



CITY OF DULUTH

Human Resources Manual

CHAPTER: 4 – HARASSMENT, DISCRIMINATION, EEO & ADA

EFFECTIVE DATE: 01-01-2009; updated 05-01-2012

EEO stands for Equal Employment Opportunities and ADA stands for Americans with Disabilities Act

Special Note: This Chapter applies to all persons enumerated in section 01.02.

[3GACP 1.4]

[4CALEA 26.1.1, 26.1.3]

04.01 PURPOSE

The City of Duluth is committed to maintaining a professional work environment that is free of illegal or improper discrimination and harassment and maintains employee quality, dignity, and respect. In keeping with this commitment, we will not tolerate harassment of employees by anyone, including any supervisor, co-worker, vendor, client, or customer of the City of Duluth. The City also supports equal employment opportunities for all.

04.02 POLICY

- A. Any harassment or discrimination prohibited by this policy, whether verbal, physical or environmental is unacceptable and will not be tolerated:
1. whether it occurs in the workplace or at outside work-sponsored activities, or
 2. whether or not the employee is on-duty or off-duty if the employee or other covered person is clearly identified or identifiable as an employee or incumbent of the City of Duluth
- B. The City prohibits any verbal, physical or visual conduct, which could offend, intimidate, or create a hostile working environment for any individual, on the basis of race, color, religion, national origin, gender, age, disability or any other characteristic protected by federal, state or local law.
1. The City specifically prohibits sexual harassment, which is defined in this policy as sexual advances, requests for sexual favors, or other verbal or

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physical conduct of a sexual nature.

2. The City specifically prohibits discrimination which is in violation of the Americans with Disabilities Act.
- C. To give equal employment and advancement opportunities to all people, we make employment decisions based on each person's performance, qualifications, and abilities. The City does not practice nor tolerate discrimination in employment opportunities or practices on the basis of race, color, religion, sex, national origin, age, disability, or any other characteristic protected by law.
- D. This policy:
1. applies to, covers, and protects all City employees and other staff, whether related to conduct engaged in by employees, elected or appointed officials; or someone who is not directly related to the City, such as a vendor, consultant, client, customer, the general public, or other City contact;
 2. covers all aspects, conditions, and benefits of employment (unless legally restricted or governed by contract) including, but not limited to:
 - recruitment, selection, and hiring
 - job assignment and classification
 - promotions, transfers, layoffs, reductions in force
 - compensation
 - leave and benefits
 - return to work
 - discipline and termination
 - access to benefits and training
 - employer-sponsored activities

04.03**DEFINITIONS**

- A. Discrimination: any act taken based on irrational preconceived judgments or convictions based not on fact, but formulated because of a person's race, color, religion, sex, national origin, age, disability, or any other characteristic protected by law.
- B. Harassment: persecution of a person through annoyance, threat, demands, insults, heckling, slurs, or personal remarks made because of such person's race, color, religion, sex, national origin, disability, age, or any other legally protected status, characteristic or classification.

04.04**PROPER DISCRIMINATION**

All persons are reminded that discrimination between the concepts of right and wrong, legal and illegal, and good and bad job performance are examples of proper discrimination. Discrimination in that sense is proper, as employees and other covered incumbents must have the ability to make fine distinctions as a part of their job tasks. Discriminations which are based on fact such as measurable or quantifiable facts in order to assess job performance are not unfair or illegal. Discrimination becomes illegal or prohibited when the acts of discrimination violate the law or this policy; and are based on

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preconceived opinions or prejudices not founded in fact.

04.05**PROHIBITED CONDUCT**

- A. Conduct prohibited in this policy will not be tolerated under any circumstances, including cases where the conduct is unwelcome, and:
1. Submission to the 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 the basis for employment decisions affecting the individual; or
 3. The conduct has the purpose or effect of unreasonably interfering with the individual's work performance or of creating an intimidating, hostile or offensive working environment.
- B. The types of behavior that may constitute prohibited harassment include, but are not limited to:
1. Derogatory, vulgar, foul, lewd, obscene, or graphic written or oral statements, gestures, or jokes regarding race, color, religion, national origin, disability, gender, sexuality, sexual experience or any other characteristics protected by federal, state or local law;
 2. Unnecessary touching or physical assault, such as patting, pinching, or brushing against another's body;
 3. Sexual compliments, flirtations, advances, propositions, innuendoes, suggestive comments or jokes; sexually oriented "kidding," "teasing" or "practical jokes;" or
 4. The display of offensive or sexually suggestive pictures or objects.
- C. To avoid even the appearance of impropriety, employees may not hug, kiss, or touch another person in an overtly sexual manner in the workplace while on-duty, as well as while off-duty when identifiable as a City of Duluth employee, even if this conduct is welcome (such as with a spouse or significant other).

04.06**WORKPLACE ROMANCE AND/OR CONSENSUAL PERSONAL RELATIONSHIPS**

- A. The City does not prohibit consensual personal relationships between employees. However, due to the potential for favorable treatment or a conflict of interest, whether perceived or real, supervisor-subordinate romantic relationships are not allowed. The options for resolving the situation include moving one of the parties to another position within the City or asking one of the parties to resign their position with the City. Refusal of reasonable alternative positions, if available, will be deemed a voluntary resignation. Those engaging in such relationships must disclose the relationship to their supervisor or the Human Resources department. The senior ranking person in the relationship is expected to make the disclosure.

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- B. In an effort to protect all our employees, the City reserves the right to reassign at least one of the individuals if any personal relationship causes a disruption to the work atmosphere. The City requires any employee in a consensual personal relationship with one another, whether supervisor-subordinate or not, to notify the Human Resources Manager if the relationship is no longer consensual.
- C. Failure to disclose the existence and/or termination of a consensual relationship which causes real or perceived favoritism or conflict of interest will be considered a violation of this policy.

04.07**INTENTION & MOTIVES ARE NOT THE DECISIVE FACTOR**

An employee's intentions and motives are not the decisive factors in considering alleged harassment behavior. The affect of one employee's behavior upon another employee is the decisive factor. If an employee's behavior is considered to be offensive by another employee or if it has an intimidating effect upon another employee, then harassment may be present. The welcomeness, frequency, and severity of the behavior also help determine whether or not harassment has occurred.

04.08**RESPONSIBILITIES**

- A. It shall be the joint responsibility of employees, managers, supervisors, and Human Resources to ensure adherence to this policy. Managers and supervisors have a greater responsibility, not only to model respectful, professional conduct at the workplace, but also to maintain an environment of respect and effective teamwork in their work areas. Human Resources will assist in the coordination, implementation and investigation of this policy and potential violations.
- B. All employees, supervisors and managers have the duties of: (1) monitoring the workplace for inappropriate behavior and conduct, (2) of ensuring that no individual or employee is subjected to any form of unlawful harassment or discrimination, and (3) maintaining a workplace free of such harassment and discrimination.
- C. It is the duty of all employees to assist in any investigation of harassment and/or discrimination and to provide truthful and accurate information

04.09**REPORTING**

- A. The City encourages employees to report all perceived incidents of harassment or discrimination, regardless of the position of the alleged offender. Any employee who has a harassment or discrimination complaint against a supervisor, co-worker, visitor, customer or other person, must bring the problem to the City's attention.
- B. If you believe that you have been harassed or discriminated against, you should immediately report the incident to your supervisor, Department Head or the Human Resources department.
- C. If you are uncomfortable reporting it to any of the above, or if you believe that

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your complaint was not properly addressed, or if your complaint involves your Department Head or the Human Resources department, you should report the incident to the City Clerk or City Manager.

- D. Whoever receives a report of harassment or discrimination, shall report it to the Human Resources department, unless the Human Resources department is involved in the complaint, in which case, the complaint should be made to the City Clerk or City Manager.

04.10**INVESTIGATING & TAKING APPROPRIATE ACTION**

- A. The complaint will be thoroughly investigated in a professional manner by an uninvolved person. You will be notified of a decision or of the status of the investigation as soon as possible.
- B. There will be no discrimination or retaliation against any individual who files a good-faith harassment or discrimination complaint, or who participates in the investigation of a harassment or discrimination complaint, even if the investigation produces insufficient evidence to support the complaint, and even if the charges cannot be proven. Retaliatory action of any kind taken as a result of any individual or any employee seeking redress under this policy is prohibited and shall be regarded as a separate and distinct cause for complaint and discipline under this policy.
- C. Knowingly false accusations of harassment or discrimination will subject the accuser to disciplinary action, up to and including termination of employment. However, the mere fact that insufficient evidence exists to support the complaint or even if charges cannot be proven is not sufficient proof of filing a “knowingly false accusation.”
- D. If the investigation substantiates the complaint, appropriate corrective action and/or disciplinary action will be taken.
- E. Actions taken internally to investigate and resolve complaints shall be conducted confidentially to the extent practicable and appropriate, and consistent with the Georgia Open Records Act, in order to protect the privacy of persons involved.

04.11**AMERICANS WITH DISABILITIES ACT (ADA) & ADA AMENDMENTS ACT (ADAAA)**

- A. The City is committed to complying fully with the Americans with Disabilities (ADA) and its amendments, including:
 - 1. ensuring equal employment opportunities for qualified persons with disabilities and making reasonable accommodations for qualified individuals, unless making the reasonable accommodation would result in undue hardship to the City
 - 2. when asked, we will attempt to make job applications available in alternative, accessible formats; and will also give assistance in completing the application

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3. we only make pre-employment inquiries regarding an applicant's ability to perform the duties of the job
4. we require post-offer medical examinations only for jobs that have bona fide job-related physical requirements
5. we keep medical records confidential and separate from other personnel files.

- B. On January 1, 2009, the ADAAA became law and both clarified, as well as added, new components to the original ADA law. The ADAAA:

Broadens the definition under the ADA of "disability" from "a physical or mental impairment that substantially limits one or more major life activities." Under the new law, one impairment will constitute a disability as long as it "materially restricts" a major life activity. The ADAAA does not define this term, but makes clear that a restriction need not be "significant" to qualify as "material." EEOC guidance issued in 2011 also declined to define "substantial limitation" other than to state that it is less than the previous standard of "prevents or significantly restricts." Moreover, an impairment does not have to last at least six months to be an actual disability. The EEOC opines [offers its opinion] that an impairment that lasts at least a few months can be a disability, but that those that last a short time will not be—unless "sufficiently severe."

The non-exhaustive list of "major life activities" will now include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

For the first time, major life activities will also include the operation of major bodily functions, including functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.

In determining whether an employee is substantially limited in a major life activity, employers should now compare them to "most people in the general population: in the following respects:

- The condition under which they perform the major life activity
- The manner in which they perform the major life activity
- How long it takes them to perform the major life activity and how long they are able to perform it
- The difficulty, effort, or time required to perform the major life activity
- The pain experienced when performing the major life activity
- The adverse effects of mitigating measures (such as prosthetics, medications, etc.)

Similarly, the determination of whether a disability exists under the new law must be made without taking into account whether medication or any other mitigating measures lessen the impairment (excluding prescription eyeglasses and contact lenses.) Employees will be evaluated without regard to hearing aids, medication, prosthetic devices and other measures they might use to manage their impairments.

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Under a secondary definition, an employee or applicant qualifies as “disabled” if he or she is regarded as having a physical or mental impairment that substantially limits one or more major life activities. The ADAAA makes clear that an individual meets this definition so long as he or she establishes that he or she has been subjected to prohibited action based on an actual or perceived impairment. The individual need not establish that he or she actually is substantially limited in a major life activity to be protected.

In addition, under the ADAAA, an impairment that is episodic or in remission will qualify as a disability, so long as that impairment—in its active state—would be substantially limiting.

- C. Individualized Assessments are one of the hallmarks of both the ADA and the ADAAA. All impairments require an individualized assessment to determine whether they rise to the level of disability. This requires a good faith and well-documented interactive process with impaired employees.
- D. Applicants or employees who needs a reasonable accommodation in order to complete the hiring process or their job duties are to make a request of their supervisor, who will then coordinate their response with the Human Resources Manager.
- E. Anyone who feels there is a concern regarding compliance with the ADA should address their concerns to their supervisor or the Human Resources Manager.

04.12**UNLAWFUL HARASSMENT, DISCRIMINATION, OR RETALIATION**

- A. Most federal laws which protect employees (and others) from acts of harassment, discrimination or retaliation (such as the Americans with Disabilities Act, Family & Medical Leave Act, Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, Equal Employment Opportunity, Uniformed Services Employment and Reemployment Rights Act, Patient Protection and Affordable Care Act, etc.) also contain provisions which prohibit unlawful harassment, discrimination, or retaliation against those who refuse to partake in unlawful actions, report unlawful actions, are impacted due to unlawful actions against other employees, or act as witnesses during any investigation regarding unlawful actions.
- B. Any employee subjecting any covered person (a job applicant, employee, receiver of city services, etc.) to unlawful harassment, discrimination, or retaliation will be subject to discipline up to and including termination.

04.13**GENETIC INFORMATION NONDISCRIMINATION ACT (GINA)**

Effective November 21, 2009, this Act prohibits discrimination in employment on the basis of “genetic information,” which means “information about such individual’s genetic tests, the genetic tests of family members of such individual, and the manifestation of a disease or disorder in family members of such individual.” Further, this Act prohibits retaliation against an employee who has opposed genetic discrimination, and it also prohibits employers from acquiring genetic information from employees, except in very limited circumstances.

04.14 IMMIGRATION LAW COMPLIANCE

The City is committed to employing only people who are United States citizens or who are aliens legally authorized to work in the United States. We do not illegally discriminate because of a person's citizenship or national origin.

In accordance with the federal Immigration Reform and Control Act of 1986, every new employee (including rehired previous employees) is required to complete the Employment Eligibility Verification Form I-9 and show documents that prove identity and employment eligibility. They must also complete the Georgia SAVE Affidavit.

04.15 REVIEW OF POLICY, PRACTICES AND PROCEDURES

The Human Resources Manager will conduct a periodic review of the City's personnel policies, practices, and procedures for the purpose of ensuring equal employment opportunities and compliance with disability and immigration legislation.

04.98 REFERENCES

- A. 28 CFR 42.301 - "Equal Opportunity Employment Program Guidelines" under the Omnibus Crime Control and Safe Streets Act of 1968
- B. O.C.G.A. 34-6A - "Equal Employment for Persons with Disabilities"
- C. Immigration Reform and Control Act of 1986 (IRCA), Pub L. 99-603; 100 Stat. 3359
- D. Systematic Alien Verification for Entitlements (SAVE) Affidavit; O.C.G.A. 50-36-1
- E. Americans with Disabilities Act of 1990; 42 USC 126; and ADA Amendments Act of 2007
- F. Title VII of the Civil Rights Act of 1964; and The Civil Rights Act of 1990
- G. Genetic Information Nondiscrimination Act of 2008

04.99 UPDATES TO THIS POLICY

- A. Section 04.11 was substantially updated to reflect the ADAAA and reformatted to reflect the addition of the new material (5-1-2012)
- B. New sections 04.12 and 04.13 were added, and all subsequent sections were renumbered with the sections on Immigration Law Compliance and Review of Policies reversed in order (5-1-2012)
- C. Section 04.14 added reference to the Georgia SAVE Affidavit (5-1-2012)

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- D. Section 04.15 added “disability and immigration legislation” to the list (5-1-2012)

- D. Original Section 04.14 (References) was renumbered to 04.98 and new references added (5-1-2012)

- E. Section 04.99 was added (5-1-2012)