

Section 408: Diversity

A. Guidelines

The City of Tempe is committed to a work environment in which all individuals are treated with respect and dignity. Each individual has the right to work in a workplace environment that promotes equal employment opportunities and prohibits discriminatory practices, including sexual harassment or any other form of harassment proscribed by law.

The City prohibits any such discrimination or harassment and prohibits retaliation against any individual who reports discrimination or harassment or participates in an investigation of such reports. Violation of this policy shall result in disciplinary action, up to and including termination of employment.

B. Definitions

1. Discrimination

Discriminate or discrimination means to exclude individuals from an opportunity or participation in any activity because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, or disability, and occurs whenever similarly situated individuals of a different group are accorded different and unequal treatment in the context of a similar situation.

2. Diversity Office

The Diversity Office is created to serve all City of Tempe employees. One of the most important roles of the Diversity Office is to serve as a Safe Haven for any employee experiencing discrimination, retaliation or a hostile work environment.

Employees can feel comfortable knowing the Diversity Office is independent from the normal chain of command.

3. Equal Employment Opportunity

It is the policy of the City to ensure equal employment opportunity to all qualified persons based solely on an individual's ability to perform the essential functions of a job without discrimination or harassment on the basis of race, color, religion, disability, gender, age, sexual orientation, gender identity, national origin or any other status protected by law. The City's equal employment policy applies to all human resources-related activities.

Employment discrimination based upon an employee's race, color, gender, religion or national origin is a violation of Title VII of the Civil Rights Act of 1964, as amended while discrimination based upon an employee's disability is a violation of the Rehabilitation Act of 1973 and Title I of the Americans with Disabilities Act of 1990. Age discrimination is a violation of the Age Discrimination in Employment Act, as amended.

4. Hostile Work Environment

A hostile work environment is one in which an employee is regularly confronted with offensive comments, jokes, cartoons or remarks making it difficult for an employee to perform his or her job. A hostile work environment does not need to be limited to sex-based conduct. For example: work environments can be racially hostile or religiously hostile among other things. Generally the conduct that creates a hostile work environment is repeated behavior which:

- (1) Pervades the work place;
- (2) Is offensive to a reasonable person; and
- (3) Is offensive to the recipient.

However, one incident, if the incident is serious enough, can be considered the basis of a hostile work environment.

5. Retaliation

For purposes of this policy, the City of Tempe defines retaliation as it is outlined in the Equal Employment Opportunity Commission (EEOC) Compliance Manual. It is unlawful to discriminate against an individual because he or she has opposed any practice made unlawful under the Federal employment discrimination statutes. This protection applies if an individual explicitly or implicitly communicates to his or her employer or other covered entity a belief that its activity constitutes a form of employment discrimination that is covered by any of the statutes enforced by the EEOC.

6. Safe Haven

The Diversity Office was created to be a Safe Haven for any employee experiencing discrimination, retaliation or a hostile work environment.

7. Sexual Harassment

For purposes of this policy, sexual harassment is defined in the Equal Employment Opportunity Commission (EEOC) Guidelines. The creation of an intimidating, hostile or offensive working environment may include such actions as persistent comments of a sexual nature, the display of obscene or sexually oriented photographs or drawings, sending sexually oriented email or consistently playing obscene or sexually oriented music or recordings.

However, conduct or actions that arise out of a personal or social relationship and that are not intended to have a discriminatory employment effect may not be viewed as harassment. The City will determine whether such conduct constitutes sexual harassment based on a review of the facts and circumstances of each situation.

Guidelines, such as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when, for example:

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- b. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting that individual; or
- c. 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 is not, by definition, limited to prohibited conduct by a particular gender, for example:

- d. A man, as well as a woman, may be the victim of sexual harassment, and a woman as well as a man, may be the accused.
- e. The accused does not have to be the victim(s) supervisor. The accused may be the agent of the supervisor, a supervisory employee who does not supervise the victim, a non-supervisory employee (e.g., a co-worker), or a non-employee.
- f. The victim does not have to be the opposite sex from the accused; same sex harassment is prohibited.
- g. The victim does not have to be the person at whom the unwelcome sexual conduct is directed. The victim may be someone who is affected by such conduct when it is directed toward another person. For example, the sexual harassment of one employee may create an intimidating, hostile, or offensive work environment for another employee or interfere with an employee's work performance. The belief that such interference has occurred must be objectively reasonable.

For purposes of clarification, sexual harassment or other forms of unlawful harassment include, but is not limited to the following behaviors:

- h. **Quid Pro Quo:** This is a Latin expression meaning "something for something," or "this for that," or "you do this for me, I'll do that for you."
- i. **Verbal Harassment:** Derogatory comments, propositioning, slurs, or other offensive words or comments on the basis of any protected status; whether made in general, directed to an individual or to a group of people, and regardless of whether the behavior was intended to harass. This includes, but is not limited to, inappropriate comments on appearance, including dress or physical features, sexual rumors, code words, and stories.

- j. ***Physical Harassment:*** Assault, impeding or blocking movement, leering, or the physical interference with normal work, privacy, or movement when directed at an individual on the basis of any protected class status. This includes such behaviors as pinching, patting, grabbing, or making explicit or implied threats or promises in return for submission to physical acts.
- k. ***Visual Forms of Harassment:*** Derogatory, prejudicial, stereotypical, or otherwise offensive posters, photographs, cartoons, notes, bulletins, drawings, screensavers, pictures, or articles of clothing that refers to any protected status or characteristic. This applies to posted materials, material maintained in or on City of Tempe property or equipment, or personal property in the workplace.

8. Other Forms of Unlawful Harassment

Under this policy, harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his or her race, color, religion, disability, gender, age, sexual orientation, national origin, gender identity or any other status protected by law and that:

- a. Has the purpose or effect of creating an intimidating, hostile, or offensive work environment.
- b. Has the purpose or effect of unreasonably interfering with an individual's work performance; or
- c. Has the purpose or effect of otherwise adversely affecting an individual's employment opportunities.

C. Responsibilities

1. Diversity Manager

The Diversity Manager is responsible for the development, implementation, coordination, and monitoring of the City's diversity policies and shall serve as a Safe Haven for all City employees. The Diversity Manager will administer the investigation of the complaints of discrimination and/or harassment filed through the Diversity Office and will prepare findings and recommendations.

2. Human Resources Department

The Human Resources Department will investigate complaints of discrimination and/or harassment filed through the Human Resources Department and will prepare findings and recommendations.

3. Department Managers and Supervisors

Department managers and supervisors, as part of their management responsibilities, shall monitor the conduct of employees to ensure that day-to-day interactions are consistent with the City's Diversity Policy.

4. Merit System Board

The use of the complaint procedure as listed below shall in no way affect employee rights. The findings of the investigation may be made available in Merit System Board hearings.

D. Procedures

1. Notification to the Offending Person

Any City employee who feels he or she may have been a victim of discrimination or harassment is encouraged to notify the offending person that his or her activities are unwelcome, undesirable, and/or offensive.

2. Complaint Procedure

a. Employees

Employees who feel victimized by sexual or other forms of harassment, a hostile work environment, discrimination and/or retaliation should report their complaint to their supervisor immediately. If the worker's immediate supervisor is the source of the alleged unlawful discrimination, harassment or retaliation, the employee should report the problem to the supervisor's superior, the Diversity Manager, or the Human Resources Manager.

b. Job Applicant

A job applicant who believes he or she has been the victim of sexual or other forms of harassment, discrimination and/or retaliation may file a complaint with the Diversity Manager or the Human Resources Manager. (See City of Tempe Equal Opportunity Complaint Form.)

c. Process

Upon receipt of the complaint in the Human Resources Department or Diversity Office, the Human Resources Manager or designee, or the Diversity Manager and the Department Manager will fully investigate the complaint. The Human Resources Manager or designee or the Diversity Manager will work with the department to obtain and evaluate all relevant evidence with respect to what has occurred and determine what remedy is appropriate.

If there is reasonable cause to believe that harassment, discrimination, and/or retaliation has occurred, the Human Resources Manager or designee, or the Diversity Manager will make recommendations for specific remedial and

disciplinary actions. The Complainant and the party charged shall be notified of the findings, as appropriate.

d. Discipline

The type of discipline to which an employee will be subject for harassing, discriminating or retaliating against another employee will depend on the severity of the finding. Discipline may range from verbal counseling to dismissal. If the discipline is a suspension, pay reduction, demotion, or dismissal, the employee will be advised of his or her rights, if any, to appeal the action under the Personnel Rules and Regulations. (See also Section 406. Disciplinary Action.)

The City Manager has the authority to reassign any employee to minimize conflict created by a charge of harassment, discrimination or retaliation. If reasonable cause has been found that harassment, discrimination or retaliation has taken place and that a reassignment is the best solution, every effort will be made to transfer the offending employee rather than the complainant unless the complainant chooses to be transferred.

If reassignment is not practical, the Department Manager or designee will monitor the situation for evidence of further retaliation.

All City employees are encouraged to use the procedures set forth in this policy.

E. Confidentiality

Confidentiality shall be maintained throughout the investigation except to satisfy the provisions of this policy, and as may be required by law. All City employees who are involved with or aware of investigations are expected to maintain the same level of confidentiality.

F. Non-Retaliation

Retaliation against an individual for reporting discrimination and/or harassment or for participating in an investigation of a claim of discrimination and/or harassment is a serious violation of this policy and shall be subject to disciplinary action, up to and including termination. Acts of retaliation shall be reported immediately to the Diversity Manager or Human Resources Manager. Appropriate corrective action shall be taken, up to and including termination.

G. False and Malicious Complaints

False and malicious complaints of any violation of the City of Tempe Personnel Rules and Regulations, as opposed to complaints which, even if erroneous, are made in good faith, may be subject to appropriate disciplinary action, up to and including termination, in accordance with Rule 4. Section 406. B. 31.

H. Filing Deadlines

Employees have the right to file complaints within 300 days of the alleged discrimination with the Equal Employment Opportunity Commission (EEOC) and/or within 180 days of the alleged discrimination with the Arizona Civil Rights Division of the Attorney General's office. Time limits for filing a complaint are according to applicable law.

These time periods should be followed even if the employee has not fully exhausted the City's administrative review procedures or any other process the City offers prior to filing a claim.