

SEXUAL HARASSMENT POLICY

Policy Statement

It is the policy of the Council of the District of Columbia (“Council”) to provide a work environment free from sexual harassment. Sexual harassment of any employee has a debilitating impact on employee morale and productivity and violates the law. This policy also prohibits retaliation against employees who report sexual harassment or participate in a sexual harassment complaint. If the Council receives an allegation of sexual harassment, or has reason to believe sexual harassment is occurring, it will take necessary steps to ensure that any harassing conduct immediately ceases and that the matter is promptly addressed. The Council is committed to taking remedial action when it learns of possible sexual harassment, even if the purported target of the harassment does not wish to file a complaint.

This policy serves as the Council’s official policy and supersedes any other existing policy. Personnel authorities within the Council may individually adopt a sexual harassment policy, but to the extent there is a conflict with other policies, this policy shall prevail.

I. SCOPE

This policy governs the conduct of the Council's employees, Councilmembers, and third parties doing business with or carrying out the goals and objectives of the Council, e.g., vendors, employees of D.C. agencies, and other persons visiting or working at the Council's worksite.

All Council employees and Councilmembers are required to comply with this policy. Employees and Councilmembers are also expected to behave professionally and to exercise good judgment in work-related relationships, whether with fellow employees, business colleagues, or members of the public with whom they come into contact in the course of official duties. Further, all employees and Councilmembers are expected to take appropriate measures to prevent sexual harassment. Additionally, all employees and Councilmembers are encouraged to report incidents of perceived sexual harassment so that any target of alleged sexual harassment may gain access to available support. All Council employees and Councilmembers must take steps to stop unwelcome behavior of a sexual nature before it becomes severe or pervasive and rises to a violation of law.

II. DEFINITIONS.

Complainant

A Council employee who files a complaint under this policy. A complainant may be the target of sexual harassment or a witness to sexual harassment.

Officer

For the purposes of this policy, the term “Officer” means the Secretary, Budget Director, General Counsel, and Chief Technology Officer of the Council.

Sexual Harassment

(a) Quid Pro Quo Sexual Harassment.

Quid pro quo sexual harassment is unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when any one of the following criteria is present:

- (1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
- (2) Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting the individual.

(b) Hostile Work Environment Sexual Harassment.

(1) Sexual harassment creates a hostile work environment when the conduct is unwelcome in nature and has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

(2) The following, although not an exhaustive list, are examples of conduct that may create a hostile work environment in violation of this policy, including during work-related travel, events, and social gatherings:

(A) Sex acts;

(B) Display of sexual organs;

(C) Giving a preference to a third party who is engaged in a sexual or romantic relationship, to the disadvantage of an employee who is not engaged in a sexual relationship with a supervisor, hiring official, or person exercising authority over the disadvantaged party (described legally as a “paramour preference”);

- (D) Using sexually oriented or sexually degrading language describing an individual or his/her body, clothing, hair, accessories or sexual experiences;
- (E) Sexually offensive comments or off-color language, jokes, or innuendo that a reasonable person would consider to be of a sexual nature, or belittling or demeaning to an individual or a group's sexual orientation or gender identity;
- (F) "Sexting" or seeking or sending pictures of intimate body parts, or taking or displaying pictures of body parts meant to be covered up (such as "upskirting" pictures), including by sending messages of a suggestive nature on self-destructing messaging apps where evidence of the written word or images is difficult to document;
- (G) The display or dissemination of sexually suggestive objects, books, magazines, photographs, music, cartoons, or computer internet sites or references;
- (H) Unnecessary and inappropriate touching or physical contact, such as brushing against a colleague's body, touching or brushing a colleague's hair or clothing, massaging, groping, patting, pinching, or hugging, that a reasonable person would consider to be of a sexual nature;
- (I) Lascivious leering or sexually suggestive gestures or sounds, i.e. whistling or kissing noises;
- (J) Sexual comments, conduct, displays, and suggestions in the workplace between two willing parties that would cause a reasonable third party to be offended;
- (K) Making inquiries about someone's private sex life or describing one's own sex life;
- (L) Any unwanted repeated contact, including but not limited to in-person or telephonic, for romantic or sexual purposes;
- (M) Sexual assault, stalking, trapping someone such that they are not free to leave and a sexual encounter is expected or threatened, threats of bodily harm relating to sex or the refusal to have sex, or crimes related to egregious acts of sexual harassment.

(c) Anyone, regardless of sex, gender, or sexual orientation may be the target or perpetrator of sexual harassment.

(d) Sexual harassment is not limited to inappropriate exercise of authority by persons in power over an employee. It can occur by an employee toward a co-worker, by an employee toward a supervisor, or by a non-employee toward an employee.

Sexual Harassment Officer

A Sexual Harassment Officer (“SHO”) is one of two individuals designated by the Secretary of the Council and specially trained to receive complaints of sexual harassment and to conciliate complaints of sexual harassment under this policy.

Sexual Consent

Sexual consent is positive, unambiguous, and voluntary agreement to engage in specific activity throughout an encounter involving sexual activity. Consent should not be inferred from the absence of a “no”. Consent to some activity does not constitute consent to others, nor does past consent to a given activity constitute present or future consent. Consent can be revoked at any time and cannot be obtained by threat, coercion, or force.

III. CONSENSUAL RELATIONSHIPS

(a) Sexual/intimate relationships between employees and supervisors in the employee's chain of command are strongly discouraged. The existence of a sexual/intimate relationship between an employee and a supervisor will be a factor in any proceeding in which the relationship is alleged to have contributed to a hostile work environment and/or adversely affected the terms and conditions of employment.

(b) Employees who engage in a limited consensual relationship with a supervisor or colleague, such as going out to dinner or on dates, remain free to refuse further sexual overtures and have the right to demand that sexual or sexually harassing conduct going beyond that which was consented to must stop. Alternatively, they also may seek the assistance of a supervisor or manager or the Council’s SHOs to demand that sexually harassing conduct cease.

(c) Conduct that was once welcome or consensual may become unwelcome. Once the conduct is no longer welcome, conduct of a sexually harassing nature must cease.

IV. REPORTING AND REMEDYING SEXUAL HARASSMENT

This policy provides several avenues an employee may pursue in response to witnessing or experiencing sexual harassment. All complaints of sexual harassment will be treated with the

same rigor and gravity, regardless of the complaint avenue the complainant elects. All complaints of sexual harassment by a Councilmember will generate an investigation by outside counsel.

Any employee who believes he or she has been the target of sexual harassment can inform the offending person orally or in writing that such conduct is unwelcome and offensive and ask the offending person to stop the offensive conduct. If the employee does not wish to communicate directly with the offending person, or if such communication has been ineffective, the employee should report the sexual harassment.

(a) Reporting Harassment by a Council Employee.

Sexual harassment by a Council employee, if reported, shall be reported through the channels described below. Complaints to supervisors will not automatically initiate an investigation by outside counsel, whereas complaints to an SHO will.

(1) Target complaints to supervisors.

(A) An employee who believes they are the target of sexual harassment from another Council employee may make a complaint to the employee's supervisor orally or in writing. The complainant's supervisor should reduce the complaint to writing and provide the complainant with section VII (External Reporting and Resources) of this policy. Upon receipt of the complaint, the complainant's supervisor must inform the alleged harasser to cease all offending conduct (if the alleged harasser is not in the supervisor's chain-of-command, the supervisor must enlist the assistance of an SHO or a supervisor in the alleged harasser's chain of command to inform the alleged harasser to cease all offending conduct). The supervisor shall promptly seek to resolve the complaint in a manner that ensures the offending conduct will not recur and take corrective action appropriate to the severity of the offense. If a supervisor cannot resolve the complaint, the supervisor must inform the complainant and encourage the complainant to make a complaint to an SHO. Supervisors are encouraged to seek advice in resolving complaints from an SHO or the General Counsel. A supervisor's consultation or request for assistance from an SHO is not considered a complaint to an SHO and will not automatically initiate an investigation by outside counsel.

In appropriate circumstances, a complaint to a supervisor may be resolved through conciliation. Conciliation is an informal method of alternative dispute resolution in which an SHO works with the complainant and alleged harasser to end the harassment and reach a resolution that is mutually agreeable to both

parties. A complainant may initiate conciliation by informing the complainant's supervisor, who shall inform an SHO, of the complainant's desire to conciliate. Participation in conciliation is voluntary and requires the cooperation of both the target and alleged harasser. Ultimately, an SHO will make a case-by-case determination of whether a complaint is appropriate for conciliation.

Upon resolution of a complaint, or in the event a supervisor cannot resolve a complaint, the supervisor must provide a written report to an SHO and OGC, which identifies the parties involved, the nature of the complaint, and steps taken to resolve the complaint. The SHOs and OGC will evaluate the report to determine whether further action, including further investigation or corrective action, is warranted. The report shall be kept confidential consistent with the terms of this policy.

(B) If an employee chooses not to complain to a supervisor or is unsatisfied with the results of a complaint to a supervisor, the employee may make a complaint to an SHO.

(2) Anonymous and Witness Complaints.

(A) The Council encourages all employees to report instances of sexual harassment they witness to their supervisors, through the Council's online complaint portal (dccouncil.seamlessdocs.com/f/sexualharassmentcomplaint) or directly to an SHO. A supervisor who receives a complaint of sexual harassment from a witness should follow the procedures described in section (a)(1)(A) to resolve and report the complaint's resolution or refer the matter to an SHO for resolution in accordance with subparagraph (C).

(B) An employee, whether a target or a witness of sexual harassment, may anonymously report sexual harassment through the Council's online complaint portal by selecting the anonymous complaint option. An anonymous complaint through the Council's complaint portal will be transmitted to the SHOs.

(C) An SHO who receives a witness or anonymous complaint will perform an initial assessment of the facts of the complaint, including interviewing the alleged target and harasser, to determine what further action, including investigation by outside counsel, is possible, desired, or warranted given the nature and severity of the complaint.

(3) Target complaints to SHOs.

(A) A person who is sexually harassed may make a complaint directly to an SHO. A complaint made directly to an SHO may be oral or written; the SHO who receives an oral complaint shall reduce the complaint to writing. Complaints made through the Council's online complaint portal will be transmitted to the SHOs.

(B) Upon receipt of a complaint under this policy, the SHO who receives the complaint shall provide the complainant with section VII (External Reporting and Resources) of this policy.

(C) The SHO shall notify the alleged harasser, in writing, that a complaint has been made against him or her and direct the individual to cease all offending conduct.

(4) Investigation of Target Complaints to SHOs.

(A) Upon receipt of a complaint from a target of sexual harassment, the SHO shall inform the General Counsel, who shall contact outside counsel to investigate the complaint. Supervisors of the alleged target and harasser will be notified of the investigation, unless the target requests confidentiality, in which case, no supervisor shall be notified until the investigation is complete, unless the imposition of interim measures or the nature of the investigation necessitates notification.

(B) The SHOs will recommend interim measures to ensure no further apparent or alleged harassment occurs pending completion of an investigation. Supervisors and Councilmembers agree to abide by and implement the interim measures recommended by the SHOs. The following interim measures may be appropriate to ensure cessation of alleged harassment during the pendency of an investigation:

- (i) Administrative leave with pay;
- (ii) Physical separation, including the use of available swing space or shifting workspaces between physical offices;
- (iii) Working from home; or
- (iv) Other measures that limit contact between the target and alleged harasser.

Acceptable interim measures are administrative in nature and are not per se an adverse employment action to either party. Where a target of harassment requests

separation from the alleged harasser, the SHO must require the target of harassment to make the request in writing.

(C) During the investigation, the SHO will be the point of contact for the complainant's or the alleged harasser's questions or concerns related to the complaint.

(D) Outside counsel has responsibility for investigating alleged sexual harassment in a prompt, thorough, and impartial manner.

(E) Outside counsel's investigation may take up to 30 days. If the investigation is not completed during that time, the complainant may elect to pursue remedies outside the Council, as further described in section VII (External Reporting and Resources).

(5) Resolving Target Complaints to SHOs.

(A) At the end of the investigation, outside counsel shall submit a written report of its findings and any recommendations of corrective action to the SHOs and the General Counsel.

(B) If outside counsel does not find that harassment occurred, an SHO shall notify the complainant and the alleged harasser of the result. No further action shall be taken.

(C)(i) If the outside counsel does find that harassment has occurred, the report shall also be submitted to:

- (I) The Councilmember for whom the alleged harasser works; or
- (II) The Officer for whom the alleged harasser works.

(ii) Councilmembers and Officers agree to take, at minimum, the corrective action recommended in the report from outside counsel, up to and including termination of the alleged harasser.

(b) Reporting Harassment by a Non-Council Employee.

A Council employee who experiences sexual harassment from a non-Council employee may make a complaint to a supervisor or an SHO through the avenues described above. The supervisor or SHO shall handle the complaint in the same manner as described above, including, if the complaint is to a supervisor, by providing a written resolution report to an SHO and OGC that identifies the parties involved, the nature of the complaint, and steps taken to resolve the

complaint. The Council's ability to resolve or investigate the complaint may be limited by lack of control over the alleged harasser. Resolution of a complaint of harassment against a non-Council employee may include the following:

- (1) Instituting a no-contact policy between the alleged harasser and the target, including barring the alleged harasser from the personal or committee offices of a Councilmember, as appropriate; and
- (2) Notifying the alleged harasser's employer of the alleged conduct and requesting the employer take appropriate action.

(c) Reporting Harassment by a Councilmember

- (1) If an employee is sexually harassed by a Councilmember, the target or witness may make a complaint to an SHO. Except as otherwise provided in this subsection, all complaints against Councilmembers, including anonymous complaints, shall follow the same investigation and reporting steps outlined in subsection (a)(4) and (5) of this section, including investigation by outside counsel, imposition of interim measures, and submission of a written report by outside counsel.
- (2) If outside counsel finds that the Councilmember engaged in conduct that violates this policy:
 - (A) The report shall not include recommendations for corrective action; but shall include information and findings sufficient for members of an ad hoc committee to recommend penalties, if any, against the offending member, pursuant to Council Rule 652.
 - (B) The report shall be submitted to:
 - (i) The General Counsel;
 - (ii) The SHOs; and
 - (iii) The Chairman.
 - (C) If the Chairman is the subject of the complaint, the Chairman pro tempore shall receive the report with no redactions.
 - (D) An ad hoc committee shall be established pursuant to Council Rule 651 within 3 business days after the investigative report is received from outside counsel. Members of the ad hoc committee shall receive unredacted versions of outside counsel's investigative report and shall protect the identities of

individuals named in the report to the greatest extent possible. Based on the findings in the report, the ad hoc committee may recommend penalties against the member in accordance with Council Rule 652.

(d) Confidentiality

All reports of sexual harassment received pursuant to this policy shall be treated as confidential consistent with the procedural mandates of this policy. Recipients of sexual harassment complaints and those involved in any conciliation, investigation, or resolution of a complaint have an obligation to protect the identities of the complainant, alleged target, harasser, and other witnesses to the fullest extent possible in light of the nature of any investigation conducted and remedial action sought or pursued. Disclosure of facts related to the complaint to an alleged target and alleged harasser's supervisor or Councilmember, the Office of General Counsel, outside counsel, and the Council as a body, in the case of a complaint against a Councilmember, may be necessary to achieve appropriate remedial action.

(e) Rights of the Alleged Harasser

Persons accused of sexual harassment deserve the full protections afforded to them under the law in administrative matters, including, but not limited to, the right to respond to allegations of sexual harassment, to counsel and representation, and the presumption of innocence. The right to counsel does not include the right to have counsel paid for by the government or Council.

V. TRAINING

The Council will provide training on sexual harassment to all Councilmembers and employees at least one time per year, which shall include training on retaliation. Annual sexual harassment training is mandatory for all Councilmembers and employees.

VI. RETALIATION

It is a violation of this policy to retaliate against someone who has reported possible sexual harassment.

Retaliation is conduct that punishes a person for exercising rights under this policy or discourages a reasonable person from engaging in activity protected under this policy. Such protected activity includes making a complaint under this policy, aiding or encouraging any other person to make a complaint under this policy, participating in the investigation or resolution of a complaint under this policy, opposing sexual harassment, refusing to follow orders that would result in sexual harassment, or intervening to protect others from sexual harassment.

Retaliatory behavior may include, but is not limited to, termination, unwarranted reprimands, intimidation, threats, unfairly downgrading personnel evaluations, transfers to less desirable positions, verbal or physical abuse, altered and more inconvenient work schedules, or coercion intended to pressure an individual to participate, not participate, or provide false or misleading information in a complaint or investigation under this policy.

The Council will take necessary steps to protect from retaliation employees who, in good faith, report incidents of potential sexual harassment and participate in investigations under this policy. Employees found to have engaged in retaliatory behavior shall be recommended for discipline, up to an including termination.

VII. EXTERNAL REPORTING AND RESOURCES

The remedies and procedures available under this policy are in addition to the legal remedies available under District and federal law. A target of sexual harassment, or a person acting on the target's behalf with or without the target's consent, may report sexual harassment within one year of the alleged harassment or its discovery to the District of Columbia Office of Human Rights ("OHR") (D.C. Official Code § 2-1403.04(a)); a target of sexual harassment may also file a charge with the U.S. Equal Employment Opportunity Commission ("EEOC") within 300 days of the alleged harassment (42 U.S.C. 2000e-5(e)).¹ Filing a complaint under this policy does not extend the time a target has to file a complaint or charge with OHR or the EEOC.

In addition to the remedies under this policy, the target is encouraged to report sexual harassment that rises to the level of criminal misconduct, such as sexual assault, kidnapping, stalking, and threats to do bodily harm, to a law enforcement agency, including the Metropolitan Police Department (MPD).

Victims of sexual assault or other possible crimes may choose to call the DC Victim Hotline at 1-844-443-5732. The Hotline is available 24/7 by telephone, text, or online chat to connect victims of crime to free resources and to help them navigate the physical, financial, legal, and

¹ The timelines for filing with administrative agencies are accurate as of January 3, 2023.

emotional repercussions of crime. Victims may be matched with an advocate who can help them decide whether to pursue a matter through the criminal justice process.

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