

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2004-171
October 20, 2004

SUBJECT: SEXUAL HARASSMENT

ORIGINATING AGENCY: Office of Human Rights

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(11) of the District of Columbia Home Rule Act of 1973, as amended, 87 Stat. 790; Pub. L. No. 93-198, D.C. Official Code § 1-204.22(11) (2001), and the District of Columbia Human Rights Act of 1977, as amended, (D.C. Official Code §§ 2-1401.01 *et seq.*) (2001), it is hereby **ORDERED** that:

I. Purpose

The purpose of this Order is to establish that the District of Columbia Government (the "District of Columbia") has a zero tolerance for sexual harassment in the workplace. Sexual harassment is recognized as one of the most invidious, demeaning and demoralizing examples of workplace misconduct. Harassment based on any one of the protected categories contained in the District of Columbia Human Rights Act is prohibited.

II. Individuals Affected

The District of Columbia prohibits workplace sexual harassment by all District of Columbia employees, including the Mayor and all employees under the Mayor's jurisdiction. The prohibition also applies to third parties doing business with, or carrying out the goals and objectives of the District of Columbia, i.e., vendors, contractors, customers and other persons visiting or working at District of Columbia worksites inside and outside District of Columbia agencies. The protections against workplace sexual harassment extend to employees, contractors, interns and any other persons engaged by the District of Columbia to provide permanent or temporary employment services at District of Columbia worksites inside and outside District of Columbia agencies.

III. Definition of Sexual Harassment

Sexual harassment is defined as 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:

- 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 a basis for employment decisions affecting the 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.

The following are examples of conduct that may create an intimidating, hostile or offensive work environment:

- a. sexually oriented or sexually degrading language describing an individual or his/her body, clothing, hair, accessories or sexual experiences;
- b. 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 sexuality or gender;
- c. the display or dissemination of sexually suggestive objects, books, magazines, photographs, music, cartoons, or computer internet sites or references;
- d. unnecessary and inappropriate touching or physical contact, i.e. brushing against a colleague's body, touching or brushing a colleague's hair or clothing, massages, groping, patting, pinching, and hugging, that a reasonable person would consider to be of a sexual nature;
- e. leering or sexually suggestive gestures or sounds, i.e. whistling or kissing noises;
- f. workplace sexual comments, conduct, displays and suggestions between two willing parties that would cause a reasonable third party to be offended;
- g. any unwanted repeated contact, including, but not limited to in-person, or telephonic, for romantic or sexual purposes;

- h. sexual assault.

Sexual harassment may be committed by persons of either gender against persons of the same or different gender.

IV. Consensual Relationships

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. If legal action is commenced against the District of Columbia and/or a supervisor who engaged in a sexual/intimate relationship with an employee, the existence of the relationship will be a factor in the District of Columbia's decision to provide legal representation to the supervisor.

V. Responsibility to Participate in Investigations

All District of Columbia employees are responsible for using their best efforts to provide that the workplace is free of sexual harassment. Employees who know of incidents of sexual harassment, as well as sexual conduct which may create an intimidating, hostile or offensive work environment, or who are victims of sexual harassment or inappropriate conduct, should report the sexual harassment or inappropriate conduct to the appropriate Equal Employment Opportunity (EEO) official or to any supervisor or manager with whom the employee feels comfortable. An employee who believes that he or she is or has been the victim of sexual harassment or inappropriate conduct may, but need not, advise the alleged perpetrator that he or she views the perpetrator's comments, conduct, displays or suggestions to be offensive and may request that the perpetrator cease the activity. Any supervisor or manager who receives a complaint or concern regarding sexual harassment or inappropriate conduct must take steps to ensure that an investigation is conducted or that other appropriate action is taken, pursuant to the procedures set forth below.

All District of Columbia employees are expected to cooperate in the investigation of sexual harassment complaints. If an employee who alleges, or is alleged or believed to be or to have been the victim of sexual harassment, declines to assist and/or participate in the investigation of the allegation, the agency may unilaterally initiate and conduct an investigation. The agency should require that the employee put in writing his/her decision to decline assistance and participation in the investigation.

Any employee who, on the direct request of the agency, declines to participate in a sexual harassment investigation may be subject to disciplinary action. Consideration of whether to recommend disciplinary action against an employee who also is the alleged victim of sexual harassment requires heightened sensitivity on the part of the agency

and should be conducted in consultation with the agency's General Counsel and the Office of the Attorney General. No employee shall engage in any discussion regarding discipline with the alleged victim prior to the General Counsel's consultation with the D.C. Ethics Officer.

VI. Prohibition Against Retaliation

Under no circumstance shall any employee, supervisor, manager or other person acting on his/her behalf, or under his/her direction, retaliate against, harass, or coerce an employee because that employee has filed or asserted a claim of sexual harassment, assisted another person in filing or asserting a claim of sexual harassment, opposed sexual harassment, been a witness in a sexual harassment investigation, or challenged an allegation of sexual harassment. While the existence of a sexual harassment complaint does not prohibit the District of Columbia from engaging in its lawful and legitimate business, employees should not be penalized or singled out for coercive, harassing or retaliatory behavior on the basis of their assertion of rights provided under the D.C. Human Rights Act.

Employees found to have engaged in retaliatory behavior shall be recommended for termination.

VII. Rights of the Alleged Harasser

Persons accused of sexual harassment deserve the full protections afforded them under the law, including, but not limited to, the presumption of innocence, unless and until there is a finding of culpability.

VIII. Interim Remedial Actions

Pending final resolution of a sexual harassment complaint, and in order to protect the rights of the alleged victim as well as the alleged harasser, the agency may take prompt temporary personnel actions that do not result in any adverse employment action. These remedial actions are administrative rather than disciplinary and may include, but are not limited to, transfers, reassignment of duties or reporting requirements, mandatory administrative leave with pay, or other appropriate measures that do not result in reduction of pay or loss of employee benefits.

IX. Allegations of Sexual Assault

Where there is an allegation of sexual assault (that is, a knowing, intentional, non-consensual touching of a sexual nature), the agency may place the victim and/or the alleged harasser on administrative leave with pay pending final administrative resolution of the complaint. Where either the agency or an appropriate law enforcement determines that a sexual assault occurred, the agency shall recommend discipline of the alleged perpetrator up to, and including, termination.

X. Confidentiality

The complaint file, including all information and documents contained in the file as well as information received during investigation of the complaint, shall be confidential. The agency shall take all reasonable steps to ensure that no information contained in the complaint file is disseminated except in furtherance of the investigation, subject to privacy and privilege rights. The agency must take all reasonable efforts during the conduct of an investigation to protect the identity of both the alleged harasser and the alleged victim as well as witnesses for either party. However, the alleged harasser shall be promptly advised of the complaint and its substance and be given an opportunity to respond to the allegations.

This confidentiality requirement does not preclude the agency from reporting a suspected illegal or improper act, or conduct related to the investigation, to an appropriate enforcement, investigating and/or legal organization or from cooperating in any related investigation.

XI. Informal Complaints of Discrimination

When an agency becomes aware of inappropriate, or potentially inappropriate, conduct of a sexual nature, the agency should advise the employee who allegedly engaged in the conduct of its inappropriateness in an effort to ensure that the conduct ceases and is not repeated. The agency shall also require that any employee found to have engaged in inappropriate conduct attend mandatory sexual harassment training.

XII. Filing and Investigating Complaints of Sexual Harassment

An alleged victim of harassment, or a person acting on the victim's behalf with or without the victim's consent, may report a sexual harassment incident to the agency's EEO Counselor, to any supervisor or manager within the agency, or to any EEO Counselor at any other District of Columbia agency within 180 days from the time of the alleged incident. An alleged victim of harassment may forego filing an internal complaint with an agency, but may instead file a complaint directly with the District of Columbia Office of Human Rights ("OHR") within one year of the alleged incident.

Agencies shall promptly initiate investigations of sexual harassment allegations. If a complaint is not resolved within 60 days of its filing, the agency shall refer the complaint to the OHR.

The sexual harassment complaint shall be investigated by the EEO Counselor of the agency in which it is filed pursuant to the procedures set forth in Title 4 of the D.C. Municipal Regulations.

The EEO Counselor shall prepare an investigative report for the Agency Director. If an EEO complaint is filed against an Agency Director, the report shall be submitted to the appropriate Deputy Mayor and/or City Administrator for review. If an EEO complaint

is filed against a Deputy Mayor and/or City Administrator, the report shall be submitted to the Mayor's General Counsel. If the EEO complaint is filed against the Mayor's General Counsel or the Mayor, an independent consultant shall be hired to conduct an investigation, and a final investigative report shall be submitted to the Inspector General for the District of Columbia for review.

XIII. Agency Investigations Limited to Current Employees

Agency authority to investigate sexual harassment complaints is limited to investigation of complaints lodged by persons who are District of Columbia employees at the time the complaint is filed. Investigation or complaints by former District of Columbia employees must be conducted by the OHR.

XIV. Discipline on a Finding of Sexual Harassment

The agency shall recommend appropriate disciplinary action, up to and including termination of any employee found to have engaged in sexual harassment as defined in Section 3 of this policy.

XV. Discipline for Making False Statements or Representations

In recognition of the seriousness of workplace sexual harassment, and the zero tolerance placed on such activity by the District of Columbia, the agency shall recommend disciplinary action, up to and including termination of any employee found to knowingly and intentionally to have made materially false statements or representations in relation to a sexual harassment claim or investigation. This provision is intended to discipline only employees who knowingly and intentionally make materially false claims and statements.

Consideration whether to recommend disciplinary action against an employee who also is the alleged victim of sexual harassment requires heightened sensitivity on the part of the agency and should be conducted in consultation with the agency's General Counsel and the Office of the Attorney General for the District of Columbia.

XVI. Applicability of Personnel Rules

Any proposed personnel action instituted under the instant Mayor's Order is subject to the District of Columbia Personnel Regulations as set out in the District of Columbia Personnel Manual.

XVII. Dissemination of Policy

Within thirty (30) days after the effective date of this Mayor's Order, the District of Columbia Office of Personnel ("DCOP") shall disseminate a copy of this order to each new employee, during his or her employee orientation. During the orientation, the employee must sign a form acknowledging receipt of the Order and an agreement to

read the Order within three (3) days. The original form acknowledging receipt of the Order shall be maintained in the employee's official personnel file. The acknowledgment form must also advise the employee that upon request he or she may obtain the agency's written procedures for filing a sexual harassment complaint from the agency's EEO Officer.

Within thirty (30) days after the effective date of this Order, all District of Columbia agencies shall disseminate to each present employee a copy of this Order via email and/or interagency mail. The notice must advise the employee that he or she may obtain the agency's written procedures for filing a sexual harassment complaint from the agency's EEO Officer or at a specific location on the agency's shared network computer drive.

Within thirty (30) days after the effective date of this Order, each agency should display, in noticeable and conspicuous locations accessible and used by a substantial number of agency employees, notices setting forth the District of Columbia's policy prohibiting sexual harassment. Each notice shall contain the identity and location of the agency's EEO Counselor and shall advise employees that a sexual harassment complaint and any subsequent investigation are confidential.

XVIII. Implementation

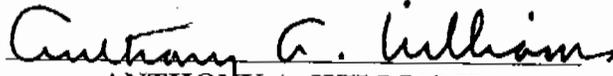
The Director of the Office of Human Rights, or the designee thereof, is authorized and directed to implement this Order and to monitor the compliance of executive departments and agencies with its directives.

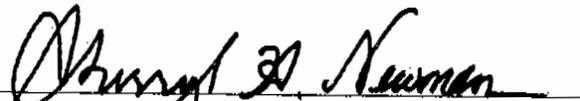
XIX. Rescission/Repeal

To the extent that any provision of this Order is inconsistent with the provisions of any Commissioner's Order, Order of the Commissioner, or previous Mayor's Order, the provisions of this Order shall prevail and shall be deemed to supersede the earlier provisions.

XX. RESCISSION: Mayor's Order 79-89, dated May 24, 1979 is rescinded.

XXI. EFFECTIVE DATE: This Order shall become effective immediately.


ANTHONY A. WILLIAMS
MAYOR

ATTEST: 
SHERRYL HOBBS NEWMAN
SECRETARY OF THE DISTRICT OF COLUMBIA