

ADMINISTRATIVE POLICY 23-02

Harassment Prohibited

1. PURPOSE

The City and Borough of Juneau (CBJ) is committed to ensuring all employees have a workplace free from harassment based on sex or any other protected traits under federal, state, or local anti-discrimination laws or policies.¹ The right to work in a harassment-free environment also protects employees from retaliation or threats of retaliation for opposing harassment or participating in investigations or proceedings addressing harassment.

2. POLICY

Harassment is prohibited by federal and state laws, as well as the CBJ's Charter, Code, and policies—including this policy. Likewise, this policy prohibits retaliation against employees for engaging in protected activity.

3. DEFINITIONS

Please note the CBJ may interpret these terms *more* liberally than federal or state agencies or courts. For example, unwelcome communication or conduct that may not legally rise to levels prohibited by federal or state laws may *still* be considered sufficiently serious to warrant discipline pursuant to this policy.²

Adverse employment action means any adverse treatment—by the employer—that is based on a retaliatory motive and is reasonably likely to deter the complainant or others from engaging in protected activity.

Harassment means unwanted communication or conduct by a supervisor, coworker, or other person that is based on protected traits rather than job-related factors, and that adversely affects the employment relationship or the work environment. Harassment includes unwanted communication or conduct from non-employees over whom the CBJ has control, which may include contractors or customers on CBJ premises.

Hostile work environment is considered prohibited harassment or sexual harassment that has become severe or pervasive enough to create a work environment that a reasonable person would

¹ These anti-discrimination laws include, but are not limited to: 42 USC § 2000e *et seq.* (“Title VII of the Civil Rights Act of 1964”); AS 18.80.220 (“The Alaska Human Rights Act”); Alaska Const. art. 1, §3 (civil rights clause); CBJ Charter 15.2(a); CBJ Code’s Title 41 (addressing equal rights), and; CBJ Personnel Rule 16 PR 040 (prohibition on harassment).

² See *State v. Pub. Safety Emps. Ass’n*, 235 P.3d 197, 202 (Alaska 2010) (noting employers have an affirmative duty to address sexual harassing conduct even before such conduct becomes “so pervasive as to rise to the level of actionable sexual harassment under Title VII....”).

consider intimidating, hostile, or abusive. The complainant does not have to be the person harassed but can be any employee affected by the unwanted communication or conduct.

Job-related factors include an employee's work performance, knowledge, skill, ability, or willingness to perform assigned work.

Protected activity includes opposition activity such as rejecting or reporting harassment. Opposition activity is protected even if a subsequent determination is made that opposed conduct did not constitute harassment (so long as the manner of opposition was reasonable and the opposition was based on a reasonable good-faith belief that the conduct opposed was, or could become, harassment). Protected activity also includes good-faith participation in investigations and proceedings regarding alleged harassment.³

Protected traits include race, religion, color, national origin, age, physical or mental disability, sex, familial status, gender identity or expression, sexual orientation, and political affiliation.

Retaliation means taking an adverse employment action against an employee on the basis of an employee's engagement in a protected activity.

Sexual harassment means conduct including, but not limited to: pressure to engage in sexual activity; inappropriate or unwelcome body contact; sexual jokes, innuendoes or comments; constant leering or staring, and; inappropriate comments concerning appearance. Sexual harassment is a category of harassment that is prohibited under this policy. Sexual harassment includes creating a work environment where employees are subject to unwelcome verbal or physical sexual behavior, such as the above-listed conduct. Sexual harassment also includes making employment decisions based on the satisfaction of sexual demands.

Supervisors includes, but is not limited to, immediate supervisors, administrators, managers, and department directors.

Unwanted communication or conduct is conduct or communication a reasonable person would clearly find harmful or offensive, which may include threats, slurs, comments, jokes, gestures, and other similar verbal or physical communication or conduct.

4. DISCIPLINE

Disciplinary action taken pursuant to this policy should be taken only *after* consultation with the HR Manager, HR Director, or the Deputy City Manager.

- A. Harassment by employees:** Employees engaging in harassment will be subject to disciplinary actions. Based upon the seriousness of the offense, disciplinary actions may include, but are not limited to, reprimand, leave, suspension, or dismissal.

³ Employees who knowingly provide false or misrepresentative statements, as determined by the investigator, may be subject to discipline. Such statements are not considered protected activity.

- B. Retaliation by employees:** Any form of retaliation, reprisal or adverse action taken against an employee for complaining about, opposing, reporting, or cooperating in the investigation of harassment is prohibited and will subject the actor to disciplinary action up to and including suspension or dismissal. Discipline may be applied even if the harassment investigation reveals there was no initial harassment in violation of this policy.
- C. Affirmative duty of supervisors:** Supervisors who knew or should have known harassment was occurring but failed to take prompt corrective action may be subject to disciplinary actions.
- D. Cooperation in investigations:** Employees are expected to cooperate in harassment investigations, and refusal to do so may trigger disciplinary action. *However*, employees retain the right not to incriminate themselves for potentially criminal conduct during investigative interviews.

5. FILING REPORTS OF HARASSMENT

Employees should report harassment as soon as possible. The sooner harassment is reported, the sooner it can be addressed and eliminated. The CBJ will attempt to investigate all claims.⁴

Initial reports should be made to immediate supervisors. Employees may also report harassment to the HR Manager, HR Director, or the Deputy City Manager, especially when: harassment continues after an initial report is made; an employee does not have an immediate supervisor; an employee is uncomfortable reporting harassment to their immediate supervisor; or an employee's immediate supervisor is the source of harassment.

Making an internal report through the CBJ does not prevent employees from filing reports with the Equal Employment Opportunity Commission (EEOC), the Alaska State Commission for Human Rights (ASCHR), or filing a grievance pursuant to the personnel rules or an applicable negotiated agreement.

6. INVESTIGATING REPORTS

Reports of harassment will be kept confidential except to the extent necessary for investigation and remedial action.⁵ Investigation participants should make efforts to protect the privacy of all involved.

⁴ Prompt filing is recommended because federal and state statutes require certain reports to be made within narrow time limits (e.g., within 180/300 days for Title VII claims (*see* 42 USCA § 2000e-5(e)(1)), within 300 days for AS 18.80 claims (*see* 6 AAC 30.230)); *however, the CBJ may still investigate and take disciplinary actions based on harassment that would be considered legally stale.*

⁵ In the interests of safety—whether employees' or the public—and in accordance with professional or legal obligations, information discovered in the course of an investigation may be

Reports of harassment, when reported to supervisors, the HR Manager, HR Director, or the Deputy City Manager, shall be investigated promptly, thoroughly, and as confidentially as possible.

Upon receiving a report of harassment, supervisors shall:

- A. immediately inform the HR Manager, HR Director, or the Deputy City Manager that a report has been received and provide all relevant facts necessary to begin the investigation, and;
- B. immediately make a determination, in consultation with HR Manager, HR Director or the Deputy City Manager, if it is appropriate to separate the complainant and the respondent without taking action adverse to either.

7. PUBLICATION OF POLICY

It is the responsibility of each department director to ensure that copies of this policy are conspicuously posted for employees at every facility in the department, provided to all supervisory staff, and are included in all department policy manuals and employee handbooks. This policy shall also remain available to the public through the CBJ's official website.

8. GENERAL PROVISIONS

- A. **Scope:** This policy applies to all CBJ departments and employees of the City and Borough of Juneau, Alaska, with the exception of Juneau School District employees. Supervisors also have an obligation to protect their employees from harassment in the workplace by non-employees.
- B. **Intended application:** This policy is not intended to restrict legitimate business activities such as disciplinary actions, performance evaluations or other activities clearly within the scope of supervisors' job-related responsibilities.
- C. **Authority to promulgate policy:** Consistent with CBJ Charter § 4.5 and CBJ Code 44.05.030, the City Manager maintains the authority to order policy and guidelines for implementation.
- D. **Authority to implement policy:** The Deputy City Manager holds the title of Equal Employment Opportunity Officer for the CBJ, and thus has overall authority to administer this policy.

All administrative and supervisory staff employed by the CBJ, including all supervisors, managers, administrators, and directors are responsible for taking

disclosed to necessary third parties having similar confidentiality duties (e.g., law enforcement, insurers, CBJ's Risk Manager).

immediate corrective action when they know or have reason to know of conduct prohibited under this policy.

E. Effective date: This policy will take effect as of the signing date.

Dated at Juneau, Alaska, this 10th day of July, 2023.



Duncan Rorie Watt
City and Borough Manager