

**DISTRICT OF COLUMBIA
FIRE AND EMERGENCY MEDICAL SERVICES DEPARTMENT**

BULLETIN NO. 27

November 2013 (Revised)

SEXUAL HARASSMENT

I. PURPOSE

The purpose of this section is to establish clearly and unequivocally that the policy of the District of Columbia Fire and Emergency Medical Service Department (Department) prohibits sexual harassment by and of its employees in any form; and, to establish procedures by which allegations of sexual harassment may be filed, investigated, and adjudicated so that all work sites within the Department will be free from sexual harassment.

II. AUTHORITY

Mayor's Order 2004-171, October 20, 2004; Mayor's Order 2002-175, October 23, 2002; Mayor's Memorandum 92-16, June 8, 1992, Equal Employment Opportunity (EEO) Rules Governing Complaints of Discrimination in the District of Columbia Government, District of Columbia Register, (31 DCR 56 (1984), hereinafter cited as EEO Rule, Equal Employment Opportunity; Commission's Sex Discrimination Guidelines, 29 C.F.R. 1604, issued November 1980, see Section 1604.11, Sexual Harassment.

III. COVERAGE

The provisions of this section govern the processing of all matters involving sexual harassment in connection with any aspect of the Department.

The procedures set forth in this policy apply to matters presently pending or hereinafter filed with the Department.

Sexual harassment is a form of sex discrimination which is prohibited under District of Columbia laws and regulations.

IV. POLICY

It is the policy of the Department to maintain an employment environment free of sexual harassment.

The prohibitions against sexual harassment apply to all employees of the Department. In

addition, it applies to third parties doing business with or carrying out the goals and objectives of the Department, including vendors, contractors, and other persons visiting or working at Department worksites. The protections against workplace sexual harassment extend to employees, contractors, interns, and volunteers. All allegations of sexual harassment will be fully investigated and corrective or disciplinary action, up to and including, termination from employment. **SEXUAL HARASSMENT WILL NOT BE TOLERATED IN THIS DEPARTMENT.**

V. DEFINITION

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual or inappropriate nature directed towards a specific gender 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 issued 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 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 of 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.

Sexual harassment or discrimination may also include treating a gender different than another gender. For example, if a female employee is not required to lift heavy objects, this may create an environment of sexual harassment or discrimination.

VI. CONSENSUAL RELATIONSHIPS

Sexual or 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 or adversely affected the terms and conditions of employment. If legal action is commenced against the District of Columbia and 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.

VII. RESPONSIBILITY TO PARTICIPATE IN INVESTIGATIONS

All Department 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, shall report the sexual harassment or inappropriate conduct to the EEO & Diversity Manager, an EEO counselor¹, or to any supervisor or manager with whom the employee feels comfortable. A manager, supervisor, or EEO counselor who is made aware of an allegation that *may* be sexual harassment shall immediately report the conduct to the EEO & Diversity Manager and the Office of Internal Affairs. 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.

All Department 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 or participate in the investigation of the allegation, the agency may unilaterally initiate and conduct an investigation. The agency will require that the

employee put in writing his or her decision to decline assistance and participate 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.

VIII. PROHIBITION AGAINST RETALIATION

Under no circumstances will any employee, supervisor, manager, or other person acting on his or her behalf, or under his or 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 agency from taking appropriate personnel actions regarding the alleged victim of the harassment, employees should not be subject to coercive, harassing or retaliatory behavior because of their assertion of rights provided under the D.C. Human Rights Act. Employees found to have engaged in retaliatory behavior will be recommended for termination.

IX. 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.

X. INTERIM REMEDIAL ACTION

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, reassignments, transfers, details, reassignment of duties or reporting requirements, or mandatory administrative leave with pay, or other appropriate measures that do not result in a reduction of pay or loss of employee benefits.

XI. ALLEGATIONS OF SEXUAL ASSAULT

When there is an allegation of a sexual assault, the Department may place the victim and the alleged harasser on administrative leave with pay, pending final administrative resolution of the complaint. Where either the Department or appropriate law enforcement determines that a sexual assault occurred, the Department will recommend discipline of the alleged perpetrator up to, and including termination.

XII. CONFIDENTIALITY

The complaint file, including all information and documents contained in the file as well as information received during investigation of the complaint, will be confidential. No information

contained in the file may be disseminated except in furtherance of the investigation and on a need to know basis, subject to privacy and privilege rights. The agency will make reasonable efforts to protect the identity of the harasser and the alleged victim, as well as witnesses for either party.

The alleged harasser will be promptly advised of the complaint and its substance and be given an opportunity to respond to the allegations.

It will not be a violation of the confidentiality requirement for the Department to report any suspected illegal or improper act, or conduct related to the investigation to an appropriate enforcement, investigating or legal organization.

XIII. INFORMAL COMPLAINTS OF DISCRIMINATION

Any employee who is found to have engaged in any inappropriate behavior or potentially inappropriate conduct of a sexual or inappropriate nature will be advised that such behavior or conduct is inappropriate, and will be required to attend sexual harassment training, at a minimum.

XIV. FILING AND INVESTIGATING COMPLAINTS OF SEXUAL HARASSMENT

A complaint or allegation of sexual harassment may be filed directly either with the Department or the District of Columbia Office of Human Rights. The filing of a complaint or allegation of sexual harassment to the Department will not bar nor preclude the complainant from filing a complaint or allegation with the Office Human Rights or with the United States Equal Employment Opportunity Commission.

Note: District of Columbia Office of Human Rights
441 4th Street, N.W.
Suite 570N
Washington, D.C. 20001
(202) 727-4559

U. S. Equal Employment Opportunity Commission
131 M Street, N.E.
Fourth Floor, Suite 4NW02F
Washington, D.C. 20507
(800) 669-4000

Allegations of sexual harassment will be fully investigated, and corrective or disciplinary action taken if warranted.

A complainant will be required to swear or affirm that the facts stated in the complaint are true to the best of his/her belief, knowledge, or information.

Only complaints or allegations of sexual harassment of a D.C. government employee that

concern incidents which occurred within 180 days from the time of the alleged incident will be considered by the Department or EEO counselor. The Department's authority to investigate sexual harassment complaints is limited to investigations 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 Office of Human Rights. Employees may file a complaint with the Office of Human Rights within one year from the time of the alleged incident.

The complainant should be prepared to provide valid documentation and information offering a detailed account of the incident including, names, dates, times, places, and witnesses.

XV. INVESTIGATION AND RESOLUTION

The investigation and resolution will comply with Bulletin 26.

XVI. DISCIPLINE ON A FINDING OF SEXUAL HARASSMENT

The Department will take appropriate action, up to and including termination, of any employee found to have engaged in sexual harassment as defined in this policy.

XVII. 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 Department will take disciplinary action, up to and including, termination of any employee found to have knowingly and intentionally made materially false statements or representations in relations 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 of whether to take 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 General Counsel and the Office of the Attorney General for the District of Columbia.

ⁱ Any D.C. Government EEO Counselor.