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BY MAIL AND EMAIL

October 16, 2019

Melanie Hartzog  
Budget Director  
Office of Management and Budget  
255 Greenwich Street, 8th Floor  
New York, NY 10007

Re: Office of Management and Budget  
Evaluation of Sexual Harassment Prevention and Response Practices  
Audit Period: January 1, 2017 to December 31, 2018  
Determination: **PRELIMINARY**

Dear Budget Director Hartzog:

On behalf of the members of the Equal Employment Practices Commission (EEPC), thank you and your agency for the cooperation extended to our staff thus far. This letter contains the EEPC's evaluation and preliminary determinations pursuant to the Office of Management and Budget's Sexual Harassment Prevention and Response Practices for the period covering January 1, 2017 to December 31, 2018.

**Purpose**

Chapter 36, Sections 830(a) and 831(d)(2) and (5) of the New York City Charter (Charter) authorize the EEPC to audit, review, evaluate, and monitor the employment practices, procedures, and programs of city agencies and other municipal entities, hereinafter "entities," and their efforts to ensure fair and effective equal employment opportunity (EEO) for women and minority employees and applicants. Charter Sections 831(d)(2) and 832(c) authorize the EEPC to make a determination that any 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 prescribed.

The Office of Management and Budget, hereinafter simply termed "agency" or "entity," falls within the EEPC's purview under Chapter 36, Sections 830(a) and 831(a) of the Charter, to review, evaluate, and monitor the coordination and implementation of affirmative employment programs of equal employment opportunity for 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 subject matter referenced, not to issue findings of discrimination pursuant to the New York City Human Rights Law.

### **Scope**

The EEPC has adopted uniform standards for auditing municipal entities<sup>1</sup> and minimum standards for auditing Community Boards (collectively “Standards”) to review, evaluate, and monitor entities’ employment and EEO-related practices, procedures, approaches, measures, standards, and programs. These standards are founded upon, and consistent with federal, state, and local laws and regulations, and policies and procedures to increase equal opportunity for women, minorities, and other employees and job applicants identified for protection from discrimination. Corrective actions prescribed are consistent with the aforementioned parameters including, but not limited to, the City of New York’s *Equal Employment Opportunity Policy, Standards and Procedures to Be Utilized by City Agencies 2014*, as amended (Citywide EEO Policy); the New York City Human Rights Law (New York City Administrative Code Title 8); New York State Human Rights Law (New York Executive Law, Article 15); the New York State Civil Service Law §55-a; and the equal employment opportunity requirements of the New York City Charter.

### *Policy and Plan Requirements*

The aforementioned Standards require, at minimum, that mayoral entities distribute the Citywide EEO Policy; non-mayoral entities establish or adopt a comprehensive EEO policy; and Community Boards, which are comprised of members appointed by the respective Borough Presidents, adopt and distribute the corresponding Borough President’s EEO Policy.

Because the EEPC is authorized to review and recommend actions that each entity should consider including in its annual plan of measures and programs to provide equal employment opportunity, or Annual EEO Plan, entities are also required to incorporate the EEPC’s corrective actions in prospective Annual EEO Plans and programs.

### **Methodology**

The EEPC communicates with 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 other employees identified as having involvement in EEO program administration such as the Principal Human Resources Professional and relevant Counsel.

The EEPC’s audit methodology includes review of the agency’s Annual EEO Plans and Quarterly EEO Reports; analysis of workforce and utilization data; and the collection and analysis of documents, records, and data an entity and its representatives provide in response to the Sexual Harassment Prevention and Response Preliminary Interview Questionnaires (PIQs). All PIQs contain requests to attach supporting documentation for the answer options selected.

EEO Professionals designated for online interviews are assigned a three-week deadline to complete and return the PIQs. The EEPC’s PIQ(s)/requests were sent to the Office of Management and Budget on February 11, 2019; the completed PIQ(s) were returned on March 4, 2019. Supporting documentation was attached. Additional requests for information were made on September 12, 2019, September 18, 2019 and October 4, 2019.

The following determination indicates where the Office of Management and Budget has or has not complied, in whole or in part, with the established Standards.

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

## Description of the Agency

Established by Section 225(b) of the New York City Charter, the Office of Management and Budget (OMB) is responsible for developing the Mayor's Preliminary and Executive Budgets, and for advising the Mayor on all policy issues affecting the City's fiscal stability and the efficiency of City services. (Source: The Green Book, 3/2019). The CEEDS Report: *Work Force Composition Summary* for the Office of Management and Budget, attached as Appendix 1, indicated that at the end of the period in review OMB's headcount was 400.

## 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.

✓ On September 7, 2017, the agency head emailed all employees to declare “[a]s a reminder, the Mayor's Office of Management and Budget (OMB) is committed to ensuring that every employee has an equal opportunity to succeed in this agency. This means we must have a work place that is free of bias, harassment, discrimination or prejudice of any kind. . . . To learn about the City's Equal Employment Opportunity Policy, please visit <http://www.nyc.gov/html/dcas/downloads/pdf/misc/eeo.pdf>.” On August 23, 2018, the agency head emailed all employees the entity's *Sexual Harassment Prevention Statement* which reiterated that “[s]exual harassment is a form of employment discrimination prohibited by the EEO Policy and law. All OMB employees should be familiar with the EEO Policy's protections against sexual harassment. The EEO Policy incorporates the protection provided by federal, state and local laws and implements them by providing for disciplinary sanctions to be imposed on employees who engage in sexual harassment. . . . Sexual harassment is strictly prohibited. Employees who violate the policy are subject to discipline including termination. Persons who violate this policy may also be subject to civil damages or criminal penalties.”

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.

✓ During the period in review, the entity adopted the City of New York's *Equal Employment Opportunity Policy, Standards and Procedures to Be Utilized by City Agencies* (EEO Policy), attached as Appendix 2. On September 7, 2017 and August 23, 2018, the agency head emailed all employees a link to the

entity's EEO Policy, which conformed to city, state and federal laws against sexual harassment and included links to the *EEO Complaint Procedural Guidelines, City of New York, 2016* (2016 EEO Complaint Procedures), attached as Appendix 3. In December 2018, the entity adopted the *EEO Complaint Procedural Guidelines, City of New York, 2018* (2018 EEO Complaint Procedures), attached as Appendix 4. The 2016 and 2018 EEO Complaint Procedures (collectively the EEO Complaint Procedures) contained uniform and responsive procedures for investigating discrimination complaints and the contact information (telephone numbers and addresses) for the federal, state and local agencies that enforce laws against discrimination and sexual harassment. The names and telephone numbers of the entity's EEO professionals were contained in the agency head's emails on September 7, 2017 and August 23, 2018. The agency head's August 2018 email linked to the Department of Citywide Administrative Services' (DCAS) website that publicly posted the EEO Policy and a 2016 EEO Policy Addendum with an updated list of classes protected against employment discrimination.

**NOTE:** A screenshot from subsequent to the period in review indicated that the EEO Policy and the names, EEO titles, office locations and telephone extensions of the entity's EEO professionals were also posted to the intranet site available to all employees. In addition, the entity reported that "[t]he 2018 EEO Complaint Procedural Guidelines are physically handed to any employee who makes a complaint or inquiry or to the recipient of a complaint or inquiry. OMB has not received guidance from DCAS that these guidelines should be published on our intranet site." The following protected classes protected against discrimination were not in the EEO Policy: "consumer credit history", "familial status", and "caregiver status." "Familial status" was also not included as a class protected against discrimination in the 2016 EEO Policy Addendum. If the agency distributes or posts its current EEO Policy, it should include the EEO Policy Addendum 2017 or an updated list of the protected classes covered by the EEO Policy. The entity should distribute or post the 2018 EEO Complaint Procedures that includes the current address for New York City Commission on Human Rights and other updated information.

## II. Training for the 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 entity's *Diversity and Equal Employment Opportunity Plan* (Annual EEO Plan) for fiscal year (FY) 2019 established a plan for all employees to complete annual *Sexual Harassment Prevention (e-learning)* training per Local Law 92. The FY 2019 Annual EEO Plan identified a training goal of 100% completion and a June 1, 2018 to March 31, 2019 training cycle. Entity training records indicated that between July 1, 2018 and February 28, 2019, 382 employees (approximately 96% of the workforce at the end of the period in review) completed DCAS' computer-based training (CBT) entitled, *Sexual Harassment Prevention What to Know About Unlawful and Inappropriate Behaviors in the Workplace*. DCAS Citywide Training Center's course catalogue indicated that topics covered by the aforementioned CBT included "[d]efinitions and examples of Sexual Harassment. . . How Sexual Harassment is a form of unlawful discrimination under federal, state and local law. . . the complaint procedures" and "[t]he complaint process for employees, managers, and supervisors." In addition, Annual EEO Plans for FY

2017, FY 2018 and FY 2019 each established EEO training plans for 70 to 80 employees to complete EEO CBT each year.

**NOTE:** Entity training records were not requested or provided to confirm EEO CBT completion.

### III. Complaint and Investigation Procedures

**Summary of Complaint Activity:** The agency reported 0 internal and 0 external complaints were filed during the period in review.

**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 EEO Complaint Procedures included a sample Complaint Intake Form that contained the following fields to capture the facts (including pertinent dates), identify the respondent(s) with reasonable specificity, and provide the essence of the circumstances which gave rise to the complaint: "[w]hat is the alleged basis of discrimination", "[p]lease give the name, title and division of the person(s) you believe discriminated against you", "[w]hen did the alleged discrimination occur", "[w]here did the alleged incident occur", and "[p]lease 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."

5. Provide the option to file a complaint anonymously.

✓ The EEO Complaint Procedures specified in the section entitled *The Intake Phase* that "[t]he 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."

In addition, as indicated by an intranet screenshot from subsequent to the period in review, all employees were informed that "[p]ersons who wish to discuss a possible violation of EEO 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."

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 EEO Complaint Procedures specified in the section entitled *Investigation* that "[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 after interviewing the Complainant. . . . Inform Respondent of the right to respond in writing to the complaint, and that the response should be submitted as soon

as possible." The EEO Complaint Procedures also stated "ensur[e] that Respondent is informed of the right to be accompanied by a representative" and "[a]ny 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. . . . All complaints and related documents, including any investigative notes, records, or copies, are strictly confidential and must be maintained by the EEO Office."

7. Issue/maintain written confirmation when an internal complaint/mediation is terminated, withdrawn or resolved by agreement of the parties or EEO Office.

✓ The EEO Complaint Procedures' section entitled *Mediation* discussed the role of mediation in the complaint investigation process and specified that "[m]ediation 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. . . . 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. . . . 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. . . . 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."

8. Take thorough notes, of words spoken and facts provided, during each interview. Include these notes in each complaint file.

✓ The EEO Complaint Procedures' section entitled *Investigation* specified that "[d]uring each interview, [the individuals conducting the EEO complaint investigation are to] 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. . . . All complaints and related documents, including any investigative notes, records, or copies, are strictly confidential and must be maintained by the EEO Office."

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 EEO Complaint Procedures' section entitled *The Intake Phase* specified that EEO complaint investigators were to "[b]egin 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." In addition, the EEO Complaint Procedures section entitled *Preparing the Final Report* specified that "[t]he 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[.]"



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 EEO Complaint Procedures' section entitled *Preparing the Final Report* specified that "[t]he 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."

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 EEO Complaint Procedures' section entitled *Preparing the Final Report* specified that "[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. 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."

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

✓ The EEO Complaint Procedures' section entitled *Investigation* specified that "[a]ll 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."

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

✓ The EEO Complaint Procedures' section entitled *Preparing the Final Report* established that "[t]he Agency Head must sign each [conclusive confidential] written report [of the outcome of the complaint investigation] and indicate that it has been reviewed and whether the determination and recommendation, if any, is adopted, rejected or modified."

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

✓ The EEO Complaint Procedures' section entitled *Preparing the Final Report* specified that "[a]fter review of the [confidential conclusive written] report [of the outcome of the complaint investigation] by the Agency Head, the EEO Office should inform all parties in writing of the outcome of the investigation. 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."

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

✓ The EEO Complaint Procedures' section entitled *Preparing the Final Report* specified that "[a]fter review of the [confidential conclusive written] report [of the outcome of the complaint investigation] by the Agency Head, the EEO Office should inform all parties in writing of the outcome of the investigation. 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." The *Preparing the Final Report* section of the EEO Complaint Procedures also specified that "[i]f, 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. . . . The written report should include . . . a conclusion/determination and recommendation." The *Investigation* section of the EEO Complaint Procedures also specified that "[a]ll complaints and related documents . . . are strictly confidential and must be maintained by the EEO Office."

**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 EEO Complaint Procedures' section entitled *The Intake Phase* directed EEO complaint investigators to determine "[h]as 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, if any) in writing of the transfer."

**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.



✓ The EEO Complaint Procedures' section entitled *The Intake Phase* directed EEO complaint investigators to determine "[u]pon receiving an EEO complaint or inquiry, the EEO Office must memorialize the complaint or inquiry and enter it into the complaint tracking system." A link to the City of New York's complaint tracking and monitoring system was provided in the EEO Complaint Procedures. Screenshots indicated that the entity was able to access the complaint tracking and monitoring system's login page. Links to the page were also provided in the entity's quarterly reports on efforts to implement an Annual Plan of measures and programs to provide equal employment opportunity.

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.

✓ Representative meeting invitations and emails documented the General Counsel and HR Professional's collaboration in the implementation of the City's policies and procedures pertaining to sexual harassment. A representative email from October 2018 and the signed final *NYC Agency Risk Assessment* (Risk Assessment) demonstrated the General Counsel and HR Professional (in lieu of the principal EEO Professional (a role with turnover during the period in review)) worked as *Task Force Members* who prepared the entity's Risk Assessment to assess workplace risk factors associated with sexual harassment (see §IV.19 for information about the Risk Assessment). A representative email from December 20, 2018 indicated that the General Counsel, principal EEO Professional and HR Professional were scheduled to meet to discuss the then recently updated EEO Complaint Procedures, the scope of which includes sexual harassment complaints.

OMB reported no internal or external employment discrimination complaints were filed during the period in review. As a result, compliance could not be meaningfully measured for the requirement that the General Counsel assist the agency head in identifying and determining appropriate responses 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. Instead compliance with these components of the standard were assessed using the EEO Policy and EEO Complaint Procedures. Section V.D of the EEO Policy established that "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." The EEO Complaint Procedures also indicated a collaborative relationship between the principal EEO Professional and the General Counsel regarding the investigation of EEO complaints, including complaints that might be related to sexual harassment. The EEO Complaint Procedures' section entitled *The Intake Phase* directed that "[i]f 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 subsequent complaint involves separate allegations."*

#### **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.

✓ During the period in review, the General Counsel, HR Professional (Director of Personnel Management and Administration), and First Deputy Director collaborated as *Task Force Members* to prepare the entity's Risk Assessment to assess workplace risk factors associated with sexual harassment. The Risk Assessment included a review of the entity's EEO complaints (there were none) and employment practices, policies and programs to identify whether there were barriers to employment opportunities that may be related to sexual harassment. The entity identified in its Risk Assessment that it had: a heterogenous workforce; centralized workplaces; and that differences in gender, ethnicity, culture and language were not barriers to employment opportunities. After a review of the areas identified by Local Law 93 of 2018 to be associated with sexual harassment, the *Task Force Members* determined no barriers to employment opportunities existed. On October 29, 2018, the agency head signed the *Risk Assessment Certification Page* to indicate their review and approval of the *Task Force Members'* assessment and determination.

In addition, the entity reported actions to correct potential barriers to employment opportunities in its FY 2017 Annual EEO Plan signed by the agency head (date unknown). The FY 2017 Annual EEO Plan identified that the entity encouraged employees to take Civil Service exams and intended to assign staff members to permanent Civil Service titles (to reduce provisional employees as required by *Section 65(5) of the New York State Civil Service Law*); began to analyze its recruitment source data of final applicants and would conduct analyses of its hires (to enable the entity to determine the effectiveness of its recruitment sources and monitor its demographic hiring rates); and would ensure its EEO professionals completed training for their EEO roles (to enable the entity's EEO professionals to adequately perform their EEO duties and responsibilities).

**NOTE:** The entity should include the principal EEO Professional in the preparation of its next Risk Assessment and subsequently thereafter.

#### **V. Responsibility for Implementation - EEO Professionals**

**Determination: The agency is in partial-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, federal EEO laws; the

requirements of the agency's EEO policies, standards and procedures; and the prevention, investigation, and resolution of discrimination and sexual harassment complaints.

✓ The entity reported in its Annual EEO Plan for FY 2017 that “*three employees [will] join the Agency's EEO Staff. They will each be registered to attend DCAS's next [multiday] Diversity and Equal Employment Opportunity Basic Training course [for EEO professionals].*” The entity reported that over the course of the period in review, the role of principal EEO Professional was filled by three individuals (serving for 18 months, 4 months, and 2 months, respectively). Training records indicated that the principal EEO Professional who served between July 9, 2018 and November 2, 2018 completed Sexual Harassment Prevention training.

➤ The entity did not demonstrate that its principal EEO Professional was trained regarding city, state, 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. **Corrective Action Required.**

**NOTE:** Subsequent to the period in review, on May 20, 2019, the entity appointed the current principal EEO Professional. Entity training records indicated that the current principal EEO Professional attended an entity seminar entitled *Equal Employment Opportunity (EEO)* in November 2015 and a *Sexual Harassment Prevention CBT* in August 2018 (see §II.3 for CBT training details). The entity's training records indicated that the current principal EEO Professional completed DCAS's two-day training on May 10, 2019 and May 17, 2019, entitled *Essential Training for New EEO Personnel*. Training correspondence from DCAS indicated that the May 2019 training was as an “*interactive seminar style training where we hope to assist you with practical questions and challenges.*” DCAS reported that training topics included “*Role of an EEO Officer*”, “*EEO Office in relation to other units*”, “*Employee discipline basics*”, “*Overview of applicable state and federal laws*”, “*Overview of applicable city policies*”, “*The complaint process, in detail [including complaint intake, documentation, interviews, retaliation, corrective actions and final investigative reports]*”, “*Reporting complaints and reasonable accommodation information to DCAS*”, “*Annual Plans*”, “*Workforce Data and Underrepresentation*”, and “*The role of the Office of Citywide Recruitment.*”

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.

✓ The entity reported that at the beginning of the period in review (from January 2017 to October 2017), it employed 3 supporting EEO professionals in addition to the principal EEO Professional. Thereafter, it had 2 supporting EEO professionals (from October 2017 to March 2018) and then 1 supporting EEO professional (from April 2018 to December 2018). At the end of the period in review, the entity had 1 supporting EEO professional to support the principal EEO Professional.

➤ The entity did not demonstrate that during the period in review the responsibilities of the principal EEO Professional were competently discharged by providing adequate resources such as opportunities for continuing education and professional development. **Corrective Action Required.**

**NOTE:** The entity's training records indicated that subsequent to the period in review, the principal EEO Professional was provided with opportunities for continuing development and professional development via DCAS's two-day training in May 2019 (see §IV.20 for training details), and with 5 trained supporting EEO professionals who served in EEO Counselor roles (see §IV.22 for EEO Counselor training details).

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.

✓ At the end of the period in review the entity had one office location and a workforce of 400 employees. The entity's undated organizational chart identified that the EEO Office consisted of the principal EEO Professional (appointed November 5, 2018 until May 19, 2019) and one EEO Counselor (appointed January 2018 to date). The entity reported that the principal EEO Professional supervised the EEO-related activities of its EEO Counselors, and that the EEO Counselors' responsibilities included complaint intake and investigations.

➤ The entity's organizational chart did not illustrate a hierarchical structure of the EEO Office where the position of EEO Counselor was a direct report to the principal EEO Professional. The entity did not demonstrate that its supporting EEO professionals were trained in EEO laws and procedures, and their responsibilities under the EEO Policy. **Corrective Action Required.**

**NOTE:** An October 2019 EEO Office organizational chart indicated a hierarchical structure. The October 2019 EEO Office organizational chart indicated that the principal EEO Professional was a direct report to the agency head, and that the entity's 5 EEO Counselors were direct reports to the EEO Officer. The entity's training records indicated that the EEO Counselors completed DCAS's two-day training in May 2019, entitled *Essential Training for New EEO Personnel* (see §IV.20 for training details). In addition, entity training records indicated that all EEO Counselors completed DCAS's *Equal Employment Opportunity (EEO)* training between November 2015 and February 2016, and DCAS's *Sexual Harassment Prevention* CBT between July 2018 and September 2019 (see §II.3 for CBT training details).

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.

✓ A representative email from December 20, 2018 indicated that the General Counsel, principal EEO Professional and HR Professional were scheduled to meet to discuss the then recently updated EEO Complaint Procedures, the scope of which includes sexual harassment complaints.

➤ The entity did not demonstrate that the principal EEO Professional worked cooperatively and closely with the General Counsel in the implementation of policies and procedures concerning EEO and sexual harassment. **Corrective Action Required.**

**Corrective Action #1:** 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.

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.

✓ Section V.C of the EEO Policy detailed the responsibilities of the principal EEO Professional, and specified that “[t]he agency’s . . . EEO Officer will . . . supervise the EEO related activities of EEO counselors and/or investigators”, “ensure that the Policy, standards, and procedures are posted at each site where the agency conducts business”, “set training objectives that ensure that all agency employees receive diversity and inclusion and EEO training”, “ensure that the Policy, standards, and procedures are available in alternative formats (i.e., large print, audio tape, and/or Braille) . . . [and] shall make a copy of these standards and procedures, and any subsequent revisions and supplemental materials, available upon request by an employee or applicant.” The entity’s policies against sexual harassment and complaint procedures were distributed to all employees (see §I.2 for policy distribution details) during the period in review, and approximately 96% of all employees/managers received sexual harassment prevention training as of February 28, 2019 (see §II.3 for training details). The entity reported that the principal EEO Professional supervised the EEO-related activities of other EEO professionals.

The EEO Policy established the expectation that the principal EEO Professional “provide guidance and assistance to agency managers, supervisors, and human resource professionals in addressing issues relating to equal employment opportunity” and the entity’s FY 2019 Annual EEO Plan reiterated that “[t]he EEO Officer will serve as a resource for OMB’s Executive, senior staff and entry level managers on topics including employment decisions, recruitment, and overall best practices.” The EEO Policy specified that the “EEO Officer has primary responsibility for assisting the agency head in implementing the Policy, standards, and procedures [including] . . . to prevent, investigate, and resolve discrimination complaints.” The EEO Complaint Procedures’ section entitled *The Intake Phase*, specified the prompt investigation of EEO complaints (which includes sexual harassment complaints). The section *The Intake Phase* specifically stated “the EEO Office is responsible for investigating the complaint” and is to “[b]egin investigation immediately after determining that the allegations raised, if true, are sufficient to establish a case of discrimination under the Policy.” OMB reported no internal or external employment discrimination complaints were filed during the period in review.

➤ The entity did not demonstrate that managers, supervisors and human resource professionals received guidance on issues pertaining to sexual harassment. **Corrective Action Required.**

**NOTE:** Subsequent to the period in review, the entity sought to provide its managers with guidance on issues pertaining to sexual harassment via training entitled, *High Performance Leadership: Getting Outcomes through Inclusion* (formerly known as *Everybody Matters*). Entity records indicated that 52 of the entity’s senior managers completed the aforementioned training between February 2019 and



September 2019. DCAS's July 2019 participant guide for *High Performance Leadership: Getting Outcomes through Inclusion* indicated that program outcome goals included "Increase awareness of Inclusion and its impact on employee work productivity, sustainability, and overall organizational engagement level. Understand ways in which subtle and unconscious behaviors create barriers to a high performing culture. Understand how cultural background can create assumptions, biases and stereotypes that impact our ability to lead effectively. Recognize and understand our role in creating a culture of high performance."

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 entity's organizational chart from the end of the period in review indicated that the principal EEO Professional was a direct report to the agency head.

**NOTE:** In addition, an organizational chart from October 2019 indicated that the principal EEO Professional was a direct report to the agency head, and that the entity's EEO Counselors were direct reports to the principal EEO Professional.

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.

✓ The entity reported that meetings between the agency head and the principal EEO Professional occurred on an as needed basis.

➤ The entity did not 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 impacted the administration and operation of programs, policies or procedures concerning sexual harassment. **Corrective Action Required.**

**Corrective Action #2:** 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.

## **VI. Responsibility for Implementation – Supervisors/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.

✓ The entity stated in its 2019 Annual EEO Plan that "senior staff at OMB will help implement the EEO plan and will work to develop strategies to address equity and diversity in all aspects of our daily operations. At senior staff meetings, the Agency Head, or her representative, will remind those present



that OMB fully supports the City's Diversity and EEO Policy and that they are responsible for implementing plan actions, such as expanding means of recruitment and ensuring that promotion opportunities are available equally. . . . The EEO Officer will serve as a resource for OMB's Executive, senior staff and entry level managers on topics including employment decisions, recruitment, and overall best practices." In addition, the entity's performance evaluation form contained a section for ratings on *Managerial Responsibilities* which included "[m]anager possesses a thorough understanding of the City's Equal Employment Opportunity Policy and complies with the policy." The options for ratings were *Above Expectation*, *Meets Expectations*, *Below Expectation*, *Needs Improvement*, and *Not Ratable*. The *Managerial Responsibilities* section also contained a comment area to capture implementation of the above expectation for managers and supervisors.

➤ The entity did not demonstrate implementation of the aforementioned expectation, such as the utilization of the managerial performance evaluation form. **Corrective Action Required.**

**NOTE:** The entity provided a redacted screenshot of a completed *Managerial Responsibilities* section from its managerial performance evaluation form to demonstrate that managers were rated on their implementation of the aforementioned performance expectations. However, because a complete and dated evaluation form was not provided, the EEPC could not determine if the form was utilized during the period in review.

**Corrective Action #3:** Ensure that managers and supervisors are held accountable for enforcing the agency's sexual harassment prevention policies and complaint procedures. Document this expectation and its implementation.

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

✓ The entity's performance evaluation form contained a section for ratings on *Managerial Responsibilities* which included "[m]anager possesses a thorough understanding of the City's Equal Employment Opportunity Policy and complies with the policy."

➤ The entity's performance evaluation form's rating for managers and supervisors did not cover 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 Required.**

**Corrective Action #4:** 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 required to comply 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 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 entity submitted to the EEPC its Annual EEO Plans for FY 2017, FY 2018 and FY 2019, and *Agency Quarterly Diversity and EEO Reports* for all quarters of the period in review (the 3rd and 4th quarters of FY 2017, all quarters of FY 2018, and the 1st and 2nd quarters of FY 2019).

**NOTE:** The agency reported no EEO complaints during the period in review. The agency should include a breakout of sexual harassment complaint activity, or an affidavit of no complaint activity, in each quarterly report.

30. Upon the EEPC's determination that the entity does not require further review or monitoring: Distribute a memorandum signed by the agency head that re-emphasizes the commitment of agency administrators to the EEO program, including the prevention of sexual harassment, and informs employees of any changes to the agency's employment practices as a result of the EEPC's audit/monitoring. This final action is required to conclude the audit and monitoring process.

**Final Action:** Upon the EEPC's determination that the entity does not require further review or monitoring: Distribute a memorandum signed by the agency head that re-emphasizes the commitment of agency administrators to the EEO program, including the prevention of sexual harassment, and informs employees of any changes to the agency's employment practices as a result of the EEPC's audit/monitoring. This final action is required to conclude the audit and monitoring process.

### **Summary of Corrective Actions:**

The Office of Management and Budget has 5 required corrective action(s) at this time. This includes the aforementioned final action.

### **Conclusion**

Pursuant to Charter Chapter 36, the Office of Management and Budget has the *option* to respond to this Preliminary Determination, but must respond to our Final Determination if corrective action is required. **Any response must be signed by the agency head and submitted to the EEPC's Executive Director.**

*Optional Response to Preliminary Determination:* If submitted, the Office of Management and Budget's optional response to the EEPC's Executive Director should indicate, with attached documentation, what steps have been or will be taken to correct outstanding areas of non-compliance, and must be received in our office within 14 days from the date of this letter. No extensions will be granted for the *option* to respond to the Preliminary Determination.

*(Optional Conference)* If requested, at the Optional Conference the EEPC will discuss the immediate steps that should be taken to correct outstanding areas of non-compliance and address questions regarding the Office of Management and Budget's implementation of the prescribed corrective action(s).

*(No Response Option)* If the Office of Management and Budget 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 action(s) based on verified information submitted as part of the response to the Preliminary Determination; identify remaining corrective action(s) that require further monitoring to ensure implementation; and assign a mandatory compliance-monitoring period of up to 6 months for this purpose. Pursuant to Charter Chapter 36, upon receipt, the Office of Management and Budget must submit a response, signed by the agency head, to our Final Determination within 30 days. Your response to the Final Determination will initiate the compliance-monitoring period.

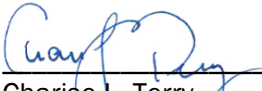
In closing, we want to thank you and your staff for the cooperation extended to the Equal Employment Practices Commission's EEO Program Analysts during the course of our audit and analysis.

Respectfully Submitted by,



William Peterson, Manager, Labor Relations Analysis and Audit

Approved by,



Charise L. Terry  
Executive Director

c:

Kathryn Johnson, Principal EEO Professional, Office of Management and Budget

Lauren Wittels, Director of Personnel Management and Administration, Office of Management and Budget

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

## **Appendix - 1**

Office of Management and Budget  
CEEDS Report: *Work Force Composition Summary*  
2<sup>nd</sup> Quarter of Fiscal Year 2019  
(End of Audit Period)



RUN DATE: 01/07/19  
 RUN TIME: 08:09:33.9

NEW YORK CITY DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES  
 CITYWIDE EQUAL EMPLOYMENT DATABASE SYSTEM (CEEDS)  
 WORK FORCE COMPOSITION SUMMARY  
 QUARTER 2 YEAR 2019 AGENCY 019 OFFICE OF MANAGEMENT AND BUDGET

PAGE: 35  
 REPORT: EBEP210

EEO JOB GROUP TOTAL.....: 2 0 0 0 0 0 0 0 0 0 0 0 0 0 2  
 100.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00 100.00

AGENCY CODE : 019 OFFICE OF MANAGEMENT AND BUDGET  
 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		
05363	STATISTICAL SECRETARY (OMB	0	0	1	0	0	0	1	3	6	0	0	1	0	12
11704	SUPERVISOR OF OFFICE MACHI	0	0	1	0	0	0	0	0	0	0	0	0	0	1
EEO JOB GROUP TOTAL.....:		0	0	2	0	0	0	1	3	6	0	0	1	0	13
		0.01	0.00	15.38	0.00	0.00	0.00	7.69	23.08	46.15	0.00	0.00	7.69	0.00	100.00

AGENCY CODE : 019 OFFICE OF MANAGEMENT AND BUDGET  
 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	0	0	2	0	0	0	0	0	0	2	0	0	0	4
56057	COMMUNITY ASSOCIATE	0	1	0	0	0	0	0	0	0	0	0	0	0	1
EEO JOB GROUP TOTAL.....:		0	1	2	0	0	0	0	0	0	2	0	0	0	5
		0.00	20.00	40.00	0.00	0.00	0.00	0.00	0.00	0.00	40.00	0.00	0.00	0.00	100.00

AGENCY TOTAL.....: 112 20 30 44 0 6 79 31 24 48 1 5 0 400  
 28.00 5.00 7.50 11.00 0.00 1.50 19.75 7.75 6.00 12.00 0.25 1.25 0.00 100.00



## **Appendix - 2**

Office of Management and Budget  
*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

2014

# EQUAL EMPLOYMENT OPPORTUNITY POLICY

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 Management and Budget  
*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**

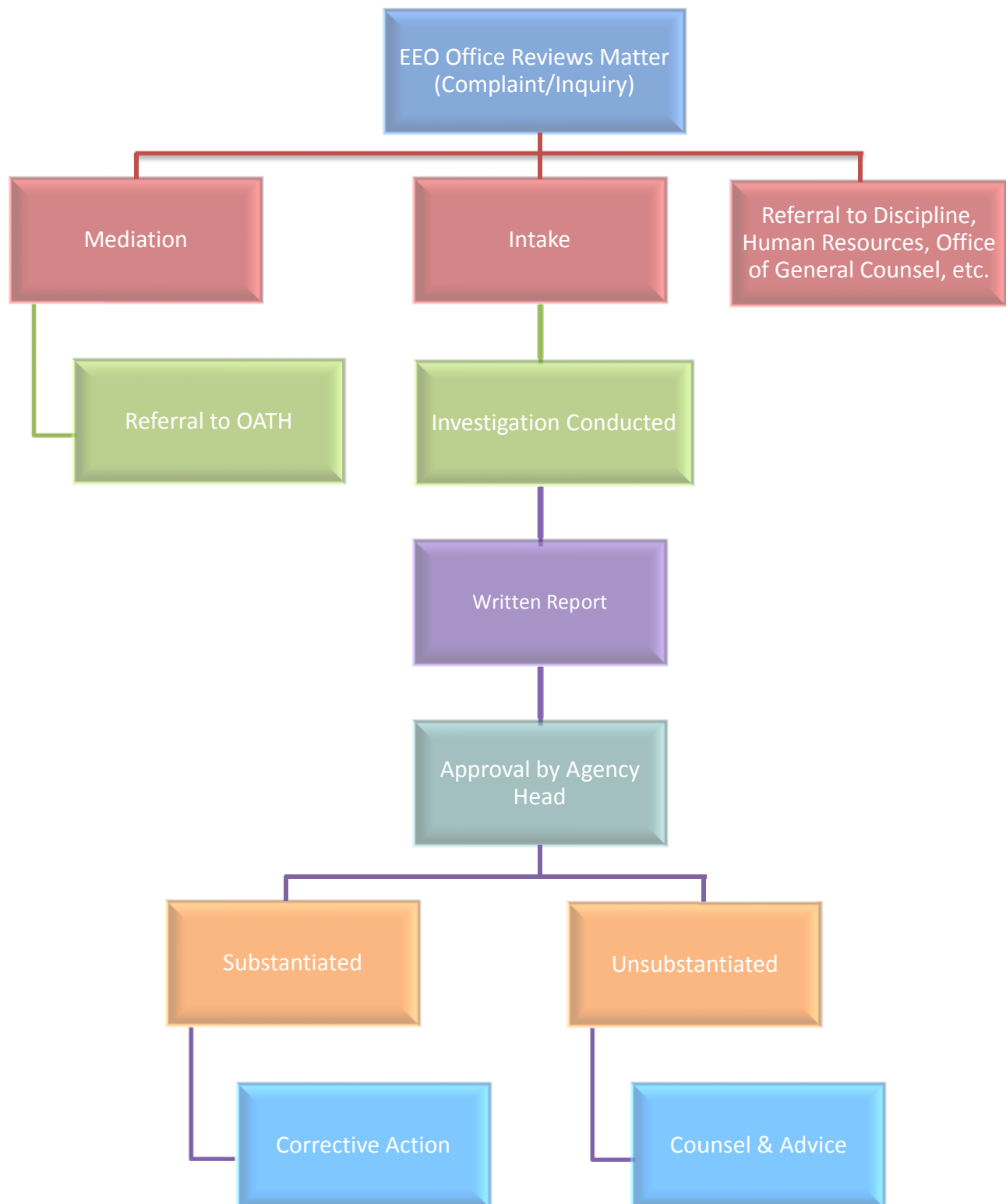
These Equal Employment Opportunity Complaint Procedural Guidelines (the “Guidelines”) are designed to assist Equal Employment Opportunity (“EEO”) Officers, Investigators and Counselors in handling EEO complaints and inquiries in a fair, consistent, and timely manner. A person who wishes to make an EEO 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://mspwwa-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://mspwwa-dcstso01.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

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**1. Contact Information**

Name \_\_\_\_\_

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

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

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

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

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

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

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

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**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

you.

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 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

## **Appendix - 4**

Office of Management and Budget  
*EEO Complaint Procedural Guidelines, City of New York*  
2018



# **EEO Complaint Procedural Guidelines**

**City of New York  
2018**



**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 inquires 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, caregiver status, genetic information or predisposing genetic characteristic, sexual orientation, status as a victim or witness of domestic violence, sex offenses or stalking, unemployment status consumer credit history, and familial 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, so long as they do not cause 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/eeo\\_booklet.shtml](http://www.nyc.gov/html/dcas/html/about/eeo_booklet.shtml).

# Protected Categories Under the City's EEO Policy

New York City employees are protected from discrimination based on any of the following categories, whether perceived or actual, and including retaliation for filing a complaint or assisting in the investigation of an EEO complaint.

**Age:** persons age 18 or older.

**Alienage or Citizenship Status:** the citizenship of any person or immigration status of any person who is not a citizen or national of the United States. Employers are required by law, however, to verify the identity and work eligibility of employees. Moreover, citizenship is a lawful requirement for certain jobs (such as Police Officer).

**Caregiver Status:** you cannot be treated differently at your job because you have children, or because you care for a relative who is sick or has disabilities.

**Color:** frequently viewed synonymously with race, discrimination based on color may occur because of a preference for, or aversion to, a particular skin color and may occur within the same racial group based on body pigmentation.

**Credit History:** includes credit worthiness, credit capacity, and payment history. Credit history cannot be used to decide whether to hire, fire, or promote an individual.

**Disability:** any physical, medical, mental, or psychological impairment, or a history or record of such impairment, whether perceived or actual. Pregnancy may also be considered a temporary disability if there are medical conditions arising from the pregnancy or childbirth.

**Familial Status:** any person who is pregnant or has a child or is in the process of securing legal custody of any individual who has not attained the age of eighteen years, **or** one or more individuals (who have not attained the age of eighteen years) being domiciled with:

- (1) a parent or another person having legal custody of such individual or individuals, or
- (2) the designee of such parent.

**Gender (or Sex):** gender includes actual or perceived sex and includes a person's gender identity, self-image, appearance, behavior or expression, whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to that person at birth. Pregnancy or childbirth is a gender-related condition; therefore, discrimination due to pregnancy or childbirth is considered to be gender discrimination.

**Marital Status:** whether a person is married, divorced, single, separated, or widowed. "Marital Status" should be distinguished from discrimination based on whom an individual is married to.

**Military Status:** military service includes past, present, and applicants for membership in the uniformed service, whether voluntary or involuntary.

**National Origin:** place of origin, as well as ancestry, and physical, cultural, linguistic or ethnic characteristics of, or names associated with, a particular country or region. Discrimination based on alienage (immigration status) or citizenship status can be found, in some cases, to be discrimination based on national origin.

**Partnership Status:** all individuals in a domestic partnership.

**Predisposing Genetic Characteristics/Genetic Information:** any inherited gene or chromosome, or alteration thereof, determined by a genetic test or inferred from information derived from an individual or family member that is scientifically or medically believed to predispose an individual or the offspring of that individual to a disease or disability, or to be associated with a statistically significant increased risk of development of a physical or mental disease or disability.

**Prior Record of Arrest or Conviction:** generally, agencies may not deny or deprive someone of a job because of a criminal conviction, unless there is a direct relationship between the conviction and the duties of the job or an unreasonable risk to property or safety, based on a variety of factors. Agencies also may not ask about arrests that did not lead to conviction unless it is a pending arrest. These restrictions do not apply to law enforcement agencies.

**Race\Ethnicity:** includes such categories as American Indian or Alaskan native, Asian or Pacific Islander, Black, Hispanic, White, and two or more races, as well as personal characteristics associated with race\ethnicity (such as hair texture, skin color, or certain facial features).

**Religion or Creed:** includes all aspects of religious observance, practice and belief, including moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views.

**Sexual Harassment:** *“unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature”* when:

- a) submission to the conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- b) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- c) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

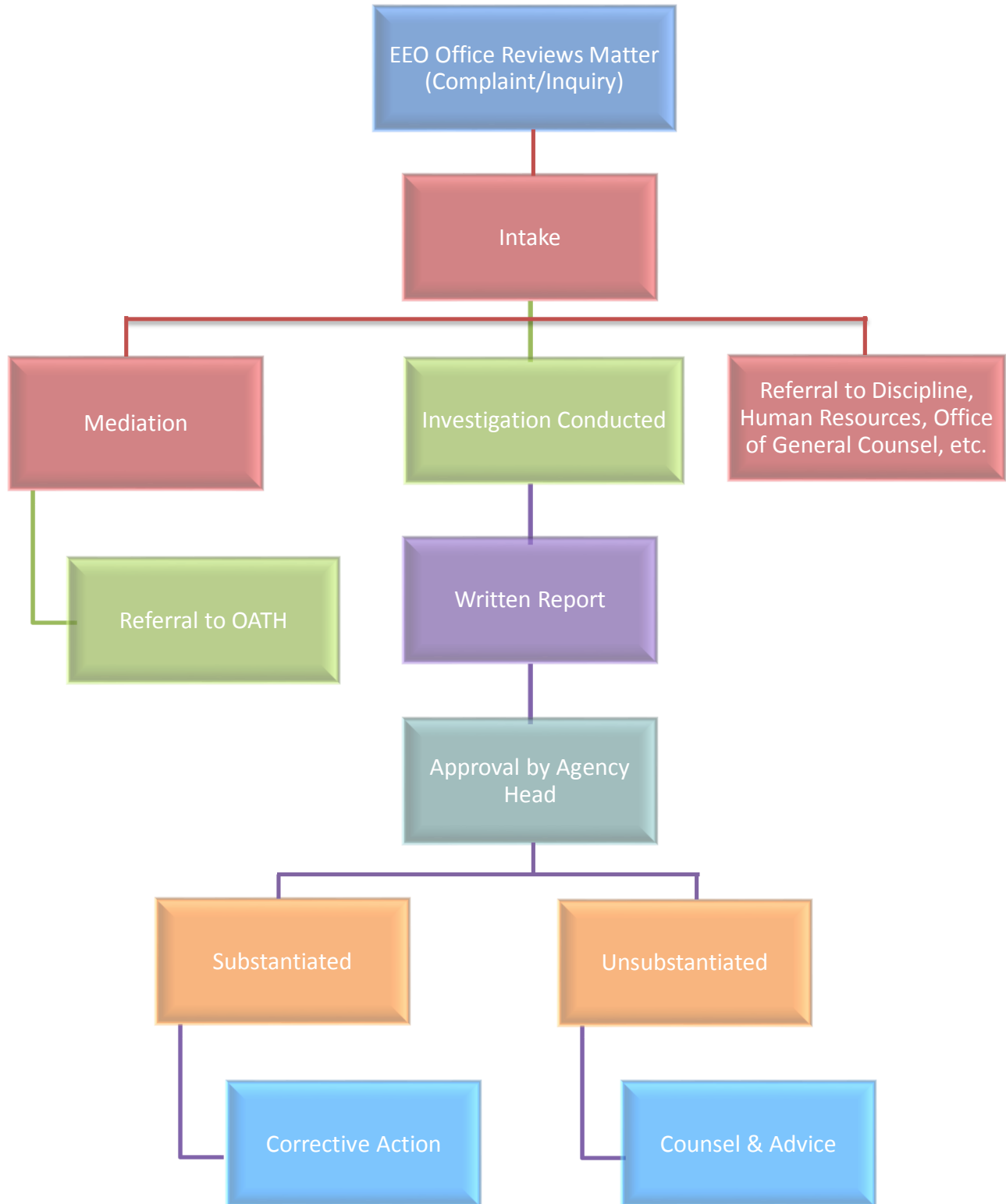
**Sexual Orientation:** heterosexuality, homosexuality, bisexuality or asexuality, whether actual or perceived.

**Unemployment Status:** refers to those who do not have a job, are available for work, and are seeking employment.

**Victim of Domestic Violence:** a person who has been subjected to acts or threats of violence, not including acts of self-defense, committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim, by a person who is or has been in a continuing social relationship of a romantic or intimate nature with the victim, or a person who is or has continually or at regular intervals lived in the same household as the victim.

**Victim of Sex Offenses or Stalking:** a victim of acts which are defined as crimes that are considered to be “sex offenses” or “stalking.”

# 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 job training program participant, 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.

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

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

- 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 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 involve one or more of the protected categories under the City's Policy, including when discrimination is based on perception or association?
  - If the complaint or inquiry does not involve an EEO basis, the EEO Office should make a referral, as appropriate.
- ☑ If the complaint or inquiry cites an EEO basis, what specific conduct, practice or policy is the alleged violation of 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 demonstrated by, e.g., discriminatory comments or different treatment of other employees who are similarly situated.
  - Failure to reasonably accommodate disability, pregnancy, childbirth and/or related medical condition, religion/religious observance, or victims of domestic violence, sex offenses or stalking.
  - Retaliation due to opposition to, 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 a 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\\_regis.shtml](http://www.nyc.gov/html/dcas/html/employees/personnelrules_regis.shtml))
  - Collective bargaining agreements (<http://www1.nyc.gov/site/olr/labor/labor-recent-agreements.page>)
  - Title Specifications and Notices of Examinations (<http://mstpwwa-dcstso01.dcas.nycnet/TitleSpecs/home.aspx>)
  - Agency Code of Conduct
- ☑ 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.

## REFERRALS

- ☑ 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.

## 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 this can be done by the EEO Office. The form 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 incident or part of a pattern of conduct;
  - 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 the 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 noted 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.

### **Final Complaint Decisions**

#### **1. Internal Complaints**

- a) Substantiated: upon analysis of the evidence (interview statements and documents), it is more likely than not that there has been a violation of the EEO Policy.
- b) Unsubstantiated: upon analysis, there is no or insufficient evidence to establish that it is more likely than not that a violation of the EEO Policy occurred.
- c) Withdrawn: the complainant affirmatively states that he or she no longer wishes to pursue the action that was initiated with the EEO Office. It requires a written acknowledgement that the decision (to withdraw) was done freely, without coercion, intimidation, promises or inducements.
- d) Mediated: this 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.
- e) Administrative Closing: The case is closed due to the following:
  - Lack of Subject Matter Jurisdiction - Complainant interviewed, documents and records reviewed. No case of employment discrimination/retaliation articulated. Full investigation not required. The matter may be referred to immediate manager/supervisor or another agency (e.g., DOI) for investigation or corrective action concerning other misconduct that is not a violation of EEO Policy.
  - Uncooperative Complainant



- Filed Externally: Complainant files with EEOC, SDHR or CCHR on same fact pattern. Internal investigation is closed. Files transferred to Agency Counsel.
- f) Third Party Referral: Due to a conflict of interest, matter referred to Law Department or DCAS for investigation\ action.

**2. External Complaints** (the decisions of cases are determined by the fair employment agencies; the definitions below are for OCEI database purposes only)

a) The fair employment agency investigating the complaint must be selected from the below options:

CCHR: City Commission on Human Rights

CORT: State/Federal Court

EEOC: Equal Employment Opportunity Commission

JOCR: Department of Justice Office of Civil Rights

OFFC: U.S. Department of Labor Office of Federal Contract Compliance Program

SDHR: NY State Division of Human Rights

b) The decision of the case must be selected based on the information provided from the fair employment agency:

1. Probable Cause<sup>4</sup>: Evidence shows that it is more likely than not that there has been a violation of the federal, state or local fair employment law.
2. No Probable Cause<sup>5</sup>: There is no evidence and\or testimony to establish that a violation of the federal, state or local fair employment law occurred.
3. Withdrawn by Complainant.
4. Mediated: a voluntary approach to dispute resolution in which the parties attempt to resolve the dispute on mutually agreeable terms with the assistance of a trained, neutral mediator.
5. Administrative Closing: The case is closed due to the following:
  - At the request of the complainant, the investigation is terminated to allow the complainant to pursue remedies in court.
  - The complainant does not cooperate with the investigation.
  - The agency does not investigate the complaint because of limited resources.
6. Please note, if the complainant deems that the investigation is taking too long, he\she can request a right to sue letter from the EEOC after it has had 180 days to investigate. The EEOC is obligated to provide the letter even if the investigation is not complete, at which time

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<sup>4</sup> EEOC reasonable cause is equivalent to probable cause.

<sup>5</sup> EEOC no reasonable cause is equivalent to no probable cause

EEOC will close the investigation. A complainant has 90 days from the time of receipt to file the lawsuit. (A complainant may file a lawsuit under the Age Discrimination in Employment Act 60 days after filing the complaint with the EEOC without receiving a right to sue letter.)

## EEO Complaint Tracking and 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.

All entries and updates made in the EEO Complaint Database must be entered as complaints are filed and the investigation progresses. All quarterly updates should be inputted no later than March 31, June 30, September 30 and December 31.

Agencies are required to submit an electronic affirmation (prompted by a DCAS email), regarding their review and entry of all required information into the EEO Complaint Database.

DCAS will send quarterly complaint summaries to agencies within five business days after the close of the quarter.

Each Agency will have five business days to review its summary and make any necessary edits in the system. DCAS will have five business days to issue new summaries to agencies that have made edits.

DCAS will publish citywide EEO complaint data on a quarterly basis on the DCAS website.

## APPENDICES: Forms and Templates

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

**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

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

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

- 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
- Caregiver Status
- Color
- Credit History
- Disability/Familial Status
- Gender/including gender identity/Pregnancy
- Predisposing Genetic Characteristic
- 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 you.

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?

**Description of Alleged Unlawful Discrimination**

**Please describe what happened to you that 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 that I have read the above charge, including any attachments, and that it is true to the best of my knowledge, information and belief. 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

[22 Reade Street - First Floor](#)

New York, NY 10007

(212) 306-7450

Web site: <http://www1.nyc.gov/site/cchr/index.page>

#### Brooklyn

25 Chapel Street, Suite 1001

Brooklyn, NY 11201

(718) 722-3130

#### Bronx

1932 Arthur Avenue, Room 203A

Bronx, NY 10457

(718) 579-6900

#### Queens

153-01 Jamaica Avenue, Room 203

Jamaica, NY 11432

(718) 657-2465

#### Staten Island

60 Bay Street, 7th Floor

Staten Island, NY 10301

(718) 390-8506

#### NEW YORK STATE DIVISION OF HUMAN RIGHTS

Central Headquarters

One Fordham Plaza, 4th Floor

Bronx, NY 10458

Toll-free number: 1-888-392-3644

For general inquiries: [info@dhr.ny.gov](mailto:info@dhr.ny.gov).

TDD/TTY: 718-741-8300.

Email a complaint: [complaints@dhr.ny.gov](mailto:complaints@dhr.ny.gov)

Fax a complaint: 718-741-8322.

**Brooklyn**

55 Hanson Place, Room 1084  
Brooklyn, New York 11217  
Telephone No. (718) 722-2385  
eFax: (718) 722-2078  
InfoBrooklyn@dhr.ny.gov

**Manhattan**

Adam Clayton Powell State Office Building  
163 West 125th Street, 4th Floor  
New York, New York 10027  
Telephone No. (212) 961-8650  
eFax: (212) 961-4312  
InfoUpperManhattan@dhr.ny.gov

**Bronx**

One Fordham Plaza, 4th Floor  
Bronx, New York 10458  
Telephone No. (718) 741-8400  
eFax: (718) 741-8318  
InfoBronx@dhr.ny.gov

**Office of Sexual Harassment \Queens**

55 Hanson Place, Room 900  
Brooklyn, New York 11217  
Telephone No. (718) 722-2060  
eFax: (718) 722-2039  
InfoOSHIQns@dhr.ny.gov

**UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION****New York District Office****33 Whitehall Street, 5th Floor****New York, NY 10004****(800) 669-4000; (800) 669-6820 (TTY)****Fax: (212) 336-3790**

To submit inquiry and schedule appointment: <https://publicportal.eeoc.gov/portal/>

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 1425 NYAV****950 Pennsylvania Avenue, NW****Washington, D.C. 20530****Telephone Number: 202-307-0663 (voice and TTY)****Fax: (202) 307-1197**

You may also file a complaint online at [www.ada.gov/complaint/](http://www.ada.gov/complaint/).

If you have questions about filing an ADA complaint, please call: ADA Information Line: 800-514-0301 (voice) or 800-514-0383 (TTY).

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



**UNITED STATES DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION**

**Immigrant and Employee Rights Section**

**950 Pennsylvania Avenue, N.W. (NYA)**

**Washington, D.C. 20530**

**Direct Office Line: 1-202-616-5594 [Voice] or 1-202-616-5525 [TTY]**

**Worker Hotline: 1-800-255-7688 [Voice] or 1-800-237-2515 [TTY]**

**Employer Hotline: 1-800-255-8155 [Voice] or 1-800-237-2515 [TTY]**

**Fax: (202) 616-5509**

**Email: [ier@usdoj.gov](mailto:ier@usdoj.gov)**

**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) 693-6500 (voice) Federal Relay Service: TTY/TDD: (800) 877-8339**

**Video Relay: (877) 709-5797**

**Fax: (202) 693-6505**

**Main Email - [CivilRightsCenter@dol.gov](mailto:CivilRightsCenter@dol.gov)External - [crcexternalcomplaints@dol.gov](mailto:crcexternalcomplaints@dol.gov)**

**Web site: <https://www.dol.gov/oasam/programs/crc/index.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 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. Please use the terms "Complainant" and "Respondent" rather than either party by name.]

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

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

[Insert agency name and logo]

**EEO Complaint Number:** \_\_\_\_\_

**Determination:**

[This section should contain the EEO Investigator's determination as to whether or not the allegations were substantiated. Please use the terms "Complainant" and "Respondent" rather than either party by name.]

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**Conclusion and Recommendations:**

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

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

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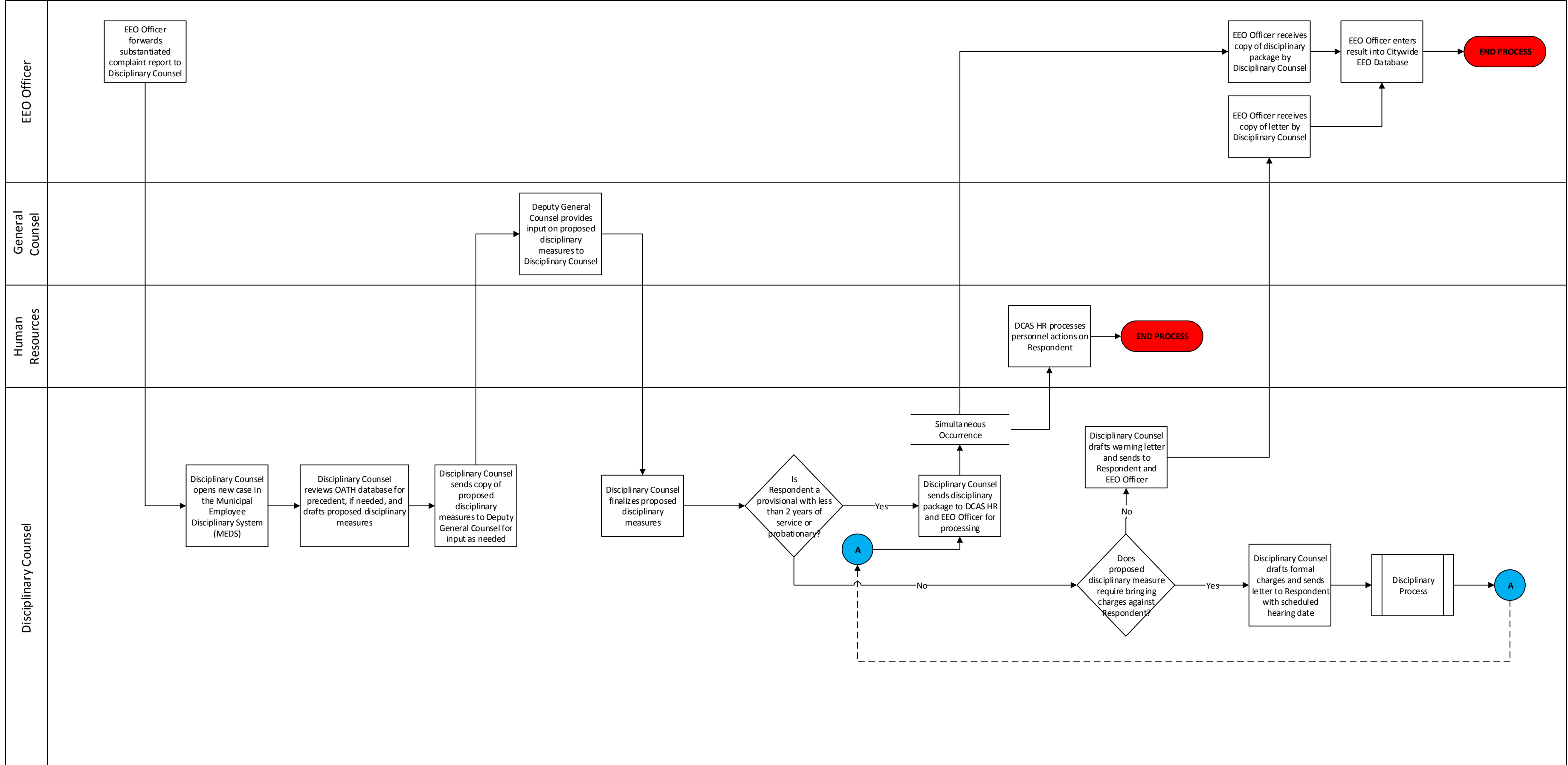
Date: \_\_\_\_\_

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[Signature] Agency Head

# Sample P- EEO Best Practice

## Substantiated Complaint Remedy Process





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The City of New York  
**Office of Management and Budget**  
255 Greenwich Street • New York, New York 10007 – 2146

**Melanie Hartzog**  
*Budget Director*

October 21, 2019

Equal Employment Practices Commission  
of the City of New York  
253 Broadway, Suite 602  
New York, NY 10007  
Attention: Charise L. Terry, Executive Director

Dear Ms. Terry:

Thank you for giving OMB the opportunity to renew its commitment to EEO. Your audit has allowed OMB to take stock of our EEO efforts, which were already strong, and make them even stronger. The following is a reply to the Corrective Actions indicated in the Evaluation of Sexual Harassment Prevention and Response Practices Audit dated October 16, 2019.

***Corrective Action #1:*** *Ensure that the principal EEO Professional works cooperatively and closely with the General Counsel in the implementation of policies and procedures concerning EEO and sexual harassment.*

In OMB's submission to the EEPC titled "OMB Counsel EEO Collaboration", meetings and correspondence are documented between General Counsel, EEO Officer and the HR Director for the FY19 Annual Diversity and EEO Plan, Agency Risk Assessment, and EEO Complaint Procedures. We believed this showed that during the audit period, the EEO Professional did work closely and cooperatively the General Counsel. Further it should be noted the EEO team is led by both the EEO Officer and HR Director. EEO Officer and Counselors are primarily responsible for investigating / fielding EEO Complaints and Inquiries. HR Director is responsible for other areas of EEO including but not limited to: Annual Diversity and EEO Plan, Recruitment, Training, Review of CEEDS reports, EEPC Audits, Agency Risk Assessment, Agency-wide communications, and attendance at EEO meetings. During the course of the audit period, the HR Director did work closely and cooperatively the General Counsel. Additional email correspondence was submitted between HR Director Lauren Wittels and Deputy General Counsel Jeffrey Werner to discuss OMB Risk Assessment, EEPC audit and other EEO Procedures.

***Corrective Action #2:*** *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.*

OMB will maintain documentation for meetings and correspondence 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.

***Corrective Action #3:*** *Ensure that managers and supervisors are held accountable for enforcing the agency's sexual harassment prevention policies and complaint procedures. Document this expectation*

and its implementation.

The EEPC acknowledged receipt of a redacted Managerial Responsibilities section from OMB's managerial performance evaluation form. However you indicated that you needed a completed and dated performance evaluation form to determine compliance with this requirement. Attached hereto please find a complete redacted Performance Evaluation.

**Corrective Action #4:** *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).*

OMB will add an additional criteria on the managerial performance evaluation which will rate managers on their ability to make employment decisions based on merit and equal consideration, or treat others in an equitable and impartial manner.

**Final Action:** *Upon the EEPC's determination that the entity does not require further review or monitoring: Distribute a memorandum signed by the agency head that re-emphasizes the commitment of agency administrators to the EEO program, including the prevention of sexual harassment, and informs employees of any changes to the agency's employment practices as a result of the EEPC's audit/monitoring. This final action is required to conclude the audit and monitoring process.*

Upon the EEPC's determination that OMB does not require further review or monitoring, OMB will distribute a memorandum signed by the agency head that re-emphasizes the commitment of agency administrators to the EEO program, including the prevention of sexual harassment, and informs employees of any changes to the agency's employment practices as a result of the EEPC's audit/monitoring. We can share a copy with you at that time.

Melanie Hartzog

Agency Head

Signature

Date

10/29/19



Sasha Neha Ahuja  
Chair

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

Charise L. Terry  
Executive Director

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**

October 30, 2019

Melanie Hartzog  
Budget Director  
Office of Management and Budget  
255 Greenwich Street, 8th Floor  
New York, NY 10007

Re: Resolution #2019AP/234-019-(2019)  
Office of Management and Budget  
Evaluation of Sexual Harassment Prevention and Response Practices  
Audit Period: January 1, 2017 to December 31, 2018  
Determination: **FINAL**

Dear Budget Director Hartzog:

On behalf of the members of the Equal Employment Practices Commission (EEPC), thank you for the continued cooperation extended to our staff. This document serves as a follow-up evaluation and Final Determination to the following:

Preliminary Determination Issued on: October 16, 2019  
Response Received: October 29, 2019

**Purpose**

Chapter 35, Sections 815(a)(15) and (19) of the New York City Charter (Charter) calls for agency heads to ensure and promote equal opportunity for all persons in appointment, payment of wages, development, and advancement, and to establish measures and programs to ensure a fair and effective affirmative employment plan to provide equal employment opportunity (EEO) for minority group members and women.

Charter Chapter 36, Sections 830(a) and 831(d)(2) and (5) authorize the EEPC to audit, review, evaluate, and monitor the employment practices, procedures, and programs of city agencies and other municipal entities, hereinafter "entities," and their efforts to ensure fair and effective EEO for women and minority employees and applicants. Charter Sections 831(d)(2) and 832(c) authorize the EEPC to make a determination that any 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 prescribed. The attachment contains the EEPC's final determination regarding the audit, review, and evaluation of the Office of Management and Budget's Sexual Harassment Prevention and Response Practices.

As the Office of Management and Budget falls within the EEPC's purview under Charter Chapter 36, Section 831(a), the EEPC is authorized to review, evaluate, and monitor the coordination and implementation of its affirmative employment programs of EEO and related practices. As indicated in our Preliminary Determination, the EEPC has adopted uniform standards<sup>1</sup> to this end. The purpose of this Final Determination, as authorized by Charter Chapter 36, Section 832(c), is to determine the sufficiency of the Office of Management and Budget's actions taken or planned thus far to correct areas of non-compliance identified in the EEPC's Preliminary Determination. Further, Chapter 36, Section 832(c) requires that: (1) the EEPC assign a compliance-monitoring period of up to six (6) months to monitor efforts taken to eliminate areas of non-compliance, if any; and (2) the agency respond in thirty (30) days and submit a report each month during this period on the progress of efforts taken to correct outstanding areas of non-compliance.

### Next Steps

**The assigned compliance-monitoring period is: November 1, 2019 to April 30, 2020. Correcting all outstanding areas of non-compliance without delay is highly encouraged and will serve to shorten this period.**

***If corrective actions remain:*** Corrective actions will be listed under the *Monitoring Required* section of the attached Final Determination. The EEPC requires that the agency head submit a signed response to this Final Determination. The signed response should indicate what steps the Office of Management and Budget has taken, or will take, to correct outstanding areas of non-compliance during the designated compliance-monitoring period. The Office of Management and Budget will be monitored monthly until all outstanding areas of non-compliance have been sufficiently corrected. The Office of Management and Budget is required to submit documentation that supports the implementation of each corrective action via TeamCentral, the EEPC's Automated Compliance-Monitoring System. Instruction on how to access and navigate TeamCentral is attached.

***Final Memorandum:*** Upon the Office of Management and Budget's implementation of the final corrective action, if any, the EEPC requires that the Office of Management and Budget submit a final memorandum, signed by the agency head, that recognizes the EEPC's audit and reiterates commitment to equal employment practices. **Upon receipt of this final memorandum, the EEPC will issue a *Determination of Compliance*.**

***If no corrective actions remain:*** In lieu of a response to this Final Determination, the Office of Management and Budget must submit a final memorandum (See Next Steps, Final Memorandum). Upon the EEPC's receipt of the final memorandum, the Office of Management and Budget will be exempt from the abovementioned compliance-monitoring period.

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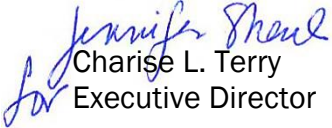
<sup>1</sup> The EEPC's uniform standards for auditing municipal entities and minimum standards for auditing community boards (collectively "Standards") are founded upon, and consistent with, federal, state, and local laws and regulations, and policies and procedures, including, but not limited to, the City of New York's *Equal Employment Opportunity Policy, Standards and Procedures to be Utilized by City Agencies 2014*; New York City Human Rights Law (NYC Administrative Code 8); New York State Human Rights Law (New York Executive Law, Article 15); New York State Civil Service Law §55-a; and the equal employment opportunity requirements of the New York City Charter.

**Conclusion**

This is the EEPD's Final Determination. Questions regarding next steps may be addressed to 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,

  
for Charise L. Terry  
Executive Director

c: Kathryn Johnson, Principal EEO Professional, Office of Management and Budget  
Lauren Wittels, Director of Personnel Management and Administration, Office of  
Management and Budget

Enclosed: TeamCentral Agency Manual

**FINAL DETERMINATION**

A response indicating progress of the Office of Management and Budget's efforts to correct outstanding areas of non-compliance, with supporting documentation, is due within 30 days.

The Equal Employment Practices Commission's findings and corrective actions required to remedy areas of non-compliance are based on the audit methodology, which included collection and analysis of the documents, records, and data provided; the EEPC's *Preliminary Interview Questionnaires (PIQs)* for EEO professionals and others involved in EEO program administration; and, if applicable, the *EEPC Employee Survey*; the *EEPC Supervisor/Manager Survey*; the *Annual EEO Plans* and *Quarterly EEO Reports* of the audited entity; 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 optional response<sup>2</sup> (if applicable) to the EEPC's Preliminary Determination, our Final Determination is as follows:

**Agree**

Regarding your responses to the following EEPC required corrective actions, we Agree based on documentation that is attached to your response.

**Corrective Action #1:**

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.

**Agency Response:**

*"In OMB's submission to the EEPC titled "OMB Counsel EEO Collaboration", meetings and correspondence are documented between General Counsel, EEO Officer and the HR Director for the FY19 Annual Diversity and EEO Plan, Agency Risk Assessment, and EEO Complaint Procedures. We believed this showed that during the audit period, the EEO Professional did work closely and cooperatively the General Counsel. Further it should be noted the EEO team is led by both the EEO Officer and HR Director. EEO Officer and Counselors are primarily responsible for investigating / fielding EEO Complaints and Inquiries. HR Director is responsible for other areas of EEO including but not limited to: Annual Diversity and EEO Plan, Recruitment, Training, Review of CEEDS reports, EEPC Audits, Agency Risk Assessment, Agency-wide communications, and attendance at EEO meetings. During the course of the audit period, the HR Director did work closely and cooperatively the General Counsel. Additional email correspondence was submitted between HR Director [name provided] and Deputy General Counsel [name provided] to discuss OMB Risk Assessment, EEPC audit and other EEO Procedures." The agency's complaint investigation procedures and EEO Policy require a cooperative relationship between the legal and EEO staff or units. The agency previously submitted the aforementioned documents to demonstrate that the EEO Officer and the HR Director collectively fulfilled the duties of the principal EEO Professional, to work cooperatively and closely with the General Counsel in the implementation of policies and procedures concerning EEO and sexual harassment.*

**EEPC Response:**

The EEPC accepts the agency's response, which elaborates on the responsibilities of the different members of the agency's EEO team, and documentation provided as confirmation that corrective action no. 1 has been implemented.

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



Corrective Action #3:

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

Agency Response:

*"The EEPC acknowledged receipt of a redacted Managerial Responsibilities section from OMB's managerial performance evaluation form. However you indicated that you needed a completed and dated performance evaluation form to determine compliance with this requirement. Attached hereto please find a complete redacted Performance Evaluation."* The agency submitted a completed, dated and redacted performance evaluation form for managers and supervisors, with the *Managerial Responsibilities* section completed, to demonstrate that OMB's managers and supervisors were held accountable for enforcing the agency's sexual harassment prevention policies and complaint procedures.

EEPC Response:

The EEPC accepts the agency's response and documentation provided as confirmation that corrective action no. 3 has been implemented.

**Monitoring Required**

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

Corrective Action #2:

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.

Agency Response:

*"OMB will maintain documentation for meetings and correspondence 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."*

EEPC Response:

The EEPC recognizes the agency's commitment to implement corrective action no. 2. To demonstrate compliance, please provide documentation of the agency's 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.

Corrective Action #4:

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:

*"OMB will add an additional criteria on the managerial performance evaluation which will rate managers on their ability to make employment decisions based on merit and equal consideration, or treat others in an equitable and impartial manner."*

EEPC Response:

The EEPC recognizes the agency's commitment to implement corrective action no. 4. To demonstrate compliance, please provide documentation of the agency's use of 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.

Final Action:

Upon the EEPC's determination that the entity does not require further review or monitoring: Distribute a memorandum signed by the agency head that re-emphasizes the commitment of agency administrators to the EEO program, including the prevention of sexual harassment, and informs employees of any changes to the agency's employment practices as a result of the EEPC's audit/monitoring. This final action is required to conclude the audit and monitoring process.

Agency Response:

*"Upon the EEPC's determination that OMB does not require further review or monitoring, OMB will distribute a memorandum signed by the agency head that re-emphasizes the commitment of agency administrators to the EEO program, including the prevention of sexual harassment, and informs employees of any changes to the agency's employment practices as a result of the EEPC's audit/monitoring. We can share a copy with you at that time."*

EEPC Response:

The EEPC recognizes the agency's commitment to implement the Final Action, which is to be completed after the EEPC's determination that the entity does not require further review or monitoring.

The EEPC thanks you and your staff for your continued cooperation.



**RESOLUTION NO.**  
**2019AP/234-019-(2019)**  
**Office of Management and Budget**  
**Budget Director Melanie Hartzog**  
**Sexual Harassment Prevention and Response Practices**  
**DETERMINATION: FINAL**

**SYNOPSIS**

<b>Corrective Action(s):</b>	<b>Total: 4</b>		
<b>Period Audit Covered:</b>	January 1, 2017 to December 31, 2018		
<b>Preliminary Determination Issued:</b>	October 16, 2019	Response Received	October 29, 2019
<b>Final Determination Issued:</b>	October 30, 2019	Response Due	November 29, 2019
<b>Compliance-Monitoring:</b>	Required	November 1, 2019 to April 30, 2020	

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

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

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

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

**Whereas**, pursuant to the audit, review, and evaluation of the Office of Management and Budget's Sexual Harassment Prevention and Response Practices, the EEPC issued a Preliminary Determination, dated October 16, 2019, setting forth findings and the following corrective actions required to remedy areas of non-compliance:

1. 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.
2. 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.
3. 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.
4. 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).

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

**Whereas**, in accordance with Charter Chapter 36, Section 832(c), after consideration, the EEPC issued a Final Determination on October 30, 2019, which indicated that the following areas required corrective action: no(s). 2 and 4; and

**Whereas**, in accordance with Charter Chapter 36, Section 832(c), in the Final Determination, the EEPC assigned a monitoring period from November 1, 2019 to April 30, 2020, to determine whether the entity eliminated areas of non-compliance, if any; and

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

**Whereas**, in accordance with Charter Chapter 36, Section 832(c), on October 30, 2019, the entity was required to issue a response to the EEPC's Final Determination; Now Therefore,

**Be It Resolved**, that pursuant to Charter Chapter 35, Sections 815(a)(15) and (19), which requires agency heads to ensure and promote equal opportunity for all persons in

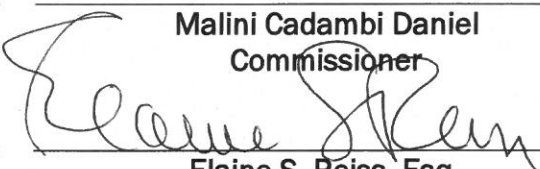
appointment, payment of wages, development, and advancement, and to establish measures and programs to ensure a fair and effective affirmative employment plan to provide equal employment opportunity for minority group members and women, the EEPC approves the issuance of this Final Determination to Budget Director Melanie Hartzog to assign compliance-monitoring.

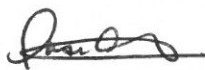
Approved unanimously on October 31, 2019.

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

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

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

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

  
\_\_\_\_\_  
Sasha Neha Ahuja  
Chair





The City of New York  
**Office of Management and Budget**  
255 Greenwich Street • New York, New York 10007 – 2146

**Melanie Hartzog**  
*Budget Director*

November 25, 2019

Equal Employment Practices Commission  
of the City of New York  
253 Broadway, Suite 602  
New York, NY 10007  
Attention: Charise L. Terry, Executive Director

Dear Ms. Terry:

Thank you for the follow-up evaluation and Final Determination sent to OMB on 10/30/19. The following are the steps the Office of Management and Budget has taken to correct outstanding areas of non-compliance during the designated compliance-monitoring period.

***Corrective Action #2:*** *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.*

OMB Response: Please find attached correspondence between the Agency Head Melanie Hartzog and EEO Professional Lauren Wittels discussing the recent review and submission of OMB's FY 2020 Diversity and EEO Plan. OMB will continue to document directives or decisions between the Agency Head (or a direct report other than the General Counsel) and the principal EEO Professional throughout the year.

***Corrective Action #4:*** *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).*

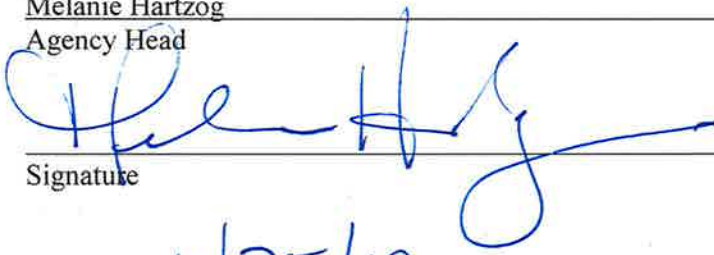
OMB Response: Please find attached OMB's revised managerial performance evaluation which includes a new question designed to rate managers on their ability to make employment decisions based on merit and equal consideration, or treat others in an equitable and impartial manner. This managerial performance evaluation has already distributed to OMB management and will be utilized going forward.

***Final Action:*** *Upon the EEPC's determination that the entity does not require further review or monitoring: Distribute a memorandum signed by the agency head that re-emphasizes the commitment of agency administrators to the EEO program, including the prevention of sexual harassment, and informs employees of any changes to the agency's employment practices as a result of the EEPC's audit/monitoring. This final action is required to conclude the audit and monitoring process.*

Upon the EEPC's determination that OMB does not require further review or monitoring, OMB will distribute a memorandum signed by the agency head that re-emphasizes the commitment of agency administrators to the EEO program, including the prevention of sexual harassment, and informs employees of any changes to the agency's employment practices as a result of the EEPC's audit/monitoring. We can share a copy with you at that time.

Melanie Hartzog

Agency Head



Signature

11/25/19

Date

# Memo

**TO:** All Employees  
**FROM:** Equal Employment Practices Commission  
**DATE:** 12/11/2019  
**RE:** Sexual Harassment Prevention and Response Practices  
Office of Management and Budget

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The New York City Charter requires the Equal Employment Practices Commission (EEPC) to conduct an audit once every four years to ensure each City agency or municipal entity (collectively "agency") complies with federal, state, and local laws and regulations, and policies and procedures that increase equal opportunity for employees and applicants.

The EEPC recently concluded an audit and evaluation of the Office of Management and Budget's practices and procedures for compliance with city, state, and federal equal employment opportunity laws and regulations, and identified enhancement by means of the following:

- 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
- 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.
- 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.
- 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).


Through successful completion of the EEPC's audit, evaluation, and monitoring processes and the aforementioned enhancements Budget Director Hartzog reaffirms the commitment to ensuring that the Office of Management and Budget's employment practices encourage





**Equal Employment  
Practices Commission**

and maintain a workplace free from unlawful discrimination and sexual harassment, and that all employees are aware of their rights and obligations under the agency's equal employment opportunity policies.

*Avraham Fink*  
  
on behalf of Melane Herzog

12/13/19

## Wittels, Lauren (OMB)

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**From:** Budget Director  
**Sent:** Wednesday, December 11, 2019 6:23 PM  
**To:** AllUsers  
**Subject:** OMB EEO Policy

Dear Colleagues:

As a reminder, the Mayor's Office of Management and Budget (OMB) is committed to ensuring that every employee has an equal opportunity to succeed in this agency. This means we must have a work place that is free of bias, harassment, discrimination or prejudice of any kind.

Supervisors have a special responsibility for ensuring that employees are aware of their rights and that our workplace is free of discrimination on the basis of race, color, creed, age, national origin, citizenship status, gender, sexual orientation, disability, military status, marital status, partnership status, any lawful source of income or lawful occupation, status as a victim of domestic violence, sex offenses or stalking, whether children are, may be or would be residing with a person, or conviction or arrest record. OMB Managers will continue to be rated on EEO policy understanding and implementation.

OMB recognizes The Equal Employment Practices Commission's (EEOC) recent audit of OMB's practices relating to Sexual Harassment Prevention and Response Practices and reiterates OMB's commitment to equal employment practices.

To learn about the City's Equal Employment Opportunity Policy, please visit <http://www.nyc.gov/html/dcas/downloads/pdf/misc/eoo.pdf>

Additional EEO Resources and Reasonable Accommodations information can be found on OMB Online: <https://nycmomb.sharepoint.com/sites/OMBOnline/SitePages/PMA-Information.aspx>

Should you become aware of any misconduct or complaint or should you need any assistance understanding or complying with these policies, please contact one of the agency's EEO Representatives:

EEO Officer: Kathryn Johnson, [REDACTED]

EEO Counselor: Angel Acevedo, [REDACTED]

EEO Counselor: Donna Brathwaite, [REDACTED]

EEO Counselor: Kara Kirchhoff, [REDACTED]

EEO Counselor: Jay Olson, 6 [REDACTED]

Thank you,  
Melanie Hartzog  
Director  
December 11, 2019

**RESOLUTION NO.  
 2019AP/236-019-(2019)C42  
 Office of Management and Budget  
 Budget Director Melanie Hartzog  
 Sexual Harassment Prevention and Response Practices  
 DETERMINATION: COMPLIANCE**

**SYNOPSIS**

<b>Corrective Action(s)</b>	Total: 4		
<b>Period Audit Covered</b>	January 1, 2017 to December 31, 2018		
<b>Preliminary Determination Issued</b>	October 16, 2019	Response Received	October 29, 2019
<b>Final Determination Issued</b>	October 30, 2019	Response Received	November 25, 2019
<b>Compliance-Monitoring</b>	Required	November 1, 2019 to April 30, 2020 without extension	

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

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

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

**Whereas**, the EEPC conducted an audit, review, and evaluation of the Office of Management and Budget’s Sexual Harassment Prevention and Response Practices; and

**Whereas**, pursuant to the audit, review, and evaluation of the Office of Management and Budget’s Sexual Harassment Prevention and Response Practices, the EEPC issued a Preliminary Determination, dated October 16, 2019, setting forth findings and the following corrective actions required to remedy areas of non-compliance:

1. 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.
2. 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.
3. 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.
4. 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).

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

**Whereas**, in accordance with Charter Chapter 36, Section 832(c), after consideration, the EEPC issued a Final Determination on October 30, 2019, which indicated that the following areas required corrective action: no(s). 2 and 4; and

**Whereas**, in accordance with Charter Chapter 36, Section 832(c), in the Final Determination, the EEPC assigned a monitoring period from November 1, 2019 to April 30, 2020, to determine whether the entity eliminated areas of non-compliance, if any; and

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

**Whereas**, in accordance with Charter Chapter 36, Section 832(c), on November 25, 2019, the entity issued a response to the EEPC's Final Determination; and


**Whereas**, in accordance with Charter Chapter 36, Section 832(c), the Office of Management and Budget was monitored until December 11, 2019; and

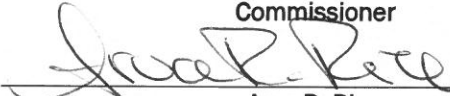
**Whereas**, pursuant to Charter Chapter 35, Sections 815(a)(15) and (19), which requires agency heads to ensure and promote equal opportunity for all persons in appointment, payment of wages, development, and advancement, and to establish measures and programs to ensure a fair and effective affirmative employment plan to provide equal employment opportunity for minority group members and women, the Budget Director submitted a copy of a memorandum to staff dated December 11, 2019, which recognized the EEPC's audit and reiterated commitment to the Office of Management and Budget's equal employment practices; Now Therefore,

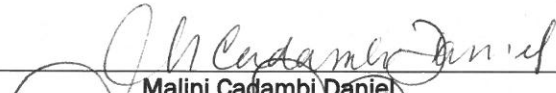
**Be It Resolved**, that the Office of Management and Budget has satisfied the equal employment standards set by the EEPC pursuant to its authority under New York City Charter Chapters 35 and 36; and


**Be It Resolved**, that the EEPC's Board of Commissioners approves the issuance of this Determination of Compliance to Budget Director Melanie Hartzog of the Office of Management and Budget.

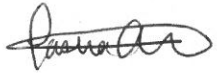
Approved unanimously on December 19, 2019.

  
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Angela Cabrera  
Commissioner

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

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

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



\_\_\_\_\_  
Sasha Neha Ahuja  
Chair





Sasha Neha Ahuja  
Chair

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

Charise L. Terry  
Executive Director

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**

December 19, 2019

Melanie Hartzog  
Budget Director  
Office of Management and Budget  
255 Greenwich Street, 8th Floor  
New York, NY 10007

Re: Resolution #2019AP/236-019-(2019)C42  
DETERMINATION: Compliance

Dear Budget Director Hartzog:

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

Thank you and principal EEO Professional Kathryn Johnson and Director of Personnel Management and Administration Lauren Wittels for the cooperation extended to the EEPC during the course of our review, evaluation, and monitoring of your agency's employment and EEO-related practices.

Sincerely,

A handwritten signature in black ink that reads "Malini Cadambi Daniel". The signature is written in a cursive style.

Malini Cadambi Daniel  
Commissioner

C: Kathryn Johnson, Principal EEO Professional, Office of  
Management and Budget  
Lauren Wittels, Director of Personnel Management and  
Administration, Office of Management and Budget



This  
*Determination of Compliance*

is hereby issued to

*Office of Management and Budget*

for successful implementation of 4 of 4 required corrective action(s),  
thereby achieving compliance with the Equal Employment Practices Commission's  
Sexual Harassment Prevention and Response Practices  
from January 1, 2017 to this date.

In care of Budget Director Melanie Hartzog,  
Principal EEO Professional Kathryn Johnson, and  
Director of Personnel Management and Administration Lauren Wittels

On this 19<sup>th</sup> day of December in the year 2019,

*Malini Cadambi Daniel*

Malini Cadambi Daniel, Commissioner

*Charise L. Terry*

Charise L. Terry, Executive Director