

## **Personnel Rule 1.1 – Discrimination and 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 Application of this Rule**

- A. 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.
- B. The provisions of this subchapter shall be applied to employees of the Seattle Municipal Court except where they conflict with any policy promulgated by the Court and/or General Court Rule 29.

### **1.1.2 Anti-discrimination**

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. Any individual who believes he or she has been discriminated against in employment may make an internal complaint to any management representative or file a complaint with the Seattle Office of Civil Rights, Washington State Human Rights Commission, or the Equal Employment Opportunity Commission.

### **1.1.3 Anti-Harassment**

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 and responsibilities 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. "Retaliation" for the purposes of administering Personnel Rule 1.1.4(D) means an adverse job action(s) taken against an employee because he or she has complained about harassment, given a statement about a harassment investigation, participated in a harassment investigation, or supported a harassment complainant.

#### **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 or designated management representative 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 or designated management representative 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 or designated management representative, in any way less desirable than his or her current position and work site.
- B. The appointing authority or designated management representative 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 or designated management representative 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 department 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/military 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 or designated management representative 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 or has agreed to participate in a mediation of the complaint.

### 1.1.6 Resolution of Harassment Complaints

- A. If the investigation substantiates the complaint of harassment by a City employee, an appropriate City official shall make a determination regarding the appropriate resolution, including disciplinary action. Before making the decision to impose disciplinary action, the appointing authority or designated representative 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 or designated representative a response to the outcome of the investigation. The appointing authority or designated representative shall take the employee'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 employee's personnel file and referenced in his or her first performance evaluation following the conclusion of the investigation. The employee 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 for the individual employee 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 or designated management representative, 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.

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. After the investigation has been completed, the complainant continues to have an obligation to promptly report to any management representative any allegations or complaints of harassment.