all investigations within 90 days unless compelling circumstances require more time. The appointing authority shall regularly inform the complainant about the status of the investigation.
 - 1. The investigation shall include interviews with the complainant and the alleged harasser and any other person(s) whom the investigator has reason to believe has information directly related to the complaint or the investigation thereof.
 - 2. The investigator shall assure compliance with any employee's right to union representation, including the right of the alleged harasser, who may reasonably believe that disciplinary action may be taken based upon his or her statements to the investigator or on the outcome of the investigation.
 - 3. The investigator shall maintain records of the investigation and shall prepare and provide a report of the investigation to the appointing authority. The appointing authority shall provide a written summary of the allegations and the investigation findings to the complainant and to the alleged harasser.
 - 4. In determining from the totality of the circumstances whether conduct is sufficiently severe or pervasive to create an intimidating, hostile or offensive work environment, the investigator shall consider the conduct from the perspective of a reasonable person of the alleged victim's race, color, religion, creed, sex, sexual orientation, gender identity, national

origin, ancestry, age, disability, marital status, families with children status, veteran status or political ideology.

5. To the extent that it does not hinder the investigation or the resolution of the complaint and is permitted under local, state and federal laws, management representatives and any independent investigator shall maintain the confidentiality of a harassment complaint.
- D. To avoid duplication of efforts or otherwise conserve City resources, the appointing authority may suspend or close an investigation for any reason that does not conflict with this Rule, including the reason that the complainant is actively pursuing his or her complaint in another forum.

1.1.6 Resolution of Harassment Complaints

- A. If the investigation substantiates the complaint of harassment, the appointing authority shall make a determination regarding the appropriate resolution, including disciplinary action. Before making the decision to impose disciplinary action, the appointing authority shall ensure that the harasser has been given the opportunity to review the results of the investigation, has been told of the evidence obtained, and has had an opportunity to provide to the appointing authority a response to the outcome of the investigation. The appointing authority shall take the harasser's response into account before taking final action on the complaint.
- B. In addition to any disciplinary action taken, substantiated complaints shall be noted in the harasser's personnel file and referenced in his or her first performance evaluation following the conclusion of the investigation. The harasser shall be ineligible for consideration for any performance pay program or any individual performance award program for which he or she might otherwise qualify, for a period of one year following the resolution of the complaint. The prohibition against performance pay or awards shall not adversely affect awards extended to work groups or teams on which the employee is a participant.
- C. If during the course of the investigation, the investigator determines that the allegation or complaint of harassment or discrimination was reported to a management representative, and that management representative failed to promptly report the allegation or complaint to the appointing authority, the appointing authority shall investigate and take appropriate action against the management representative, to include disciplinary action. In addition, the failure to report shall be noted in the management representative's personnel file and referenced in his or her first performance evaluation following completion of the investigation. The management representative shall forfeit for one year following resolution of the complaint any eligibility for individual performance pay or performance awards.
- D. Following determination of a substantiated complaint of harassment, the appropriate management representative should inquire of the complainant at a frequency and for whatever duration is necessary to ensure that the harassment has not resumed and that the complainant has not been retaliated against for making a complaint.