



Angela Cabrera  
Malini Cadambi Daniel  
Elaine S. Reiss, Esq.  
Arva R. Rice  
Commissioners

Charise L. Terry, PHR  
Executive Director

Judith Garcia Quiñonez, Esq.  
Executive Agency Counsel

Jennifer Shaw, Esq.  
Executive Agency Counsel/  
Director of Compliance Monitoring

253 Broadway  
Suite 602  
New York, NY 10007

212. 615. 8939 tel.  
212. 676. 2724 fax

## BY MAIL AND EMAIL

August 31, 2018

Gale A. Brewer  
Borough President  
Office of the Manhattan Borough President  
1 Centre Street, 19th Floor  
New York, NY 10007

Re: Preliminary Determination for Audit: Review, Evaluation and Monitoring of the Office of the Manhattan Borough President's Sexual Harassment Prevention and Response Practices January 1, 2016 to December 31, 2017.

Dear Borough President Brewer:

On behalf of the members of the Equal Employment Practices Commission (Commission or EEPC), thank you and your agency for the cooperation extended to our staff during the course of this audit. This letter contains the Commission's findings and preliminary determinations pursuant to our audit and analysis of your agency's sexual harassment prevention and response practices for the period covering January 1, 2016 to December 31, 2017.

Chapter 36, Section 831(d)(5) of the New York City Charter empowers this Commission to audit and evaluate the employment practices and procedures of city agencies and their efforts to ensure fair and effective equal employment opportunity for women and minority employees and applicants seeking employment. Sections 831(d)(2) and 832(c) authorize this Commission to make a determination that any agency's plan, program, procedure, approach, measure or standard does not provide equal employment opportunity, require appropriate corrective action and monitor the implementation of the corrective action it prescribes.

The Office of the Manhattan Borough President, which may herein be referred to as "the agency," falls within the Commission's purview under Chapter 36, Section 831(a) of the New York City Charter, which delineates city agency as any "city, county, borough or other office, administration, board, department, division, commission, bureau, corporation, authority, or other agency of government where the majority of the board members of such agency are appointed by the mayor or serve by virtue of being city officers or the expenses of which are paid in whole or in part from the city treasury..."

The purpose of this audit and analysis is to evaluate the agency's sexual harassment prevention and response practices, not to issue findings of discrimination pursuant to the New York City Human Rights Law. This Commission has adopted *Uniform Standards for EEPD Audits*<sup>1</sup> and *Minimum Equal Employment Opportunity Standards for Community Boards* to assess agencies' EEO programs and policies for compliance with federal, state and local laws, regulations, policies and procedures that are designed to increase equality of opportunity for municipal government employees and job applicants. These standards are founded upon and consistent with federal, state and local laws, regulations, procedures and policies including, but not limited to, the Citywide Equal Employment Opportunity Policy - Standards and Procedures to be Utilized by City Agencies; the New York City Human Rights Law (NYC Administrative Code §§8-107(1)(a) and (d), 8-107.13, and 8-107.1); the New York State Civil Service Law §55-a; and the equal employment opportunity requirements of the New York City Charter. Prescribed corrective actions are consistent with the aforementioned parameters.

Since this Commission is empowered to review and recommend actions that each agency should consider including in its annual plan of measures and programs to provide equal employment opportunity (Annual EEO Plan), the audited agency should incorporate required corrective actions in its current EEO Program and prospective Annual EEO Plans.

## **Scope and Methodology**

This Commission's audit methodology includes the collection and analysis of the documents, records and data the agency provides in response to the document and information request; responses to the *EEPC Preliminary Interview Questionnaires* (PIQs) for EEO professionals and others involved in EEO program administration; and, if applicable, review of the agency's *Annual EEO Plans*, *Quarterly EEO Reports* and analysis of *Citywide Equal Employment Database System* (CEEDS) reports.

EEO professionals (including, but not limited to, past or current EEO Officers, Deputy or Co-EEO Officers, EEO Counselors, EEO Trainers, EEO Investigators, Disability Rights Coordinators, Career Counselors, and 55-a Program Coordinators) and others involved in EEO program administration such as the Principal Human Resources Professional are given a three-week deadline to complete and return their individual questionnaires. The Commission's EEO Program Analysts also conduct additional research and follow-up discussions or interviews with EEO professionals, when appropriate.

## **Description of the Agency**

*"The Borough Presidents are the executive officials of each borough. The City Charter gives them authority to: work with the Mayor in preparing the annual executive budget submitted to the City Council and to propose borough budget priorities directly to the council; review and comment on major land use decisions and propose sites for city facilities within their respective boroughs; monitor and modify the delivery of city services within their boroughs; and engage in strategic*

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<sup>1</sup> Corresponding audit/analysis standards are numbered throughout the document.

*planning for their boroughs. The Borough Presidents appoint members to Community Boards who serve without compensation, and each chairs a Borough Board. Each Borough President maintains a topographical bureau.”*<sup>2</sup> The CEEDS Report: Work Force Composition Summary for the Office of the Manhattan Borough President, attached as Appendix 1, indicates that at the end of the period in review the agency’s headcount was 52.

## **PRELIMINARY DETERMINATIONS AFTER AUDIT AND ANALYSIS**

Following are the corresponding audit standards for each subject area along with the EEPC’s findings and required corrective actions, where appropriate:

### **I. ISSUANCE, DISTRIBUTION AND POSTING OF EEO POLICIES:**

**Determination:** The agency is in partial compliance with the standards for this subject area.

1. Issue a Policy Statement or memorandum reiterating commitment to the prevention of sexual harassment annually.
- ✓ On August 21, 2017, the principal EEO Professional emailed the co-EEO Officer, General Counsel, Deputy General Counsel, Chief of Staff, and Community Affairs Director, the agency head’s *Equal Employment Opportunity Policy Memorandum* (EEO Policy Memorandum) that asserted, “[p]lease take the time to review and understand the [EEO] Policy. I cannot overstate the importance of this policy and its goal, which is to ensure a workplace that is free from unlawful discrimination and harassment. This Policy prohibits sexual harassment.” During the period in review, the EEO Policy Memorandum was also posted to the agency’s electronic file share drive accessible to all employees.

NOTE: Subsequent to the period in review, on June 13, 2018, the aforementioned EEO Policy Memorandum was emailed to all staff.

2. Distribute/Post a paper or electronic copy of the Equal Employment Opportunity Policy, Standards and Procedures to Be Utilized by City Agencies – or an agency Policy that conforms to city, state and federal laws against sexual harassment– for use by managers, supervisors, and legal, human resources and EEO professionals. Include, or attach as addenda: uniform and responsive procedures for investigating discrimination/sexual harassment complaints, and current contact information for the agency’s EEO professionals as well as federal, state and local agencies that enforce laws against discrimination/sexual harassment.
- ✓ On August 21, 2017, the agency’s EEO policy, entitled *Manhattan Borough President’s Office Equal Employment Opportunity (EEO) Policy and Plan* (EEO Policy), attached as Appendix 2, and complaint procedure, entitled *Manhattan Borough President’s Office EEO Complaint Investigation Procedure* (EEO Complaint Investigation Procedure), attached as Appendix 3, were emailed by principal EEO Professional (*Special Projects Coordinator*) to the co-EEO Officer (*Urban Planner*), General Counsel, Deputy General Counsel, Chief of Staff, and

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<sup>2</sup> “Borough President – Manhattan.” *Green Book Online*, City of New York, 2015, <http://a856-gbol.nyc.gov/GBOLWebsite/GreenBook/Details?orgId=2883>

Community Affairs Director. The EEO Policy conformed to city, state, and federal laws against sexual harassment, and included a definition of sexual harassment and the names and telephone numbers of the agency's EEO professionals. Section I of the EEO Policy informed employees that, "[t]he following federal, state and local agencies enforce laws against discrimination: The New York City Commission on Human Rights, the New York State Division of Human Rights, the United States Equal Employment Opportunity Commission (the "EEOC") or the Department of Justice. Information about how to contact these agencies can be found in the City's EEO Policy Handbook "About EEO: What You May Not Know" ... or the MBPO EEO office or the Office of Citywide EEO..." An electronic link to the City of New York's EEO Policy Handbook was provided in the agency's EEO Policy. Section I.B of the agency's EEO Policy also stated, "[e]veryone who works within the MBPO or its workplaces, or who seeks employment within the MBPO, is covered by federal, state and local employment laws and this policy." During the period in review, the EEO Policy and EEO Complaint Investigation Procedure were posted to the agency's electronic file shared drive accessible to all employees and provided in hard copy by Human Resources to all new employees during on-boarding. The complaint investigation procedures included procedures for investigating discrimination/sexual harassment complaints.

- The agency's EEO Complaint Investigation Procedure did not require the immediate commencement of an investigation if the allegations raised sufficiently warranted an investigation. The address listed for the New York City Commission on Human Rights in the EEO Complaint Investigation Procedure is no longer current. Corrective Action Required.

**NOTE:** The address listed for the New York City Commission on Human Rights in the City of New York's EEO Policy Handbook, *About EEO: What You May Not Know* is no longer current. If the agency distributes this document, it should include an updated address for the New York City Commission on Human Rights with that distribution.

**Corrective Action 1:** Distribute/Post a paper or electronic copy of the *Equal Employment Opportunity Policy, Standards and Procedures to Be Utilized by City Agencies* – or an agency Policy that conforms to city, state and federal laws against sexual harassment– for use by managers, supervisors, and legal, human resources and EEO professionals. Include, or attach as addenda: uniform and responsive procedures for investigating discrimination/sexual harassment complaints, and current contact information for the agency's EEO professionals as well as federal, state and local agencies that enforce laws against discrimination/sexual harassment.

## **II. EEO TRAINING FOR AGENCY:**

**Determination:** The agency is in partial compliance with the standards for this subject area.

3. Establish and implement a training plan for new and existing employees to ensure that all individuals who work within the agency, including managers and supervisors, receive training on the prevention of sexual harassment as well as discrimination complaint and investigation procedures.

- ✓ The agency planned to annually train all new and existing employees, including managers and supervisors, on the agency's EEO policies and procedures. EEO training was provided in-house by the principal EEO Professional, co-EEO Officer, General Counsel and Deputy General Counsel. Topics addressed in the agency's EEO training PowerPoint included: the prevention of sexual harassment, the definition of sexual harassment, and the discrimination complaint and investigation procedures. Sign-in sheets indicated that during the period in review, 20 employees (approximately 38% of the workforce) completed the agency's EEO training.
- The agency did not demonstrate that all individuals who worked within the agency received training on the prevention of sexual harassment as well as discrimination complaint and investigation procedures. Corrective Action Required.

**Corrective Action 2:** Establish and implement a training plan for new and existing employees to ensure that all individuals who work within the agency, including managers and supervisors, receive training on the prevention of sexual harassment as well as discrimination complaint and investigation procedures.

### **III. COMPLAINT & INVESTIGATION PROCEDURES**

**Summary of Complaint Activity:** The Office of the Manhattan Borough President reported a total of 1 internal and 1 external complaints filed during the period in review. In response to the EEOC's request, the agency submitted the internal EEO complaint file, which will herein be referred to as, EEO complaint file No. 1. The following findings are based on the examination of this complaint file and documents and forms submitted; wherever applicable, the agency's policies and procedures were used to measure compliance with the standard.

**Determination:** The agency is in partial compliance with the standards for this subject area.

- 4. Include in the complaint file a completed *Complaint Intake Form*, or a written complaint that captures facts (including pertinent dates) that identify the respondent(s) with reasonable specificity and provide the essence of the circumstances which gave rise to the complaint.
- ✓ The agency's *EEO Complaint Form*, attached to the EEO Complaint Investigation Procedure, captured, "...the alleged basis of discrimination, ...the name(s), title(s) and division of the person(s) you believe discriminated against you..., [w]hen did the incident(s) take place, ...[w]here did the incident take place, ...[i]dentify all employees or individuals who witnessed discrimination, ...[i]dentify all employees or individuals that you know of who have been subjected to discrimination, have received the same treatment or have the same concerns, and ...[d]o you have any evidence or documentation regarding this matter? (Photos, notes, letters, personal emails, texts, social media messages, voice mail messages, any objects of any kind, etc.)"
- EEO complaint file No. 1 did not include a completed *EEO Complaint Form* or written complaint that captures facts (including pertinent dates), identifies the respondent(s) with

reasonable specificity or provide the essence of the circumstances that gave rise to the complaint. Corrective Action Required.

**Corrective Action 3:** Include in the complaint file a completed Complaint Intake Form, or a written complaint that captures facts (including pertinent dates) that identify the respondent(s) with reasonable specificity and provide the essence of the circumstances which gave rise to the complaint.

5. Provide the option to file a complaint anonymously.
- ✓ The agency's EEO Policy was used to measure compliance with this standard. Employees were provided with the option to file a complaint anonymously by Section III.A of the agency's EEO Policy which stated, "[p]ersons who wish to discuss a possible violation of this policy without revealing their identity may do so by telephoning or writing the EEO office. In such cases, an EEO officer or representative will provide counseling and take such follow-up action as may be appropriate and possible, given the restraints of anonymity."
6. Serve the respondent with a notice of the complaint that includes the respondent's right to respond to the allegations and right to be accompanied by a representative of his/her choice. Maintain in the complaint file documentation regarding the service of notice on the respondent.
  - EEO complaint file No. 1 did not contain a notification of the complaint to the respondent. Corrective Action Required.

**Corrective Action 4:** Serve the respondent with a notice of the complaint that includes the respondent's right to respond to the allegations and right to be accompanied by a representative of his/her choice. Maintain in the complaint file documentation regarding the service of notice on the respondent.

7. Issue/maintain written confirmation when an internal complaint/mediation is terminated, withdrawn or resolved by agreement of the parties or EEO Office.
  - ✓ Because EEO complaint file No. 1 was not withdrawn, terminated or resolved by agreement of the parties or the EEO Office, the agency's EEO Complaint Investigation Procedure and EEO Policy were used to measure compliance with this standard. The EEO Complaint Investigation Procedure stated, "[t]he MBPO's EEO Office will issue and maintain written confirmation when a complaint is withdrawn or resolved by agreement of the parties." In addition, Section 3.D of the EEO Policy set forth the following requirements that, "[m]ediation may be terminated by any party to the mediation. If this occurs, the EEO Officer or the Center will inform the other party or parties in writing that the mediation has been terminated."
8. Take thorough notes, of words spoken and facts provided, during each interview. Include these notes in each complaint file.



- ✓ EEO complaint file No. 1 contained notes of words spoken and facts provided during each interview in a complaint summary. In addition, the EEO Complaint Investigation Procedure stated, “[t]he EEO Officer(s) shall take thorough notes, of words spoken and facts provided, during each interview and include these notes in the complaint file.”

9. Issue a conclusive report within 90 days of the date the complaint was filed. Commence an investigation immediately if allegations raised sufficiently warrant an investigation.

- ✓ Because EEO complaint file No. 1 did not contain a conclusive report (see §III.16 for additional information), the agency’s EEO Complaint Investigation Procedure was used to measure compliance with this standard. The EEO Complaint Investigation Procedure included the following directive, “[t]he EEO Officer(s) will make every effort to issue a final report within 90 days from the date the complaint was filed.”

NOTE: The agency’s EEO Complaint Investigation Procedure did not require the immediate commencement of an investigation if the allegations raised sufficiently warranted an investigation (see §I.2 for associated corrective action).

10. In rare circumstances where a complaint investigation cannot commence immediately, or where a conclusive report cannot be issued within 90 days, specify in the complaint file the reason for the delay and project a time frame for completion of the report. Notify the complainant and respondent of the delay.

- ✓ Because EEO complaint file No. 1 did not contain a conclusive report (see §III.16 for additional information), the agency’s EEO Complaint Investigation Procedure was used to measure compliance with this standard. The EEO Complaint Investigation Procedure stated, “[i]n the instances where the investigation cannot be completed in that [90 day] timeframe, both parties will be notified in writing of the delay. The EEO Officer(s) will include in the case file the cause of the delay. They will also provide a reasonable timeframe in which to complete the investigation and issue a report.”

11. Generate at the end of each complaint investigation, a conclusive confidential report which includes a summary of the allegations and responses, a summary of the procedural history of the investigation, a statement of the relevant facts gathered, a determination, a recommendation and documentation of the Agency Head’s Review.

- ✓ Because EEO complaint file No. 1 did not contain a conclusive report (see §III.16 for additional information), the agency’s EEO Complaint Investigation Procedure was used to measure compliance with this standard. The EEO Complaint Investigation Procedure stated, “[a]t the conclusion of their investigation, the EEO Officer(s) will submit a detailed report of their findings to the Borough President with a determination as to whether the complaint is substantiated or unsubstantiated as well as a recommendation for any necessary corrective action. The Borough President shall make a final determination as to corrective action to be taken, if any, by adopting, rejecting, or modifying the recommendations for corrective action in

*the report... [and it] shall be signed by the Borough President to indicate it has been reviewed and adopted."*

12. Maintain complaint files in a secure area and ensure that they can be located and reviewed by the agency head, agency general counsel, and other appropriate staff identified by the agency head.

✓ The agency reported its complaint files were maintained in a locked cabinet drawer in the office of the General Counsel and electronically in a secured and dedicated folder with access restricted to the EEO Counselor, General Counsel and Deputy General Counsel. The agency also reported that the complaint files were accessible to the agency head upon request.

13. Establish and implement a policy whereby the agency head (or an approved direct report other than the General Counsel) reviews the principal investigator's conclusive report; issues a written/electronic determination adopting, rejecting, or modifying the recommended action; and signs each determination, via writing or electronically, to indicate it has been reviewed and adopted.

✓ The EEO Complaint Investigation Procedure established that, *"[a]t the conclusion of their investigation, the EEO Officer(s) will submit a detailed report of their findings to the Borough President with a determination as to whether the complaint is substantiated or unsubstantiated as well as a recommendation for any necessary corrective action. The Borough President shall make a final determination as to corrective action to be taken, if any, by adopting, rejecting, or modifying the recommendations for corrective action in the report... [which] shall be signed by the Borough President to indicate it has been reviewed and adopted."*

14. Inform each complainant and respondent of the conclusion and outcome of their complaint investigation in writing as part of the agency's complaint procedure.

✓ The EEO Complaint Investigation Procedure established that, *"[t]he outcome of the investigation, including any corrective action taken, shall be included in the case file. The EEO Officer(s) will notify both parties in writing of the determination of the investigation (simply whether the complaint was substantiated or not). If the EEO Officer(s) found that the complaint was substantiated, the Borough President will notify the respondent of any corrective action."* The respondent to EEO complaint No. 1 was notified of the outcome of the investigation, specifically that the complaint was transferred due to the filing of an external complaint.

NOTE: The complainant to EEO complaint No. 1 was not notified of the outcome of the complaint investigation (see §III.16 for associated corrective action).

15. Ensure each internal discrimination complaint file contains a written determination of its outcome and corrective action(s) taken as a result.



- ✓ EEO complaint No. 1 contained a written determination of its outcome. Specifically, the complaint summary identified that the complaint was transferred to an external agency due to the filing of an external complaint.

16. Notify the complainant and respondent in writing when the investigation by the EEO professional has been transferred because of the filing of an external complaint.

- ✓ During the period in review, EEO complaint file No. 1 was transferred due to the filing of an external complaint. The file contained a copy of the notice sent to the respondent that the investigation was transferred because of the filing of an external complaint.
  - The complaint file did not contain a notice to the complainants that the investigation was transferred because of the filing of an external complaint. Corrective Action Required.

**Corrective Action 5:** Notify the complainant and respondent in writing when the investigation by the EEO professional has been transferred because of the filing of an external complaint.

17. Establish and utilize a complaint tracking and monitoring system that permits the agency to identify the location, status, and length of time elapsed in the complaint investigation process, the issues and the bases of the complaints, the aggrieved individuals, and other information necessary to analyze complaint activity to identify trends.

NOTE: The agency had one (1) complaint. The agency did not establish or utilize a complaint tracking system. As compliance with this standard could not be meaningfully measured for the period in review, further evaluation of this area was impractical.

18. Ensure that the General Counsel assists the agency head in identifying and determining appropriate responses to sexual harassment; works with the principal EEO Professional in the implementation of the City's policies and procedures pertaining to sexual harassment; informs the principal EEO Professional when external complaints or litigation involving sexual harassment is brought against the agency; is available to consult on internal sexual harassment complaint investigations; and is responsible for the investigation of, and response to, external sexual harassment complaints.

- ✓ The General Counsel's Office provided consultation to the principal EEO Professional and co-EEO Officer regarding internal EEO investigations, and assisted with the implementation of the agency's policies and procedures pertaining to sexual harassment. In addition, the agency reported that General Counsel informed the principal EEO Professional when an external complaint was brought against the agency and prepared the agency's response to external complaints
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#### **IV. ANNUAL REVIEW OF PRACTICES, POLICIES AND PROGRAMS**

**Determination:** The agency is in compliance with the standards for this subject area.

19. Ensure that the principal EEO Professional, HR Professional, and General Counsel, review the number of sexual harassment complaints, and the agency's employment practices, policies and programs on an annual basis to identify whether there are barriers to employment opportunities that may be related to sexual harassment and determine what, if any, actions are required to correct deficiencies.
- ✓ In August 2017, the principal EEO Professional, Chief of Staff, and General Counsel collaborated to update the agency's EEO Policy, which included provisions on sexual harassment; copies of a meeting request for this purpose, and an email with the updated EEO Policy were provided.

NOTE: The agency had one (1) complaint. No review was conducted to identify whether there were trends or barriers to employment opportunities that may be related to sexual harassment. As compliance with the standard could not be meaningfully measured for the period in review, further evaluation of this area was impractical.

#### **V. RESPONSIBILITY FOR IMPLEMENTATION - EEO PROFESSIONALS**

**Determination:** The agency is in compliance with the standards for this subject area.

20. Appoint a principal EEO Professional to implement EEO policies and standards within the agency. Ensure the principal EEO Professional is trained regarding city, state and federal EEO laws; the requirements of the agency's EEO policies, standards and procedures; and the prevention, investigation, and resolution of discrimination and sexual harassment complaints.
- ✓ The agency's principal EEO Professional (*Special Projects Coordinator*), who was designated in February 2016, completed the Department of Citywide Administrative Services (DCAS) Citywide Training Center (CTC) training on *Diversity and Equal Employment Opportunity Basic Training* for EEO Professionals (October 2016), which covered EEO obligations under city, state and federal EEO laws, the agency's EEO policies, standards and procedures, and the prevention, investigation, and resolution of discrimination complaints. In addition, the principal EEO Professional completed the following DCAS CTC trainings: *EEO Complaint Procedural Guidelines Launch* (March 2016), *Structured Interviewing and Unconscious Bias* (June 2016), *Straight Talk: LGBTQ Community at Work* (November 2016), *LGBT: Are You Ready For the "T"* (December 2016), and *Everybody Matters* (December 2016).
21. Ensure that the responsibilities of the principal EEO Professional are competently discharged by providing adequate resources such as opportunities for continuing education and professional development, and/or support staff to meet EEO obligations.
- ✓ To ensure that the responsibilities of the principal EEO Professional were competently discharged, the agency designated a co-EEO Officer (*Urban Planner*) in February 2016 who was also responsible for conducting internal EEO complaint investigations, and for providing

guidance on issues pertaining to sexual harassment upon request to managers, supervisors, and human resource professionals. Both EEO professionals had access to DCAS CTC trainings on city, state and federal EEO laws and unlawful discriminatory practices, requirements of the City's EEO policies, standards and procedures, and investigation and resolution of discrimination complaints (see §V.20 and §V.22 for lists of EEO trainings completed by the EEO Professionals). In addition, Section V.A of the EEO Policy stated that, "[t]he Chief of Staff must ensure that the responsibilities of the EEO Officer are competently discharged. The Borough President should appoint at least two EEO Officers ... to receive discrimination complaints and conduct investigations."

22. Where the agency's organizational structure necessitates multiple EEO professionals, select such individuals from different office locations and, where possible, from a variety of levels within the organizational structure. Appoint EEO professionals who are trained in EEO laws and procedures and know how to carry out their responsibilities under the EEO Policy.
  - ✓ At the end of the period in review, the agency had 52 employees in nine (9) functional units at two (2) locations. The EEO Office consisted of two (2) EEO professionals from the *Community Affairs* and *Land Use* units, both of whom were located at the agency's primary address. The principal EEO Professional completed various trainings pertaining to EEO laws and procedures (see §V. 20). The co-EEO Officer completed the following DCAS CTC trainings; *EEO Complaint Procedural Guidelines Launch* (March 2016), *Structured Interviewing and Unconscious Bias* (June 2016), and *LGBT: Are You Ready For the "T"* (June 2016).
23. Ensure that the principal EEO Professional works cooperatively and closely with the General Counsel in the implementation of policies and procedures concerning EEO and sexual harassment.
  - ✓ In August 2017, the principal EEO Professional and General Counsel collaborated in the writing and updating of the agency's EEO Policy (see §V. 19), which included provisions on sexual harassment; the formulation and delivery of associated EEO training; the investigation of EEO complaints; and responses to reasonable accommodation requests. The requirement for a collaborative relationship between the principal EEO Professional and General Counsel was emphasized in the agency's EEO Policy, which stated, "[t]he EEO Officer should work closely and cooperatively with the MBPO's General Counsel," and "[t]he MBPO General Counsel should... work cooperatively and closely with the EEO Officer in the implementation of the MBPO's EEO policies and related procedures."
24. Assign the principal EEO Professional (or EEO-related designee) the responsibility to supervise the activities of EEO professionals, and ensure that: the policies against sexual harassment and complaint procedures are distributed/posted at all agency locations; employees/managers receive sexual harassment prevention training; EEO-related policies are made available in alternative formats (i.e., large print, audio recording and/or Braille) upon request; managers, supervisors and human resource professionals receive guidance on issues pertaining to sexual harassment; and allegations of sexual harassment are promptly investigated.

- ✓ The principal EEO Professional and co-EEO Officer were responsible for internal EEO complaint investigations, and for providing guidance on issues pertaining to sexual harassment to managers, supervisors and human resource professionals upon their request. The EEO policies were posted to the agency's electronic shared drive by the principal EEO Professional, where they were accessible to all employees, and could be viewed in large print electronically and provided to applicants upon request. The agency also reported that the EEO Office was responsible for ensuring that employees/managers received sexual harassment prevention training. In addition, Section V.B of the EEO Policy elaborated on the responsibilities of the agency's EEO professionals by stating, "[t]he EEO Officer should ... provide guidance and assistance to MBPO managers, supervisors and human resource professionals in addressing issues relating to equal employment opportunity... ensure that all MBPO employees receive EEO training ... and ensure that EEO policies and complaint procedures are posted at each site where the MBPO conducts business. The MBPO's EEO Officer shall make a copy of these standards and procedures, and any subsequent revisions and supplemental materials, available upon request by an employee or applicant."

25.Ensure that the principal EEO Professional reports directly to the agency head (or a direct report other than the General Counsel) in order to exercise the necessary authority and independent judgment to fulfill EEO responsibilities.

- ✓ The principal EEO Professional was a direct report to the Chief of Staff, as acknowledged in Section V.A of the agency's EEO Policy which stated, "[t]he EEO Officer must report directly to the Chief of Staff. In order to avoid potential conflicts of interest, under no circumstances should the EEO Officer report to the General Counsel."

NOTE: The agency's January 2018 organization chart did not reflect the EEO reporting relationship between the principal EEO professional and Chief of Staff that was outlined in the EEO Policy. The organization chart or the EEO Policy should be updated to reflect the current reporting relationship.

26.Maintain documentation regarding directives or decisions between the agency head (or a direct report other than the General Counsel) and the principal EEO Professional that impact the administration and operation of programs, policies or procedures concerning sexual harassment.

- ✓ In August 2017, the principal EEO Professional, Chief of Staff, and General Counsel collaborated to update the agency's EEO Policy, which included provisions on sexual harassment and the formulation and delivery of associated EEO training. Copies of a meeting request for this purpose and an emailed updated EEO Policy were provided to demonstrate the collaboration of the principal EEO Professional, Chief of Staff, and General Counsel on this project.

**VI. RESPONSIBILITY FOR IMPLEMENTATION – MANAGERS**

**Determination:** The agency is in non-compliance with the standards for this subject area.

27. Ensure that managers and supervisors are held accountable for enforcing the agency's sexual harassment prevention policies and complaint procedures. Document this expectation and its implementation.

- The agency did not provide documentation that demonstrates that managers/supervisors were held accountable for enforcing the agency's sexual harassment prevention policies and complaint procedures. Corrective Action Required.

**Corrective Action 6:** Ensure that managers and supervisors are held accountable for enforcing the agency's sexual harassment prevention policies and complaint procedures. Document this expectation and its implementation.

28. Ensure the managerial performance evaluation form contains a rating for EEO (which covers responsibilities and processes for assuring their ability to make employment decisions based on merit and equal consideration, or treat others in an equitable and impartial manner).

- In response to the EEPCC's preliminary interview question, the agency reported that managers were not rated on EEO responsibilities. Corrective Action Required.

**Corrective Action 7:** Ensure the managerial performance evaluation form contains a rating for EEO (which covers responsibilities and processes for assuring their ability to make employment decisions based on merit and equal consideration, or treat others in an equitable and impartial manner).

**VII. REPORTING STANDARD FOR AGENCY HEAD:**

**Determination:** The agency is in non-compliance with the standards for this subject area.

29. Submit to the EEPCC an Annual Plan of measures and programs to provide equal employment opportunity, and quarterly reports<sup>3</sup> on efforts to implement the Plan within 30 days following each quarter. Include a breakout of sexual harassment complaint activity in each quarterly report.

- The agency did not submit to the EEPCC Annual Plans of measures and programs to provide equal employment opportunity. Corrective Action Required.

**Corrective Action 8:** Submit to the EEPCC an Annual Plan of measures and programs to provide equal employment opportunity.

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<sup>3</sup> Submission of *Quarterly Reports on EEO Activity* is optional for non-Mayoral agencies.

**After implementation of the EEPC's corrective actions, if any:**

1. Distribute a memorandum from the agency head informing employees of any changes implemented in the agency's policies and procedures against sexual harassment pursuant to the EEPC's audit, and re-emphasizing the agency head's commitment to the EEO program and the prevention of sexual harassment.

Final Action: Distribute a memorandum from the agency head informing employees of the EEPC's audit and any changes implemented in the agency's policies and procedures against sexual harassment pursuant to the EEPC's audit, and re-emphasizing the agency head's commitment to the EEO program and the prevention of sexual harassment.

**Conclusion**

**The agency has 8 required corrective action(s) at this time.**

Pursuant to Chapter 36 of the New York City Charter, your agency has the *option* to respond to this *preliminary determination*, but must respond to our Final Determination if corrective action is required.

*Optional Response to preliminary determination:* If submitted, your optional response should indicate, with attached documentation, what steps your agency has taken or will take to implement the prescribed corrective actions, and must be received in our office within 14 days from the date of this letter. No extensions will be granted for the *option* to respond to the *preliminary determination*.

*(Optional Conference)* During the Optional Conference, we will discuss the immediate steps your agency should take and address questions regarding your agency's implementation of the prescribed corrective action(s).

*(No Response Option)* If your agency does not respond to this preliminary determination within 14 days, it will become the EEPC's Final Determination.

*Mandatory Response to Final Determination:* Following this preliminary determination, the EEPC will issue a Final Determination where we may modify or eliminate the corrective actions based on verified information; identify remaining action which requires further monitoring in order to ensure implementation; and assign a mandatory compliance-monitoring period of up to 6 months for this purpose. Pursuant to Chapter 36 of the New York City Charter your agency must respond to our Final Determination within 30 days. Your response to the Final Determination will initiate the compliance-monitoring period.





In closing, we want to thank you and your staff for the cooperation extended to the Equal Employment Practices Commission's EEO Program Analysts during the course of our audit and analysis.

Respectfully submitted by,

A handwritten signature in blue ink that reads "William Peterson". The signature is written in a cursive style and is positioned above a horizontal line.

William Peterson, EEO, Employment and Labor Relations Analyst

Approved by,

A handwritten signature in blue ink that reads "Charise L. Terry". The signature is written in a cursive style and is positioned above a horizontal line.

Charise L. Terry, PHR  
Executive Director

c: Adele Bartlett, Deputy General Counsel  
Brian Lafferty, Principal EEO Professional

## **Appendix - 1**

Office of the Manhattan Borough President  
CEEDS Report: *Work Force Composition Summary*  
2<sup>nd</sup> Quarter of Fiscal Year 2018  
(End of Audit Period)

RUN DATE: 01/03/18  
RUN TIME: 14:40:13.7

NEW YORK CITY DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES  
CITYWIDE EQUAL EMPLOYMENT DATABASE SYSTEM (CEEDS)  
WORK FORCE COMPOSITION SUMMARY  
QUARTER 2 YEAR 2018 AGENCY 010 BOROUGH PRESIDENT-MANHATTAN

PAGE: 14  
REPORT: EBEP210

10124 PRINCIPAL ADMINISTRATIVE A	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
EEO JOB GROUP TOTAL.....:	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
	0.00	0.00	0.00	0.00	0.00	0.00	0.00	100.00	0.00	0.00	0.00	0.00	0.00	0.00	100.00

AGENCY CODE : 010 BOROUGH PRESIDENT-MANHATTAN  
EEO JOB GROUP : 013 CLERICAL

		MALE						FEMALE							
TITLE CODE	TITLE DESCRIPTION	WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN	WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN	OTHER	TOTAL EMP
12882	SECRETARY TO THE PRESIDENT	0	0	0	0	0	0	2	0	0	0	0	0	0	2
	EEO JOB GROUP TOTAL.....:	0	0	0	0	0	0	2	0	0	0	0	0	0	2
		0.00	0.00	0.00	0.00	0.00	0.00	100.00	0.00	0.00	0.00	0.00	0.00	0.00	100.00

AGENCY CODE : 010 BOROUGH PRESIDENT-MANHATTAN  
EEO JOB GROUP : 027 TRANSPORTATION

		MALE						FEMALE							
TITLE CODE	TITLE DESCRIPTION	WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN	WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN	OTHER	TOTAL EMP
06145	CHAUFFEUR-ATTENDANT (BOROU	0	2	0	0	0	0	0	0	0	0	0	0	0	2
	EEO JOB GROUP TOTAL.....:	0	2	0	0	0	0	0	0	0	0	0	0	0	2
		0.00	100.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	100.00

AGENCY CODE : 010 BOROUGH PRESIDENT-MANHATTAN  
EEO JOB GROUP : 031 PARA PROFESSIONAL OCCUPATIONS

		MALE						FEMALE							
TITLE CODE	TITLE DESCRIPTION	WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN	WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN	OTHER	TOTAL EMP
22117	COMMUNITY PLANNING BOARD C	0	0	0	2	0	0	0	1	1	0	0	0	0	4
56057	COMMUNITY ASSOCIATE	0	1	0	0	0	0	1	1	2	0	0	1	0	6
56058	COMMUNITY COORDINATOR	3	2	2	1	0	0	0	4	1	4	0	0	0	17
	EEO JOB GROUP TOTAL.....:	3	3	2	3	0	0	1	6	4	4	0	1	0	27
		11.13	11.11	7.41	11.11	0.00	0.00	3.70	22.22	14.81	14.81	0.00	3.70	0.00	100.00

AGENCY TOTAL.....:	6	6	4	4	0	1	8	11	6	4	0	2	0	52
	11.55	11.54	7.69	7.69	0.00	1.92	15.38	21.15	11.54	7.69	0.00	3.85	0.00	100.00

## **Appendix - 2**

Office of the Manhattan Borough President  
*Manhattan Borough President's Office Equal Employment  
Opportunity (EEO) Policy and Plan*  
August 21, 2017



THE CITY OF NEW YORK  
**OFFICE OF THE PRESIDENT**  
BOROUGH OF MANHATTAN

**GALE A. BREWER**  
BOROUGH PRESIDENT

**Manhattan Borough President's Office**  
**Equal Employment Opportunity (EEO)**  
**Policy and Plan**

**I. Equal Employment Opportunity Policy**

The Manhattan Borough President's Office (MBPO) is an equal opportunity employer and prohibits employment actions and treatment based on actual or perceived race, color, national origin, alienage or citizenship status, religion or creed, gender (including "gender identity" – which refers to a person's actual or perceived sex, and includes self-image, appearance, behavior or expression, whether or not different from that traditionally associated with the legal sex assigned to the person at birth), disability, age (18 and over), military status, prior record of arrest or conviction, marital status, partnership status, predisposing genetic characteristic, sexual orientation, status as a victim of domestic violence, sexual offenses and stalking or discrimination based on unemployment status, caregiver status<sup>1</sup> or consumer credit history.<sup>2</sup>

**A. Types of Prohibited Conduct**

Decisions and practices based on an individual's protected status (e.g., race, religion, age and the other categories listed above) that unlawfully affect employment or the compensation, terms, conditions or privileges of an individual's employment or potential employment with the MBPO are prohibited by the policy. This includes unlawful decisions, actions and practices that occur in the course of recruitment, testing, hiring, work assignments, salary benefits, working conditions, performances evaluations, promotions, training opportunities, career development and advancement, transfers, discipline, discharge or any other application or selection process relating to employment.

The MBPO's EEO Policy also prohibits sexual harassment—that is conduct or language of a sexual nature—and harassment based on gender or any other protected characteristic (such as race, religion,

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<sup>1</sup> The protected category of "caregiver status" was added to the New York City's Human Rights Law on January 5, 2016, and took effect on May 4, 2016. A caregiver is defined as a person who provides direct and ongoing care for a minor child (under the age of 18) or a care recipient. A "care recipient" is defined as a person with a disability who is either a covered relative, or a person who resides in the caregiver's household and who relies on the caregiver for medical care or to meet the needs of daily living. A covered relative is defined as a caregiver's child, spouse, domestic partner, parent, sibling, grandchild or grandparent, or the child or parent of the caregiver's spouse or domestic partner, or any other individual in a familial relationship with the caregiver as designated by the rules of the New York City Commission on Human Rights.

<sup>2</sup> "Consumer credit history" was added as a protected category to the New York City Human Rights Law on May 6, 2015 and went into effect on September 3, 2015. Certain positions are exempt, such as police officers and peace officers. The New York City Commission on Human Rights has issued interpretative guidance (available on its website) on this law.

disability or sexual orientation). Forms of harassment may include, but are not limited to, the use of vulgar language, abusive acts or language, hostility, physical aggression, intimidation, or unequal treatment.

Harassment and/or retaliation against a person who opposes or complains about prohibited conduct or participates in any way in the complaint, investigation or reasonable accommodation processes are strictly prohibited.

This policy also prohibits the denial of reasonable accommodations (for disabilities; religious beliefs, observances and practices; or for victims of domestic violence, sex offenses or stalking) that do not create undue hardship.

Some offensive acts or remarks may violate this policy, even if they are not so severe that they violate federal, state or local discrimination laws. The MBPO may discipline conduct that violates this policy even if the conduct does not violate a law prohibiting discrimination.

This policy also prohibits any MBPO employee from aiding, abetting, inciting, compelling or coercing any person in an MBPO facility, whether or not an MBPO employee, from engaging in any conduct prohibited by this policy, including, but not limited to, conduct that creates a hostile work environment based on any protected characteristic.

## B. Applicability

Everyone who works within the MBPO or its workplaces, or who seeks employment within the MBPO, is covered by federal, state and local employment laws and this policy. This includes all current employees, managers (including executives and senior level staff members), supervisors, co-workers, and job applicants.

This policy not only protects individuals from prohibited conduct because of their own protected status (such as their own actual or perceived race, religion, national origin or disability) but also protects individuals from conduct motivated by the actual or perceived race, religion, national origin or disability, etc., of other persons with whom they are associated. For example, this policy applies to individuals who are subjected to adverse actions because of their marriage to, or domestic partnership or association with, persons of a particular racial, religious or national origin group, or persons who have a disability. Moreover, discrimination based on an individual's name(s) or spouse's or domestic partner's name(s) that is associated with a particular racial, religious or national origin group is prohibited.

These protections apply to actions that violated this policy, whether or not intentionally offensive or directed at a particular person or group.

This policy extends to conduct which occurs at any location that could be reasonably regarded as an extension of the workplace, such as any field location, off-site business-related social function, MBPO vehicle or facility where MBPO government business is being conducted and discussed.

In addition, interns (paid or unpaid) have a right to a workplace that is free of discrimination, including harassment, based on race, color, national origin, religion, gender, disability, or age, and any basis that could otherwise be determined to be prohibited behavior pursuant to the MBPO's Equal Employment



Opportunity (“EEO”) Policy (such as alienage or citizenship status, sexual orientation, gender identity, or status as a victim of domestic violence) as applied to employees or applicants for employment.

All MBPO employees are expected to be respectful of all of their co-workers and members of the public, and to be sensitive to the effects of their behavior on those around them. All employees must be trained in the requirements of this policy and must receive a copy of the EEO Policy Handbook, “*About EEO: What You May Not Know*,” which is available at [http://www.nyc.gov/html/dcas/html/about/eoo\\_booklet.shtml](http://www.nyc.gov/html/dcas/html/about/eoo_booklet.shtml).

## **II. Specific Protections**

The following sections are provided to enable individuals to understand the unique definitions, issues, rights and responsibilities under this policy pertaining to sexual harassment and discrimination based on disability, religion, retaliation and status as a victim of domestic violence, a sex offense or stalking.

### **A. Sexual harassment:**

Sexual harassment is a form of employment discrimination which is prohibited by law. The federal government has created guidelines which define sexual harassment as “unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature...when 1) submission to the conduct is made either explicitly or implicitly a term or condition of an individual’s employment; 2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or 3) such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.”<sup>3</sup>

Sexual harassment may involve individuals of the same or different gender(s). A broad range of behavior may be considered sexual harassment, including sexually suggestive remarks, pictures or gestures, verbal abuse or harassment of a sexual nature, subtle or direct propositions for sexual favors, and any unnecessary touching, patting, or pinching.

### **B. Disabilities**

Discrimination against a person based on that person’s actual or perceived disability, record of disability, or relationship with a person with a disability will not be tolerated by the MBPO. For the purpose of this policy, a disability is: 1) a physical, medical, mental or psychological impairment; 2) a history or record of such impairment; or 3) being regarded as having such impairment.

The MBPO will take appropriate action to provide reasonable accommodations to qualified employees and applicants with disabilities, unless providing such accommodations creates an undue hardship. Reasonable accommodations include the provision of equipment, changes in workplace policies and practices, and other forms of assistance that allow people with disabilities to apply for a position to perform their jobs, or to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without disabilities.

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<sup>3</sup> Code of Federal Regulations, Title 29, Section 1604.11

Whether an accommodation is reasonable will depend upon the circumstances of the particular request. Some examples of accommodations that may be reasonable include: making facilities physically accessible to, and usable by, persons with disabilities; job restructuring; modifying work schedules; providing or modifying equipment or devices; providing qualified readers, interpreters, auxiliary aides and/or other support services; and providing leave and/or arranging for transfer or reassignment to a vacant position, if such transfer or reassignment does not violate the Civil Service Law, Personnel Rules and Regulations or other applicable laws, regulations and/or collective bargaining agreements.

Undue hardship may exist when an accommodation is significantly difficult, unduly costly, extensive, substantial, or disruptive, or would change the nature or operation of any agency's business.

The MBPO encourages employment of and promotional opportunities for qualified persons with disabilities. For example, pursuant to Section 55-a of the New York State Civil Service Law, where agency needs and availability permit, the MBPO encourages the use of the 55-a program, which will allow MBPO to employ qualified persons who have been certified as disabled in competitive positions on a non-competitive basis. Individuals who wish to apply for the 55-a program are encouraged to seek assistance from the MBPO personnel officer or 55-a coordinator.

### C. Religion

The MBPO's EEO Policy prohibits adverse employment actions based on a person's religion. This includes discriminatory practices and decisions, harassment, hostility or other adverse actions because of a person's creed, religious affiliation, or religious beliefs, observances or practices.

In addition, depending on the circumstances, the MBPO must try to reasonably accommodate the religious observances, beliefs or practices of an employee or applicant, unless the accommodation creates an undue hardship. A reasonable accommodation for religion may be a change in a workplace rule or practice that allows an individual to respect his or her religious observances, beliefs or practices. The MBPO may be required to provide accommodations for religion such as: flexible arrival and departure times; leave; voluntary exchanges of shifts or assignments; time and/or place to pray; accommodations relating to appearance and dress; modifying workplace practices, policies and/or procedures.

The MBPO is not required to provide accommodations that are too costly or difficult to provide, that would be disruptive or that would interfere with job performance.

### D. Retaliation

It is a violation of this policy to retaliate against or harass any person who asserts his or her rights regarding employment discrimination by: 1) opposing discriminatory practices in the workplace; 2) complaining about prohibited conduct; or 3) participating in any way in the complaint, investigation or reasonable accommodation processes. It is also a violation of this policy to retaliate against or harass someone because of his or her association with such an individual.

Behaviors which may be considered retaliatory include, but are not limited to: threats, reprimands, negative evaluations, harassment, refusal to hire, denial of promotion or job benefits, demotion,

suspension, discharge, negative references to prospective employers, or other actions affecting the terms, conditions or privileges of employment.

Examples of behavior that is protected against retaliation under this policy include, but are not limited to: expressing an intent to file a charge or complaint alleging prohibited conduct; participating as a witness in an EEO investigation, administrative proceeding, hearing or trial; and/or seeking a reasonable accommodation.

#### E. Domestic Violence, Sex Offenses or Stalking:

The MBPO prohibits employment discrimination against persons who are victims of domestic violence, or victims of sex offenses or stalking, as defined by that law and the New York State Penal Law. The MBPO shall provide reasonable accommodations that do not create undue hardship and that enable such persons to satisfy the essential requisites of a job, provided that the status as a victim of domestic violence, or victim of sex offenses or stalking is known, or should have been known, by the MBPO.

### III. Procedures

#### A. Reporting Violations:

Anyone who believes that he or she has been subjected to any action, decision or harassment in violation of this policy, or who witnesses others being subjected to improper conduct, is urged to promptly report the incident(s) to his or her supervisor or manager, to MBPO personnel supervising the application, testing and interviewing process, or directly to an EEO Officer. Supervisors, managers, or human resources personnel who receive EEO complaints, or who otherwise become aware of any improper discrimination, must notify an EEO officer at the MBPO. Supervisors and managers should also encourage individuals who believe that the MBPO's EEO Policy has been violated to consult with an EEO officer.

An individual who believes that this policy has been violated may report the incident orally or in writing. Where the complaint is taken orally, the manager, supervisor, or EEO representative shall document the complaint. The EEO office will assist any individual to determine whether the conduct or decision is appropriate for the complaint process. Where an individual chooses to file an internal complaint with the MBPO EEO office, that complaint must be filed within one year of the event which is the subject of the complaint. An individual wishing to file an internal complaint may do so by completing the **MBPO EEO Discrimination Complaint Form** and, if applicable, the **Witness Form**, both of which are attached to this policy.

Persons who wish to discuss a possible violation of this policy without revealing their identity may do so by telephoning or writing the EEO office. In such cases, an EEO officer or representative will provide counseling and take such follow-up action as may be appropriate and possible, given the restraints of anonymity.

If any employee knowingly makes a false accusation of discrimination or knowingly provides false information in the course of an investigation of a complaint, such conduct may be grounds for discipline. A complaint made in good faith, even if found to be unsubstantiated, will not be considered a false accusation.

## B. Contact with the EEO Office:

An employee has a right to meet privately with an EEO representative. Such a meeting may take place either during or outside of office hours. If an employee makes a request to meet with an EEO representative during office hours, the employee should obtain approval from a manager or supervisor in order to leave his or her work assignment. An employee need not disclose the purpose for or details of the meeting with an EEO officer. Reasonable leave requests to meet with an EEO officer during work hours cannot be denied by managers or supervisors. Managers and supervisors shall allow employees to meet with EEO officers at the earliest practicable time consistent with the operational needs of their units. Where the MBPO has more than one EEO officer, an employee is not required to meet with an EEO representative who works in the employee's unit.

At the employee's request, arrangements may also be made to hold the meeting before or after office hours, or during the employee's lunch period. Should such a meeting take place entirely on the employee's own time, he or she need not advise a manager or supervisor of the meeting, or obtain the consent or approval of a manager or supervisor. The EEO officer will arrange to meet with an employee at outside premises where appropriate and/or necessary in order to ensure confidentiality. If necessary, EEO officers will make arrangements for sign language interpreters and other forms of effective communication with persons with disabilities to facilitate access to EEO services.

The EEO officer will discuss and research appropriate options, including actions an individual could take on his or her own behalf, referrals to other offices and/or agencies, mediation, investigation and/or interim relief. The EEO officer may also facilitate any further discussions with other agency personnel.

In appropriate cases, an EEO investigation may be conducted in conjunction with or by the MBPO's General Counsel's office or disciplinary officer. In addition, there may be exceptional circumstances under which an investigation may be conducted by another individual or entity, as deemed appropriate by the MBPO's General Counsel.

Any person who is interviewed during the course of an EEO investigation has a right to be accompanied by a representative of his or her choice. This includes individuals who make complaints, persons against whom complaints are made or witnesses. It is preferable that the EEO officer have advance notice that the person who is being interviewed will be bringing a representative.

Any person who is the subject of the complaint will have an opportunity to respond in writing.

All employees are expected to cooperate with EEO investigations. Failure to cooperate in an investigation may result in disciplinary action.

## C. Withdrawing Complaints

A complaint of discrimination may be withdrawn at any time by the person who filed the complaint. In some instances, the MBPO EEO Officer will find it appropriate to end the investigation when the complaint is withdrawn. Prior to ending the investigation, the EEO Officer must determine whether the agency should take corrective action to address inappropriate conduct. If the EEO Officer determines

that corrective action is required, it may be necessary for the EEO Officer to continue the investigation or recommend action to remedy inappropriate behavior.

#### D. Mediation

Mediation is a voluntary, informal and confidential process that provides an opportunity for everyone involved in a complaint to come to a mutual agreement about how the complaint should be resolved. It is an alternative that may quickly resolve complaints without a full investigation.

All requests for mediation should be made to the EEO office. Mediation may be requested by any party involved and may be declined by any party.

The EEO Officer will determine whether the complaint is appropriate for mediation. The EEO Officer may choose to conduct the mediation internally within the agency, or through the Center for Mediation Services (the “Center”) at the City’s Office of Administrative Trials and Hearings. If the Center is chosen, the EEO Officer will advise the Center of the names of the parties, and their contact information. The Center will then arrange a date and time for the mediation with the parties. If the parties agree to a resolution of the situation during mediation at the Center, and any action needed to resolve the matter has received all necessary approvals, the Center will forward a copy of the resolution agreement to the EEO Officer.

Mediation may be terminated by any party to the mediation. If this occurs, the EEO Officer or the Center will inform the other party or parties in writing that the mediation has been terminated. In the event that mediation does not result in a resolution, the EEO Officer or the Center will provide the parties with a written statement informing the parties of the complainant’s right to an investigation of the allegation. Where efforts to mediate complaints are unsuccessful, complaints will be investigated by the EEO office. Additional information about the Center is available online at <https://www1.nyc.gov/site/oath/conflict-resolution/what-is-mediation.page>.

#### E. Concluding the Complaint Investigation:

The EEO Officer will advise all parties in writing of the outcome of a complaint. If the EEO Officer concludes that a violation of this policy has occurred, the EEO Officer will recommend appropriate corrective action. The agency head will review the EEO Officer’s report and promptly issue a determination adopting, rejecting or modifying the recommended action. Such determination shall be in writing and may be issued electronically.

Any person found to have engaged in conduct or practices in violation of this policy may be subject to discipline which may include a reprimand, suspension, probation, demotion, transfer, termination, or any other measures permitted by law and/or collective bargaining agreements. In addition to implementing such disciplinary action, the MBPO may take such steps as may be necessary to address the impact that any violation of this policy has had on the complainant or within the agency.

#### F. Other Places Where Complaints May Be Filed

The following federal, state and local agencies enforce laws against discrimination: The New York City Commission on Human Rights, the New York State Division of Human Rights, the United States Equal

Employment Opportunity Commission (the “EEOC”) or the Department of Justice. Information about how to contact these agencies can be found in the EEO Policy Handbook “*About EEO: What You May Not Know*” on the DCAS website at [http://www.nyc.gov/html/dcas/html/about/eoo\\_booklet.shtml](http://www.nyc.gov/html/dcas/html/about/eoo_booklet.shtml), or the MBPO EEO office or the Office of Citywide EEO located at 1 Centre Street, 17<sup>th</sup> Floor, New York, NY 10007, (212) 386-0257. Please note that there are statutory deadlines for filing complaints with each of these agencies.

Where a person exercises his or her right to file a complaint with a federal, state or local administrative agency (known as an “external compliant”) based on or related to the same facts and circumstances of an internal complaint, the MBPO EEO Officer will transfer the matter to the MBPO General Counsel, who will be responsible for any further handling of the matter. The EEO Office will notify the complainant and the parties who are the subject of the complaint, in writing, that the investigation by the EEO Officer has been transferred because of the filing of the external complaint. The MBPO General Counsel will be responsible for handling external complaints regardless of the timing of such complaints (whether filed before the internal complaint is filed, at the same time that the internal claim was filed, or after the internal complaint was filed but prior to the completion of the agency’s internal EEO procedures). The transfer of the complaint to the MBPO General Counsel’s Office should in no way preclude the EEO Officer from cooperating with the General Counsel’s Office with respect to the ultimate resolution of the complaint.

#### G. Requests for Reasonable Accommodations

The MBPO may be required to provide reasonable accommodations when requests are made in connection with disabilities, religion and/or to accommodate individuals who are victims of domestic violence, sex offenses or stalking. The reasonable accommodation process should be flexible and interactive, involving MBPO representatives who are necessary to the reasonable accommodations process and the individual who is requesting a reasonable accommodation. In all instances, the MBPO EEO Officer should be notified of the request in order to facilitate discussions, research appropriate accommodations and assist in the resolution of the matter.

EEO representatives, agency personnel supervising any phase of the application process, and/or managers and supervisors involved in the process shall notify individuals who request reasonable accommodations whether the request has been granted. Where the specific accommodation requested is impractical, MBPO representatives will seek to implement an appropriate alternative reasonable accommodation. The following procedures detail the specific aspects of each type of request.

(1) Disabilities: An employee or applicant requesting reasonable accommodations for disabilities may make such requests to his or her manager or supervisor, agency personnel supervising the application, process, or directly to the agency EEO office or Disabilities Rights Coordinator. A request for a reasonable accommodation may be made orally or in writing. Where the request is made orally, it shall be documented by that person who receives the request.

EEO representatives and/or Disabilities Rights Coordinators, agency personnel supervising the application process, and managers and supervisors involved in the process shall provide reasonable assistance (such as help in completing forms) to an individual requesting an accommodation. Additionally, if a reasonable accommodation is requested to facilitate an individual’s ability to apply for



employment, the MBPO staff supervising the application procedures may be required to assist the applicant in completing the application process.

By law, all documentation and information concerning the medical condition or history of an individual requesting a reasonable accommodation for a disability must be collected and maintained on separate forms, and in separate medical files, apart from other personnel data. Such information must be treated as confidential medical records, except that managers and supervisors may be informed of necessary restrictions on work and accommodations required. Furthermore, medical information may be provided: 1) to first aid safety personnel, if the disability might require emergency treatment; 2) to government officials investigating the agency's compliance with applicable laws; 3) to workers' compensation offices in accordance with Workers' Compensation Law; and 4) for insurance purposes.

(2) Religious Accommodations: An employee or applicant requesting reasonable accommodations for religion may make such requests to his or her manager or supervisor, agency personnel supervising the application process, or directly to the MBPO EEO office. Requests for religious accommodations should be documented by the individual receiving the request.

(3) Victims of Domestic Violence, Sex Offenses or Stalking: An employee or applicant requesting reasonable accommodations for domestic violence, sex offenses or stalking may make such requests to his or her manager or supervisor, agency personnel supervising the application process, or directly to the MBPO EEO office.

The MBPO may require a person requesting a reasonable accommodation to provide certification that the person is a victim of domestic violence, sex offenses, or stalking. The person requesting the reasonable accommodation shall provide a copy of such certification to the MBPO within a reasonable period after the request is made. A person may satisfy the certification requirement by providing documentation from an employee, agent, or volunteer of a victim services organization, an attorney, a member of the clergy, or a medical or other professional service provider from whom the individual seeking a reasonable accommodation, or that individual's family or household member, has sought assistance in addressing domestic violence, sex offenses, or stalking and the effects of the violence or stalking; a police or court record; or other information consistent with the disclosure and the request for accommodation.

(4) Pregnancy: An employee or applicant for employment requesting reasonable accommodations due to pregnancy and those who suffer medical conditions related to pregnancy and childbirth or a related medical condition may make such requests to her manager or supervisor, agency personnel supervising the application process, or directly to the MBPO EEO office. Such a reasonable accommodation may include bathroom breaks, leave for a period of disability arising from childbirth, breaks to facilitate increased water intake, periodic rest for those who stand for long periods of time, and assistance with manual labor among other things.

All information, including a statement of the person requesting a reasonable accommodation or any other documentation, record, and the fact that the individual has requested or obtained a reasonable accommodation, shall be retained in the strictest confidence by the MBPO, except to the extent that disclosure is requested or consented to in writing by the person requesting the reasonable accommodation, or is otherwise required by applicable federal, state or local law.

Where an employee or applicant has requested a reasonable accommodation consistent with these procedures and the MBPO representative has not provided the reasonable accommodation, an appeal may be made to the Chief of Staff. Within 10 business days of receipt of an appeal, the Chief of Staff, or his or her designee, shall:

1. obtain the request for reasonable accommodation made by the employee or applicant and review all related documentation, standards, procedures and potential accommodations;
2. meet and/or consult with the employee or applicant, the EEO officer, and any MBPO representative that the Chief of Staff deems necessary to the reasonable accommodation request;
3. evaluate the reasonableness of employee or applicant and supervisor preferences regarding the accommodation request, giving primary consideration to the employee's or applicant's preferences; and
4. consult with the Office of Citywide EEO or the Law Department.

Within 15 business days of receipt of the appeal, the Chief of Staff shall issue a written determination on the request for reasonable accommodation, specifying what accommodation shall be provided, if any, and, where necessary, directing the appropriate MBPO representative to implement such accommodation promptly. The EEO Officer shall monitor implementation of the reasonable accommodation.

#### H. Confidentiality

All complaints, investigations, requests for accommodations and records will be handled, to the extent possible, in a manner that will protect the privacy interests of those involved. EEO matters may be discussed with other persons who may have information about a complaint or who are necessary to implement reasonable accommodations for disability, religion or based on status as a victim of domestic violence, a sex offense or stalking. Therefore, it may be necessary to disclose information to persons with a legitimate need to know about the matter.

#### I. Documentation

All inquiries, complaints, requests, mediation efforts, investigations, requests for accommodation and their outcomes will be documented by the EEO office.

### **IV. MBPO Procedures**

A. The Borough President or, at his or her direction, the MBPO EEO Officer and/or personnel officer, should review MBPO statistical information (including total employment and new hires and promotions, by race/ethnicity and gender), EEO complaints made during the previous fiscal year and the MBPO's employment practices, policies and programs.

B. The MBPO will ensure fair employment practices pursuant to the requirements of the City Charter, and hold EEO representatives, human resources professionals, managers and supervisors accountable for ensuring that the MBPO does not discriminate against employees or applicants for employment.

C. The MBPO will ensure fair recruitment efforts, identify relevant professional and community organizations serving women and minorities throughout the City, and review and update listings of recruitment outreach sources.

D. When the MBPO advertises vacancies in discretionary positions, the MBPO will include a statement that the MBPO and the City of New York is an equal opportunity employer, and when pictures are used in recruitment advertisements, diversity will be displayed.

E. The MBPO will ensure that all new employees are advised of the MBPO's EEO policies, their rights and responsibilities under such policies, and the discrimination complaint procedure.

F. The MBPO will ensure that all individuals who work within the MBPO, including managers and supervisors, are trained concerning EEO-related rights and responsibilities.

G. The MBPO will retain information about personnel actions, discretionary hiring, applicants, promotions, demotions, transfers, rates of pay, terms of compensation and selection for training.

## **V. Accountability Standards**

### **A. Borough President**

The Borough President will ensure that the MBPO does not discriminate against employees or applicants for employment as prohibited by federal, state and local laws. The Borough President will also ensure that legal, human resource and EEO representatives, managers and supervisors: 1) receive a copy of this policy (and any addenda); 2) are trained in EEO laws and procedures and 3) know how to carry out their responsibilities under this policy. The Borough President must distribute a copy of the EEO Policy Handbook, *"About EEO: What You May Not Know"* to all employees.

In order to meet the MBPO's obligations under the City Charter and other federal, state and local laws, and to achieve the goals of this agency plan, the Borough President must appoint a trained EEO Officer whose responsibility it will be to implement the MBPO's EEO Policy within the MBPO. The EEO Officer must report directly to the Chief of Staff. In order to avoid potential conflicts of interest, under no circumstances should the EEO Officer report to the General Counsel. Where the MBPO's organizational structure necessitates multiple EEO representatives, such individuals should be selected from different office locations and, where possible, from a variety of levels within the organizational structure. The Chief of Staff must ensure that the responsibilities of the EEO Officer are competently discharged.

The Borough President should appoint at least two EEO Officers, who may not be of the same gender, to receive discrimination complaints and conduct investigations. The Borough President should designate a Disabilities Rights Coordinator, whose responsibility it will be to ensure compliance with all federal, state, and local laws, as well as City and MBPO policies, pertaining to persons with disabilities. Usually the EEO Officer of the MBPO should serve as the Disabilities Rights Coordinator; however, when circumstances warrant, the Borough President may designate a person other than the EEO Officer of the MBPO.

The Chief of Staff is required to approve all MBPO EEO plans and final determinations concerning EEO complaint resolutions and should conduct a regular review (no less frequently than annually) of EEO complaints and requests for accommodations. The Chief of Staff will ensure that all employees are provided with information regarding employee rights and obligations regarding this policy, and with information about the complaint and reasonable accommodation procedures. The Chief of Staff will also ensure that the MBPO's EEO policies and complaint procedures are posted at each site where the MBPO conducts business. Such posting may include postings on electronic bulletin boards and intranet sites. The Chief of Staff will ensure that each of the MBPO's employees is accountable for his or her compliance with EEO-related policies, and receives training in EEO laws.

#### B. EEO Officers

The MBPO's EEO Officer has primary responsibility for assisting the Borough President and Chief of Staff in implementing the MBPO's EEO policies and standards. Specifically, the MBPO's EEO Officer must be knowledgeable regarding EEO laws, the requirements of the City's EEO policies, standards and procedures, and how to prevent, investigate, and resolve discrimination complaints. The EEO Officer and/or Disabilities Rights Coordinator will also receive requests for accommodations, and recommend appropriate action to the Borough President regarding EEO-related issues. The EEO Officer should work closely and cooperatively with the MBPO's General Counsel and the DCAS Office of Citywide EEO, and provide guidance and assistance to MBPO managers, supervisors and human resource professionals in addressing issues relating to equal employment opportunity.

The EEO Officer will also: 1) ensure that all MBPO employees receive EEO training; 2) supervise the EEO-related activities of EEO counselors and/or investigators, if applicable; and 3) ensure that EEO policies and complaint procedures are posted at each site where the MBPO conducts business. The MBPO's EEO Officer shall make a copy of these standards and procedures, and any subsequent revisions and supplemental materials, available upon request by an employee or applicant.

#### C. General Counsel

The MBPO General Counsel should 1) assist the Borough President and Chief of Staff in identifying and determining appropriate responses to EEO issues; 2) work cooperatively and closely with the EEO Officer in the implementation of the MBPO's EEO policies and related procedures; 3) inform the EEO Officer when external complaints or litigation involving EEO matters are brought against the MBPO; 4) be available to consult on internal EEO investigations; and 5) be responsible for the investigation of, and response to, external complaints.

#### D. Managers and Supervisors

Managers and supervisors will make every effort to maintain a work environment that fosters sensitivity and respect for the diversity of all individuals. Specifically, each manager or supervisor shall: 1) be accountable to the Borough President and Chief of Staff for effectively implementing EEO-related policies; 2) perform managerial or supervisory responsibilities in a non-discriminatory manner; 3) receive training in EEO laws; 4) cooperate with the EEO Officer in the implementation of EEO policies and standards (including training, complaint resolutions, processing, recording and reporting reasonable accommodation requests, EEO-related recruitment and selection standards and modifying MBPO procedures to ensure equal employment opportunity for applicants and employees); 5) promptly consults

with the MBPO's EEO Officer if he or she observes, learns about, or suspects that a violation of this policy has occurred; 6) where appropriate, encourage subordinates to consult with the EEO office; 7) allow employees to meet with EEO representatives at the earliest practical time consistent with the operational needs of his or her unit; and 8) maintain confidentiality with respect to EEO-related matters.

#### E. Personnel Officers

Personnel Officers have primary responsibility for assisting the Borough President and Chief of Staff in implementing the MBPO's personnel policies and shall be knowledgeable regarding the interplay of EEO-related laws and other work-related statutory schemes including the Family Medical Leave Act, the Civil Service Law, and the Workers' Compensation Law. Personnel Officers should cooperate with the EEO Officers in the implementation of EEO policies and standards, including training objectives, complaint resolutions, and modifying agency procedures to ensure equal employment opportunity for applicants and employees.

Personnel Officers will also: 1) ensure that all employees have access to information regarding job responsibilities, performance evaluation standards, examinations, training opportunities and job postings; 2) ensure that all new employees are advised of the City's EEO policies, the employees' rights and responsibilities under such policies, and the discrimination complaint procedures; 3) inform the EEO Officer on an annual basis of the number of 55-a program participants and efforts that the MBPO has made to employ promote or accommodate qualified individuals with disabilities; 4) involve the MBPO EEO Officer in the review of EEO-related decisions, actions and practices; and 5) promptly consult with the MBPO's EEO Officer if he or she knows, has been informed of, or suspects that a violation of the MBPO's policy has occurred.

#### EEO CONTACTS:

EEO Officer:	Brian Lafferty	212-669-4564 <a href="mailto:blafferty@manhattanbp.nyc.gov">blafferty@manhattanbp.nyc.gov</a>
Disabilities Rights Coord.:	Brian Lafferty	212-660-4564 <a href="mailto:blafferty@manhattanbp.nyc.gov">blafferty@manhattanbp.nyc.gov</a>
EEO Officer:	Erica Baptiste	212-669-8143 <a href="mailto:ebaptiste@manhattanbp.nyc.gov">ebaptiste@manhattanbp.nyc.gov</a>
Personnel Officer:	Deirdre Lyles	212-669-2375 <a href="mailto:dlyles@manhattanbp.nyc.gov">dlyles@manhattanbp.nyc.gov</a>
55-a Coordinator:	Deirdre Lyles	212-669-2375 <a href="mailto:dlyles@manhattanbp.nyc.gov">dlyles@manhattanbp.nyc.gov</a>

## **Appendix - 3**

Office of the Manhattan Borough President

*Manhattan Borough President's Office EEO Complaint Investigation  
Procedure*

August 21, 2017





OFFICE OF THE PRESIDENT  
BOROUGH OF MANHATTAN  
THE CITY OF NEW YORK

1 Centre Street, 19th floor, New York, NY 10007  
(212) 669-8300 p (212) 669-4306 f  
431 West 125th Street, New York, NY 10027  
(212) 531-1609 p (212) 531-4615 f  
[www.manhattanbp.nyc.gov](http://www.manhattanbp.nyc.gov)

Gale A. Brewer, Borough President

## **Manhattan Borough President's Office EEO Complaint Investigation Procedure**

When a complaint is filed with the Office of the Manhattan Borough President by an MBPO employee, Community Board member, or Community Board employee against another MBPO employee, Community Board member, or Community Board employee regarding a violation of the MBPO EEO Policy, it the responsibility of the Borough President's EEO Officer(s) to investigate the complaint.

### **Initial Intake**

A complainant may notify an EEO Officer of his or her complaint verbally, through email, a written letter, or by submitting an *EEO Discrimination Complaint Form*. Although the complainant is encouraged to complete the *EEO Discrimination Complaint Form*, it can be completed by an EEO Officer, should the complainant decline. A copy of the complaint shall be maintained in the complaint file.

If the EEO Officer(s) determines that the complainant is alleging a violation of the MBPO EEO Policy, the respondent shall be served with a *Notice of Discrimination Complaint* which includes the respondent's right to respond to the allegations, and right to be accompanied by a representative of his/her choice. Documentation regarding the service of notice on the respondent will be maintained in the complaint file.

The EEO Officer(s) will begin the Finding of Facts in order to determine if the complaint is substantiated or unsubstantiated.<sup>1</sup>

### **Finding of Facts**

The EEO Officer(s) will begin by interviewing the complainant and requesting a list of witnesses, if any, to the alleged EEO violation. The EEO Officer(s) will interview the respondent and request a list of witnesses, if any, to the alleged EEO violation. The EEO Officer(s) will interview all witnesses they deem relevant to the investigation. The EEO

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<sup>1</sup> Before the EEO Officer(s) begin the Finding of Facts, the complainant may choose to forego the investigation in favor of mediation, provided by the Officer(s). If unsuccessful, the Officer(s) must issue a written report confirming termination and informing complainant of right to request investigation.

Officer(s) shall take thorough notes, of words spoken and facts provided, during each interview and include these notes in the complaint file.

The EEO Officer(s) may also request that the parties and/or witnesses provide any documentation that the Officers deem relevant to the investigation.

Please note: Any party or witness is entitled, if they wish, to be accompanied by someone at the interview, although such person is not entitled to speak or interfere in any way with the questioning. Such person would also be bound from disclosing the substance of the interview and any details relating to the investigation. The complainant, respondent and witnesses also should not disclose any details of the interview.

The MBPO and its EEO Officers deem the content and existence of these investigations to be confidential and all those interviewed and their representatives are expected to keep this information confidential.

The MBPO's EEO Office will issue and maintain written confirmation when a complaint is withdrawn or resolved by agreement of the parties.

The MBPO's EEO Office will notify the complainant and respondent in writing when the investigation by the EEO Office has been transferred because of the filing of an external complaint.

### **Conclusion of Investigation**

At the conclusion of their investigation, the EEO Officer(s) will submit a detailed report of their findings to the Borough President with a determination as to whether the complaint is substantiated or unsubstantiated as well as a recommendation for any necessary corrective action. The Borough President shall make a final determination as to corrective action to be taken, if any, by adopting, rejecting, or modifying the recommendations for corrective action in the report. Such determination adopting, rejecting, or modifying the recommendation shall be signed by the Borough President to indicate it has been reviewed and adopted. The outcome of the investigation, including any corrective action taken, shall be included in the case file.

The EEO Officer(s) will notify both parties in writing of the determination of the investigation (simply whether the complaint was substantiated or not). If the EEO Officer(s) found that the complaint was substantiated, the Borough President will notify the respondent of any corrective action.

The EEO Officer(s) will make every effort to issue a final report within 90 days from the date the complaint was filed. In the instances where the investigation cannot be completed in that time frame, both parties will be notified in writing of the delay. The EEO Officer(s) will include in the case file the cause of the delay. They will also provide a reasonable timeframe in which to complete the investigation and issue a report.

**Contact MBPO'S EEO Office:**

EEO Officer:	Erica Baptiste	Brian Lafferty
Phone:	212-669-8143	212-669-4564
Email Address:	<a href="mailto:ebaptiste@manhattanbp.nyc.gov">ebaptiste@manhattanbp.nyc.gov</a>	<a href="mailto:blafferty@manhattanbp.nyc.gov">blafferty@manhattanbp.nyc.gov</a>

**The following federal, state, and local agencies enforce laws against discrimination:**

- New York City Commission on Human Rights:  
<http://www.nyc.gov/html/cchr/html/home/home.shtml>
- New York State Division of Human Rights: <http://www.dhr.ny.gov/>
- United States Equal Employment Opportunity Commission (the "EEOC"):  
<http://www.eeoc.gov>
- United States Department of Justice: <http://www.justice.gov/>

**EEO COMPLAINT FORM**

What is the alleged basis of discrimination? (Please check all that apply)

- ☐ Age
- ☐ Alienage/Citizenship
- ☐ Arrest/ Conviction record
- ☐ Color
- ☐ Disability
- ☐ Gender/including gender identity/Pregnancy
- ☐ Genetic Predisposition Where did the alleged incident occur?
- ☐ Marital Status
- ☐ Military Status
- ☐ National Origin
- ☐ Partnership Status
- ☐ Race
- ☐ Religion/Creed
- ☐ Sexual Harassment
- ☐ Sexual Orientation
- ☐ Unemployment Status
- ☐ Caregiver Status
- ☐ Credit History
- ☐ Victim of Domestic Violence, Sex Offense or Stalking
- ☐ Retaliation for filing a complaint or assisting (Please provide the name(s) of witnesses on the Witness Information Form) in the investigation of an EEO complaint

Were there witnesses to the discrimination? Yes \_\_\_\_\_ No \_\_\_\_\_

Did you report this incident to anyone? Yes \_\_\_\_\_ No \_\_\_\_\_

Have you filed a complaint about the alleged discrimination with any of the following agencies?

- ☐ New York City Commission on Human Rights
- ☐ New York State Division of Human Rights
- ☐ United States Equal Employment Opportunity Commission
- ☐ United States Department of Labor
- ☐ United States Department of Justice

(If so, please state the date and the complaint number)

Complaint# \_\_\_\_\_ Date Filed: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Please give the name(s), title(s) and division of the person(s) you believe discriminated against you below.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Division: \_\_\_\_\_

When did the alleged discrimination occur? Date: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

#### NOTICE: YOUR RIGHTS TO FILE A COMPLAINT WITH CIVIL RIGHTS ENFORCEMENT AGENCIES

Any employee or applicant for employment who believes that they have experienced unlawful discrimination has a right to file a formal complaint with the federal, state or local agencies listed below. A person does not give up this right when they file a complaint with the Manhattan Borough President's Office (MBPO) EEO Officer.

The following federal, state and local agencies enforce laws against discrimination:

#### NEW YORK CITY COMMISSION ON HUMAN RIGHTS

40 Rector Street

New York, NY 10006

(212) 306-7450

(212) 306-7686 (TTY)

Website: <https://www1.nyc.gov/site/cchr/about/contact-us.page>

NEW YORK STATE DIVISION OF HUMAN RIGHTS

One Fordham Plaza, 4th Floor

Bronx, NY 10458

(718) 741-8400

or

163 West 125th Street, 4th Floor

New York, NY 100270

(212) 961-8650

(212) 961-8999 (TTY)

or

20 Exchange Place, 2nd Floor

New York, NY 10005

(212) 480-2522

or

55 Hanson Place, 3rd Floor

Brooklyn, NY 11217

(718) 722-2856

Website: <https://dhr.ny.gov/>

UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

New York District Office

33 Whitehall Street, 5th Floor

New York, NY 10004

(212) 336-3620; (212) 336-3622 (TTY)

Website: [www.eeoc.gov](http://www.eeoc.gov)

In addition to filing with the aforementioned agencies, a person with a complaint alleging discrimination based on disability may file with:

UNITED STATES DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION

Disability Rights Section

New York Avenue Building

950 Pennsylvania Avenue N.W.

Washington, D.C. 20530

(202) 307-0663 (voice and TDD)

Website: <https://www.justice.gov/crt/disability-rights-section>

A person with a complaint alleging discrimination based on citizenship or immigration status may file with:

UNITED STATES DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION

Office of Special Counsel for Immigration-Related Unfair Employment Practices

New York Avenue Building

950 Pennsylvania Avenue N.W.

Washington, D.C. 20530

Voice: (202) 616-5594; (202) 616-5525; 1-800-237-2515

Website: [www.usdoj.gov/crt/osc](http://www.usdoj.gov/crt/osc)

A person who has been discriminated against by a recipient of financial assistance from the U.S. Department of Labor may file a complaint, either with the recipient or with the Civil Rights Center (CRC). Those who wish to file complaints with CRC should mail their complaints to:

UNITED STATES DEPARTMENT OF LABOR

Director, Civil Rights Center

Frances Perkins Building, Room N-4123

200 Constitution Avenue N.W.

Washington, D.C. 20210

(202) 693-6502 (voice)

(202) 693-6515 (TTY)

Website: <https://www.dol.gov/oasam/programs/crc/>

Please Note: There are statutory deadlines for filing complaints with each of these agencies. The deadline in some instances is as short as 180 days. If you wish to file a complaint with an external administrative agency, you should promptly contact any of these agencies directly or a private attorney for information about how to file a complaint, time limits, and how to preserve your rights.

Discrimination complaints filed with the Manhattan Borough President's Office (MBPO) must be made within One Year of the incident that you are complaining about.

Please describe what happened to you on the following pages, what you believe is unlawful discrimination, and/or how other persons were treated differently using all of the questions below. This statement may be amended to correct omissions. Please answer all of the questions and use extra pages if necessary.

☐ What is the basis of your complaint?

---

☐ What is the specific behavior that you experienced?

---

☐ Who was engaged in the behavior?

---

☐ When did the incident(s) take place?

☐ Was the behavior repeated or has it happened before?

---

☐ How long has this been going on?

---

☐ Where did the incident take place?

---

☐ How, if at all, did you react?

---

☐ Was your ability to work affected in any way?

---

☐ How were you affected otherwise?

---

☐ Do you know of anyone who witnessed this or similar incidents? Identify all employees or individuals who witnessed discrimination.

---

☐ Do you know of other employees or individuals who have been subjected to discrimination, have received the same treatment or have the same concerns? Identify all employees or individuals that you know of who have been subjected to discrimination, have received the same treatment or have the same concerns.

☐ Do you have any evidence or documentation regarding this matter ? (Photos, notes, letters, personal emails, texts, social media messages, voice mail messages, any objects of any kind, etc.)

---

☐ What resolution are you seeking? In other words, what is the outcome that you expect to result from filing this complaint? What corrective action do you want taken?

---

☐ Are you interested in discussing conciliation (i.e. work on an informal resolution of this matter) at this time? Please indicate yes or no.

---

☐ Have you previously complained about this or any related acts to any other agency employee, supervisor or other city, state, or federal official? If so, please identify the person(s) to whom you complained and the dates complaints were made.

---

Should we have to contact you during the fact finding investigation, please indicate where you would like to be contacted and list the corresponding information:

☐ at home phone ( \_ \_ \_ ) \_ \_ \_ - \_ \_ \_ \_

☐ at work phone ( \_ \_ \_ ) \_ \_ \_ - \_ \_ \_ \_

☐ at cell phone ( \_ \_ \_ ) \_ \_ \_ - \_ \_ \_ \_

☐ through office email \_\_\_\_\_

☐ through personal email \_\_\_\_\_

☐ through mail to office \_\_\_\_\_

☐ through mail to home \_\_\_\_\_



I certify I have read the above charge and any attached pages that it is true to the best of my knowledge, information and belief, and that I have read the attached notices concerning my rights to file a complaint with federal, state and local civil rights enforcement agencies.

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_ Complainant's Signature \_\_\_\_\_ •

## WITNESS INFORMATION FORM

Complaint # \_\_\_\_\_

Complainant's Name: \_\_\_\_\_

Please provide the name, address/location and telephone number of any witness to the alleged unlawful discrimination. If DCAS employs the person please provide their division and title, if known. If the person (s) is employed by another city agency please provide the name of the agency, if known.

Please complete a separate form for each witness

Name: \_\_\_\_\_

Agency: \_\_\_\_\_

Division: \_\_\_\_\_

Civil Service or Office Title: \_\_\_\_\_

Address/Location: \_\_\_\_\_

Telephone: \_\_\_\_\_



OFFICE OF THE PRESIDENT  
BOROUGH OF MANHATTAN  
THE CITY OF NEW YORK

1 Centre Street, 19th floor, New York, NY 10007  
(212) 669-8300 p (212) 669-4306 f

431 West 125th Street, New York, NY 10027  
(212) 531-1609 p (212) 531-4615 f

[www.manhattanbp.nyc.gov](http://www.manhattanbp.nyc.gov)

**Gale A. Brewer, Borough President**

September 14, 2018

Charise Terry, PHR  
Executive Director  
Equal Employment Practices Commission  
253 Broadway, Suite 602  
New York, NY 10007

Dear Ms. Terry:

Enclosed, please find my staff's response to the corrective actions and notes from the "Preliminary Determination for Audit: Review Evaluation, and Monitoring of the Office of the Manhattan Borough President's Sexual Harassment Prevention and Response Practices January 1, 2016 to December 31, 2017."

Should you have any questions, please contact Adele Bartlett, General Counsel, at 212-669-8139 or [abartlett@manhattanbp.nyc.gov](mailto:abartlett@manhattanbp.nyc.gov).

Sincerely,

  
Gale A. Brewer

Enclosure: Response to "Preliminary Determination for Audit: Review Evaluation, and Monitoring of the Office of the Manhattan Borough President's Sexual Harassment Prevention and Response Practices January 1, 2016 to December 31, 2017"

**Excerpt from page 4 of “Preliminary Determination for Audit: Review, Evaluation and Monitoring of the Office of the Manhattan Borough President’s Sexual Harassment Prevention and Response Practices January 1, 2016 to December 31, 2017”**

*The agency’s EEO Complaint Investigation Procedure did not require the immediate commencement of an investigation if the allegations raised sufficiently warranted an investigation. The address listed for the New York City Commission on Human Rights in the EEO Complaint Investigation Procedure is no longer current. Corrective Action Required.*

*NOTE: The address listed for the New York City Commission on Human Rights in the City of New York’s EEO Policy Handbook, About EEO: What You May Not Know is no longer current. If the agency distributes this document, it should include an updated address for the New York City Commission on Human Rights with that distribution.*

*Corrective Action 1: Distribute/Post a paper or electronic copy of the Equal Employment Opportunity Policy, Standards and Procedures to Be Utilized by City Agencies -- or an agency Policy that conforms to city, state and federal laws against sexual harassment-- for use by managers, supervisors, and legal, human resources and EEO professionals. Include, or attach as addenda: uniform and responsive procedures for investigating discrimination/sexual harassment complaints, and current contact information for the agency’s EEO professionals as well as federal, state and local agencies that enforce laws against discrimination/sexual harassment.*

---

**Response to Corrective Action 1 on page 4:**

The MBPO EEO complaint investigation procedure document will be updated to state that “the EEO Officers will, as soon as is practicable, begin the finding of facts.”

It should be noted that the MBPO EEO complaint investigation procedure already states that “if the EEO Officer(s) determines that the complainant is alleging a violation of the MBPO EEO Policy, the respondent shall be served with a Notice of Discrimination Complaint which includes the respondent’s right to respond to the allegations, and right to be accompanied by a representative of his/her choice. Documentation regarding the service of notice on the respondent will be maintained in the complaint file. The EEO Office(s) will begin the Finding of Facts in order to determine if the complaint is substantiated or unsubstantiated.”

The updated MBPO EEO complaint investigation procedure document will be distributed to all employees by email.

---

**Response to NOTE on page 4:**

The MBPO EEO policy document contains a url link to the City of New York’s EEO Policy Handbook, About EEO: What You May Not Know that was not recently updated.

The MBPO will update the link so that it brings users to the updated City of New York's EEO Policy Handbook, which has the current address of the New York City Commission on Human Rights and distribute the updated MBPO EEO policy document to all employees by email.

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**Excerpt from page 5 of "Preliminary Determination for Audit: Review, Evaluation and Monitoring of the Office of the Manhattan Borough President's Sexual Harassment Prevention and Response Practices January 1, 2016 to December 31, 2017"**

*The agency planned to annually train all new and existing employees, including managers and supervisors, on the agency's EEO policies and procedures. EEO training was provided in-house by the principal EEO Professional, co-EEO Officer, General Counsel and Deputy General Counsel. Topics addressed in the agency's EEO training PowerPoint included: the prevention of sexual harassment, the definition of sexual harassment, and the discrimination complaint and investigation procedures. Sign-in sheets indicated that during the period in review, 20 employees (approximately 38% of the workforce) completed the agency's EEO training.*

*The agency did not demonstrate that all individuals who worked within the agency received training on the prevention of sexual harassment as well as discrimination complaint and investigation procedures. Corrective Action Required.*

*Corrective Action 2: Establish and implement a training plan for new and existing employees to ensure that all individuals who work within the agency, including managers and supervisors, receive training on the prevention of sexual harassment as well as discrimination complaint and investigation procedures.*

---

**Response to Corrective Action 2 on page 5:**

The MBPO will improve its record keeping of EEO training completions so as to demonstrate that all individuals working within the MBPO received training on the prevention of sexual harassment as well as discrimination complaint and investigation procedures.

The MBPO will continue to implement a training plan for new and existing employees to ensure that all individuals who work within the agency, including managers and supervisors, receive training on the prevention of sexual harassment as well as discrimination complaint investigation procedures.

---

**Excerpt from pages 5 and 6 of "Preliminary Determination for Audit: Review, Evaluation and Monitoring of the Office of the Manhattan Borough President's Sexual Harassment Prevention and Response Practices January 1, 2016 to December 31, 2017"**

*The agency's EEO Complaint Form, attached to the EEO Complaint Investigation Procedure, captured, "...the alleged basis of discrimination, ...the name(s), title(s) and division of the person(s) you believe discriminated against you..., [w]hen did the incident(s) take place, ...[w]here did the incident take place, ...[i]dentify all employees or individuals who witnessed discrimination, ...[i]dentify all employees or individuals that you know of who have been subjected to discrimination, have received the same treatment or have the same concerns,*

*and ...[d]o you have any evidence or documentation regarding this matter? (Photos, notes, letters, personal emails, texts, social media messages, voice mail messages, any objects of any kind, etc.)”*

*EEO complaint file No. 1 did not include a completed EEO Complaint Form or written complaint that captures facts (including pertinent dates), identifies the respondent(s) with reasonable specificity or provide the essence of the circumstances that gave rise to the complaint. Corrective Action Required.*

*Corrective Action 3: Include in the complaint file a completed Complaint Intake Form, or a written complaint that captures facts (including pertinent dates) that identify the respondent(s) with reasonable specificity and provide the essence of the circumstances which gave rise to the complaint.*

---

**Response to Corrective Action 3 on page 6:**

In the case of EEO complaint file No. 1, there was no “EEO Complaint Form” because the MBPO lacked the power to compel the complainants to fill out the “EEO Complaint Form.” Moreover, the complainants did not respond to multiple requests to discuss their complaint so that the MBPO could fill out the “EEO Complaint Form” with them.

Moving forward, the MBPO will continue to strongly encourage complainants to fill out the “EEO Complaint Form,” and if a complainant refuses to fill out the “EEO Complaint Form,” the MBPO will make every effort to fill out the complaint form with whatever information or documentation that the complainant has provided.

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**Excerpt from page 6 of “Preliminary Determination for Audit: Review, Evaluation and Monitoring of the Office of the Manhattan Borough President’s Sexual Harassment Prevention and Response Practices January 1, 2016 to December 31, 2017”**

*EEO complaint file No. 1 did not contain a notification of the complaint to the respondent. Corrective Action Required.*

*Corrective Action 4: Serve the respondent with a notice of the complaint that includes the respondent’s right to respond to the allegations and right to be accompanied by a representative of his/her choice. Maintain in the complaint file documentation regarding the service of notice on the respondent.*

---

**Response to Corrective Action 4 on page 6:**

In the case of EEO complaint file No. 1, the MBPO General Counsel and MBPO Deputy General Counsel met in person with the respondent and informed the respondent of the charges/allegations and her rights, including the right to be accompanied by a representative of her choice.

It should be noted that the MBPO EEO complaint investigation procedure document already states that “if the EEO Officer(s) determines that the complainant is alleging a violation of the MBPO EEO Policy, the respondent shall be served with a Notice of Discrimination Complaint which includes the respondent’s right to respond to the allegations, and right to be accompanied by a representative of his/her choice. Documentation regarding the service of notice on the respondent will be maintained in the complaint file.”

Moving forward, the MBPO will be sure to provide a written “Notice of Discrimination Complaint” to respondents of the charges/allegations and their rights. The MBPO will make certain that all complaint files include this written “Notice of Discrimination Complaint” and all other appropriate documentation.

---

**Excerpt from page 7 of “Preliminary Determination for Audit: Review, Evaluation and Monitoring of the Office of the Manhattan Borough President’s Sexual Harassment Prevention and Response Practices January 1, 2016 to December 31, 2017”**

*Because EEO complaint file No. 1 did not contain a conclusive report (see §III.16 for additional information), the agency’s EEO Complaint Investigation Procedure was used to measure compliance with this standard. The EEO Complaint Investigation Procedure included the following directive, “[t]he EEO Officer(s) will make every effort to issue a final report within 90 days from the date the complaint was filed.”*

*NOTE: The agency’s EEO Complaint Investigation Procedure did not require the immediate commencement of an investigation if the allegations raised sufficiently warranted an investigation (see §I.2 for associated corrective action).*

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**Response to NOTE on page 7:**

As indicated above, The MBPO EEO complaint investigation procedure document will be updated to state that “the EEO Officers will, as soon as is practicable, begin the finding of facts.”

The updated MBPO EEO complaint investigation procedure document will be distributed to all employees by email.

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**Excerpt from page 9 of “Preliminary Determination for Audit: Review, Evaluation and Monitoring of the Office of the Manhattan Borough President’s Sexual Harassment Prevention and Response Practices January 1, 2016 to December 31, 2017”**

*During the period in review, EEO complaint file No. 1 was transferred due to the filing of an external complaint. The file contained a copy of the notice sent to the respondent that the investigation was transferred because of the filing of an external complaint.*

*The complaint file did not contain a notice to the complainants that the investigation was transferred because of the filing of an external complaint. Corrective Action Required.*

*Corrective Action 5: Notify the complainant and respondent in writing when the investigation*

*by the EEO professional has been transferred because of the filing of an external complaint.*

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**Response to Corrective Action 5 on page 9:**

In the case of EEO complaint file No. 1, the case was transferred by action of complainants' attorney so it was presumed by the MBPO General Counsel and MBPO Deputy General Counsel that the complainants were notified by their attorney that the investigation by the EEO professional had been transferred.

Moving forward, the MBPO will always be sure to provide notification to the complainant and respondent in writing when the investigation by the EEO professional has been transferred because of the filing of an external complaint by the complainant.

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**Excerpt from page 9 of "Preliminary Determination for Audit: Review, Evaluation and Monitoring of the Office of the Manhattan Borough President's Sexual Harassment Prevention and Response Practices January 1, 2016 to December 31, 2017"**

*17. Establish and utilize a complaint tracking and monitoring system that permits the agency to identify the location, status, and length of time elapsed in the complaint investigation process, the issues and the bases of the complaints, the aggrieved individuals, and other information necessary to analyze complaint activity to identify trends.*

*NOTE: The agency had one (1) complaint. The agency did not establish or utilize a complaint tracking system. As compliance with this standard could not be meaningfully measured for the period in review, further evaluation of this area was impractical.*

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**Response to NOTE on page 9:**

The MBPO acknowledges the utility of an EEO complaint tracking system and conducting analysis of EEO complaints. However, it is not possible to identify a trend from a single complaint.

Moving forward, the MBPO will utilize an EEO complaint tracking system.

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**Excerpt from page 10 of "Preliminary Determination for Audit: Review, Evaluation and Monitoring of the Office of the Manhattan Borough President's Sexual Harassment Prevention and Response Practices January 1, 2016 to December 31, 2017"**

*19. Ensure that the principal EEO Professional, HR Professional, and General Counsel, review the number of sexual harassment complaints, and the agency's employment practices, policies and programs on an annual basis to identify whether there are barriers to employment opportunities that may be related to sexual harassment and determine what, if any, actions are required to correct deficiencies.*

*In August 2017, the principal EEO Professional, Chief of Staff, and General Counsel collaborated to update the agency's EEO Policy, which included provisions on sexual*



*harassment; copies of a meeting request for this purpose, and an email with the updated EEO Policy were provided.*

*NOTE: The agency had one (1) complaint. No review was conducted to identify whether there were trends or barriers to employment opportunities that may be related to sexual harassment. As compliance with the standard could not be meaningfully measured for the period in review, further evaluation of this area was impractical.*

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**Response to NOTE on page 10:**

Again, it is not possible to identify a trend from a single complaint.

Moving forward, however, the MBPO will conduct a review of the number of sexual harassment complaints, and the agency's employment practices, policies and programs on an annual basis to identify whether there are barriers to employment opportunities that may be related to sexual harassment and determine what, if any, actions are required to correct deficiencies.

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**Excerpt from page 12 of "Preliminary Determination for Audit: Review, Evaluation and Monitoring of the Office of the Manhattan Borough President's Sexual Harassment Prevention and Response Practices January 1, 2016 to December 31, 2017"**

*25. Ensure that the principal EEO Professional reports directly to the agency head (or a direct report other than the General Counsel) in order to exercise the necessary authority and independent judgment to fulfill EEO responsibilities.*

*The principal EEO Professional was a direct report to the Chief of Staff, as acknowledged in Section V.A of the agency's EEO Policy which stated, "[t]he EEO Officer must report directly to the Chief of Staff. In order to avoid potential conflicts of interest, under no circumstances should the EEO Officer report to the General Counsel."*

*NOTE: The agency's January 2018 organization chart did not reflect the EEO reporting relationship between the principal EEO professional and Chief of Staff that was outlined in the EEO Policy. The organization chart or the EEO Policy should be updated to reflect the current reporting relationship.*

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**Response to NOTE on page 12:**

The MBPO organization chart and EEO policy will be updated to reflect the reporting relationship of all EEO professionals.

**Excerpt from page 13 of “Preliminary Determination for Audit: Review, Evaluation and Monitoring of the Office of the Manhattan Borough President’s Sexual Harassment Prevention and Response Practices January 1, 2016 to December 31, 2017”**

*27. Ensure that managers and supervisors are held accountable for enforcing the agency’s sexual harassment prevention policies and complaint procedures. Document this expectation and its implementation.*

*The agency did not provide documentation that demonstrates that managers/supervisors were held accountable for enforcing the agency’s sexual harassment prevention policies and complaint procedures. Corrective Action Required.*

*Corrective Action 6: Ensure that managers and supervisors are held accountable for enforcing the agency’s sexual harassment prevention policies and complaint procedures. Document this expectation and its implementation.*

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**Response to Corrective Action 6 on page 13:**

Moving forward, MBPO EEO trainings will include supplemental sessions for supervisors and managers. This supplemental training will explain to all supervisors and managers their responsibility to enforce the sexual harassment and complaint procedures and this training will include a written acknowledgement from all supervisors and managers of their responsibility to enforce the sexual harassment and complaint procedures. These written acknowledgements from all supervisors and managers will be collected and maintained in a dedicated file by the MBPO.

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**Excerpt from page 13 of “Preliminary Determination for Audit: Review, Evaluation and Monitoring of the Office of the Manhattan Borough President’s Sexual Harassment Prevention and Response Practices January 1, 2016 to December 31, 2017”**

*28. Ensure the managerial performance evaluation form contains a rating for EEO (which covers responsibilities and processes for assuring their ability to make employment decisions based on merit and equal consideration, or treat others in an equitable and impartial manner).*

*In response to the EEPD’s preliminary interview question, the agency reported that managers were not rated on EEO responsibilities. Corrective Action Required.*

*Corrective Action 7: Ensure the managerial performance evaluation form contains a rating for EEO (which covers responsibilities and processes for assuring their ability to make employment decisions based on merit and equal consideration, or treat others in an equitable and impartial manner).*

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**Response to Corrective Action 7 on page 13:**

The MBPO does not have performance evaluations for managerial employees since it is a small agency.

In the future, should a performance evaluation for managerial employees be developed, it will include a rating for EEO (which covers responsibilities and processes for assuring their ability to make employment decisions based on merit and equal consideration, or treat others in an equitable and impartial manner).

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**Excerpt from page 13 of “Preliminary Determination for Audit: Review, Evaluation and Monitoring of the Office of the Manhattan Borough President’s Sexual Harassment Prevention and Response Practices January 1, 2016 to December 31, 2017”**

*29. Submit to the EEPC an Annual Plan of measures and programs to provide equal employment opportunity, and quarterly reports<sup>3</sup> on efforts to implement the Plan within 30 days following each quarter. Include a breakout of sexual harassment complaint activity in each quarterly report.*

*The agency did not submit to the EEPC Annual Plans of measures and programs to provide equal employment opportunity. Corrective Action Required.*

*Corrective Action 8: Submit to the EEPC an Annual Plan of measures and programs to provide equal employment opportunity.*

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**Response to Corrective Action 8 on page 13:**

The MBPO was not required to complete an annual plan of measures and of programs to provide equal employment opportunity, nor was it required to submit quarterly reports on efforts to implement the plan within 30 days following each quarter until July 2018.

Moving forward, the MBPO will complete an annual plan of measures and of programs to provide equal employment opportunity and it will submit quarterly reports on efforts to implement the plan within 30 days following each quarter. Each quarterly report will include a breakout of sexual harassment complaint activity.

It should be noted that the MBPO only had a single EEO complaint for the audit period and this EEO complaint was not one that involved allegations of sexual harassment.



**Angela Cabrera**  
**Malini Cadambi Daniel**  
**Elaine S. Reiss, Esq.**  
**Arva R. Rice**  
Commissioners

**Charise L. Terry, PHR**  
Executive Director

**Judith Garcia Quiñonez, Esq.**  
Executive Agency Counsel

**Jennifer Shaw, Esq.**  
Executive Agency Counsel/  
Director of Compliance

**253 Broadway**  
**Suite 602**  
**New York, NY 10007**

212. 615. 8939 tel.  
212. 676. 2724 fax

## **BY MAIL AND EMAIL**

September 26, 2018

Gale A. Brewer  
Borough President  
Office of the Manhattan Borough President  
1 Centre Street, 19th Floor  
New York, NY 10007

RE:        Audit    Resolution    **#2018AP/224-010-(2018)**:    Final  
Determination Pursuant to the Review, Evaluation and Monitoring of  
the Office of the Manhattan Borough President's Sexual Harassment  
Prevention and Response Practices from January 1, 2016 to  
December 31, 2017.

Dear Borough President Brewer:

On behalf of the members of the Equal Employment Practices Commission (Commission or EEPC), thank you for your September 14, 2018 response to our August 31, 2018 Preliminary Determination, and for the cooperation extended to our staff during the course of this audit. Consistent with the powers and duties of agency heads set forth in New York City Charter, this Commission requires the agency head to issue the response to this Final Determination.

As indicated in our Preliminary Determination, this Commission has adopted uniform standards<sup>1</sup> to assess agencies' employment practices and programs for compliance with federal, state and local laws, regulations, policies and procedures that are designed to increase equality of opportunity for municipal government employees and job applicants. The attached Determination contains the Commission's findings and required corrective actions pertaining to the referenced review, evaluation and monitoring of your agency's employment practices and procedures.

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<sup>1</sup> Founded upon and consistent with federal, state and local laws, regulations, procedures and policies including, but not limited to, the Citywide Equal Employment Opportunity Policy - Standards and Procedures to be Utilized by City Agencies; New York City Human Rights Law (NYC Administrative Code, §§8-107.1(a) and 8-107.13(d)); New York State Civil Service Law §55-a and the equal employment opportunity requirements of the New York City Charter.



Chapter 36, Section 832.c of the New York City Charter requires that: 1) the EEPC assign a 6-month compliance period to monitor your agency's efforts to eliminate remaining required corrective actions; and 2) the agency provide a written response within 30 days from the date of this letter indicating corrective action taken.

The assigned compliance-monitoring period is: **OCTOBER 2018 TO MARCH 2019**. Implementing all the corrective actions prior to the conclusion of the six months is highly encouraged and will serve to shorten the compliance monitoring period.

**If corrective actions remain:** Your agency's response should indicate what steps your agency has taken, or will take, to implement the corrective actions during the designated period. Documentation that supports the implementation of each corrective action shall be uploaded to TeamCentral, the EEPC's Automated Compliance-Monitoring System. Your agency will be monitored monthly until all corrective actions have been implemented. Instruction on how to access and navigate TeamCentral is attached. Upon your agency's completion of the final corrective action, this Commission requires that your agency upload a final memorandum signed by the agency head which informs employees of the changes implemented pursuant to our audit and re-emphasizes commitment to the EEO program. Upon receipt of the final memorandum, the EEPC will issue a *Determination of Compliance*.

**If no corrective actions remain:** Your agency is exempt from the aforementioned monitoring period. However, this Commission requires a final memorandum signed by the agency head which informs employees of the changes implemented pursuant to our audit and re-emphasizes commitment to the EEO program. This will be considered your agency's final action. Upon receipt of the memo, a *Determination of Compliance* will be issued.

If there are further questions regarding this Final Determination or the compliance-monitoring process, please have the Principal EEO Professional contact Jennifer Shaw, Esq., Executive Agency Counsel/Director of Compliance at [jshaw@eepc.nyc.gov](mailto:jshaw@eepc.nyc.gov) or 212-615-8942.

Thank you and your staff for your continued cooperation.

Sincerely,



Charise L. Terry, PHR  
Executive Director

C: Adele Bartlett, Deputy General Counsel  
Brian Lafferty, Principal EEO Professional

Enclosed: TeamCentral Agency Manual

## FINAL DETERMINATION

Agency response indicating corrective action taken with documentation is due within 30 days.

The Equal Employment Practices Commission's findings and required corrective actions are based on the audit methodology which includes collection and analysis of the documents, records and data the agency provided in response to the *EEPC* document and information request; the *EEPC Preliminary Interview Questionnaires* (PIQ) for EEO professionals and others involved in EEO program administration; and, if applicable, the *EEPC Employee Survey*; the *EEPC Supervisor/Manager Survey*; the agency's *Annual EEO Plans* and *Quarterly EEO Reports*; and workforce data from the *Citywide Equal Employment Database System*. Additional research and follow-up discussions or interviews were conducted as appropriate.

After reviewing the agency's optional response<sup>2</sup> (if applicable) to the *EEPC*'s preliminary Determination, our Final Determination is as follows:

### Monitoring Required

The agency's implementation of the following required corrective actions will be monitored during the assigned compliance monitoring period.

#### Corrective Action #1

Distribute/Post a paper or electronic copy of the *Equal Employment Opportunity Policy, Standards and Procedures to Be Utilized by City Agencies* – or an agency Policy that conforms to city, state and federal laws against sexual harassment– for use by managers, supervisors, and legal, human resources and EEO professionals. Include, or attach as addenda: uniform and responsive procedures for investigating discrimination/sexual harassment complaints, and current contact information for the agency's EEO professionals as well as federal, state and local agencies that enforce laws against discrimination/sexual harassment.

Agency Response: *"The MBPO EEO complaint investigation procedure document will be updated to state that "the EEO Officers will, as soon as is practicable, begin the finding of facts." [...] The updated MBPO EEO complaint investigation procedure document will be distributed to all employees by email. The MBPO EEO policy document contains a url link to the City of New York's EEO Policy Handbook, About EEO: What You May Not Know that was not recently updated. The MBPO will update the link so that it brings users to the updated City of New York's EEO Policy Handbook, which has the current address of the New York City Commission on Human Rights and distribute the updated MBPO EEO policy document to all employees by email"* (Agency Response pgs. 2 - 3).

EEPC Response: The *EEPC* recognizes the agency's commitment to implement corrective action **#1**. Please provide documentation to demonstrate that the agency distributed/posted a paper or electronic copy of an agency Policy that conforms to city, state and federal laws against sexual harassment– for use by managers, supervisors, and legal, human resources and EEO

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<sup>2</sup> Excerpts are italicized.

professionals. Include, or attach as addenda: uniform and responsive procedures for investigating discrimination/sexual harassment complaints, and current contact information for the agency's EEO professionals as well as federal, state and local agencies that enforce laws against discrimination/sexual harassment.

**Corrective Action #2**

Establish and implement a training plan for new and existing employees to ensure that all individuals who work within the agency, including managers and supervisors, receive training on the prevention of sexual harassment as well as discrimination complaint and investigation procedures.

Agency Response: *"The MBPO will improve its record keeping of EEO training completions so as to demonstrate that all individuals working within the MBPO received training on the prevention of sexual harassment as well as discrimination complaint and investigation procedures. The MBPO will continue to implement a training plan for new and existing employees to ensure that all individuals who work within the agency, including managers and supervisors, receive training on the prevention of sexual harassment as well as discrimination complaint investigation procedures."* (Agency Response pg. 3)

EEPC Response: The EEPC recognizes the agency's commitment to implement corrective action #2. Please provide documentation to demonstrate that the agency established and implemented a training plan for new and existing employees to ensure that all individuals who work within the agency, including managers and supervisors, receive training on the prevention of sexual harassment as well as discrimination complaint and investigation procedures.

**Corrective Action #3**

Include in the complaint file a completed Complaint Intake Form, or a written complaint that captures facts (including pertinent dates) that identify the respondent(s) with reasonable specificity and provide the essence of the circumstances which gave rise to the complaint.

Agency Response: *"[...] Moving forward, the MBPO will continue to strongly encourage complainants to fill out the "EEO Complaint Form," and if a complainant refuses to fill out the "EEO Complaint Form," the MBPO will make every effort to fill out the complaint form with whatever information or documentation that the complainant has provided."* (Agency Response pg. 4)

EEPC Response: The EEPC recognizes the agency's commitment to implement corrective action #3. Please provide documentation to demonstrate that included in the complaint file is a completed Complaint Intake Form, or a written complaint that captures facts (including pertinent dates) that identify the respondent(s) with reasonable specificity and provide the essence of the circumstances which gave rise to the complaint.

**Corrective Action #4**

Serve the respondent with a notice of the complaint that includes the respondent's right to respond to the allegations and right to be accompanied by a representative of his/her choice. Maintain in the complaint file documentation regarding the service of notice on the respondent.

Agency Response: *"In the case of EEO complaint file No. 1, the MBPO General Counsel and MBPO Deputy General Counsel met in person with the respondent and informed the respondent of the charges/allegations and her rights, including the right to be accompanied by a representative of her choice. [...] Moving forward, the MBPO will be sure to provide a written "Notice of Discrimination Complaint" to respondents of the charges/allegations and their rights. The MBPO will make certain that all complaint files include this written "Notice of Discrimination Complaint" and all other appropriate documentation."* (Agency Response pgs. 4 - 5)

EEPC Response: The EEPC recognizes the agency's commitment to implement corrective action #4. Please provide documentation to demonstrate that the respondent is served with a notice of the complaint that includes the respondent's right to respond to the allegations and right to be accompanied by a representative of his/her choice. Maintain in the complaint file documentation regarding the service of notice on the respondent.

**Corrective Action #5**

Notify the complainant and respondent in writing when the investigation by the EEO professional has been transferred because of the filing of an external complaint.

Agency Response: *"In the case of EEO complaint file No. 1, the case was transferred by action of complainants' attorney so it was presumed by the MBPO General Counsel and MBPO Deputy General Counsel that the complainants were notified by their attorney that the investigation by the EEO professional had been transferred. Moving forward, the MBPO will always be sure to provide notification to the complainant and respondent in writing when the investigation by the EEO professional has been transferred because of the filing of an external complaint by the complainant."* (Agency Response pg. 6)

EEPC Response: The EEPC recognizes the agency's commitment to implement corrective action #5. Please provide documentation to demonstrate that the complainant and respondent are notified in writing when the investigation by the EEO professional has been transferred because of the filing of an external complaint.

**Corrective Action #6**

Ensure that managers and supervisors are held accountable for enforcing the agency's sexual harassment prevention policies and complaint procedures. Document this expectation and its implementation.

Agency Response: *"Moving forward, MBPO EEO trainings will include supplemental sessions for supervisors and managers. This supplemental training will explain to all supervisors and managers their responsibility to enforce the sexual harassment and complaint procedures and*



*this training will include a written acknowledgement from all supervisors and managers of their responsibility to enforce the sexual harassment and complaint procedures. These written acknowledgements from all supervisors and managers will be collected and maintained in a dedicated file by the MBPO.” (Agency Response pg. 8)*

EEPC Response: The EEPC recognizes the agency's commitment to implement corrective action #6. Please provide documentation to demonstrate that managers and supervisors are held accountable for enforcing the agency's sexual harassment prevention policies and complaint procedures; and that this expectation and its implementation are documented.

**Corrective Action #7**

Ensure the managerial performance evaluation form contains a rating for EEO (which covers responsibilities and processes for assuring their ability to make employment decisions based on merit and equal consideration, or treat others in an equitable and impartial manner).

Agency Response: *“The MBPO does not have performance evaluations for managerial employees since it is a small agency. In the future, should a performance evaluation for managerial employees be developed, it will include a rating for EEO (which covers responsibilities and processes for assuring their ability to make employment decisions based on merit and equal consideration, or treat others in an equitable and impartial manner).” (Agency Response pgs. 8 - 9)*

EEPC Response: The EEPC recognizes the agency's commitment to implement corrective action #7. Pursuant to the EEPC's authority to recommend procedures, approaches, measures, standards, and programs to be utilized to ensure equal employment opportunity, and its authority to monitor the implementation of those recommendations,<sup>3</sup> and in furtherance of the accountability standards set forth in sections V(A) and V(D) of the Manhattan Borough President's Office EEO Policy and Plan, please provide documentation to demonstrate that the agency has adopted a managerial performance evaluation form that contains a rating for EEO (which covers responsibilities and processes for assuring their ability to make employment decisions based on merit and equal consideration, or treat others in an equitable and impartial manner).

**Corrective Action #8**

Submit to the EEPC an Annual Plan of measures and programs to provide equal employment opportunity.

Agency Response: *“The MBPO was not required to complete an annual plan of measures and of programs to provide equal employment opportunity, nor was it required to submit quarterly reports on efforts to implement the plan within 30 days following each quarter until July 2018. Moving forward, the MBPO will complete an annual plan of measures and of programs to provide equal employment opportunity and it will submit quarterly reports on efforts to implement the plan within 30 days following each quarter. Each quarterly report will include a breakout of sexual harassment complaint activity. It should be noted that the MBPO only had a single EEO complaint*

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<sup>3</sup> See City Charter sections 831(d)(2) and 832(c).



*for the audit period and this EEO complaint was not one that involved allegations of sexual harassment.” (Agency Response pg. 9)*

EEPC Response: The EEPC recognizes the agency's commitment to implement corrective action #8. Please submit to the EEPC an Annual Plan of measures and programs to provide equal employment opportunity.

Thank you and your staff for your continued cooperation.

**EQUAL EMPLOYMENT PRACTICES COMMISSION  
CITY OF NEW YORK**

**RESOLUTION #2018AP/224-010-(2018):** Final Determination pursuant to the Audit: Review, Evaluation and Monitoring of the Office of the Manhattan Borough President's Sexual Harassment Prevention and Response Practices from January 1, 2016 through December 31, 2017.

**Whereas**, pursuant to Chapter 36, Section 831(d)(2) and (5) of the New York City Charter, the Equal Employment Practices Commission is authorized to audit and evaluate the employment practices, programs, policies, and procedures of city agencies and their efforts to ensure fair and effective equal employment opportunity for minority group members and women, and to make recommendations to city agencies to insure equal employment opportunity for minority group members and women; and

**Whereas**, pursuant to Chapter 36, Section 831(d)(2), this Commission has adopted *Uniform Standards for EEPC Audits* and *Minimum Equal Employment Opportunity Standards for Community Boards* to assess agencies' EEO programs and policies for compliance with federal, state and local laws, regulations, policies and procedures designed to increase equality of opportunity for women, minorities, and other employees and job applicants identified for protection from discrimination in employment within municipal government; and

**Whereas**, pursuant to its audit of the Office of the Manhattan Borough President's (MBPO) Sexual Harassment Prevention and Response Practices, the Equal Employment Practices Commission (EEPC) issued a Preliminary Determination letter, dated August 31, 2018, setting forth findings and the following required corrective actions:

1. Distribute/Post a paper or electronic copy of the Equal Employment Opportunity Policy, Standards and Procedures to Be Utilized by City Agencies – or an agency Policy that conforms to city, state and federal laws against sexual harassment– for use by managers, supervisors, and legal, human resources and EEO professionals. Include, or attach as addenda: uniform and responsive procedures for investigating discrimination/sexual harassment complaints, and current contact information for the agency's EEO professionals as well as federal, state and local agencies that enforce laws against discrimination/sexual harassment.
2. Establish and implement a training plan for new and existing employees to ensure that all individuals who work within the agency, including managers and supervisors, receive training on the prevention of sexual harassment as well as discrimination complaint and investigation procedures.
3. Include in the complaint file a completed Complaint Intake Form, or a written complaint that captures facts (including pertinent dates) that identify the respondent(s) with reasonable specificity and provide the essence of the circumstances which gave rise to the complaint.
4. Serve the respondent with a notice of the complaint that includes the respondent's right to respond to the allegations and right to be accompanied by a representative of his/her choice. Maintain in the complaint file documentation regarding the service of notice on

the respondent.

5. Notify the complainant and respondent in writing when the investigation by the EEO professional has been transferred because of the filing of an external complaint.
6. Ensure that managers and supervisors are held accountable for enforcing the agency's sexual harassment prevention policies and complaint procedures. Document this expectation and its implementation.
7. Ensure the managerial performance evaluation form contains a rating for EEO (which covers responsibilities and processes for assuring their ability to make employment decisions based on merit and equal consideration, or treat others in an equitable and impartial manner).
8. Submit to the EEPC an Annual Plan of measures and programs to provide equal employment opportunity.

**Whereas**, the agency submitted its response to the EEPC's Preliminary Determination letter on September 14, 2018; and

**Whereas**, in accordance with Chapter 36, Section 832(c) of the New York City Charter, the EEPC considered the agency's response and issued a Final Determination on September 26, 2018, which agreed and indicated that corrective action(s) nos. 1 through 8 require compliance monitoring; and

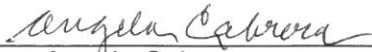
**Whereas**, in accordance with Chapter 36, Section 832(c) of the City Charter, the EEPC is required to monitor the agency for a period not to exceed six months, from October 2018 through March 2019, to determine whether it implemented the remaining required corrective actions; and

**Whereas**, in accordance with Chapter 36, Section 832(c) of the City Charter, the agency is required to respond in 30 days and make monthly reports thereafter to the Commission on the progress of its implementation of such corrective actions; and

**Whereas**, all of the EEPC's corrective actions are required by, or are consistent with, federal, state and local laws, regulations, policies and procedures designed to increase equality of opportunity for women, minorities, and other employees and job applicants identified for protection from discrimination in employment within municipal government; Now Therefore,

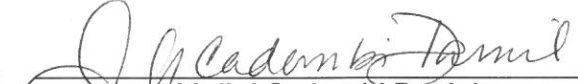
**Be It Resolved**, that the Commission approves issuance of this Final Determination to Manhattan Borough President Gale A. Brewer.

Approved unanimously on October 25, 2018.



**Angela Cabrera**  
Commissioner

**Arva Rice**  
Commissioner



**Malini Cadambi Daniel**  
Commissioner



**Elaine S. Reiss, Esq.**  
Commissioner



OFFICE OF THE PRESIDENT  
BOROUGH OF MANHATTAN  
THE CITY OF NEW YORK

1 Centre Street, 19th floor, New York, NY 10007  
(212) 669-8300 p (212) 669-4306 f  
431 West 125th Street, New York, NY 10027  
(212) 531-1609 p (212) 531-4615 f

[www.manhattanbp.nyc.gov](http://www.manhattanbp.nyc.gov)

**Gale A. Brewer, Borough President**

October 24, 2018

Charise Terry, PHR  
Executive Director  
Equal Employment Practices Commission  
253 Broadway, Suite 602  
New York, NY 10007

Dear Ms. Terry:

Enclosed, please find the response of the Office of the Manhattan Borough President to the September 26, 2018 Final Determination from your agency.

During the six months to come, we will be working to implement your recommendations and build a more comprehensive and effective system to prevent and address Sexual Harassment and other EEO violations.

Should you have any questions, please contact Brian Lafferty, EEO Counsellor at 212-669-4564, [blafferty@manhattanbp.nyc.gov](mailto:blafferty@manhattanbp.nyc.gov) or Adele Bartlett, General Counsel, at 212-669-8139, [abartlett@manhattanbp.nyc.gov](mailto:abartlett@manhattanbp.nyc.gov).

Sincerely,

Gale A. Brewer

Enclosure: Response to Final Determination

The MBPO hereby submits the following response to the Final Determination of the EEPC, and the Corrective Actions noted therein:

Corrective Action # 1

The MBPO shall distribute to supervisors and managers copies of the agency policy regarding sexual harassment, which will include attachments of the complaint investigation procedures, complaint forms, contact information for the MBPO EEO counsellors<sup>1</sup> and other agencies charged with enforcement of laws against discrimination and sexual harassment.

Corrective Action #2

The MBPO already provides all staff with training on the prevention of sexual harassment. The agency will continue to do so, and will provide a specific section of such training for supervisors and managers.

Corrective Action #3

The MBPO will make every effort, going forward, to have complainants complete an intake and written complaint form which would include relevant facts and the essence of the circumstances that gave rise to the complaint. The MBPO has consistently done this in the past. The single complaint reviewed by the EEPC did not contain such form because the complainants adamantly and repeatedly refused to complete such forms, and the MBPO lacks the coercive authority to force compliance in such circumstances.

Corrective Action #4

Moving forward, the MBPO will be sure to provide a written "Notice of Discrimination Complaint" to respondents of the charges/allegations and their rights. The MBPO will make certain that all complaint files include this written "Notice of Discrimination Complaint" and all other appropriate documentation.

Corrective Action #5

In the future, the MBPO will notify all unrepresented parties if a complaint is transferred from MBPO as a result of a filing of the complaint with an external agency with EEO enforcement jurisdiction.<sup>2</sup>

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<sup>1</sup> The MBPO does not have staff "EEO Professionals". The Agency has a male and female EEO counsellor who receives training, provide training to the staff, receive complaints and along with General Counsel staff, investigate and determine complaints.

<sup>2</sup> In the case of the EEO complaint transferred by the complainant filing with the NYC Commission on Human Rights, communication of such transfer was from the complainants' attorney to the MBPO. Direct communication by MBPO attorneys, even in the form of a notice, with the complainants rather than their attorney would have, arguably been a violation of ethical rules.

#### Corrective Action #6

Moving forward, MBPO EEO trainings will include supplemental sessions for supervisors and managers. This supplemental training will explain to all supervisors and managers their responsibility to enforce the sexual harassment and complaint procedures and this training will include a written acknowledgement from all supervisors and managers of their responsibility to enforce the sexual harassment and complaint procedures.

#### Corrective Action # 7

The MBPO is a small agency with fewer than a dozen employees charged with supervision. At this moment, the agency does not envision development of a managerial/supervisory performance evaluation form. However, if one is developed, it will include a rating regarding EEO values. The agency, including its head, the Borough President, its Deputy Borough Presidents and the Chief of Staff are all committed to ensuring that supervisors make decisions and treat all staff with equal consideration and in an equitable and impartial manner.

#### Corrective Action #8

The MBPO is committed to developing and implementing and Annual Plan of measures and programs to provide equal employment opportunity.



## MEMORANDUM

TO: All Employees

FROM: Honorable Gale A. Brewer, Manhattan Borough President *GAB*

DATE: March 28, 2019

RE: Equal Employment Practices Commission Audit of Manhattan Borough President's Office

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The New York City Equal Employment Practices Commission (EEPC) recently conducted an audit and evaluation of the Manhattan Borough President's Office's Sexual Harassment Prevention and Response Practices, consistent with its New York City Charter mandated responsibility to audit the employment practices, policies and procedures of every City agency once every four years. The EEPC conducts audits to ensure each agency's compliance with federal, state and local laws, regulations, policies and procedures that are designed to increase equality of opportunity for City employees and job applicants.

The EEPC found the Manhattan Borough President's Office was generally in compliance with the law and policies, and identified certain areas for corrective action. The Manhattan Borough President's Office has implemented changes in its policies and procedures against sexual harassment, and will incorporate these into the Manhattan Borough President's Office's prospective Annual Equal Employment Opportunity (EEO) Plan. The following are a summary of the changes implemented:

- 1) The Manhattan Borough President's Office's prospective Annual Equal Employment Opportunity (EEO) Plan of measures and programs to provide equal employment opportunity was submitted to the EEPC.
- 2) A training plan was established for new and existing employees to ensure that all individuals who work within the agency, including managers and supervisors, receive training on the prevention of sexual harassment as well as discrimination complaint and investigation procedures. This training plan was included in the Manhattan Borough President's Office's prospective Annual Equal Employment Opportunity (EEO) Plan. Sexual harassment prevention training has been and will continue to be provided for all staff. Structured interview training will be provided for hiring managers.
- 3) As per the MBPO's EEO Complaint Investigation Procedures, respondents to EEO complaints will receive notices of complaints filed against them which make explicitly clear that respondents have the right to respond to the allegations and to be accompanied by a representative of their choosing. Moreover, complainants and

respondents will be notified in writing when investigations are transferred due to the filing of external complaints.

- 4) Managers and supervisors will be evaluated based on implementing EEO policies, observing EEO regulations and performing their responsibilities in a non-discriminatory manner. All Manhattan Borough President's Office's managers and supervisors are expected to promote a work environment that is fair, safe for all, and values equity, inclusion, and respect. Managers and supervisors will be held accountable for ensuring that the Manhattan Borough President's office does not discriminate against employees or applicants for employment. Managers and supervisors must proactively support the Manhattan Borough President's Office's diversity and inclusion initiatives, and work toward the attainment of its diversity and inclusion goals.
- 5) The Manhattan Borough President's Office's EEO Complaint Investigation Procedure document was updated to a.) include the current address for the New York City Commission on Human Rights and b.) to clarify that, when allegations raised sufficiently warrant an investigation, an investigation will be commenced immediately. Moreover, as per the EEO Complaint Investigation Procedure, "The EEO Officer(s) will make every effort to issue a final report within 90 days from the date the complaint was filed. In the instances where the investigation cannot be completed in that time frame, both parties will be notified in writing of the delay. The EEO Officer(s) will include in the case file the cause of the delay. They will also provide a reasonable timeframe in which to complete the investigation and issue a report."

As Manhattan Borough President, I hereby reaffirm my commitment to the Manhattan Borough President's Office's EEO program and the prevention of sexual harassment. I take this opportunity to reaffirm our office's strong commitment to maintaining a workplace and employment practices free from unlawful discrimination and harassment for all our employees and applicants for employment. I am firmly committed to preventing discrimination and sexual harassment by ensuring that all employees are aware of their rights and obligations under the EEO policy and by encouraging a work environment that tolerates and appreciates differences among employees. I thank you for sharing this commitment.



**RESOLUTION NO.  
2018AP/229-010-(2019)C8  
Office of the Manhattan Borough President  
Borough President Gail A. Brewer  
Sexual Harassment Prevention and Response Practices  
DETERMINATION: COMPLIANCE**

**SYNOPSIS**

<b>Corrective Action(s)</b>	Total: 8		
<b>Period Audit Covered</b>	January 1, 2016 to December 31, 2018		
<b>Preliminary Determination Issued</b>	August 31, 2018	Response Received	September 14, 2018
<b>Final Determination Issued</b>	September 26, 2018	Response Received	October 24, 2018
<b>Compliance-Monitoring</b>	Required	October 1, 2018 to March 31, 2019 without extension	

**Whereas**, pursuant to Chapter 36, Sections 830(a) and 831(d)(2) and (5) of the New York City Charter (Charter), the Equal Employment Practices Commission (EEPC) is authorized to audit, review, evaluate, and monitor the employment procedures, practices and programs of city agencies and other municipal entities (hereinafter "entities") and their efforts to ensure fair and effective equal employment opportunity (EEO) for minority group members and women who are employed or seek employment, and to recommend practices, procedures, approaches, measures, standards, and programs to be utilized by such entities in these efforts; and

**Whereas**, pursuant to Charter Chapter 36, Sections 830(a) and 831(d)(2) and (5), the EEPC has adopted uniform standards for auditing agencies and municipal entities, and minimum standards for auditing community boards, to review, evaluate, and monitor entities' practices, procedures, approaches, measures, standards, and programs for compliance with federal, state, and local laws and regulations, and policies and procedures to increase equal opportunity for women, minorities, and other employees and job applicants identified for protection from discrimination; and

**Whereas**, in accordance with Charter Chapter 36, Section 832(c), the EEPC may make a determination pursuant to Charter Section 831(d) whether any plan, program, procedure, approach, measure, or standard adopted or utilized by any municipal entity does not provide equal employment opportunity, and the EEPC's determinations of compliance or non-compliance and prescribed corrective action are required by, or consistent with federal, state, and local laws and regulations, and policies and procedures to increase equality of opportunity for women, minorities, and other employees and job applicants identified for protection from discrimination; and

**Whereas**, the EEPC conducted an audit, review, and evaluation of the Office of the Manhattan Borough President's Sexual Harassment Prevention and Response Practices; and

**Whereas**, pursuant to the audit, review, and evaluation of the Office of the Manhattan Borough President's Sexual Harassment Prevention and Response Practices, the EEPC issued a Preliminary Determination, dated August 31, 2018, setting forth findings and the following corrective actions required to remedy areas of non-compliance:

1. Distribute/Post a paper or electronic copy of the *Equal Employment Opportunity Policy, Standards and Procedures to Be Utilized by City Agencies* – or an agency Policy that conforms to city, state and federal laws against sexual harassment– for use by managers, supervisors, and legal, human resources and EEO professionals. Include, or attach as addenda: uniform and responsive procedures for investigating discrimination/sexual harassment complaints, and current contact information for the agency's EEO professionals as well as federal, state and local agencies that enforce laws against discrimination/sexual harassment.
2. Establish and implement a training plan for new and existing employees to ensure that all individuals who work within the agency, including managers and supervisors, receive training on the prevention of sexual harassment as well as discrimination complaint and investigation procedures.
3. Include in the complaint file a completed Complaint Intake Form, or a written complaint that captures facts (including pertinent dates) that identify the respondent(s) with reasonable specificity and provide the essence of the circumstances which gave rise to the complaint.
4. Serve the respondent with a notice of the complaint that includes the respondent's right to respond to the allegations and right to be accompanied by a representative of his/her choice. Maintain in the complaint file documentation regarding the service of notice on the respondent.
5. Notify the complainant and respondent in writing when the investigation by the EEO professional has been transferred because of the filing of an external complaint.
6. Ensure that managers and supervisors are held accountable for enforcing the agency's sexual harassment prevention policies and complaint procedures. Document this expectation and its implementation.
7. Ensure the managerial performance evaluation form contains a rating for EEO (which covers responsibilities and processes for assuring their ability to make employment decisions based on merit and equal consideration, or treat others in an equitable and impartial manner).
8. Submit to the EEPC an Annual Plan of measures and programs to provide equal employment opportunity.

**Whereas**, within a two-week deadline following the EEPC's Preliminary Determination, the entity submitted a preliminary response; and

**Whereas**, in accordance with Charter Chapter 36, Section 832(c), after consideration, the EEPC issued a Final Determination on September 26, 2018, which indicated that the following areas required corrective action: no(s). 1, 2, 3, 4, 5, 6, 7 and 8; and

**Whereas**, in accordance with Charter Chapter 36, Section 832(c), in the Final Determination, the EEPC assigned a monitoring period from October 1, 2018 to March 31, 2019, to determine whether the entity eliminated areas of non-compliance, if any; and

**Whereas**, in accordance with Charter Chapter 36, Section 832(c) the entity was required to respond in 30 days, and make monthly reports thereafter for a period not to exceed six months, on the progress of its efforts to correct outstanding areas of non-compliance; and

**Whereas**, in accordance with Charter Chapter 36, Section 832(c), on October 24, 2018, the entity issued a response to the EEPC's Final Determination; and


**Whereas**, in accordance with Charter Chapter 36, Section 832(c), the Office of the Manhattan Borough President was monitored until March 28, 2019; and

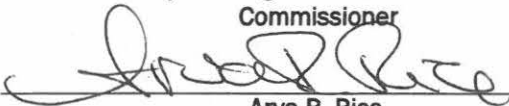
**Whereas**, pursuant to Charter Chapter 35, Sections 815(a)(15) and (19), which requires agency heads to ensure and promote equal opportunity for all persons in appointment, payment of wages, development, and advancement, and to establish measures and programs to ensure a fair and effective affirmative employment plan to provide equal employment opportunity for minority group members and women, the Borough President submitted a copy of a memorandum to staff dated March 28, 2019, which recognized the EEPC's audit and reiterated commitment to the Office of the Manhattan Borough President's equal employment practices; Now Therefore,


**Be It Resolved**, that the Office of the Manhattan Borough President has satisfied the equal employment standards set by the EEPC pursuant to its authority under New York City Charter Chapters 35 and 36; and

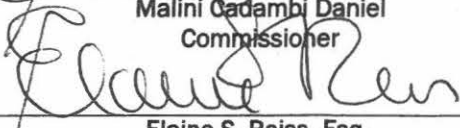
**Be It Resolved**, that the EEPC's Board of Commissioners approves the issuance of this Determination of Compliance to Borough President Gail A. Brewer of the Office of the Manhattan Borough President.

Approved unanimously on April 18, 2019.

  
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Angela Cabrera  
Commissioner

  
\_\_\_\_\_  
Arva R. Rice  
Commissioner

  
\_\_\_\_\_  
Malini Cadambi Daniel  
Commissioner

  
\_\_\_\_\_  
Elaine S. Reiss, Esq.  
Commissioner





**Equal Employment  
Practices Commission**

**BY MAIL AND EMAIL**

**Vacant**  
Chair

**Angela Cabrera**  
**Malini Cadambi Daniel**  
**Elaine S. Reiss, Esq.**  
**Arva R. Rice**  
Commissioners

**Charise L. Terry, PHR**  
Executive Director

**Judith Garcia Quiñonez, Esq.**  
Executive Agency Counsel/  
Director of Learning and Development

**Jennifer Shaw, Esq.**  
Executive Agency Counsel/  
Director of Compliance

**253 Broadway**  
**Suite 602**  
**New York, NY 10007**

212. 615. 8939 tel.  
212. 676. 2724 fax

April 18, 2019

**Gale A. Brewer**  
Borough President  
Office of the Manhattan Borough President  
1 Centre Street, 19th Floor  
New York, NY 10007

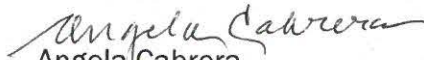
Re: Resolution #2018AP/229-010-(2019)C8  
DETERMINATION: Compliance

Dear Borough President Brewer:

On behalf of the members of the Equal Employment Practices Commission (EEPC), I write to inform you that pursuant to New York City Charter Chapter 35, Sections 815(a)(15) and (19), which requires agency heads to ensure and promote equal opportunity for all persons in appointment, payment of wages, development, and advancement, and to establish measures and programs to ensure a fair and effective affirmative employment plan to provide equal employment opportunity (EEO) for minority group members and women, the EEPC's Board of Commissioners has approved the attached Determination.

Thank you and EEO Officer/ Special Projects Coordinator Brian J. Lafferty for the cooperation extended to the EEPC during the course of our review, evaluation, and monitoring of your agency's employment and EEO-related practices.

Sincerely,

  
Angela Cabrera  
Commissioner

Enc.

C: Brian J. Lafferty, EEO Officer/ Special Projects Coordinator,  
Office of the Manhattan Borough President



EEPC

EQUAL EMPLOYMENT PRACTICES COMMISSION

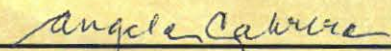
This  
**Determination of Compliance**

is issued to the

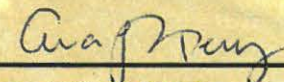
**Office of the Manhattan Borough President**

for successfully implementing 8 of 8 required corrective actions pursuant to the Equal Employment Practices Commission's  
Sexual Harassment Prevention and Response Practices Audit from January 1, 2016 to this date.

On this 18th day of April in the year 2019,



Angela Cabrera, Commissioner



Charise L. Terry, PHR, Executive Director

In care of Borough President Gail A. Brewer  
and Principal EEO Professional Brian J. Lafferty