

POLICY NUMBER

APM-3-81

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ISSUED BY:

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City Manager

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City of Miami



ADMINISTRATIVE POLICY

REVISIONS

REVISED SECTION	DATE OF REVISION
III. Legal Ramifications	03/13/97
IV. Policy Implementation	03/13/97
V. Non-Retaliation	03/13/97
VI. Notification	03/13/97

SUBJECT: POLICY STATEMENT ON SEXUAL HARASSMENT

PURPOSE: To define the policy of the City of Miami whereas all employees have the right to work in an environment free from all forms of discrimination and conduct which can be considered harassing, coercive, or disruptive, including sexual harassment.

It is the City's position that sexual harassment is a form of misconduct that undermines the integrity of the employment relationship and the provision of services to its citizens. It is further an unlawful employment practice under Title VII of the Civil Rights Act of 1964, as amended.

Effective this date, this administrative policy supersedes all previous directives relating to sexual harassment.

The Policy will be as Follows:

I. PRACTICAL AND LEGAL DEFINITIONS AND GUIDELINES:

Pursuant to the Equal Employment Opportunity Commission (EEOC), sexual harassment is defined as unwelcome activity of a sexual nature.

Sexual conduct becomes unlawful when it is **unwelcome**. Conduct is unwelcome when the employee did not solicit or invite it, and the employee regarded the conduct as undesirable and/or offensive.

Sexual conduct is unwelcome when:

- a) Acceptance or rejection of the conduct is used to make employment decisions (hiring, promotion, work assignments, etc.) that affect the person claiming harassment;
- b) The conduct has the purpose of unreasonably interfering with the victim's job performance; or



- c) The conduct creates an intimidating, hostile, or offensive work environment.

Although, an employee may not resist the sexual advances of a supervisor, that does not mean that the sexual conduct is welcome. Actual participation in sexual conduct may be voluntary, but it can still be unwelcome sexual harassment.

For example, an employee may join in with jokes or banter of a sexual context in the workplace, which may seem to indicate the conduct is welcome. Sexual harassment can be found if subsequently the employee tells co-workers or other involved individuals that further sexual conduct is no longer welcome, yet it continues. If a supervisor observes such joking, the participants should be counseled that such behavior is unacceptable, even if no one complains about it.

All comments of a sexual nature observed by, or joined by, managers or supervisors should cease.

Sexual joking or innuendo, whether welcome or unwelcome, is inappropriate in the workplace. The employer is inviting trouble if sexual comments are tolerated. The best course of action for all supervisors is to avoid any conduct of this type in the workplace.

Sexual Harassment may include any of the following:

1. “Quid pro quo”

Quid pro quo harassment occurs in cases where an express promise of a job benefit (promotion, assignment etc.), or threat of adverse working conditions is made, and in situations where it is implied that adverse circumstances (termination, demotion, etc.) will happen if an employee does not agree to participate in unwelcome sexual activity.

Only supervisors or members of management can engage in “quid pro quo” harassment. In quid pro quo situations, the City of Miami is liable



for the actions of supervisors or management personnel even if the City did not know about the harassment, or if the advances occurred away from the workplace.

2. Hostile Work Environment

This form of harassment is usually relentless and continued sexual conduct in the workplace that interferes with an employee's work performance or creates an intimidating, abusive, or offensive work environment.

Hostile environment can also be found from any unfavorable working conditions directed only toward one sex. Acts of aggression, intimidation, hostility, rudeness, name calling or other types of abusive conduct can be sexual harassment.

Additionally, as both males and females become employed in non-traditional occupations, they do not assume the risk of sexual harassment by holding these positions. Lewd jokes, pin-ups, pornographic magazines, graffiti, vulgar statements, sexually-oriented calendars, innuendoes, references to sexual activity, or overt physical conduct by fellow employees create a hostile work environment and is unlawful sexual harassment.

The City of Miami can be held liable for hostile work environment sexual harassment when the City knew, or should have known, that harassment was taking place and failed to take prompt remedial action.

3. Sexual Favoritism

Sexual favoritism occurs when, for example, an employee is granted a promotion because he/she submits to unwelcome requests for sexual favors from a supervisor. Under these circumstances, both male and female co-workers can allege sexual harassment by demonstrating that they were denied a chance at promotion because of the sexual harassment directed toward the promoted individual.



4. Harassment by non-employees

Employers can be held liable for the sexual harassment of employees by customers, or third parties, if the employer has some degree of control to stop the improper behavior. Immediate corrective action must be taken if improper conduct becomes apparent.

II. MANAGEMENT RESPONSIBILITY:

The maintenance of high standards of honesty, integrity, impartiality, and conduct by City employees is essential to assure the effective performance of the City's business and the maintenance of confidence by citizens of Miami in their City government. The conduct of any employee in violation of this policy cannot be tolerated.

As such, sexual harassment, as previously described, is a form of employee misconduct which not only undermines the integrity of the employment relationship, but is also illegal. All employees must be allowed to work in an environment free from unsolicited and unwelcome sexual conduct.

The City of Miami, both in spirit and by law, is dedicated to a strong policy against any form of discrimination on the basis of sex. Sexual harassment is unacceptable conduct and will not be tolerated.

Management is responsible for taking action against acts of sexual harassment by non-supervisor personnel or others, regardless of whether the specific acts complained of were sanctioned or specifically forbidden per this policy, and regardless of the manner in which the City becomes aware of the conduct.

It shall be a violation of this Policy on Sexual Harassment for any employee, supervisor, or non-City employee to sexually harass any employee or applicant for employment.

Violations of this policy will be cause for disciplinary action up to and including termination.



III. LEGAL RAMIFICATIONS:

In addition to back pay, front pay, and attorney's fees that have always been available under Title VII, the Civil Rights Act of 1991 provides that the City of Miami can be held legally and financially liable to victims of sexual harassment for compensatory damages, attorney's fees, expert witness fees, and the opportunity for a jury trial.

The City of Miami and all departments can reduce the City's legal liability for any acts of sexual harassment by:

- (1) Taking any and all steps necessary to prevent sexual harassment from occurring in the workplace, including training and other preventive measures; and
- (2) Taking immediate and appropriate corrective action to resolve individual complaints.

IV. POLICY IMPLEMENTATION AND COMPLAINT PROCEDURES:

1. The Office of Equal Opportunity/Diversity Programs is the City's expert and informational resource on sexual harassment.
2. All supervisors, including Department Directors and Assistant City Managers, are charged with the responsibility to ensure all City departments are free of all aforementioned forms of sexual harassment and to take corrective measures when necessary.
3. The Office of Equal Opportunity/Diversity Programs will develop and implement instructional programs for the purpose of ensuring that all officials and employees clearly comprehend the fact that sexual harassment in City Government is illegal and will not be tolerated.
4. All Department Directors will ensure distribution of this Policy on Sexual Harassment to all employees and advise employees of their rights to resolve complaints involving sexual harassment pursuant to Chapters 14 and 15 of the City's Personnel Policy Manual and Section 11 of the



Affirmative Action Plan. In addition, a separate but consistent two-page bulletin on the City's Sexual Harassment Policy and complaint procedure (copy attached) has been developed for distribution to each City employee. It is the responsibility of each Department Director to see that each employee in his/her department is given two copies of the above-described two-page bulletin on the City's Sexual Harassment Policy and complaint procedure. Each employee will keep one copy of the two-page bulletin. One copy of the two-page bulletin will be signed by each employee and returned to his/her Department Director who will forward the original to the Department of Human Resources for placement in the employee's personnel file. Every Department Director, Assistant City Manager, and any other city employee who does not report to a Department Director will be given two copies of the two-page bulletin by the Human Resources Director who will keep each signed copy of the bulletin in an appropriate file.

5. The Office of Equal Opportunity/Diversity Programs will confidentially investigate, mediate, and/or resolve complaints of employees or applicants who allege sexual harassment pursuant to Section 11 of the Affirmative Action Plan. **Any employee also has the right to file a complaint with the EEOC or with any other federal, state, or local agency.**
6. In the resolution of such complaint(s), should it appear that disciplinary action is warranted, the Office of Equal Opportunity/Diversity Programs will notify and cooperate with the Office of Labor Relations prior to any such recommendation being submitted to the affected Department Director and City Manager.
7. If in the resolution of said complaint, recommendations are made for corrective action in policies or procedures, the affected departments will be required to implement the same within sixty (60) days unless a waiver is obtained from the City Manager.
8. The Department of Human Resources will obtain a signed copy of the bulletin on sexual harassment and emphasize this policy at the time of employee orientation.



V. NON RETALIATION:

This policy prohibits retaliation against employees who file sexual harassment charges or assist or participate in any investigation of such charges. Any such employee will not be adversely affected in terms and conditions of employment, nor discriminated against or discharged because of the complaint.

Any supervisor or harasser who engages, or attempts to engage, in retaliation for filing such a complaint, will be subject to disciplinary action up to and including termination. Similarly, any Department Director or Assistant City Manager who condones such retaliation or who allows an atmosphere of retaliation or intimidation to exist in any department will be dealt with appropriately.

VI. NOTIFICATION:

This policy shall be made readily available to all Assistant City Managers, Department Directors, and City employees. Additional requests for copies of the policy should be directed to the Office of Equal Opportunity/Diversity Programs. All employees must understand the contents contained herein as to what constitutes sexual harassment, and realize the City of Miami regards any violation of this Policy as a serious offense.

For further information, assistance, or the filing of a complaint alleging sexual harassment, please contact the Office of Equal Opportunity/Diversity Programs, Miami Riverside Center, 444 S.W. 2nd Avenue, Suite 642, Miami, Florida 33130 at 416-1990.