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## BY MAIL AND EMAIL

August 30, 2018

Michael McSweeney  
City Clerk, Clerk of the Council  
Office of the City Clerk  
141 Worth Street  
New York, NY 10013

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

Dear City Clerk McSweeney:

On behalf of the members of the Equal Employment Practices Commission (Commission or EEP), 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 City Clerk, 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 EEPC 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 Office of the City Clerk is responsible for facilitating a variety of services performed by the City Clerk in the dual role as Clerk of the City Council and Clerk of the City of New York. As the Clerk of the City Council, the Clerk is responsible for attesting to all laws enacted by the City Council; attesting to all legislation desired by and affecting the City requiring concurrent action by the State Legislature; and for keeping the transcripts of the proceedings of the City Council. As the City Clerk, the Clerk attests to leases and deeds of City property, grants, agreements, bonds, tax notes,

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

and other forms of obligations of the City; has charge of all papers and documents of the City that include executive and administrative orders of the Mayor, certificates of judicial appointments by the Mayor, Oaths of Office of City employees, City Marshall bonds, and referendum petitions; and is custodian of the City Seal. Aside from these functions, the City Clerk maintains two separate and important bureaus under its jurisdiction: the Lobbying Bureau and the Marriage Bureau.<sup>2</sup> The Office of the City Clerk's total workforce, at the end of the audit period in review, was 72 employees.<sup>3</sup>

## 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 compliance with the standards for this subject area.

1. Issue a Policy Statement or memorandum reiterating commitment to the prevention of sexual harassment annually.
  - During the period in review the agency did not issue a policy statement or memorandum reiterating commitment to the prevention of sexual harassment annually. **Corrective Action Required.**

NOTE: Subsequent to the period in review, on May 9, 2018, the agency issued a *Sexual Harassment Policy Statement*. A log of distribution, signed by employees, confirmed that employees received a paper copy of the policy statement. The *Sexual Harassment Policy Statement* affirmed the agency's commitment to the prevention of sexual harassment by stating: "[s]exual harassment is a form of employment discrimination prohibited by the EEO Policy and law. All Office of the City Clerk's employees should be familiar with the EEO Policy's protections against sexual harassment... Sexual harassment is strictly prohibited. Employees who violate this policy are subject to discipline, including termination."

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.

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<sup>2</sup>"About the City Clerk's Office." City Clerk's Office, 2018, [www.cityclerk.nyc.gov/html/about/about.shtml](http://www.cityclerk.nyc.gov/html/about/about.shtml)

"City Clerk & Clerk of the Council." Green Book Online, City of New York, 2015, <http://a856-gbol.nyc.gov/GBOLWebsite/GreenBook/Details?orgId=2857>.

<sup>3</sup> Based on the CEEDS: *Workforce Composition Summary Report* attached as Appendix 1.

- ✓ The agency adopted and distributed the City of New York's *Equal Employment Opportunity Policy, Standards and Procedures to Be Utilized by City Agencies*<sup>4</sup> (EEO Policy), the *EEO Complaint Procedural Guidelines, City of New York*<sup>5</sup> (EEO Complaint Procedural Guidelines), the City of New York's EEO Policy Handbook: *About EEO: What You May Not Know*, and the agency's *EEO Memorandum* to new employees during orientation. The EEO Policy contained current contact information for the federal, state and local agencies that enforce laws against discrimination. The EEO Complaint Procedural Guidelines contained uniform and responsive procedures for investigating discrimination complaints. The *EEO Memorandum* outlined the documents that employees received during orientation and included contact information for the agency's principal EEO Professional and EEO Counselor/Investigator. Signed acknowledgements confirm that 72 employees received the aforementioned policies and procedures.

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.

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

**Determination: The agency is in 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's training plan required all new employees to complete the Department of Citywide Administrative Services' (DCAS) *Equal Employment Opportunity* computer-based training and *Everybody Matters, Diversity & Inclusion* computer-based training within the first two weeks of employment. Certificates of completion document that approximately 70% of employees completed computer-based training between January 1, 2016 and December 31, 2017. The *Equal Employment Opportunity* computer-based training included modules on the prevention of sexual harassment and discrimination complaint and investigation procedures. The *Sexual Harassment* module defined sexual harassment, provided examples of behavior that constitutes sexual harassment and stated who is eligible to file a sexual harassment complaint. The *How to File an EEO Complaint* module explained the discrimination complaint and investigation process.

NOTE: Subsequent to the period in review, between January 2018 and May 2018, certificates of completion document that the remaining 30% of employees completed the *Equal*

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<sup>4</sup> The *Equal Employment Opportunity Policy, Standards and Procedures to Be Utilized by City Agencies* is attached as Appendix 2.

<sup>5</sup> The *EEO Complaint Procedural Guidelines, City of New York* is attached as Appendix 3.

*Employment Opportunity and Everybody Matters, Diversity & Inclusion* computer-based trainings.

### III. COMPLAINT & INVESTIGATION PROCEDURES

**Summary of Complaint Activity:** The Office of the City Clerk reported no internal or external employment discrimination complaints were filed during the period in review. As a result, this Commission conducted its analysis of the agency's complaint and investigation procedures based on the policies, procedures and other information provided.

**Determination:** The agency is in 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 *Complaint Intake Form* included areas to capture facts (including pertinent dates, the name(s) and title(s) of the respondent(s), the location of the incident, witnesses present, etc.) and a description of the circumstances giving rise to the complaint.
5. Provide the option to file a complaint anonymously.
- ✓ The agency's EEO Complaint Procedural Guidelines stated, "[t]he person making the complaint may do so anonymously, if he or she chooses." Additionally, the EEO Policy 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".
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.
- ✓ The agency's EEO Complaint Procedural Guidelines stated, "[t]he EEO Office must serve Respondent with a notice of complaint along with a redacted copy of the complaint or a summary of the complaint and allegations... [s]chedule a meeting with Respondent, ensuring that Respondent is informed of the right to be accompanied by a representative... [and i]nform respondent of the right to respond in writing to the complaint." Additionally, the agency's Notice of Discrimination Complaint Form stated, "[y]ou may respond in writing to the allegations in this complaint" and "[y]ou have the right to be accompanied by a representative of your choice."
7. Issue/maintain written confirmation when an internal complaint/mediation is terminated, withdrawn or resolved by agreement of the parties or EEO Office.

- ✓ The agency's EEO Complaint Procedural Guidelines stated, "[a] party may withdraw from mediation at any time... [i]f the parties agree to a resolution during mediation, a resolution agreement will be drafted and provided to the parties and the referring EEO Officer... [t]he EEO Office must inform all parties to the complaint, in writing, of the termination of mediation." Additionally, the EEO Policy stated, "[w]ithdrawal of a complaint must be made or confirmed in writing" and "[m]ediation may be terminated by any party to the mediation. If this occurs, the EEO Officer will inform the other party or parties in writing that the mediation has been terminated." Furthermore, the agency created a Request for Withdrawal of Complaint form to be utilized when an internal complaint is withdrawn.
- 8. Take thorough notes, of words spoken and facts provided, during each interview. Include these notes in each complaint file.
- ✓ The agency's EEO Complaint Procedural Guidelines set forth the following requirements, "[d]uring each interview, take thorough notes, as close to verbatim as possible. Notes should reflect the content of the interview, both the questions and answers, as completely as possible... [a]ll complaints and related documents, including any investigative notes, records, or copies... must be maintained by the EEO Office... [a]fter all the relevant facts have been gathered, the EEO Officer must prepare a confidential written report on the complaint investigation... [t]he written report should include a statement of the relevant facts gathered during the investigation."
- 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.
- ✓ The agency's EEO Complaint Procedural Guidelines set forth the following requirements, "[t]he complaint investigation should begin immediately after a determination that the allegations raised, if true, are sufficient to establish discrimination... [t]he complaint investigation should be completed... within 90 calendar days of the filing of a complaint... [t]he final investigative report must be completed and the parties notified of the outcome within 90 calendar days from the date the complaint was filed with the EEO Office."
- 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.
- ✓ The agency's EEO Complaint Procedural Guidelines stated, "[t]he final investigative report must be completed... within 90 calendar days... unless the time period is extended by the EEO Office for good cause, with written notice to the parties and memorialized in the investigative file and/or the complaint tracking system. The EEO Office must document the reason for the delay, and project a time frame for the completion of the 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.

- ✓ The agency's EEO Complaint Procedural Guidelines stated, "[a]fter all the relevant facts have been gathered, the EEO Officer must prepare a confidential written report on the complaint investigation and must submit the report to the Agency Head for review... [t]he written report should include a summary of the allegations and responses, a summary of the procedural history of the investigation, a statement of the relevant facts gathered during the investigation, a conclusion/determination and recommendation... [t]he Agency Head must sign each written report and indicate that it has been reviewed." Additionally, the EEO Policy stated, "[t]he EEO Officer will submit a confidential report of the complaint investigation to the agency head at the conclusion of the investigation. 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."

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.

NOTE: The agency reported no employment discrimination complaints were filed during the audit period. As compliance with the standard could not be meaningfully measured for the period in review, further evaluation of this area was impractical.

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 agency's EEO Complaint Procedural Guidelines stated, "[a]fter all the relevant facts have been gathered, the EEO Officer must prepare a confidential report on the complaint investigation and must submit the report to the Agency Head for review... The Agency Head must sign each written report and indicate that it has been reviewed and whether the determination and recommendation, if any, is adopted, rejected or modified." Additionally, the EEO Policy stated, "The EEO Officer will submit a confidential report of the complaint investigation to the agency head at the conclusion of the investigation... 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."

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 agency's EEO Complaint Procedural Guidelines stated, "[a]fter review of the report by the Agency Head, the EEO Office should inform all parties in writing of the outcome of the investigation... [t]he decision after investigation should be communicated to the parties in writing, in a discreet and confidential manner, indicating the conclusion reached, whether the misconduct alleged has been substantiated, and the agency's opposition to that kind of activity." Additionally, the EEO Policy stated, "[t]he EEO Officer will advise all parties in writing of the outcome of a complaint." Furthermore, the agency reported that its complaint procedure required written communication informing the complainant, respondent, or other relevant parties of the outcome of the investigation.
15. Ensure each internal discrimination complaint file contains a written determination of its outcome and corrective action(s) taken as a result.
- ✓ The agency's EEO Complaint Procedural Guidelines stated, "if, based on facts, the EEO Officer determines that... the Respondent engaged in unlawful discriminatory conduct in violation of the City's EEO Policy, the EEO Officer must determine the most appropriate action ... and make a written recommendation to the Agency Head ... [t]he written report should include ... a conclusion/determination and recommendation." Additionally, the EEO Policy stated, "[t]he EEO Officer will submit a confidential report of the complaint investigation to the agency head... 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."
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.
- ✓ The agency's EEO Complaint Procedural Guidelines stated, "[i]f an external complaint or lawsuit is filed subsequent to the filing of the internal complaint... [t]he EEO Office must notify Complainant (and Respondent, if any) in writing of the transfer." Additionally, the EEO Policy stated, "The EEO Officer 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."
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 reported no employment discrimination complaints were filed during the audit period. As compliance with the 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 collaborated with the principal EEO Professional in the creation of the agency's forms (*Complaint Intake Form, Witness Information Form, Notice of Discrimination Complaint Form, Complaint Withdrawal Form, etc.*) to be utilized during the complaint intake and investigation processes. Additionally, the agency responded in the affirmative to the EEPC's Preliminary Interview Questionnaires regarding the General Counsel's responsibility for the following: helping to identify and determine appropriate responses to sexual harassment; informing the principal EEO Professional when external complaints are brought against the agency; being available to consult on internal sexual harassment complaint investigations; and the investigation of, and response to, external complaints. Furthermore, the *EEO Policy* stated, "an EEO investigation may be conducted in conjunction with or by an agency's General Counsel's office..." The *EEO Policy* also stated, "[w]hen a person exercises his or her right to file a complaint with a federal, state, or local administrative agency (known as an "external complaint") based on or related to the same facts and circumstances of an internal complaint, the agency EEO Officer will transfer the matter to the agency General Counsel, who will be responsible for any further handling of the matter... After transfer of the complaint to the agency General Counsel, the EEO Officer will cooperate with the General Counsel with respect to the ultimate resolution of the complaint."

#### **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.
- ✓ The agency responded in the affirmative to the EEPC's Preliminary Interview Questionnaire, which inquired about whether the principal EEO Professional, HR Professional, and General Counsel reviewed the agency's training policy and complaint procedures to identify trends or barriers to employment opportunities that may be related to sexual harassment. As a result of the review, the agency decided to establish a plan to ensure all new employees complete computer-based training (see § II. 3). Additionally, the agency determined it would be beneficial to establish forms (see § III. 18) to create consistency in the complaint intake and investigation processes.

NOTE: No complaints were filed during the period in review; therefore a review of the number of sexual harassment complaints could not be conducted for the period in review.

**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.
- ✓ Certificates of completion demonstrate that the principal EEO Professional, who was appointed in 2008, completed DCAS' Citywide Training Center's in-person EEO related training: *Basic Training for Equal Employment Opportunity Representatives* (2006), and the following DCAS computer-based trainings: *EEO Training for Managers and Supervisors* (2009), *Everybody Matters, Diversity & Inclusion* (2015), and *Equal Employment Opportunity* (2016). The aforementioned trainings covered laws, requirements, policies, and procedures geared toward the prevention of discrimination and sexual harassment complaints. *Basic Training for Equal Employment Opportunity Representatives* and the *Equal Employment Opportunity* computer-based training covered the laws and requirements of the investigation and resolution of discrimination and sexual harassment complaints.
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.
- ✓ During the period in review, support for the principal EEO Professional was provided by the Director of Personnel who also served as EEO Counselor/EEO Investigator. The principal EEO Professional had access to training opportunities (see § V. 20); attended DCAS' best practice meetings; and communicated with DCAS whenever there was a new policy, procedure, Executive Order, etc., in order to stay abreast of EEO matters. DCAS' best practice meetings provided guidance on the optimal ways in which city agencies can fulfill their requirements under city, state and federal EEO laws, policies and procedures.
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 their responsibilities under the EEO Policy.
- ✓ During the period in review, the agency had 72 employees, two EEO professionals and 5 different office locations. The Director of Personnel was designated as EEO Counselor/EEO Investigator to support the principal EEO Professional with carrying out EEO responsibilities under the *EEO Policy*. The EEO Counselor/Investigator completed the following EEO related trainings: *Basic Training for Equal Employment Opportunity Representatives* (2007) and

*Everybody Matters, Diversity & Inclusion* (2016) computer-based training. *Basic Training for Equal Employment Opportunity Representatives* covered the investigation and resolution of discrimination and sexual harassment complaints. *Everybody Matters, Diversity & Inclusion* covered policies and procedures to assist in the prevention of discrimination and sexual harassment complaints.

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.
  - ✓ The General Counsel collaborated with the principal EEO Professional in the creation of forms (see § III. 18) to be utilized by the agency during the complaint intake and investigation processes.
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.
  - ✓ During the period in review, the principal EEO Professional distributed the *EEO Policy, About EEO: What You May Not Know* and the *EEO Complaint Procedural Guidelines* at each site where the agency conducted business (see § I. 2); and ensured employees received sexual harassment prevention training via *Equal Employment Opportunity* computer-based training (see § II. 3). In addition, the agency responded in the affirmative to the EEOC's Preliminary Interview Questionnaire, that the principal EEO Professional provided sexual harassment policies and procedures in alternative formats upon request; provided guidance and assistance to agency managers, supervisors and human resource professionals in addressing issues relating to sexual harassment; and was responsible for investigating allegations of sexual harassment. Additionally, the agency reported that during the period in review the principal EEO Professional provided sexual harassment policies and procedures in large print and supervised the activities of the EEO Counselor/Investigator on an as needed basis.
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 agency's organizational chart illustrated a direct reporting relationship between the principal EEO Professional and the agency head.
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.

NOTE: The agency reported that during the period in review no directives or decisions that impacted the administration and operation of policies, programs or procedures geared toward the prevention of sexual harassment were issued. As compliance with the standard could not be meaningfully measured for the period in review, further evaluation of this area was impractical. When future directives or decisions between the agency head and the principal EEO Professional that impact the administration and operation of programs, policies or procedures concerning sexual harassment occur, the agency should maintain documentation.

## **VI. RESPONSIBILITY FOR IMPLEMENTATION – MANAGERS**

**Determination:** The agency is in partial 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.
- ✓ All staff, including managers and supervisors, signed to acknowledge receipt of the *EEO Policy*, which stated, "each agency manager or supervisor shall: 1) be accountable to the agency head 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 the Policy, standards, and procedures...; 5) promptly consult with the agency'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 an 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." Additionally, the agency responded in the affirmative to the EEOC's Preliminary Interview Questionnaire, which inquired whether the agency held managers and supervisors accountable for the following: consulting with an EEO professional if sexual harassment was observed, communicated or suspected; and allowing employees to meet with an EEO professional at the earliest mutually convenient time.
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).
- The agency's managerial performance evaluation form did not include a rating for EEO to ensure that managers and supervisors are held accountable for implementing and enforcing the agency's EEO related expectations and policies. **Corrective Action Required.**

**Corrective Action #1:** 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 EEPC an Annual Plan of measures and programs to provide equal employment opportunity, and quarterly reports<sup>6</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 EEPC did not receive the agency's Annual Plans of measures and programs to provide equal employment opportunity. Corrective Action Required.

**Corrective Action #2:** Submit to the EEPC an Annual Plan of measures and programs to provide equal employment opportunity.

**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 signed by 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 2 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

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<sup>6</sup> Submission of *Quarterly Reports on EEO Activity* is optional for non-Mayoral agencies.





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 black ink, appearing to read "Menelik Allsop", written over a horizontal line.

Menelik Allsop, EEO Program Analyst

Approved by,

A handwritten signature in blue ink, appearing to read "Charise L. Terry", written over a horizontal line.

Charise L. Terry, PHR  
Executive Director

c: Jose L. Gonzalez, Principal EEO Professional



Appendix – 1

*Office of the City Clerk*

**CEEDS Report: *Workforce Composition Summary Report***  
***2<sup>nd</sup> Quarter Fiscal Year 2018***  
(End of Audit Period)

RUN DATE: 01/03/18  
RUN TIME: 14:40:14.1

NEW YORK CITY DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES  
CITYWIDE EQUAL EMPLOYMENT DATABASE SYSTEM (CEEDS)  
WORK FORCE COMPOSITION SUMMARY  
QUARTER 2 YEAR 2018 AGENCY 103 CITY CLERK

PAGE: 116  
REPORT: EBEP210

AGENCY CODE : 103 CITY CLERK  
EEO JOB GROUP : 001 ADMINISTRATORS

TITLE CODE	TITLE DESCRIPTION	MALE						FEMALE						OTHER	TOTAL EMP
		WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN	WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN		
06742	DEPUTY CITY CLERK (CC)(FOR	0	1	0	0	0	0	0	0	2	0	0	0	0	3
12930	DEPUTY CITY CLERK	0	0	0	0	0	0	1	1	0	0	0	0	0	2
12988	CITY CLERK AND CLERK OF CO	1	0	0	0	0	0	0	0	0	0	0	0	0	1
EEO JOB GROUP TOTAL.....:		16.66	16.67	0.00	0.00	0.00	0.00	16.67	16.67	33.33	0.00	0.00	0.00	0.00	6

AGENCY CODE : 103 CITY CLERK  
EEO JOB GROUP : 002 MANAGERS

TITLE CODE	TITLE DESCRIPTION	MALE						FEMALE						OTHER	TOTAL EMP
		WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN	WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN		
05418	EXECUTIVE ASSISTANT TO THE	0	0	0	0	0	0	0	0	1	0	0	0	0	1
06006	SPECIAL ADVISER TO THE CIT	0	0	0	0	0	0	1	0	0	0	0	0	0	1
06168	ASSISTANT ADMINISTRATOR (O	1	0	0	0	0	0	0	0	0	0	0	0	0	1
06242	EXECUTIVE ASSISTANT TO THE	0	0	0	0	0	0	0	0	0	0	1	0	0	1
06692	CHIEF OF STAFF (OFFICE OF	0	0	1	0	0	0	0	0	0	0	0	0	0	1
10010	ADMINISTRATIVE MANAGEMENT	1	0	0	0	0	0	0	0	0	0	0	0	0	1
95005	EXECUTIVE AGENCY COUNSEL	0	1	0	0	0	0	0	0	0	0	0	0	0	1
EEO JOB GROUP TOTAL.....:		28.55	14.29	14.29	0.00	0.00	0.00	14.29	0.00	14.29	0.00	14.29	0.00	0.00	7

AGENCY CODE : 103 CITY CLERK  
EEO JOB GROUP : 003 MANAGEMENT SPECIALISTS

TITLE CODE	TITLE DESCRIPTION	MALE						FEMALE						OTHER	TOTAL EMP
		WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN	WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN		
60216	PUBLIC RECORDS OFFICER	0	0	0	0	0	0	1	0	0	0	0	0	0	1
EEO JOB GROUP TOTAL.....:		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	1

AGENCY CODE : 103 CITY CLERK  
EEO JOB GROUP : 010 TECHNICIANS

TITLE CODE	TITLE DESCRIPTION	MALE						FEMALE						OTHER	TOTAL EMP
		WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN	WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN		
31121	ASSOCIATE INVESTIGATOR	0	0	0	0	0	0	0	1	0	0	0	0	0	1

RUN DATE: 01/03/18  
RUN TIME: 14:40:14.1

NEW YORK CITY DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES  
CITYWIDE EQUAL EMPLOYMENT DATABASE SYSTEM (CEEDS)  
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QUARTER 2 YEAR 2018 AGENCY 103 CITY CLERK

PAGE: 117  
REPORT: EBEP210

EEO JOB GROUP TOTAL.....: 0 0 0 0 0 0 0 0 1 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 0.00 100.00

AGENCY CODE : 103 CITY CLERK  
EEO JOB GROUP : 012 CLERICAL SUPERVISORS

TITLE CODE	TITLE DESCRIPTION	MALE						FEMALE						OTHER	TOTAL EMP
		WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN	WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN		
10124	PRINCIPAL ADMINISTRATIVE A	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 : 103 CITY CLERK  
EEO JOB GROUP : 013 CLERICAL

TITLE CODE	TITLE DESCRIPTION	MALE						FEMALE						OTHER	TOTAL EMP
		WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN	WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN		
09888	EXECUTIVE SECRETARY TO THE	1	0	0	0	0	0	0	0	0	0	0	0	0	1
10251	CLERICAL ASSOCIATE	2	0	4	4	0	0	2	5	13	6	0	0	0	36
10252	SECRETARY	0	1	0	0	0	0	0	0	0	0	0	0	0	1
EEO JOB GROUP TOTAL.....:		3	1	4	4	0	0	2	5	13	6	0	0	0	38
		7.89	2.63	10.53	10.53	0.00	0.00	5.26	13.16	34.21	15.79	0.00	0.00	0.00	100.00

AGENCY CODE : 103 CITY CLERK  
EEO JOB GROUP : 031 PARA PROFESSIONAL OCCUPATIONS

TITLE CODE	TITLE DESCRIPTION	MALE						FEMALE						OTHER	TOTAL EMP
		WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN	WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN		
10209	COLLEGE AIDE	2	2	0	1	0	0	2	1	0	0	0	0	0	8
56056	COMMUNITY ASSISTANT	0	0	0	0	0	0	0	0	1	0	0	0	0	1
56057	COMMUNITY ASSOCIATE	1	0	0	0	0	0	0	0	4	0	0	0	0	5
56058	COMMUNITY COORDINATOR	0	0	2	0	0	0	0	0	1	0	0	0	0	3
EEO JOB GROUP TOTAL.....:		3	2	2	1	0	0	2	1	6	0	0	0	0	17
		17.67	11.76	11.76	5.88	0.00	0.00	11.76	5.88	35.29	0.00	0.00	0.00	0.00	100.00

AGENCY TOTAL.....: 9 5 7 5 0 0 9 8 22 6 1 0 0 72  
12.51 6.94 9.72 6.94 0.00 0.00 12.50 11.11 30.56 8.33 1.39 0.00 0.00 100.00

Appendix - 2

*Office of the City Clerk*

*Equal Employment Opportunity Policy, Standards and Procedures to  
Be Utilized by City Agencies 2014*



# EQUAL EMPLOYMENT OPPORTUNITY POLICY

STANDARDS AND PROCEDURES  
TO BE UTILIZED BY CITY AGENCIES

CITY OF NEW YORK

2014

# EQUAL EMPLOYMENT OPPORTUNITY P O L I C Y

STANDARDS AND PROCEDURES  
TO BE UTILIZED BY CITY AGENCIES

**CITY OF NEW YORK**

**BILL DE BLASIO**  
Mayor

**LISETTE CAMILO**  
Commissioner  
Department of Citywide Administrative Services

2014



**NEW YORK CITY  
EQUAL EMPLOYMENT OPPORTUNITY POLICY**

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# **NEW YORK CITY EQUAL EMPLOYMENT OPPORTUNITY POLICY** **(2014)**

## **Introduction**

The New York City Charter provides that each agency head must ensure that his or her agency does not discriminate against employees or applicants for employment in any manner prohibited by federal, state, and local law.<sup>1</sup> In addition, the Charter requires agency heads to establish measures, programs, and annual EEO Plans that communicate each agency's efforts to provide equal employment opportunity ("EEO") to City employees and applicants for employment within City government.<sup>2</sup> The Department of Citywide Administrative Services ("DCAS") is required to establish uniform procedures and standards to assist City agencies in establishing annual EEO Plans, and other measures and programs to ensure equal employment opportunity.<sup>3</sup> DCAS developed this Policy,<sup>4</sup> and the standards and procedures contained herein, to implement DCAS' and the City's obligations under the City Charter; federal, state, and local laws; and the City's diversity and inclusion strategy.

The *Equal Employment Opportunity Policy (2014)*, hereafter known as "Policy," supersedes the previous *Equal Employment Opportunity Policy (2005)* of the City of New York. Detailed uniform complaint and reasonable accommodation procedures are published separately. This Policy, any addenda to this Policy, and the EEO Policy Handbook are to be distributed to each agency head, EEO Officer,<sup>5</sup> General Counsel, Agency Personnel Officer (APO), manager, and supervisor.

In addition to the Policy, DCAS updated the EEO Policy Handbook, "*About EEO: What You May Not Know*."<sup>6</sup> The EEO Policy Handbook was created to provide City government employees with a user-friendly summary of the relevant laws and the Policy.

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<sup>1</sup> See Charter Section 815(h).

<sup>2</sup> See Charter Section 815(a)(19).

<sup>3</sup> See Charter Section 814(a)(12).

<sup>4</sup> This Policy was drafted in consultation with the Equal Employment Practices Commission, the New York City Law Department and EEO Officers from various City agencies.

<sup>5</sup> Each agency head appoints an EEO Officer to assist with the implementation of the Policy, standards, and procedures. The agency EEO Officer and other personnel, including EEO counselors, investigators, liaisons, etc., are referred to in this Policy as 'EEO office or EEO representatives.'

<sup>6</sup> The Policy may be downloaded at <http://www.nyc.gov/html/dcas/html/about/ecopol>. The EEO Policy Handbook, "*About EEO: What You May Not Know*," may be downloaded at [http://www.nyc.gov/html/dcas/html/about/eo\\_booklet.shtml](http://www.nyc.gov/html/dcas/html/about/eo_booklet.shtml).

## **I. Equal Employment Opportunity Policy**

The City of New York is an equal opportunity employer and prohibits discriminatory employment actions against, and treatment of, City employees and applicants for employment 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,<sup>7</sup> marital status, partnership status,<sup>8</sup> genetic information or predisposing genetic characteristic,<sup>9</sup> sexual orientation, status as a victim or witness of domestic violence, sex offenses or stalking,<sup>10</sup> and unemployment status.<sup>11</sup>

### **A. Types of Prohibited Conduct**<sup>12</sup>

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 City of New York are prohibited by this Policy. This includes unlawful decisions, actions, and practices that occur in the course of recruitment, testing, hiring, work assignments, salary and benefits, working conditions, performance evaluations, promotions, training opportunities, career development and advancement, transfers, discipline, discharge, or any other application or selection process relating to employment.

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<sup>7</sup> Some employment actions motivated by the reasons listed are permitted by law, such as where an employer may deny employment on the basis of an applicant’s prior record of conviction, if there is a direct relationship between one or more of the applicant’s criminal offenses and the specific employment sought, or where employing the applicant poses an unreasonable risk to property or to the safety or welfare of specific individuals or the general public. (*See* Correction Law, Art. 23-A, Section 752.)

<sup>8</sup> “Partnership status” was added as a protected class under New York City’s Human Rights Law on October 3, 2005.

<sup>9</sup> The term “predisposing genetic characteristic” was adopted on August 30, 2005 to streamline the terms “genetic predisposition” and “carrier status” in the previous version of the New York State Human Rights Law.

<sup>10</sup> “Status as victim of sex offenses or stalking” was added as a protected class under the City Human Rights Law on December 22, 2003.

<sup>11</sup> “Unemployment status” was added as a protected class under New York City’s Human Rights Law on June 11, 2013.

<sup>12</sup> See also, EEO Policy Handbook: *“About EEO: What you May Not Know,”* for more examples of prohibited conduct.

The Policy also prohibits sexual harassment (i.e., conduct or language of a sexual nature) and harassment based on gender or any other protected characteristic (such as race, religion, 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.

The Policy prohibits conduct which unreasonably interferes with an employee's job performance or creates an intimidating, hostile, or offensive working environment, or creates an abusive working environment based on any protected characteristic.

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.

The Policy also prohibits the denial of reasonable accommodations for disabilities; pregnancy, childbirth, and related medical conditions; religious beliefs, observances, and practices; or for victims of domestic violence, sex offenses, or stalking that do not create an 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 City and its agencies may discipline conduct that violates this Policy even if the conduct does not violate a law prohibiting discrimination.

The Policy also prohibits any City employee from aiding, abetting, inciting, compelling, or coercing any person present in a City facility, whether or not that person is an employee of the City, 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 New York City government or its workplaces, or who seeks employment within City government, 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, paid and unpaid interns,<sup>13</sup> and job applicants.

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<sup>13</sup> The prohibition of discrimination against interns was added in the New York City's Human Rights Law on April 15, 2014.

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, whether or not intentionally offensive or directed at a particular person or group, which violate this Policy.

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, City vehicle, or facility where City government business is being conducted and discussed.

In addition, Work Experience Program ("WEP") participants 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 Policy as applied to employees or applicants for employment.

All City employees, interns, and WEP participants are expected to be respectful of everyone in the City's workplaces and members of the public, and to be sensitive to the effects of their behavior on those around them. All employees, interns, and WEP participants 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."*

## **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, sex offenses, or stalking.



## A. Sexual Harassment

Sexual harassment is a form of employment discrimination which is prohibited by law. The federal government 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>14</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 City of New York. 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 City of New York and its agencies will take appropriate action to provide reasonable accommodations to qualified employees and job 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, perform their jobs, or enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without disabilities.

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 aids, 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

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<sup>14</sup> Code of Federal Regulations, Title 29, Section 1604.11.

the Civil Service Law, Personnel Rules and Regulations, other applicable laws, or regulations and/or collective bargaining agreements.

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

The City of New York 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 City encourages agencies to utilize the 55-a Program, which will allow City agencies 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 Agency Personnel Officer or 55-a Coordinator.

#### C. Religion

The 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 actual or perceived creed, religious affiliation, religious beliefs, observances, or practices.

In addition, depending on the circumstances, agencies must try to reasonably accommodate the religious observances, beliefs, or practices of an employee or job 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. City agencies may be required to provide accommodations for religion such as flexible arrival and departure times, and/or leave; voluntary exchanges of shifts or assignments; time and/or place to pray; accommodations relating to appearance and dress; and modifying workplace practices, policies, and/or procedures.

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

#### D. Retaliation

It is a violation of the 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 are 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 New York City Human Rights Law 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. Agencies 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 agency.

### 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 agency personnel supervising the application, testing, and interviewing process; or directly to the EEO office at the agency where the violation actually occurred, or which is the employer of the individual who purportedly committed the complained of act(s). Supervisors, managers, or human resources personnel who receive EEO complaints, or otherwise become aware of any improper discrimination, must notify the agency EEO Officer. Supervisors and managers should also encourage individuals who believe that the Policy has been violated to consult with the EEO office.

An individual who believes that this Policy has been violated may report the incident orally or in writing. Where the report is taken orally, the manager, supervisor, or EEO representative shall document the report. The EEO office will assist any individual in determining whether the conduct or decision reported is appropriate for the complaint process. Where an individual chooses to file an internal complaint with the agency EEO office, that complaint must be filed within one year of the event which is the subject of the complaint.

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, the EEO office 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 representative. Reasonable leave requests to meet with an EEO representative during work hours cannot be denied by managers or supervisors. Managers and supervisors shall allow employees to meet with EEO representatives at the earliest practicable time consistent with the operational needs of their units. Where an agency has more than one EEO representative, an employee is not required to meet with an EEO representative who works in the employee's division.

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 representative will arrange to meet with an employee at outside premises where appropriate and/or necessary in order to ensure confidentiality. If necessary, EEO representatives will make arrangements for sign language interpreters and other forms of effective communication with persons with disabilities.

The EEO representative 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 representative may also facilitate any further discussions with other agency personnel.

In appropriate cases, an EEO investigation may be conducted in conjunction with or by an agency's General Counsel's office, Inspector General, 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 Law Department or DCAS.

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 were made, or witnesses. It is preferable that the EEO office receive 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. Withdrawal of a complaint must be made or confirmed in writing. In some instances, the agency 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 Officer. 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 externally through entities that provide mediation services.

Mediation may be terminated by any party to the mediation. If this occurs, the EEO Officer 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 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.

#### E. Concluding the Complaint Investigation

The EEO Officer will submit a confidential report of the complaint investigation to the agency head at the conclusion of the investigation. 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. The EEO Officer will advise all parties in writing of the outcome of a complaint.

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, agencies 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:

- 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/>

Information about how to contact these agencies can be found in the EEO Policy Handbook, “*About EEO: What You May Not Know*,” at [http://www.nyc.gov/html/dcas/html/about/eeo\\_booklet.shtml](http://www.nyc.gov/html/dcas/html/about/eeo_booklet.shtml), the DCAS website at <http://www.nyc.gov/html/dcas/html/about/eeo.shtml>, or the Office of Citywide Diversity and EEO at 1 Centre Street, 17<sup>th</sup> Floor North, New York, NY 10007, (212) 386-0257. Please note that there are statutory deadlines for filing complaints with each of these agencies.<sup>15</sup>

When a person exercises his or her right to file a complaint with a federal, state, or local administrative agency (known as an “external complaint”) based on or related to the same facts and circumstances of an internal complaint, the agency EEO Officer will transfer the matter to the agency General Counsel, who will be responsible for any further handling of the matter. The EEO Officer 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 agency 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). After transfer of the complaint to the agency General Counsel, the EEO Officer will cooperate with the General Counsel with respect to the ultimate resolution of the complaint.

#### G. Requests for Reasonable Accommodations

City agencies may be required to provide reasonable accommodations when requests are made in connection with disabilities; pregnancy, childbirth, and related medical conditions; religious beliefs, observances, and practices; or for victims of domestic violence, sex offenses, or stalking. The reasonable accommodation process should be flexible and interactive, involving agency representatives who are necessary to the reasonable accommodation process and the individual who is requesting a reasonable accommodation. In all instances, the agency EEO office should be notified of the request in order to facilitate discussions, research appropriate accommodations, and assist in the resolution of the matter.

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<sup>15</sup> The deadline in some instances is as short as 180 days. Therefore, to preserve their rights, individuals who believe that they have been discriminated against and wish to file a complaint with an external agency should promptly contact the City Commission on Human Rights, the State Division of Human Rights, the EEOC, the Department of Justice, or a private attorney for further guidance.

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 impracticable, agency 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 job applicant with a disability who requests reasonable accommodations to enable him or her to satisfy the essential functions of the job or enjoy the rights in question may make such requests to his or her manager or supervisor, agency personnel supervising the application process, or directly to the agency EEO Officer or Disabilities Rights Coordinator.<sup>16</sup> 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 Officers 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 agency 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 and 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 agency EEO Officer. Requests for religious accommodation should be documented by the individual receiving the request.

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<sup>16</sup> A Disability Rights Coordinator is responsible for ensuring compliance with federal, state, and local laws and the Policy regarding people with disabilities.

3) Victim 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 agency EEO Officer.

Agencies 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 agency 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:<sup>17</sup> An employee or job applicant requesting reasonable accommodations due to pregnancy and those who suffer medical conditions related to pregnancy, 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 agency EEO Officer or Disability Rights Coordinator. Such a reasonable accommodation may include bathroom breaks; leave for a period of disability arising from pregnancy, childbirth, or related medical conditions; 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 City agencies, 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 job applicant has requested a reasonable accommodation consistent with these procedures and the agency representative has not provided the reasonable accommodation, an appeal may be made to the agency head. Within 10 business days of receipt of an appeal, the agency head, or his or her designee, shall:

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<sup>17</sup> The City's Human Rights Law was amended to include reasonable accommodations related to pregnancy, childbirth or related medical conditions effective January 30, 2014.

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 agency representative that the agency head deems necessary to the reasonable accommodation request;
3. evaluate the reasonableness of employee's or applicant's and agency representative's preferences regarding the accommodation request, giving primary consideration to the employee's or applicant's preferences; and
4. consult with the DCAS Office of Citywide Diversity and EEO or the Law Department.

Within 15 business days of receipt of the appeal, the agency head or his\her designee, 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 agency representative to implement such accommodation promptly. The EEO Officer or Disability Rights Coordinator shall monitor implementation of the reasonable accommodation.

#### G. 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, status as victims of domestic violence, sex offenses or stalking, and pregnancy, childbirth, or a related medical condition. Therefore, it may be necessary to disclose information to persons with a legitimate need to know about the matter.

#### H. Documentation

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

## J. Additional Sources of Procedural Information

The Guidelines for the Implementation of the City's Discrimination Complaint Procedures may be found online:

[http://www.nyc.gov/html/dcas/downloads/pdf/misc/eo\\_discriminationcomplaint\\_procedures.pdf](http://www.nyc.gov/html/dcas/downloads/pdf/misc/eo_discriminationcomplaint_procedures.pdf)

The City's Reasonable Accommodation Policy and Procedure may be found online:

[http://www.nyc.gov/html/dcas/downloads/pdf/misc/eo\\_reasonableaccommodation.pdf](http://www.nyc.gov/html/dcas/downloads/pdf/misc/eo_reasonableaccommodation.pdf)

## IV. Agency-Specific Diversity and EEO Plans

Agency heads are required by the New York City Charter to annually prepare, adopt, and implement a plan to provide equal employment opportunity. The plan must be prepared based on uniform procedures and standards provided by DCAS. DCAS will work with agency heads to help them develop realistic and achievable objectives.

Each agency head or, at his or her direction, the agency EEO Officer and/or APO, should review agency 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 agency's employment practices, policies, and programs. The agency head should then work with the EEO Officer, General Counsel and APO to identify: 1) whether there are any barriers to equal opportunity within the agency; 2) the agency's obligations as a result of government grants and/or contracts; and 3) what, if any, corrective actions are required under court decrees and/or governmental audits. Agencies may wish to seek the advice of the Law Department or consult with the DCAS Office of Citywide Diversity and EEO regarding the development of agency Diversity and EEO Plans.

The Diversity and EEO Plan should communicate the agency's intention to promote equal employment opportunity and diversity and inclusion by continuing effective measures or implementing new strategies and programs (i.e., preventive, corrective and risk management strategies in areas such as recruitment, training, selection, promotion, and policy dissemination standards) that prevent, diminish, or eliminate barriers to equal opportunity employment. DCAS will provide agencies with formats and recommendations for Diversity and EEO Plan development that are consistent with employment practices recommended by human resources management organizations and enforcement entities.

Although each agency's Diversity and EEO Plan will be tailored to the specific issues of that agency, there are some general measures that all agencies are required to implement. Each agency's Diversity and EEO Plan must, at a minimum, include the following:

- A commitment to ensure fair employment practices, and promote a workplace that values its employees in support of the City's diversity and inclusion strategy. The commitment will hold EEO Officers and representatives, human resources professionals, managers and supervisors accountable for ensuring that the agency does not discriminate against employees or applicants for employment and support the diversity and inclusion initiatives at the agency. This commitment should be reflected in the agency strategic plan, mission, vision, and performance metrics. It should also include the agency's strategy to ensure equal employment opportunity and to implement the best diversity and inclusion practices at the agency. The commitment should also be communicated to all employees through a Commitment Statement to affirm the principles of equal employment opportunity and diversity and inclusion.
- A commitment to assess recruitment efforts to determine whether such efforts adversely impact any particular group and what recruitment sources yield a diverse pool of qualified candidates. It should also include the agency's strategy to implement the best diversity and inclusion recruitment practices to ensure equal employment opportunity. Minimally, agencies should identify relevant professional and community organizations serving women and minorities throughout the City, review and update listings of recruitment outreach sources, and contact such organizations when positions not filled through civil service lists become available or where agencies may otherwise use discretion in hiring.
- A commitment to assess agency job postings to ensure appropriate diversity, inclusion, and equal opportunity employer messaging.
- A commitment to assess the manner in which candidates are selected for employment, to determine whether there is any adverse impact upon any particular racial, ethnic, disability, or gender group. To the extent that adverse impact is discovered, the agency head will determine whether the criteria being utilized are job-related. If the criteria are not job-related, the agency will discontinue using that method. Methods which diminish adverse impact will be preferred over those with greater impact, provided that the agency's job-related aims are not compromised by using the method with a diminished impact. Examples of selection methods which may diminish adverse impact include race/ethnicity-neutral and gender-neutral questions in interview materials and assembling interview panels that reflect gender, race and ethnic diversity. The agency will also ensure that, to the extent practicable, agency

personnel involved in both the discretionary and the civil service hiring pool process receive structured interviewing training and use structured interviewing in the selection process.

- A commitment to assess criteria for selecting persons for mid-level to high-level discretionary positions.
- A commitment to make career counseling about civil service jobs available for employees. Employees should be reminded of the identity of the agency's Career Counselor and the type of guidance which is available from the Career Counselor, at least once each fiscal year. Each agency should promptly notify agency employees and DCAS of any change in the identity of the agency Career Counselor.
- A commitment to ensure that all new employees are advised of this Policy, their rights and responsibilities under it, the discrimination complaint and investigation procedures, and the reasonable accommodation procedures.
- A commitment to establish a diversity, inclusion, and EEO training plan to ensure that all individuals who work within the agency, including managers and supervisors, are trained concerning diversity, inclusion, and EEO-related rights and responsibilities in a manner consistent with the minimum standards for diversity, inclusion and EEO training established by DCAS.
- A commitment to review on a regular basis and retain information about personnel actions, discretionary hiring, applicants, promotions, demotions, transfers, rates of pay, terms of compensation, and selection for training or apprenticeship as required by federal, state, and local law, and/or the City's official records retention schedule.
- A plan to meet obligations or remedies required or recommended as a result of government grants or contracts, court orders, consent decrees, or any audit/review conducted by a governmental agency.

Other measures which may be used to ensure fair employment practices include, for example:

- Advertising job vacancy notices in periodicals and websites with a diverse and inclusive readership.
- Sending job vacancy notices to professional and community organizations serving diverse and inclusive populations.

- Participating in career and job fairs.
- Whenever possible, promoting public service as a career choice at schools, colleges and universities.
- Using internships, work/study, co-op, and scholarship programs to attract interested persons and to develop and hire interested and qualified candidates.
- Sponsoring open houses (i.e., networking events, facilities tours).
- Working with appropriate DCAS personnel to review the competencies, skills and abilities required (as presented in job vacancy notices and notices of examination) for available positions to ensure that these standards are updated, job-related, and required by business necessity.
- Reviewing application forms and agency materials and products in order to ensure that they do not contain discriminatory language or images.
- Ensuring that human resources personnel, managers, supervisors, and other personnel involved in the recruitment and hiring process are trained in interviewing, selection, hiring skills, and EEO, to enable such individuals to correctly identify the most capable candidates.
- Implementing and encouraging inclusive skills and behavior standards for managers to ensure that they are able to maximize their professionalism, performance and communication skills.
- Conducting or encouraging the use of training and development programs to improve skills, performance, and career opportunities of all employees.
- Creating talent pools through employee surveys and databases, to promote cross-training, mentoring, coaching, stretch assignments, cross divisional assignments, job transfers, and rotation programs for career enhancement and development experiences.
- Planning and administering employee incentives, quality of work life and recognition programs, engagement surveys, performance evaluations, employee resource groups, and diversity councils.
- Promoting employees' awareness of opportunities for promotion and transfer within the agency, publicizing promotions and changes in the managerial ranks, and ensuring that the agency engage in succession planning for top managerial



positions. The agency considers its own employees for such opportunities by having programs that identify ready now and high potential talents.

The City of New York, through DCAS, will also:

- Provide the uniform procedures, formats, and reports required by the New York City Charter to facilitate the planning and review of the City's efforts to provide equal employment opportunity for employees and applicants for City government employment.
- Assess qualifications required for most civil service positions and ensure that civil service examinations are job-related and consistent with business necessity.
- Provide assistance to agencies to ensure that recruitment efforts fit particular human resource needs.
- Encourage agency job postings internally through City Jobs and externally through the City's website: <http://www1.nyc.gov/jobs/>
- Continue to conduct on-site EEO monitoring visits to agencies.
- Continue efforts to better ensure the accuracy of ethnicity and gender data.

## **V. Enforcement and Accountability Standards**

### **A. Department of Citywide Administrative Services**

DCAS is required to: 1) establish and enforce uniform procedures and standards for use by City agencies in establishing measures, programs, and plans to ensure equal employment opportunity, including a time schedule for the development, review and adoption of EEO plans; 2) establish a uniform format for use by City agencies for the presentation of statistical information on the workforce of City agencies; and 3) develop resources regarding information on employment and educational programs.<sup>18</sup> DCAS is also required to publish and submit annual reports on the activities of DCAS and the other City agencies with respect to equal employment opportunity.<sup>19</sup>

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<sup>18</sup> See Charter Sections 814(a)(12)-(15).

<sup>19</sup> See Charter Section 814(b)(8).

Within DCAS, the Office of Citywide Diversity and EEO assists the Commissioner to develop and enforce the Policy, standards, and procedures. The Office of Citywide Diversity and EEO will assist City agencies by developing or collaborating on solutions, strategies and initiatives to effectively implement the provisions of the City Charter and other federal, state, and local laws, and monitoring the EEO-related activities of City agencies. In addition, DCAS maintains the data that is necessary in order to fulfill the City's EEO obligations under the City Charter and other federal, state and local laws.

## B. Agency Heads

Each agency head will ensure that his or her agency does not discriminate against employees or applicants for employment as prohibited by federal, state and local laws.<sup>20</sup> Agency heads are accountable to their respective Deputy Mayors for their agencies' EEO practices. Agency heads will also ensure that legal, human resources, and EEO personnel, managers, and supervisors: 1) receive a copy of this Policy (including any addenda); 2) are trained in EEO laws and procedures; and 3) know how to carry out their responsibilities under this Policy. Agency heads must distribute a copy of the EEO Policy Handbook, "*About EEO: What You May Not Know*" to all employees and ensure that a copy is available on the agency's website.

As discussed in Section IV, each agency head must annually adopt and implement a Diversity and EEO Plan that communicates measures and programs that the agency will undertake to ensure fair and effective efforts to provide equal employment opportunity. Draft Diversity and EEO Plans are to be developed and submitted each fiscal year according to the timetable and format established by DCAS, and must be reviewed and approved by DCAS. Agencies are required to file copies of finalized agency Diversity and EEO Plans with the Mayor, the City Council, the Equal Employment Practices Commission ("EEPC"), and the City Civil Service Commission, and to also make Diversity and EEO Plans available for reasonable public inspection.<sup>21</sup>

Each agency head will then submit quarterly reports to DCAS, as well as to the Mayor, City Council, and EEPC, on the agency's efforts during the previous quarter to implement the agency Diversity and EEO Plan. Such quarterly reports will also include a review and documentation of EEO complaints and requests for reasonable accommodations for said quarter. Quarterly Diversity and EEO reports must, pursuant to the City Charter, be timely submitted to DCAS and the other entities mentioned above, no later than thirty (30) days following the reporting period using the reporting format provided by DCAS.

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<sup>20</sup> See Charter Section 815(h).

<sup>21</sup> See Charter Section 815(a)(19).

In order to meet the City's obligations under the City Charter and other federal, state and local laws, and to achieve the goals of the agency Diversity and EEO Plan, each agency head must appoint a trained EEO Officer whose responsibility it will be to implement the Policy within that agency. Because EEO Officers will need independence of judgment as well as the authority of the agency head in order to carry out their responsibilities, the EEO Officer must report directly to the agency head, or if approved by DCAS, to a direct report to the agency head. In order to avoid potential conflicts of interest, under no circumstances should the EEO Officer report to the General Counsel. Where the agency'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 agency head must ensure that the responsibilities of the EEO Officer are competently discharged.

Agency heads should appoint at least two EEO representatives, who may not be of the same gender, to receive discrimination complaints and conduct investigations. Each agency head must designate a Career Counselor with appropriate training and knowledge, who is familiar with civil service jobs, to provide career counseling to employees who request such guidance. The agency head should also 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 agency policies, pertaining to persons with disabilities. Usually the EEO Officer of each agency should serve as the Disabilities Rights Coordinator; however, when circumstances warrant, an agency head may designate another person to serve as the Disabilities Rights Coordinator.

Agency heads are required to sign off on all agency Diversity and EEO Plans and final determinations concerning EEO complaint resolutions and should conduct a quarterly review of EEO complaints and requests for accommodations. Such sign off may be in written or electronic form. Each agency head will ensure that all employees are provided with information that complies with the standards provided by DCAS regarding employee rights and obligations contained within this Policy, and with information about the complaint, investigation and reasonable accommodation procedures. The agency head will also ensure that the Policy, standards, and procedures are posted at each site where the agency conducts business. Such posting may include postings on electronic bulletin boards and intranet sites. Each agency head will ensure that each of the agency's employees is accountable for his or her compliance with EEO-related policies, and receives training in EEO laws.

Agency heads should ensure that information regarding employee rights and obligations, and the complaint, investigation, and reasonable accommodation procedures are available in appropriate alternative formats to employees and job applicants with disabilities.

### C. EEO Officers

The agency's EEO Officer has primary responsibility for assisting the agency head in implementing the Policy, standards, and procedures. Specifically, the agency's EEO Officer must be knowledgeable regarding EEO laws, the requirements of the Policy, standards, and procedures, and how to prevent, investigate, and resolve discrimination complaints. The EEO Officer and/or Disability Rights Coordinator will also receive requests for accommodations, and recommend appropriate action to the agency head regarding EEO-related issues. The EEO Officer will also provide guidance to the agency head in submitting the agency's annual Diversity and EEO Plan and in preparing and reviewing quarterly reports. The EEO Officer should work closely and cooperatively with the agency's General Counsel and the DCAS Office of Citywide Diversity and EEO, and provide guidance and assistance to agency managers, supervisors, and human resource professionals in addressing issues relating to equal employment opportunity.

The EEO Officer will also: 1) set training objectives that ensure that all agency employees receive diversity and inclusion and EEO training; 2) supervise the EEO-related activities of EEO counselors and/or investigators; 3) ensure that the Policy, standards, and procedures are posted at each site where the agency conducts business; and 4) ensure that the Policy, standards, and procedures are available in alternative formats (i.e., large print, audio tape, and/or Braille). Each agency'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.

### D. Agency General Counsels

Agency General Counsels should: 1) assist the agency head in identifying and determining appropriate responses to EEO issues; 2) work cooperatively and closely with the EEO Officer in the implementation of the Policy, standards, and procedures; 3) inform the EEO Officer when external complaints or litigation involving EEO matters are brought against the agency; 4) be available to consult on internal EEO investigations; and 5) be responsible for the investigation of, and response to, external EEO complaints.

### E. 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 agency manager or supervisor shall: 1) be accountable to the agency head 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 the Policy, standards, and procedures (including training, complaint resolutions, processing, recording, and reporting reasonable accommodation requests, EEO-related recruitment, and selection standards; and modifying agency procedures to ensure equal employment opportunity for applicants and employees); 5) promptly consult with the agency'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 an 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.

#### F. Personnel Officers

Personnel Officers have primary responsibility for assisting the agency head in implementing the City's personnel policies and shall be knowledgeable regarding the interplay of EEO-related laws and other work-related legal regulations including Family Medical Leave Act, New York State Civil Service Law, and Workers' Compensation Law. Personnel Officers should cooperate with EEO Officers in the implementation of the Policy, standards, and procedures 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 employees know the identity of the agency Career Counselor and 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 Policy, standards, and procedures, the employees' rights and responsibilities under such policies, and the discrimination complaint procedures; 3) inform the EEO Officer on a quarterly basis of the number of 55-a Program participants and efforts that the agency has made to employ, promote, or accommodate qualified individuals with disabilities; 4) involve the agency EEO Officer in the review of EEO-related decisions, actions, and practices; and 5) promptly consult with the agency's EEO Officer if he or she knows, has been informed of, or suspects that a violation of this Policy has occurred.

Appendix – 3

*Office of the City Clerk*

*EEO Complaint Procedural Guidelines, City of New York 2016*

# **EEO Complaint Procedural Guidelines**

**City of New York  
2016**



**Department of Citywide Administrative Services**



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# THE CITY OF NEW YORK

## EQUAL EMPLOYMENT OPPORTUNITY COMPLAINT

### PROCEDURAL GUIDELINES

#### Overview

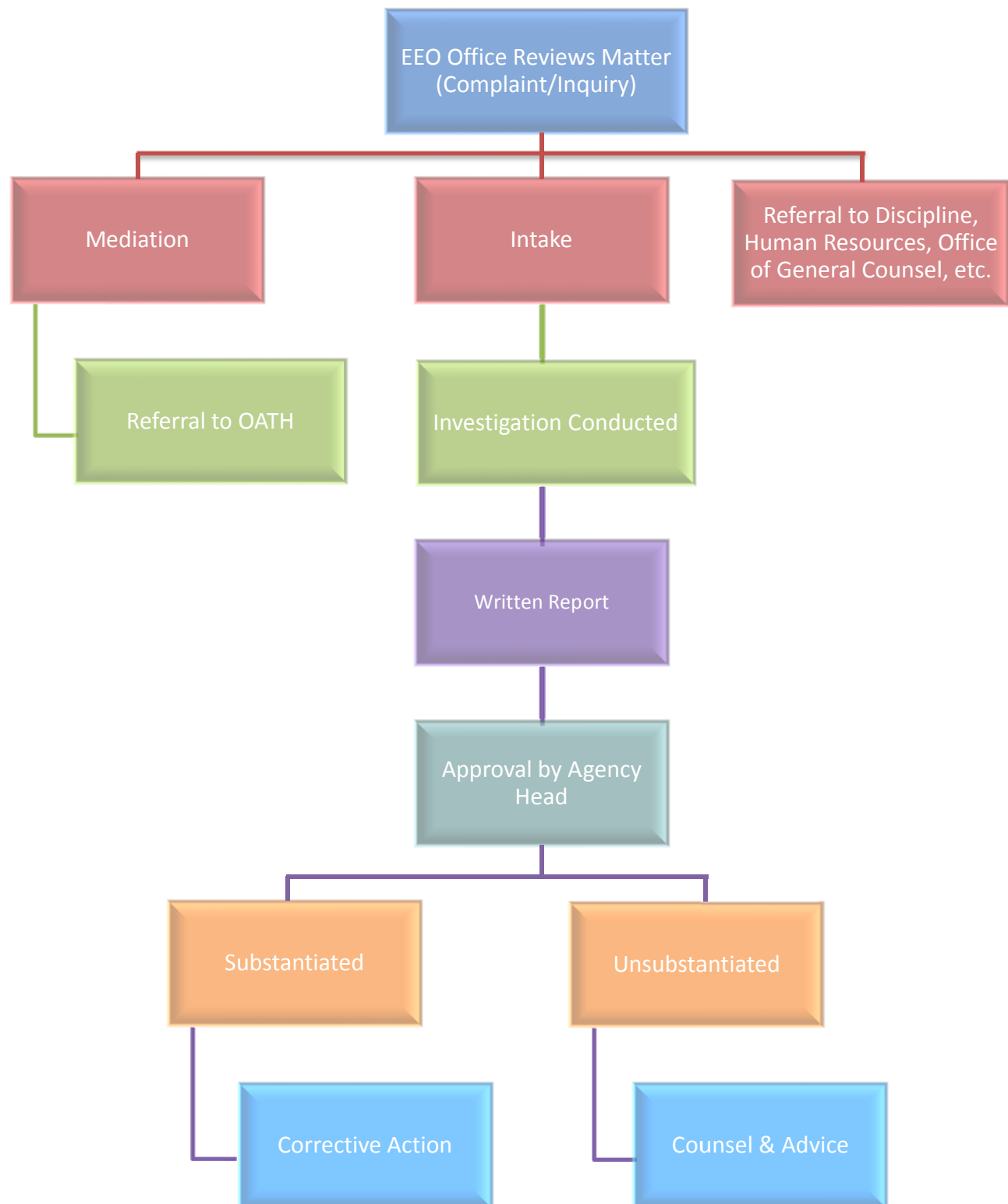
These Equal Employment Opportunity Complaint Procedural Guidelines (the “Guidelines”) are designed to assist Equal Employment Opportunity (“EEO”) Officers, Investigators and Counselors in handling EEO complaints and inquiries in a fair, consistent, and timely manner. A person who wishes to make an EEO complaint, or who inquiries about a possible EEO complaint, should be referred to the City’s EEO Policy (the “Policy”) and the “About EEO: What You May Not Know” Handbook (the “Handbook”).<sup>1</sup>

As provided in the Policy, the City prohibits discriminatory employment actions against, and treatment of, City employees and applicants for employment 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, genetic information or predisposing genetic characteristic, sexual orientation, status as a victim or witness of domestic violence, sex offenses or stalking, and unemployment status. 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 also prohibited. The Policy also prohibits the denial of reasonable accommodations for disabilities; pregnancy, childbirth, and related medical conditions; religious beliefs, observances, and practices; or for victims of domestic violence, sex offenses, or stalking that do not create an undue hardship. Persons who claim discrimination in violation of the Policy may file a complaint within one year of the alleged discriminatory incident, with the EEO Office at the City agency where the incident occurred (“internal complaint”) or with a Civil Rights enforcement agency, subject to its filing requirements (“external complaint”).

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<sup>1</sup>The EEO Policy is available at <http://www.nyc.gov/html/dcas/html/about/eeopol.shtml>. The EEO handbook 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).

## The EEO Complaint Process *at a Glance*



# THE INTAKE PHASE

The EEO complaint or inquiry process begins when a person (the “Complainant”) contacts the EEO Office regarding an alleged discriminatory incident.

The person making the complaint may do so anonymously, if he or she so chooses. Anonymous complaints must be treated the same as identified complaints, to the extent possible.

A complaint may be filed by an employee a former employee, independent contractor, a consultant, a volunteer, an intern, a WEP worker, or an applicant for City employment.

A complaint may be filed on the Complainant’s own behalf or on behalf of someone else.

**Supervisors and managers are required under the Policy to timely notify their EEO Office of any alleged discriminatory conduct they observe or become aware of.**

Upon receiving an EEO complaint or inquiry, the EEO Office must memorialize the complaint or inquiry and enter it into the complaint tracking system,<sup>2</sup> as well as schedule, by email or letter, an intake session with Complainant, if known, for purposes of assessing or confirming the following:

- ☒ Is the complaint timely?
  - Determine when the alleged discriminatory conduct occurred. A complaint must be filed within one year of the date the alleged discriminatory conduct occurred.
  - While a Complainant may not be able to file a complaint and obtain specific relief sought if the complaint is untimely, the EEO Office may conduct an investigation and may make recommendations to address inappropriate conduct.
- ☒ Has Complainant previously filed a lawsuit or complaint with an enforcement agency regarding the same claims of discrimination? If so, the matter must be transferred to the agency’s Office of General Counsel.
  - If an external complaint or lawsuit is filed subsequent to the filing of the internal complaint, the matter must also be transferred to the agency’s Office of General Counsel. The EEO Office must notify Complainant (and Respondent<sup>3</sup>, if any) in writing of the transfer.
  - If the Complainant alleges retaliation after filing the external complaint, the retaliation complaint must also be transferred to the Office of General Counsel.
  - If a subsequent complaint involves allegations unrelated to the initial external complaint, the EEO Office may retain and investigate the subsequent complaint as a separate complaint. The EEO Office must consult with the Office of General Counsel in determining whether the

<sup>2</sup> The complaint tracking system is available at <https://mispwva-dcslnx01.csc.nycnet/Login.aspx>.

<sup>3</sup> The Respondent is the person or entity alleged to have engaged in the discriminatory conduct.

subsequent complaint involves separate allegations.

- ☒ Has Complainant previously raised the same issues with others at the agency?
  - Did Complainant discuss the alleged discriminatory conduct with a supervisor/manager, Human Resources, or co-workers?
  - Has Complainant filed a grievance with his or her union regarding the same conduct, practice or policy?
- ☒ Does the complaint or inquiry raise one or more of the protected categories under the City's Policy, including when discrimination is based on perception or association (see the Handbook, pages 8-10, for definitions of the protected categories)?
  - If the complaint or inquiry does not raise an EEO basis, the EEO Office should make a referral, as appropriate.
- ☒ If the complaint or inquiry raises an EEO basis, what specific conduct, practice or policy is the person alleging violates the Policy? The issues raised could involve one or more of the following issues:
  - Harassment, including, but not limited to "the use of vulgar language, abusive acts or language, hostility, physical aggression, intimidation or unequal treatment" based on any of the protected categories (see the City's EEO Policy, page 3).
  - Adverse employment actions, such as negative performance evaluation or denial of promotion or benefits, allegedly based on one or more protected categories as shown by, for example, discriminatory comments or different treatment of other employees who are similarly situated.
  - Failure to reasonably accommodate disability, pregnancy, childbirth and related medical condition, religion/religious observance, victims of domestic violence, sex offenses or stalking.
  - Retaliation due to opposition or complaining about discrimination or participating in the complaint, investigation or reasonable accommodation process. Retaliatory conduct includes conduct reasonably likely to dissuade a person from engaging in protected activity.
  - Policy alleged to have a discriminatory impact on a protected category that is not job-related or justified by business necessity.
- ☒ What is Complainant's status with the agency?
  - Does Complainant work at the agency?
  - What is Complainant's civil service status?
  - Is Complainant an employee of the agency or different agency or an independent contractor?
    - The EEO Office must contact the EEO Office of the employing agency and coordinate the investigation.
- ☒ Which person(s), if any, is alleged to have engaged in the discriminatory conduct (the "Respondent")?
  - Complaints against the EEO Officer and agency heads should be referred to the City's Law Department or Department of Citywide Administrative Services ("DCAS").
  - Complaints by employees or others against a member of the public visiting the agency

should be referred to the agency's EEO Officer.

- Complaints by the public against persons working at the agency should be handled by the agency's EEO Officer.
- In the case of complaints against employees of other agencies, the EEO Office of each agency should conduct a joint inquiry or investigation of the complaint.

☒ Is there a specific document or rule that applies to the conduct or practice complained about? For example:

- Personnel Services Bulletins (<http://www.nyc.gov/html/dcas/html/employees/psbtoc.shtml>)
- Personnel Rules and Regulations of the City of New York ([http://www.nyc.gov/html/dcas/html/employees/personnelrules\\_regs.shtml](http://www.nyc.gov/html/dcas/html/employees/personnelrules_regs.shtml))
- Collective bargaining agreements (<http://www1.nyc.gov/site/olr/labor/labor-recent-agreements.page>)
- Title Specifications and Notices of Examinations (<http://dcascitynet.dcas.nycnet/TitleSpecs/home.aspx>)
- Agency Code of Conduct

☒ Do the allegations involve conduct which must be reported to or investigated by a different office or agency? For instance:

- Discipline (Advocate): violations of code of conduct.
  - The EEO Office may rely on fact-findings of Discipline or may conduct separate or additional investigation.
- Inspector General: fraud, corruption and unethical conduct.
- Police/Law Enforcement: criminal conduct.
  - The EEO Office may have to place an investigation or inquiry on hold if the matter is referred to law enforcement.

☒ Is it necessary that action be taken prior to the investigation of the complaint?

- After consultation and approval from appropriate agency personnel, it may be necessary to provide interim relief to alleged victims of harassment.
- Interim relief may include, among other actions, temporary transfers and assignment or shift changes.

☒ Inform Complainant regarding confidentiality and anonymity, and the Policy regarding retaliation.

☒ Prior to meeting Complainant, inform Complainant of the right to be accompanied by a representative.

☒ Begin investigation immediately after determining that the allegations raised, if true, are sufficient to establish a case of discrimination under the Policy, that the complaint is timely, and that the EEO Office is responsible for investigating the complaint. Complete an investigation within 90 calendar days of the filing of the complaint.

- Ensure a Complaint Form is completed, preferably by Complainant although it can be done by the EEO Office, but should be signed by Complainant.

# MEDIATION

Mediation is a voluntary approach to dispute resolution in which the parties try to resolve the dispute themselves on mutually agreeable terms, with the help of a trained third party mediator. The EEO Officer may recommend mediation, or either party to the complaint may request mediation.

The EEO Office may recommend mediation at the inquiry/intake stage and/or the parties may subsequently request mediation during the investigation, subject to the approval of the EEO Officer. Requests for mediation must be made in writing.

Mediation may be conducted by a trained third party mediator. The Center for Creative Conflict Resolution, which is part of the Office of Administrative Trials and Hearings (“OATH”), conducts mediation free of cost to City agencies and employees. More information about OATH is available at <http://www.nyc.gov/html/oath/html/about/the-center.shtml>.

Mediation is most appropriate for complaints involving interpersonal conflict, and should not be considered in certain cases, such as when the complaint includes allegations of sexual harassment or criminal conduct.

Mediation efforts must not exceed 45 days from the start of mediation. The EEO Office may extend the mediation for good cause.

While mediation continues, the 90-day period for completion of the investigation is suspended.

If the parties agree to a resolution during mediation, a resolution agreement will be drafted and provided to the parties and the referring EEO Officer. The resolution agreement will resolve the pending EEO complaint. Any resolution agreement requiring agency action or approval will only become effective subject to agency approval. If a resolution is not reached, the matter is returned to the EEO Officer and the 90-day investigative period resumes. The EEO Officer may also determine if an agreement has been violated and if so, whether to refer it for further mediation or declare the agreement void.

A party may withdraw from mediation at any time. The EEO Office may also terminate the mediation process if it deems that the effort has been unproductive. The EEO Office must inform all parties to the complaint, in writing, of the termination of mediation. The notice must also inform the parties that the EEO Office will resume its investigation of the complaint.



# INVESTIGATION

- The purpose of the investigation is to determine whether there are facts supporting the allegations of discrimination.
- The complaint investigation should begin immediately after a determination that the allegations raised, if true, are sufficient to establish discrimination under the Policy, that the complaint is timely, and that the EEO Office is responsible for investigating the complaint.
- The complaint investigation should be completed and the Complainant should be notified of the outcome within **90 calendar days** of the filing of a complaint.
  - The EEO Office should ensure that a Complaint Form is completed, preferably by Complainant although it can be done by the EEO Office, but should be signed by Complainant, and logged into the complaint tracking system.
  - Complainants should be provided the following upon filing a complaint:
    - a copy of the written complaint
    - acknowledgement of receipt of the complaint
    - a copy of or links to the City' EEO Policy and Handbook
- Meet with Complainant to supplement or clarify information provided during the intake phase.
  - Confirm if there any persons who witnessed the alleged discriminatory conduct.
  - Does the Complainant have or know of any documents, such as emails or photos, containing information about the alleged conduct?
- Conduct a thorough investigation that provides answers as to:
  - who was involved in the alleged discriminatory conduct;
  - what occurred during the alleged conduct;
  - when and where the alleged conduct took place;
  - the identity of all witnesses to the alleged conduct, anyone with whom the alleged conduct has been discussed, or anyone who may have identified as having been subject to similar conduct as that alleged or who has information concerning any aspect of the alleged conduct;
  - whether this was an isolated conduct or part of a pattern;
  - what impact, if any, the alleged conduct has had on the Complainant and/or the work environment;
- Determine whether the action alleged to be discriminatory was based on a legitimate, nondiscriminatory reason.
- Obtain and review any available and relevant notes, recordings, photographs, physical evidence, or other documentation.

### Conducting Interviews

- Explain objective of the interview.
- Explain City's EEO Policy on retaliation.
- Ask open-ended interview questions in a non-judgmental manner.
- Determine what witnesses know based on personal knowledge versus what they have heard.
- During each interview, take thorough notes, as close to verbatim as possible. Notes should reflect the content of the interview, both the questions and answers, as completely as possible.

### Notice to Respondent of the Complaint

- The EEO Office must serve Respondent with a notice of complaint along with a redacted copy of the complaint or a summary of the complaint and allegations after interviewing the Complainant. The following information must be redacted: the Complainant's home address and telephone number, and the name(s), title(s), and division(s) of witnesses.
- Schedule a meeting with Respondent, ensuring that Respondent is informed of the right to be accompanied by a representative.
- Remind Respondent of the City's EEO Policy against unlawful discrimination and retaliation.
- Inform Respondent of the right to respond in writing to the complaint, and that the response should be submitted as soon as possible.
- Give Respondent an opportunity to offer his/her version of events and any other relevant information, including any witnesses who are likely to have relevant information. The EEO Office should interview witnesses identified by Respondent.

### Amending the Complaint

The complaint may be amended in writing, for any reason, prior to conclusion of the investigation and notice of outcome to the parties. For purposes of the one-year filing period, amendments to the original complaint will be deemed timely if the original complaint was itself timely. However:

- If a Complainant, after filing an initial complaint, seeks to file a subsequent complaint based on different facts than those alleged in the initial complaint, the subsequent complaint should be treated as a separate complaint.
- If a Complainant, after filing an initial complaint, seeks to file a subsequent complaint alleging retaliation for making the initial complaint, the later complaint should be treated as a separate complaint.

- All initial, amended, and new complaints should be cross-referenced in the EEO Office's complaint file and the complaint tracking system.

### **Right to be Accompanied by a Representative**

Any person who is interviewed during the course of an EEO investigation has the right to be accompanied by a representative of his or her choice. This includes individuals who make complaints, persons against whom complaints were made, or witnesses. It is preferable that the EEO Office receive advance notice that the person who is being interviewed will be bringing a representative. The representative may not respond on behalf of the party being interviewed or interfere with the interview.

### **Confidentiality and Record Keeping**

Complaints and complaint investigations should be accorded the strictest confidentiality possible. The EEO Office should make every effort to protect from disclosure the complaint allegations, the identity of parties to the complaint and any witnesses. Exceptions include disclosing to persons with a legitimate need to know certain information in order to respond to the complaint allegations or implement interim or corrective action. All persons with whom the EEO Office interacts concerning the complaint and its investigation should be asked to refrain from discussing the complaint beyond their interaction with the EEO Office.

All complaints and related documents, including any investigative notes, records, or copies, are strictly confidential and must be maintained by the EEO Office. The EEO Office may consult the agency's Office of General Counsel concerning a request to view or have copied, in whole or part, the EEO Office's files.

### **Meeting with EEO Office and Obligation to Cooperate**

Anyone has the right to meet privately with the EEO Office during its office hours. An employee seeking to meet with the EEO Office at a reasonable time during that office's hours must secure prior permission for same from his/her appropriate supervisor. Such requests must be granted as a matter of right, but the supervisor may determine a reasonable time for the employee to visit the EEO Office. The employee is not required to disclose to the supervisor or anyone the reason for the employee's visit to the EEO Office. If appropriate or preferred by the employee, the meeting between the employee and the EEO Office may be scheduled before or after that office's hours, or during the employee's lunch break or personal time.

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

### **False Allegations**

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

### **Agency As Respondent**

Whenever an agency and/or subdivision of an agency are named as a Respondent in a complaint, the Agency Head should designate an appropriate person to respond to the allegations in the complaint on behalf of the agency or subdivision.

# PREPARING THE FINAL REPORT

The final investigative report **must be completed and the parties must be notified of the outcome within 90 calendar days** from the date the complaint was filed with the EEO Office, unless the time period is extended by the EEO Office for good cause, with written notice to the parties and memorialized in the investigative file and/or the complaint tracking system. The EEO Office must document the reason for the delay, and project a time frame for the completion of the report.

The EEO Officer should routinely consult the agency's Office of General Counsel on questions that arise while preparing the written report or at any phase of the investigation.

- After all the relevant facts have been gathered, the EEO Officer must prepare a confidential written report on the complaint investigation and must submit the report to the Agency Head for review.
- In preparing the written report, the EEO Officer should determine the credibility of the parties and witnesses, including their motives and biases. The EEO Officer should routinely consult the agency's Office of General Counsel on questions that arise while preparing the written report or at any phase of the investigation.
- If, based on the facts, the EEO Officer determines that it is more likely than not that the Respondent engaged in unlawful discriminatory conduct in violation of the City's EEO Policy, the EEO Officer must determine the most appropriate action to be taken in light of the facts and circumstances and make a written recommendation to the Agency Head.
- Corrective action may include measures necessary to address the impact that the violation of the City's EEO Policy had on the Complainant or within the agency. Disciplinary action must be taken in accordance with provisions of law, rules and regulations and any relevant collective bargaining agreement. Determining the appropriate disciplinary action is often a difficult and sensitive matter with potential legal consequences. Therefore, the agency's Office of General Counsel, Agency Advocate and/or Labor Relations Office must concur in any recommendation to pursue discipline before it can be adopted as part of a written report.
  - The written report should include a summary of the allegations and responses, a summary of the procedural history of the investigation, a statement of the relevant facts gathered during the investigation, a conclusion/determination and recommendation. Conclusions must be supported by facts uncovered during the investigation.
- The Agency Head must sign each written report and indicate that it has been reviewed and whether the determination and recommendation, if any, is adopted, rejected or modified. After review of the report by the Agency Head, the EEO Office should inform all parties in writing of the outcome of the investigation.

## Informing Parties of Outcome

The decision after investigation should be communicated to the parties, in writing, in a discreet and confidential manner, indicating the conclusion reached, whether the misconduct alleged has been

substantiated, and the agency's opposition to that kind of activity.

## APPENDICES

The following pages contain templates in the form of sample documents and letters that were developed to promote consistency in the complaint and investigative processes. Although agencies are not mandated to use these specific templates, the information captured in these templates should be considered the **minimum** requirement.

Regarding the sample final investigative report included here, this format is strongly encouraged in the interest of consistency and clarity of reporting.

**All** EEO complaints are to be entered in the complaint tracking system.

- ☒ It is **recommended** that this be done immediately following the initial intake interview with the Complainant(s).
- ☒ It is **required** that this be done before the end of the quarter.

## SAMPLE A – Intake Form

[Insert agency name and logo]

**Complaint #:** \_\_\_\_\_

**Date received:** \_\_\_\_\_

Origin (circle one):    Letter                      Telephone                      Office Visit                      Email

Received by (circle one):    EEO STAFF NAME                      EEO STAFF NAME    EEO STAFF NAME

---

**1. Contact Information**

Name \_\_\_\_\_

Title \_\_\_\_\_ Employee ID# \_\_\_\_\_

Work Unit \_\_\_\_\_ Location \_\_\_\_\_

Work Telephone # \_\_\_\_\_ Shift \_\_\_\_\_

Home Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Home Phone # \_\_\_\_\_

Cell Phone # \_\_\_\_\_ Email Address \_\_\_\_\_

---

**2. Subject/Respondent Information**

Name \_\_\_\_\_

Title \_\_\_\_\_ Employee ID# \_\_\_\_\_

Work Unit \_\_\_\_\_ Location \_\_\_\_\_

Work Telephone # \_\_\_\_\_ Shift \_\_\_\_\_

Home Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Home Phone # \_\_\_\_\_

Cell Phone # \_\_\_\_\_ Email Address \_\_\_\_\_

**Complaint #:** \_\_\_\_\_

**Describe the nature of the complaint**

Attach additional sheets as necessary

- ☐ Supervisor Behavior    ☐ Employee Behavior    ☐ Employment Practice

<b>What resolution are you seeking?</b>

**Action(s) taken by EEO Office**

- ☐ Counsel and Advice
- ☐ Mediation
- ☐ Not an EEO matter, referred to appropriate department for handling:

**Date:** \_\_\_\_\_

**Department / Contact:** \_\_\_\_\_

- ☐ Inquiry/Investigation Commenced

**Complaint #:** \_\_\_\_\_



## SAMPLE B – Complaint Form

[Insert agency name and logo]

### Complaint of Discrimination

(Please print the following information)

Name *ERN* Division/Office/Agency

Civil Service Title Office Title Supervisor

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
- ☐ Marital Status
- ☐ Military Status
- ☐ National Origin
- ☐ Partnership Status
- ☐ Race
- ☐ Religion/Creed
- ☐ Sexual Harassment
- ☐ Sexual Orientation
- ☐ Unemployment Status
- ☐ Victim of Domestic Violence, Sex Offense or Stalking
- ☐ Retaliation for filing a complaint or assisting in the investigation of an EEO complaint

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

y  
ou.

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

Where did the alleged incident occur?

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

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

(Please provide the name(s) of witnesses on the Witness Information Form)

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

What corrective action do you want taken?

## Complaint of Discrimination

Page 2

### Description of Alleged Unlawful Discrimination

**Please describe what happened to you which you believe is unlawful discrimination, and how other persons were treated differently. This statement may be amended to correct mistakes or omissions. (Please use extra pages if necessary)**

*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** \_\_\_\_\_

## **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 DCAS EEO Officer, or any of the DCAS EEO Representatives. 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)**

**Web site: [www.nyc.gov/html/cchr/home/html](http://www.nyc.gov/html/cchr/home/html)**

#### **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**

**Web site: [www.nysdhr.com](http://www.nysdhr.com)**

#### **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)**

**Web site: [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)  
Web site: [www.usdoj.gov/crt/drs/drshome/htm](http://www.usdoj.gov/crt/drs/drshome/htm)**

**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  
Web site: [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)  
Web site: [www.dol.gov/dol/oasam/crhome.htm](http://www.dol.gov/dol/oasam/crhome.htm)**

**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 DCAS EEO Office must be made within One Year of the incident that you are complaining about.**

**SAMPLE C – Witness Information Form**

[Insert agency name and logo]

**WITNESS INFORMATION FORM  
CONFIDENTIAL**

**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**

**(Please Print)**

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

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

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

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

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

**Telephone :(    )** \_\_\_\_\_

## SAMPLE D – EEO Complaint Activity Sheet

[Insert agency name and logo]

EEO Investigator: \_\_\_\_\_ Complaint #: \_\_\_\_\_

DATE	NAME	NATURE OF CONTACT

## **SAMPLE E – CHECKLIST: TYPICAL QUESTIONS TO ASK A COMPLAINANT**

- 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?  
\_\_\_\_\_
- Do you know of other employees who have been subjected to the same treatment or have the same concern?  
\_\_\_\_\_
- Do you have any evidence regarding this matter? (Photos, notes, letters, personal emails, texts, social media messages, voice mail messages, any objects of any kind, etc.)  
\_\_\_\_\_
  - If Complainant (or witnesses) reference evidence that resides on Department computers, the Department's office of Information Technology should be contacted for collection of this evidence.
- What resolution are you seeking? In other words, what is the outcome that you expect to result from filing this complaint?  
\_\_\_\_\_

**SAMPLE F – Acknowledgment of Receipt of Policy**

**[Insert agency name and logo]**

I, \_\_\_\_\_, employee ID number \_\_\_\_\_, acknowledge that I received the City of New York’s Equal Opportunity Policy.

I have reviewed the policy and understand its content. I also acknowledge that it was reviewed and explained to me during my counseling session.

_____	_____
Signature of Employee	Date

_____	_____
EEO Representative	Date



**SAMPLE G – Inquiry Letter to Complainant**

**[Insert agency name and logo]**

Date

Ms./Mr. FIRST NAME LAST NAME

STREET ADDRESS

BOROUGH, New York #####

Re: EEO Complaint #

Dear Ms. \_\_\_\_\_:

Thank you for contacting the EEO Office with your concerns. We will be conducting an inquiry into your complaint. The matter has been assigned to NAME and TITLE of EEO Investigator, who will be contacting you shortly.

In the interim, please feel free to contact Ms. \_\_\_\_\_ (EEO Investigator) directly at (###) ###-#### if there is any additional information you think may assist her. Thank you for your cooperation in advance.

Sincerely,

EEO OFFICER

## SAMPLE H – Notice of Discrimination Complaint

\_\_\_\_\_

Complainant

v.

\_\_\_\_\_

Respondent

On \_\_\_\_\_, \_\_\_\_\_

Date

Complainant's Name(s)

filed a complaint of discrimination against you on the basis of \_\_\_\_\_.

You may respond in writing to the allegations contained in this complaint after receiving this notice and a summary of the complaint allegations. Any response you wish to make must be received by the (agency's) \_\_\_\_\_ EEO Office on or before \_\_\_\_\_ (14 calendar days from date of notice).

We have scheduled a meeting on \_\_\_\_\_ at the EEO Office [Insert address]. Please call (phone number) immediately if you need to reschedule the meeting. You have the right to be accompanied by a representative of your choice. Please notify the EEO Office in advance of the meeting if you plan to be accompanied by a representative.

Responsibility for investigating this complaint rests with the agency's EEO Office. The complaint process is usually completed within 90 calendar days of the date on which the complaint was filed.

At the conclusion of the investigation, a confidential written report of the investigation will be submitted to the agency head. If, based upon the investigation, it is determined that the City's EEO Policy has been violated, a recommendation will be made to the agency head that appropriate corrective action be taken, which may include disciplinary action. All parties will be notified in writing of the outcome of the investigation.

A copy of The City's EEO Policy is attached for your reference. Please review this policy.

Please note that it is a violation of the City's EEO Policy to retaliate against or harass any person for filing a complaint of harassment or discrimination or cooperating with an investigation of a complaint. Such retaliation or harassment will be cause for disciplinary action regardless of the findings of the initial investigation.

\_\_\_\_\_

EEO Officer or designee

\_\_\_\_\_

Date

**SAMPLE I – Request for Withdrawal of Complaint**

**[Insert agency name and logo]**

**RE: COMPLAINT #** \_\_\_\_\_

I, \_\_\_\_\_, Employee ID number \_\_\_\_\_ hereby request withdrawal of my complaint of employment discrimination filed with the EEO Office on \_\_\_\_\_. My decision to request withdrawal of this complaint is not the result of either coercion or intimidation by any other individual. I understand that this withdrawal may NOT conclude the investigation of my complaint by the EEO Office of \_\_\_\_\_ Agency.

I wish to withdraw this complaint because

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Complainant's Signature

\_\_\_\_\_  
Date

**FOR OFFICE USE ONLY**

ACCEPTED:      YES      NO

COMMENTS:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
EEO Office Representative Signature

\_\_\_\_\_  
Date

**SAMPLE J – Administrative Closure Letter**

**[Insert agency name and logo]**

Date

Ms. / Mr. FIRST NAME LAST NAME

STREET ADDRESS

BOROUGH, New York #####

Re: EEO Complaint #

---

Dear Ms. \_\_\_\_\_:

Thank you for contacting the EEO Office with your concerns. Recently we requested that you provide us with information and list of witnesses to assist us in our inquiry/investigation. However, to date, you have failed to provide us with that statement.

Please forward the statement to us immediately. If we do not receive the information within the next 10 days, we will administratively close your case. If and/or when you submit the statement, your case will be re-opened. Thank you for your cooperation.

Please feel free to contact me with any questions or concerns that you may have at ###-###-####.

Sincerely,

EEO Officer

**SAMPLE K – Investigation Completed; Substantiated  
Letter to Complainant**

**[Insert agency name and logo]**

Date

Ms./Mr. FIRST NAME LAST NAME

STREET ADDRESS

BOROUGH, New York #####

Re: EEO Complaint #  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Please be advised that the EEO Office has concluded its investigation of the above referenced complaint which you filed alleging discrimination on the basis of \_\_\_\_\_.

Upon a review of all the pertinent facts presented in the complaint, this office finds that the allegations were substantiated.

This case has been referred to our [State agency department/office] which will implement disciplinary action as the Commissioner deems appropriate.

If you should have any questions, I can be reached at ### ##-####.

\*[Disciplinary Officer, Dept., Advocate, Labor Relations Department or Inspector General]

Sincerely,

EEO OFFICER

c: Commissioner

**SAMPLE L – Investigation Completed: Substantiated  
Letter to Respondent**

**[Insert agency name and logo]**

Date

Ms. / Mr. FIRST NAME LAST NAME

STREET ADDRESS

BOROUGH, New York #####

Re: EEO Complaint #  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Please be advised that the EEO Office has concluded its investigation of the above referenced complaint which [Name of Complainant] filed alleging discrimination on the basis of \_\_\_\_\_, in which you were named respondent.

Upon a review of all the pertinent facts presented in the complaint, this office finds that the allegations were substantiated.

The following corrective measures will be taken: [Please enter steps that will be taken here, either in a sentence or as a bulleted list.]

Please note that it is a violation of the City's EEO Policy to retaliate against or harass any person for filing a complaint of harassment or discrimination or cooperating with the investigation of a complaint.

If you should have any questions, I can be reached at ### ###-####.

Sincerely,

EEO OFFICER

c: Commissioner

**SAMPLE M – Investigation Completed; Unsubstantiated  
Letter to Complainant**

**[Insert agency name and logo]**

Date

Ms./Mr. FIRST NAME LAST NAME

STREET ADDRESS

BOROUGH, New York #####Re: EEO Complaint # \_\_\_\_\_

Dear Ms. \_\_\_\_\_:

I am writing to inform you that the EEO Office has concluded its review of the complaint you filed on \_\_\_\_\_. We conducted a comprehensive investigation of the charges made in your complaint, including \_\_\_\_\_. We have kept the investigation impartial and objective.

Based on our investigation, your charges of a violation of New York City's EEO Policy could not be substantiated. [State reason, if appropriate].

Thank you for bringing your concerns to our attention and for being patient while we addressed them. Please continue to report any conduct that you deem inconsistent with The City's policies. I want to assure you that [Agency Name] is committed to protecting you from any retaliation as a result of your complaint and our investigation. Please call me if you feel you are being subjected to retaliation in any form.

To protect the privacy of everyone involved in this investigation we have taken steps to handle this matter in confidence. We expect you to treat the information contained in this letter in the same manner.

Sincerely,

EEO OFFICER

c: Commissioner

**SAMPLE N – Investigation Completed;– Unsubstantiated  
Letter to Respondent**

**[Insert agency name and logo]**

Date

Ms./Mr. FIRST NAME LAST NAME

STREET ADDRESS

BOROUGH, New York #####

Re: EEO Complaint # \_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Please be advised that the EEO Office has concluded its investigation of the above referenced complaint which [Name of complainant] filed alleging discrimination on the basis of \_\_\_\_\_, in which you were named respondent.

Upon a review of all the pertinent facts presented in the complaint, this office finds that the allegations were unsubstantiated.

To protect the privacy of everyone involved in this investigation we have taken steps to handle this matter in confidence. We expect you to treat the information contained in this letter in the same manner.

Please note that it is a violation of the City's EEO Policy to retaliate against or harass any person for filing a complaint of harassment or discrimination or cooperating with the investigation of a complaint.

If you should have any questions, I can be reached at ### ##-####.

Sincerely,

EEO OFFICER

c: Commissioner



**SAMPLE O – EEO Complaint Final Investigative Report**  
**CONFIDENTIAL**

[Insert agency name and logo]

Date: \_\_\_\_\_

To: \_\_\_\_\_ [Agency Head]

From: \_\_\_\_\_ [EEO Officer or Investigator]

Re: \_\_\_\_\_ [EEO Complaint Number]

Complainant: \_\_\_\_\_

Respondent: \_\_\_\_\_

The undersigned was designated to conduct an investigation of alleged misconduct involving the above referenced matter.

**Statement of Basis of Complaint:**

This complaint alleges discrimination in the form of \_\_\_\_\_

The initial information that served as a basis for this investigation was provided by \_\_\_\_\_ [Identify person or persons who supplied information of possible misconduct] and consisted of [an oral statement *and/or* a written statement attached hereto as Appendix A].

The investigation was initiated on \_\_\_\_\_, and concluded on \_\_\_\_\_.

**Summary of History of Complaint:**

- \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

All potential witnesses have been interviewed and are listed as follows:

- Name: \_\_\_\_\_ Title (If NYC Employee) \_\_\_\_\_
- Name: \_\_\_\_\_ Title (If NYC Employee) \_\_\_\_\_
- Name: \_\_\_\_\_ Title (If NYC Employee) \_\_\_\_\_
- Name: \_\_\_\_\_ Title (If NYC Employee) \_\_\_\_\_

- Employee: \_\_\_\_\_ was contacted on \_\_\_\_\_, but declined to be interviewed.

The documents that were reviewed are listed as follows:

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

The following evidence has also been secured (any objects, images, printout of text messages, social media content, etc.):

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

### Findings of Fact

[This section should contain statements made by the complainant and witnesses. Please cite attachments, if any.]

- \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[This section should contain statements made by the complainant and witnesses that are disputed or unsubstantiated by the investigator(s).]

- \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### Statement of Response:

The Respondent responded to the allegations by stating

\_\_\_\_\_

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**Opinions:**

[This section should contain the opinions and observations of the EEO Investigator.]

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**Determination:**

[This section should contain the EEO Investigator's determination as to whether or not the allegations were substantiated.]

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**Conclusion and Recommendations:**

Based upon the conclusion of this investigation it is recommended that:

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Date: \_\_\_\_\_

---

[Signature] EEO Officer

I have reviewed this report and the recommendation(s) made above.

The recommendations meet with my approval and will be adopted \_\_\_\_\_

The recommendations made above do NOT meet with my approval \_\_\_\_\_

Comments:

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Date: \_\_\_\_\_

---

[Signature] Agency Head



THE CITY OF NEW YORK  
OFFICE OF THE CITY CLERK  
141 WORTH STREET  
NEW YORK, N.Y. 10013

SEP 13 2018 PM 3:01

MICHAEL McSWEENEY  
CITY CLERK, CLERK OF THE COUNCIL

September 12, 2018

**VIA ELECTRONIC MAIL & HAND DELIVERY**

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

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

Dear Ms. Terry,

In reference to the above-captioned matter, the Office of the City Clerk (the "City Clerk") is submitting this response to outline the steps taken to implement the two corrective actions prescribed by the NYC Equal Employment Practices Commission ("EEPC").

With respect to *Corrective Action #1: 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)*, the City Clerk is adding the requisite language to our managerial performance evaluation form. The revised form will be submitted to the EEPC.

With respect to *Corrective Action #2: Submit to the EEPC an Annual Plan of measures and programs to provide equal employment opportunity*, the City Clerk is drafting an Annual Plan which will be submitted to the EEPC upon completion.

On behalf of my staff please accept my gratitude for the professional manner in which EEPC staff members conducted this audit.

Sincerely,

Michael McSweeney  
City Clerk  
Clerk of the Council

c: Menelik Allsop, EEO Program Analyst



**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 20, 2018

Michael McSweeney  
City Clerk, Clerk of the Council  
Office of the City Clerk  
141 Worth Street  
New York, NY 10013

RE: Audit Resolution **#2018AP/223-103-(2018)**: Final Determination Pursuant to the Review, Evaluation and Monitoring of the Office of the City Clerk's Sexual Harassment Prevention and Response Practices from January 1, 2016 to December 31, 2017.

Dear City Clerk McSweeney:

On behalf of the members of the Equal Employment Practices Commission (Commission or EEPC), we thank you for your September 12, 2018 response to our August 30, 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 which 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.

**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**

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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.



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 that 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: Jose L. Gonzalez, Principal EEO Professional, Office of the City Clerk

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:** 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: *"With respect to Corrective Action #1: 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), the City Clerk is adding the requisite language to our managerial performance evaluation form. The revised form will be submitted to the *EEPC*."*

EEPC Response: The *EEPC* recognizes the agency's commitment to implement corrective action #1. 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 #2:** Submit to the *EEPC* an Annual Plan of measures and programs to provide equal employment opportunity.

Agency Response: *"With respect to Corrective Action #2: Submit to the *EEPC* an Annual Plan of measures and programs to provide equal employment opportunity, the City Clerk is drafting an Annual Plan which will be submitted to the *EEPC* upon completion."*

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



EEPC Response: The EEPC recognizes the agency's commitment to implement corrective action #2. 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/223-103-(2018):** Final Determination pursuant to the Audit: Review, Evaluation and Monitoring of the Office of the City Clerk'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 which are 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 City Clerk (OCC) Sexual Harassment Prevention and Response Practices, the Equal Employment Practices Commission (EEPC) issued a Preliminary Determination letter, dated August 30, 2018, setting forth findings and the following required corrective actions:

1. 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).
2. 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 13, 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 20, 2018 which indicated that corrective actions nos. 1 and 2 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

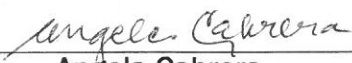
**Whereas**, in accordance with Chapter 36, Section 832 (c) of the City Charter, the agency is required to respond in 30 days and make monthly reports thereafter to the


Commission on the progress of implementation of such corrective actions; and

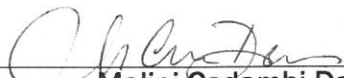
**Whereas**, all of the EEPD's corrective actions are required by, or are consistent with, federal, state and local laws, regulations, policies and procedures which are designed to increase equality of opportunity for women, minorities, and other employees and job applicants identified for protection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

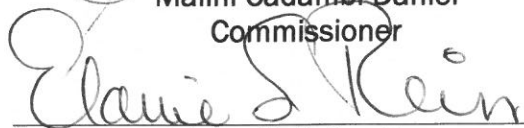
**Be It Resolved**, that the Commission approves issuance of this Final Determination to Michael McSweeney, City Clerk, Clerk of the Council of the Office of the City Clerk.

Approved unanimously on September 21, 2018.

  
\_\_\_\_\_  
Angela Cabrera  
Commissioner

  
\_\_\_\_\_  
Arva Rice  
Commissioner

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

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



**THE CITY OF NEW YORK  
OFFICE OF THE CITY CLERK**

141 WORTH STREET  
NEW YORK, N.Y. 10013

**MICHAEL McSWEENEY**  
CITY CLERK, CLERK OF THE COUNCIL

October 26, 2018

**VIA ELECTRONIC MAIL & HAND DELIVERY**

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

Re: Audit Resolution # 2018AP/223-103-(2018): Final Determination Pursuant to the Review, Evaluation and Monitoring of the Office of the City Clerk's Sexual Harassment Prevention and Response Practices January 1, 2016 to December 31, 2017

Dear Ms. Terry,

In reference to the above-captioned matter, the Office of the City Clerk (the "City Clerk") is submitting this response to indicate the two corrective actions taken as prescribed by the NYC Equal Employment Practices Commission ("EEPC").

With respect to *Corrective Action #1: 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)*, attached please find the evaluation form (required text italicized for your convenience).

With respect to *Corrective Action #2: Submit to the EEPC an Annual Plan of measures and programs to provide equal employment opportunity*, attached please find the Annual Plan.

Please direct any further questions to Jose Gonzalez at 212-669-8097.

Sincerely,

Michael McSweeney  
City Clerk  
Clerk of the Council

c: Menelik Allsop, EEO Program Analyst



THE CITY OF NEW YORK  
OFFICE OF THE CITY CLERK

141 WORTH STREET  
NEW YORK, N.Y. 10013


MICHAEL MCSWEENEY  
CITY CLERK, CLERK OF THE COUNCIL

PATRICK L. SYNMOIE, ESQ.  
COUNSEL TO THE CITY CLERK

TEL: (212) 669-8171  
FAX: (212) 669-4224  
E-MAIL: [psynmoie@cityclerk.nyc.gov](mailto:psynmoie@cityclerk.nyc.gov)

MEMORANDUM

TO: All Employees

FROM: Michael McSweeney, City Clerk 

DATE: November 21, 2018

RE: Equal Employment Practices Commission Audit of the Office of the City Clerk (the "City Clerk")

---

The New York City Equal Employment Practices Commission ("EEPC") recently conducted an audit and evaluation of the City Clerk'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 designed to increase equality of opportunity for City employees and job applicants.

The EEPC found the City Clerk was generally in compliance with the law and policies, and identified certain areas for corrective action. The City Clerk has implemented changes in its policies and procedures against sexual harassment, and will incorporate these into the City Clerk's prospective Annual Equal Employment Opportunity Plans. The following is a summary of the changes implemented:

- With respect to *Corrective Action #1: 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)*, the evaluation form was modified accordingly.
- With respect to *Corrective Action #2: Submit to the EEPC an Annual Plan of measures and programs to provide equal employment opportunity*, the Annual Plan was submitted to the EEPC on October 26, 2018.

As Commissioner, I hereby reaffirm my commitment to the City Clerk's Equal Employment Opportunity program and the prevention of sexual harassment. I take this opportunity to reaffirm our agency'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 Equal Employment Opportunity policy and by encouraging a work environment that tolerates and appreciates differences among employees. I thank you for sharing this commitment.



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

**RESOLUTION #2018AP/226-103-(2018)C20:** Determination of Compliance (Monitoring Period Required) by the Office of the City Clerk with the Equal Employment Practices Commission's required corrective actions pursuant to the Review, Evaluation and Monitoring of the Sexual Harassment Prevention and Response Practices Audit 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 (Charter), the Equal Employment Practices Commission (EEPC) 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 (EEO) for minority group members and women, and to make recommendations to city agencies to ensure equal employment opportunity for minority group members and women; and

**Whereas**, pursuant to Charter Chapter 36, Section 831(d)(2), the EEPC 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, and 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 and analysis of the Office of the City Clerk's (OCC) EEO Program, the EEPC issued a Preliminary Determination letter, dated August 30, 2018, setting forth findings and the following required corrective actions:

1. 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).
2. Submit to the EEPC an Annual Plan of measures and programs to provide equal employment opportunity.

**Whereas**, the OCC submitted its response to the EEPC's Preliminary Determination letter on September 12, 2018; and

**Whereas**, in accordance with Charter Chapter 36, Section 832(c), the EEPC considered the agency's response and issued a Final Determination on September 20, 2018, which indicated corrective actions nos. 1 and 2 required compliance monitoring; and

**Whereas**, the OCC submitted its response to the EEPC's Final Determination letter on October 26, 2018; and

**Whereas**, in accordance with Charter Chapter 36, Section 832(c), the EEPC monitored the agency's implementation of the remaining corrective actions from October 2018 to December 2018, with no extension of the monitoring period; and

**Whereas**, at the EEPC's request pursuant to Charter Section 815.a.(15), the OCC submitted a copy of the agency head's memorandum to staff dated November 21, 2018, which outlined the corrective actions implemented in response to the EEPC's audit and reiterated his commitment to

the agency's EEO Program; and


**Whereas**, all of the EEPC's corrective actions are required by, or are consistent with, federal, state, and local laws, and 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,

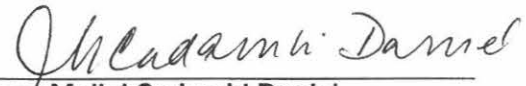
**Be It Resolved**, that the Office of the City Clerk has implemented the required corrective actions deemed necessary to ensure compliance with the EEPC's equal employment opportunity standards and the requirements of Charter Chapters 35 and 36.

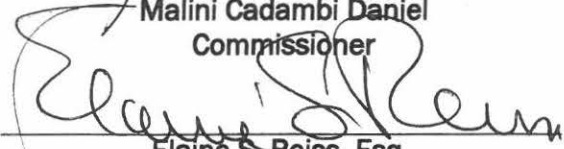
**Be It Resolved**, that the EEPC will forward this Determination of Compliance to City Clerk Michael McSweeney of the Office of the City Clerk.

Approved unanimously on December 17, 2018.

  
\_\_\_\_\_  
Angela Cabrera  
Commissioner

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

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

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



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

December 17, 2018

Michael McSweeney  
City Clerk, Clerk of the Council  
Office of the City Clerk  
141 Worth Street  
New York, NY 10013

Re: Resolution #2018AP/226-103-(2018)C20: Determination of  
Agency Compliance

Dear City Clerk McSweeney:

On behalf of the members of the Equal Employment Practices Commission (EEPC), I want to inform you that the EEPC has issued the attached Determination of Compliance to the Office of the City Clerk. The EEPC has determined that the Office of the City Clerk has implemented the required corrective actions deemed necessary for ensuring a fair and effective affirmative employment program of equal opportunity as required by the EEPC's equal employment opportunity standards and Chapters 35 and 36 of the New York City Charter.

On behalf of the EEPC, I want to thank you and EEO Officer Jose L. Gonzalez for the cooperation extended to the EEPC.

Sincerely,

A handwritten signature in black ink, appearing to read "Elaine S. Reiss". The signature is fluid and cursive, with the first name "Elaine" being more prominent than the last name "Reiss".

Elaine S. Reiss, Esq.  
Commissioner

c: Principal EEO Professional, Jose L. Gonzalez, Office of the City Clerk



EEPC

EQUAL EMPLOYMENT PRACTICES COMMISSION

This

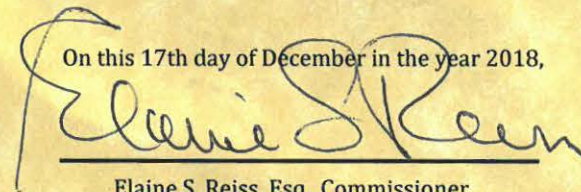
# Determination of Compliance

is issued to the

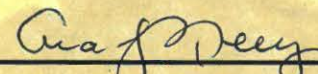
## Office of the City Clerk

*for successfully implementing 2 of 2 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 17th day of December in the year 2018,



Elaine S. Reiss, Esq., Commissioner



Charise L. Terry, PHR, Executive Director

In care of City Clerk Michael McSweeney and  
Principal EEO Professional Jose L. Gonzalez