

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2023-131
October 31, 2023

SUBJECT: Updated District Government Sexual Harassment Policy, Guidance, and Procedures

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by sections 422(2), (3), and (11) of the District of Columbia Home Rule Act of 1973, 87 Stat. 790; Pub. L No. 93-198, D.C. Official Code §§ 1-204.22(2), (3), and (11), it is hereby **ORDERED** that:

I. PURPOSES AND BACKGROUND

This Order incorporates provisions of, updates, and supersedes Mayor's Order 2017-313, dated December 18, 2017, regarding sexual harassment in District of Columbia ("District") Government workplaces.

In addition to providing procedural updates to the District's sexual harassment policy, this Order establishes and directs the Sexual Harassment Task Force to further examine the District's sexual harassment policies and provide recommendations to further the goal of a harassment-free workplace; establishes obligations of District Government employees; adds Mayor's direct reports to those required to be referred for outside investigation of sexual harassment; and bans all sexual and romantic relationships between supervisors and the employees in their chain of command.

This Order reaffirms that the District Government does not tolerate any form of inappropriate workplace conduct including sexual harassment, nor does it tolerate sexual harassment in non-employment interactions between District Government employees and the public. Sexual harassment is recognized as one of the most demeaning and demoralizing examples of workplace misconduct.

This Order also requires that employees be trained on sexual harassment every year and provides additional specificity as to the qualifications and role of Sexual Harassment Officers.

Further, this Order directs agency compliance with the Sexual Harassment Data Collection and Reporting Act of 2022, D.C. Law 24-171, D.C. Official Code § 1-546.01, and clarifies, consistent with the Human Rights Enhancement Amendment Act of 2022, D.C. Law 24-172, D.C. Official Code § 2-1402.11(c-2), the definition of sexual harassment.

II. INDIVIDUALS AND ENTITIES COVERED

A. Prohibitions and Protections

1. This Order is intended broadly to prohibit sexual harassment in all interactions with District Government employees and officials and persons acting on behalf of the District Government, and to facilitate speedy investigation and non-monetary remedial action including warnings to stop offensive behavior, additional training, reassignments, and personnel and contract actions.
2. The District of Columbia prohibits workplace sexual harassment by all District Government employees and officials. The prohibition applies to harassment of other employees and officials and to harassment of third parties and members of the public interacting with the District Government, such as vendors, contractors, grantees, customers, clients, and other persons visiting or working at District Government worksites or service sites inside and outside District Government agencies.
3. Likewise, contractors and grantees carrying out work on behalf of the District Government shall not sexually harass colleagues who carry out work on behalf of the District Government; District Government employees; or customers, clients, or beneficiaries of the services the contractors and grantees provide on behalf of the District Government; and those clients, customers, beneficiaries, employees, and colleagues may file complaints that trigger sexual harassment investigations and possibly remedies. Remedies may include requiring the contractor or grantee to use alternate personnel to provide services, and other remedies available under the contract or grant agreements up to and including contract or grant termination or non-renewal of the grant or contract.
4. In addition, sexual harassment by District Government clients, customers, or visitors against District Government employees, contractors, or grantees, or other clients, customers, or visitors, at District Government worksites or service sites, is prohibited and complaints made against District Government employees who sexually harass contractors, grantees, agency clients, customers or visitors, upon investigation, may result in discipline of the employee and accommodations of the contractor, grantee, customer or visitor, such as having another government official assigned to the matter.
5. In the course of their duties as members of District of Columbia boards and commissions, board and commission members are bound by the prohibitions, procedures, and deadlines set forth in this Order.

6. Not every procedure set forth in this Order applies to persons not working for the District Government.

B. Scope

1. Laws prohibiting sexual harassment apply throughout the District Government. The agencies listed below should either use the training, procedures, information, and processes provided in this Order, or their own, similar ones. To the extent District law requires centralized reporting, the reporting requirements in this Order apply to all agencies.
2. Those agencies include the Office of the Attorney General, the Office of the Chief Financial Officer, the Board of Elections, the Zoning Commission, the Public Service Commission, the Commission on Arts and Humanities, the Washington Convention and Sports Authority (Events DC), the Board of Education, the University of the District of Columbia, the DC Public Library, the DC State Athletics Commission, the Public Charter School Board and public charter schools, the Office of the People's Counsel, the District of Columbia Water and Sewer Authority (DC Water), the Green Finance Authority, the Health Benefit Exchange Authority, the Not-for-Profit Hospital Corporation, the Contract Appeals Board, the DC Retirement Board, the Office of Employee Appeals, the DC National Guard, the Criminal Justice Coordinating Council, the Office of Police Complaints, the Corrections Information Council, and the Uniform Law Commission.
3. This Order does not apply to the Council of the District of Columbia, Advisory Neighborhood Commissions, or the DC Courts, and agencies and offices subordinate to them.

III. SEXUAL HARASSMENT

- A. The Human Rights Enhancement Amendment Act of 2022, D.C. Law 24-172, effective September 21, 2022; D.C. Official Code § 2-1402.11(c-2) expanded the definition of "harassment" and "sexual harassment" under the D.C. Human Rights Act to provide that sexual harassment includes conduct of a sexual nature, "whether direct or indirect, verbal or nonverbal, that unreasonably alters an individual's terms, conditions, or privileges of employment or has the purpose or effect of creating an intimidating, hostile, or offensive work environment."
- B. In addition, sexual harassment includes "sexual advances, requests for sexual favors, or other conduct of a sexual nature where submission to the conduct is made either explicitly or implicitly a term or condition of employment or where submission to or rejection of the conduct is used as the basis for an employment decision affecting the individual's employment." This is sometimes referred to as *quid pro quo* sexual harassment.

- C.** In determining whether sexual harassment has taken place, the D.C. Human Rights Act states that “conduct need not be severe or pervasive to constitute harassment” and that “no specific number of incidents or specific level of egregiousness is required.”
- D.** Examples of conduct that can contribute to or constitute sexual harassment or an intimidating, hostile, or offensive work environment include:
1. Sex acts;
 2. Display of sexual organs;
 3. Using sexually oriented or sexually degrading language describing an individual or their body, clothing, hair, accessories, or sexual experiences;
 4. Sexually offensive comments or off-color language, jokes, or innuendo that a reasonable person would consider to be of a sexual nature, or belittling or demeaning to an individual or a group’s sex, sexual orientation, or gender identity;
 5. “Sexting” or seeking or sending pictures of intimate body parts;
 6. Taking or displaying pictures of body parts meant to be covered up (such as “upskirting” pictures);
 7. Displaying or disseminating sexually suggestive objects, books, screensavers, magazines, photographs, music, cartoons, or computer internet sites or references;
 8. Unnecessary and inappropriate touching or physical contact, such as intentional and repeated brushing against a colleague’s body, touching or brushing a colleague’s hair or clothing, massages, groping, patting, pinching, or hugging, that a reasonable person would consider to be of a sexual nature;
 9. Leering, ogling, or making sexually suggestive gestures or sounds, such as whistling or kissing noises;
 10. Making inquiries about someone’s private sex life or describing one’s own sex life;
 11. Workplace sexual comments, conduct, displays and suggestions between two willing parties in the presence of another that are inconsistent with professional workplace norms;

12. Any unwanted repeated contact, including, but not limited to in-person, or telephonic, for romantic or sexual purposes;
 13. Giving a preference to someone who is engaged in a dating, romantic, or sexual relationship based on the relationship to the disadvantage of someone who is not engaged in a dating, romantic, or sexual relationship; and
 14. Sexual assault, stalking, trapping someone such that they are not free to leave and a sexual encounter is expected or threatened, threats of bodily harm relating to sex or the refusal to have sex, or other crimes related to acts of sexual harassment.
- E. Further, the District may treat some conduct of a sexual nature as misconduct, even when it does not rise to the level of unlawful sexual harassment actionable under the D.C. Human Rights Act. As an example, an employee who tends to greet people with a hug may have been warned that the conduct was offensive to some employees and then hugs an employee whom they have not seen in many months. The conduct may not rise to the level of “unreasonably altering the individual’s terms, conditions, or privileges of employment,” but it could constitute misconduct since they had been warned that some employees associate hugging with unwanted sexual contact that is offensive in the work environment.

IV. DATING, ROMANTIC, AND SEXUAL RELATIONSHIPS IN THE WORKPLACE

A. Prohibitions

1. Prohibitions on certain dating, romantic, or sexual relationships in the workplace exist to prevent real or perceived impropriety, favoritism, conflicts of interest due to power dynamics, control of an employee’s assignments and performance reviews, as well as to advance fairness for all other employees, contractors, grantees, and clients. Even consensual dating, romantic, or sexual relationships can generate allegations of favoritism based on sexual relationships or sexual harassment by one of the parties or a third party. Relationships, or aspects of relationships, that may be perceived as consensual by one party may be considered coerced or harassing by the other party due to power dynamics, and relationships that start consensually may evolve into sexual harassment.
2. Subject to the conditions and implementation procedures discussed in this Order, it is now the policy of the District Government that a dating, romantic, or sexual relationship between a supervisor and any employee in the chain of command they supervise – whether supervision is direct or indirect, operational or situational – is prohibited. Note that chain of

command in this definition may span agencies or divisions within an agency.

3. In addition, District Government employees shall not initiate a dating, romantic, or sexual relationship with trainees, recruits, or interns, regardless of the employee's assignment in relation to the trainee, recruit, or intern if the employee is in the same agency as the trainee, recruit, or intern.
4. Further, this Order prohibits dating, romantic, and sexual relationships when they are prohibited by applicable professional or ethical standards, such as lawyer-client, doctor-patient, or social worker-client.
5. District Government employees shall not participate personally and substantially in particular matters that affect or could affect the financial interests of someone with whom they are in a dating, romantic, or sexual relationship, whether that person is an employee, grantee, contractor, or client of the agency.

B. Designation of Person or Committee to Resolve Issues Surrounding Workplace Relationships; Existing Relationships

1. By November 17, 2023, District Government agency directors shall designate their own agency human resources agency/officers, another appropriate officer, or an office or committee to receive disclosures of relationships and resolve workplace issues arising from any prohibited dating, romantic, or sexual relationship on a case-by-case basis consistent with this Order; absent such a designation, disclosures shall be made to the Director.
2. By December 8, 2023, existing relationships that fall within the prohibitions of this Order must be disclosed to the designee identified in subsection IV.B.1. of this Order, in the manner specified by their agency or on a form to be created by DCHR, whereupon the situation will be evaluated and a resolution determined.
3. Resolution may involve giving the employees a defined but reasonable time to find a new position where the relationship is not implicated by this Order; shifting reporting structures to take the relationship out of a prohibited status; or establishment of recusal structures when the employees do not work in the same agency or division but they heretofore were in situational or operational chains of command.
4. To the extent adjustments are made in work sites or shifts, reporting structures, job duties or any other factor for one or both of the persons in

the relationship, agencies shall endeavor to afford such options on a voluntary basis for all concerned, particularly if an employee not involved in a prohibited relationship is affected by any proposed accommodation of the relationship.

5. If no satisfactory resolution of the prohibited relationship can be reached, the persons in a dating, romantic, or sexual relationship may request a waiver of the provisions of this Order. Waiver requests shall be submitted to the Mayor and shall be accompanied by a recommendation from the agency or agency designee. Waiver requests may include any information relevant to the determination and shall be on a form to be created by the Department of Human Resources ("DCHR").
6. Agencies may make reasonable efforts to assist with a transfer or reassignment, without prejudicing either employee (or any other employee), but it is not the responsibility of the personnel authority or the agency to restructure their agency operations or find a new position for someone in the relationship. No agency is required to grant a request or application for a transfer.
7. Agencies may promulgate regulations or policies consistent with this Order to effect its implementation and to provide consistent treatment for employees facing this situation, though each relationship may pose unique issues. Agencies may also issue rules explaining in more detail for their agencies' employees and contractors how terms such as "dating," "chain of command" and "trainee" are to be interpreted considering their agency's operations. Agencies may prohibit dating, romantic, or sexual relationships with their own clients or clients of the agency or a subset of the agency, as the agency deems appropriate to prevent factual or perceived impropriety or favoritism. For instance, an agency with both social workers and non-licensed employees providing case work to agency clients could extend the ban on dating and sexual relationships with clients to their non-licensed employees, to hold them to the same professional standards as their licensed colleagues.
8. By December 12, 2023, agencies shall report the number of disclosed relationships to the Mayor's Office of Legal Counsel ("MOLC") and the contact information of the person handling requests for accommodation, for consideration by the Sexual Harassment Taskforce.

C. Disclosure of Relationships

1. In addition to the disclosures of existing relationships required by Section IV.B., if by promotion or agency reorganization or other circumstance, two employees in a dating, romantic, or sexual relationship would fall into a prohibited relationship status, their relationship must be disclosed as soon as the possibility of falling into prohibited status is realized by either person in the relationship.
2. If there is a reasonable likelihood that someone could raise a credible charge that there has been or could be preferential treatment based on a dating, romantic, or sexual relationship that is not in a chain of command, then the employees involved in the dating, romantic, or sexual relationship must also report their relationship to the person or office designated pursuant to Section IV.B. Such reporting is necessary for consideration of whether additional safeguards are necessary and whether the prohibition on relationships based on situational supervision is implicated.

D. New Relationships

Generally, if two persons in a chain of command wish to begin a dating, romantic, or sexual relationship with each other, one party to the relationship should apply for a transfer or otherwise seek employment that eliminates the supervisory relationship before the relationship begins so that no prohibited relationship commences. For example, a supervisor may be transferred to another supervisory role so that they are not in the chain of command with the other person.

E. Conduct

1. District Government employees in a dating, romantic, or sexual relationship with another District Government employee, or client/customer of their agency, or grantee or contractor of their agency, shall conduct themselves in an appropriate manner while on duty and shall not engage in behavior that detracts from a professional work environment.
2. Any sexual activity at work sites or during an employee's working hours, regardless of location, is prohibited.

F. Violations

A violation of a provision of this Order regarding dating, romantic, or sexual relationships may not constitute sexual harassment as defined above, but an employee who engages in a prohibited relationship under Section IV.A. of this Order or fails to disclose a relationship that is required to be disclosed shall be subject to appropriate personnel action, up to and including termination.

G. Legal Representation

If legal action is commenced against the District of Columbia and/or a supervisor who engaged in a dating, romantic, or sexual relationship with an employee, or a person engaged in a potentially-conflictual relationship, the existence of the sexual or romantic relationship will be a factor in the District of Columbia's decision to provide legal representation to the supervisor or the employee(s) engaged in a relationship.

V. PROCEDURES FOR STOPPING SEXUAL HARASSMENT; REPORTING AND INVESTIGATING SEXUAL HARASSMENT CLAIMS

A. Employee Obligations

1. District Government employees are bound by the principles set forth in the Code of Conduct at 6B DCMR §§ 1800.2–1800.4 and are expected to act at all times in a manner reflecting their roles as public servants. Depending on an employee's role in the District Government, the obligations regarding the prevention of sexual harassment may differ. "Employees" for the purpose of this Order include contractors engaged by the District Government performing work on behalf of the District similar to that as its employees, such as at District worksites.
2. All employees are obligated to:
 - a. Refrain from engaging in behavior that constitutes sexually harassing conduct;
 - b. Refrain from initiating or conducting a prohibited dating, romantic, or sexual relationship as described in Section IV.A. of this Order;
 - c. Disclose their own dating, romantic, or sexual relationships with other employees if required in Section IV.D. of this Order;
 - d. Affirm their agreement to comply with this Order;
 - e. Complete annual sexual harassment training;
 - f. Cooperate fully in any inquiry or investigation into an alleged violation of this Order; and
 - g. Refrain from any behavior that may call into question the impartial and harassment-free provision of services to constituents, agency clients or customers, contractors, or grantees.

3. Supervisors should take particular care to avoid conduct that could lead to allegations of sexual harassment, considering time, place, and situations of interactions with employees.

B. Employee Communication

1. To avail themselves of the procedures and protections of this Order, when a District Government employee finds conduct unwelcome, intimidating, or offensive, they may: (a) tell the person who is engaging in offensive or inappropriate sexual conduct to stop and that such conduct is unwelcome; or (b) ask the employee's supervisor, General Counsel, or Sexual Harassment Officer to advise the person that the conduct is offensive and unwelcome; or (c) proceed immediately to file a complaint of sexual harassment under this Order.
2. Employees and others engaged in intervention are encouraged to document all intervention efforts or requests to cease reported inappropriate sexual conduct, including conversations, texts, or email exchanges.

C. Reporting Allegations of Inappropriate Conduct of a Sexual Nature or Sexual Harassment

1. All District Government employees are encouraged to help ensure that District Government workplaces are free of sexual harassment. Employees who know of incidents of inappropriate conduct of a sexual nature, as well as behavior that may create an intimidating, hostile, or offensive work environment, or who are victims of inappropriate conduct of a sexual nature, should report the inappropriate conduct.
2. Employees may report to the Sexual Harassment Officer ("SHO") of their agency or any other agency, or the supervisor or manager of the employee engaging in inappropriate conduct, to their own supervisor, or to the agency General Counsel. Contractors, grantees, and customers of agencies may report allegations of inappropriate conduct of a sexual nature to the SHO of the relevant agency or any other agency, the relevant agency's General Counsel, the supervisor of the employee who engaged in the alleged inappropriate conduct, or their grant or contract administrator.
3. Allegations of sexual harassment against the Mayor, City Administrator, Mayor's Chief of Staff, Mayor's Senior Advisor, Director of the MOLC, any Deputy Mayor, or any official who directly reports to the Mayor, shall be referred to the Inspector General to determine if the allegation is credible, in which case it shall be referred for independent investigation. Such investigations shall be carried out by an entity outside the District Government and those reports shall be provided to MOLC (or the City

Administrator if the allegation is against the Director of the MOLC) and the Inspector General.

D. Agency Responsibilities

1. Sexual Harassment Officers (“SHOs”) and Investigations

- a. Each Deputy Mayor’s Office and each agency shall designate a primary SHO and an alternate SHO and shall update the designations, as needed, on an ongoing basis. Each agency shall provide the names of its SHOs to DCHR, and DCHR shall maintain a current District-wide list of agency SHOs. Further, pursuant to D.C. Official Code § 1-546.01(2), SHOs shall be registered with the Office of Human Rights (“OHR”).
- b. SHOs shall be trained and qualified to serve. To be qualified to serve as a SHO, individuals must have taken and continue to take annual training provided by DCHR and OHR. SHOs may but are not required to be an agency’s Equal Employment Opportunity (“EEO”) officer, or human resources manager; they must be competent in EEO laws and be designated by the agency to accept sexual harassment complaints and to review and investigate claims. SHOs need not be attorneys.
- c. The primary and alternate SHOs for a smaller agency may be employees of another agency (*i.e.*, the SHO of a larger agency may serve as the SHO for a smaller agency). An agency of any size may also obtain assistance from another agency’s SHO in handling a particular investigation, including having another agency’s SHO carry out an investigation, where there is a possibility of the appearance of a conflict of interest, or for administrative convenience. For the purposes of this Order, a smaller agency availing itself of this option will still be referred to as the “agency.”
- d. A person seeking to report a violation of this Order may file with any agency SHO, not solely the SHO at their agency or the agency at which the alleged sexual harassment occurred. Persons filing complaints, however, are not entitled to have the investigation conducted by the person of their choosing.
- e. If a complaint is reported to someone other than the SHO, the person receiving the complaint must notify the agency SHO, unless giving notice would raise conflict of interest concerns, in which case the person must notify the agency General Counsel.

- f. Unless the complaint is against the agency General Counsel, the SHO shall immediately notify the agency's General Counsel of the complaint, and the General Counsel shall thereafter notify the Mayor's Office of Legal Counsel ("MOLC"). The SHO may consult with the agency's General Counsel, or the General Counsel's designee, for legal guidance on conducting the investigation and shall notify the General Counsel of any issue that may require higher-level support. If the complaint is against the General Counsel, the SHO shall notify the MOLC directly.
- g. SHOs should review DCHR's SHO training materials before initiating an investigation. DCHR has training materials on duties to inform the bargaining unit, the right to union representation during investigatory questioning, assessing credibility, unconscious bias, conducting interviews, gathering evidence, protecting confidentiality, preservation of evidence, when to stop an investigation and refer a matter for criminal investigation and more.
- h. The primary function of a SHO is to accept complaints alleging violations of this Order and to gather, investigate and review the factual basis of the claim(s). SHOs may corroborate or refute factual allegations; SHOs may provide impressions and evidence regarding the credibility of witnesses. They weigh such evidence and may take into account their impressions of the credibility of witnesses. Ultimately, SHOs make and submit to the appropriate agency Director recommended determinations of whether the allegations are substantiated or are not substantiated. They are not to make legal conclusions about whether sexual harassment occurred.
- i. Investigations of allegations of inappropriate conduct of a sexual nature shall be conducted, and the associated investigation report completed, as soon as practicable, within sixty (60) days after the filing of the report of the alleged sexual harassment, absent unusual circumstances.
- j. The investigative report shall include a description of the allegations, a description of the SHO's investigation, a description of the evidence adduced by the SHO, and the SHO's recommended determination as to whether the allegations were substantiated. The SHO shall transmit the report to the Director or agency Director's designee and General Counsel of the agency where the alleged harasser is employed.

2. Interim Remedial Actions

- a. Pending the completion of the SHO investigation and report, the issuance of the agency report, and the imposition of any disciplinary action, and to protect the rights of the alleged victim as well as the alleged harasser, the agency may take temporary personnel actions that do not result in any adverse employment action to either party.
- b. When an agency becomes aware of an allegation of misconduct of a sexual nature, the agency shall notify the alleged harasser of the reported behavior and may demand that the alleged behavior cease immediately and not be repeated.
- c. The agency shall take such other remedial steps as it deems appropriate to mitigate the possibility of the alleged harassing conduct continuing.
- d. Interim remedial actions are administrative rather than disciplinary and may include, but are not limited to, transfers, reassignment of duty station, changed shifts, duties or reporting requirements, mandatory administrative leave with pay, or other appropriate measures that do not result in reduction of pay, demotion in title or responsibility, or other loss of employee benefits. In general, the agency should avoid moving the alleged victim or changing the alleged victim's shift, or taking similar action affecting the alleged victim, unless the alleged victim requests the action; if the agency takes such an action absent a request from the alleged victim, the agency should make clear to the alleged victim that the action is being taken in pursuit of an effective and prompt stop to any alleged harassment, and not in retaliation for reporting the alleged harassment.
- e. Personnel authorities are encouraged to find alternative, reasonably comparable placement during the pendency of an investigation for the accuser or accused in lieu of administrative leave with pay, where possible and if consistent with any collective bargaining agreements.

3. Post-SHO Investigation Agency Actions

- a. The agency Director or agency Director's designee may reject a SHO report and return it to the SHO for further investigation, information, documentation, or analysis if the agency Director or designee considers the report to be incomplete, inadequate, or otherwise unacceptable.

- b. If the report is not rejected, the agency Director, or the agency Director's designee, within fourteen (14) days of receiving the SHO's report, shall issue an agency report that accepts, modifies, or rejects the SHO's findings and substantiation recommendations, describes the rationale for any such modifications or rejections, and makes conclusions as to whether the substantiated allegations constitute a violation of this Order. The SHO report shall be included as an attachment to the agency Director or designee's report. The agency Director or designee shall consult with the agency's General Counsel during the preparation of the report regarding relevant legal standards or other legal issues.
- c. If the report determines that a violation of this Order has occurred, the report shall be submitted to the agency's human resource officer for appropriate disciplinary action, up to and including termination. The agency shall require that any employee found to have violated this Order whose employment is not terminated must attend mandatory sexual harassment training within sixty (60) days after the issuance of the agency report.
- d. The agency must provide the employee and the alleged harasser with a summary written notification of its findings and conclusions (final agency decision) after the fourteen (14) day period and shall convey the same to MOLC within five (5) days after it is issued. The notice shall include a description of each allegation and the agency's determination as to whether the allegations were substantiated or were unsubstantiated. Such notice shall not include summaries of witness interviews, credibility determinations, or legal analysis; the notice is a simple recitation of the allegations and the determination as to whether the allegations were substantiated or were unsubstantiated.
- e. Any conclusion in the SHO or Director's report that a violation of this Order occurred does not constitute a final legal conclusion that sexual harassment under the D.C. Human Rights Act or federal law occurred. Conversely, a finding that was not substantiated is not a legal conclusion that no violation of the D.C. Human Rights Act or federal law occurred.
- f. Consistent with norms regarding the privacy of personnel actions, the complaining party shall not be informed of any disciplinary actions against the alleged harasser.
- g. Regardless of whether a complaint has been substantiated, relevant staff, including the General Counsel, are authorized to work together

to advise the Director or deciding official as to whether to recommend or implement personnel actions or management procedures to reduce the possibility of reoccurrence of any inappropriate behavior or behavior that poses risks for the District. Any meetings among the General Counsel, human resources staff, and agency management shall endeavor to preserve the confidentiality of the complaint generating the meeting or consultation to the greatest extent possible.

4. Communicating the Order: Orientation, Pledges, Training, and Notifications

- a. The personnel authority shall circulate this Order to all new hires during their orientation, shall give each new hire time to read a summary of the Order during orientation, and shall obtain a signed verification that the new employee has read the summary and pledges not to engage in sexual harassment or any other conduct that violates the rules prohibiting sexually harassing behavior, certain dating, romantic, or sexual relationships, and requiring disclosure of certain relationships. Agencies with supplemental orders relating to sexual harassment shall provide those orders, too, to onboarding employees.
- b. When individual contractors are working inside an agency in a manner akin to a District Government employee, the agency or the supervising contractor shall obtain signatures from individuals during onboarding orientations affirming their agreement to abide by this Order.
- c. New employees shall take a course on sexual harassment as part of the on-boarding process and in no event more than fourteen (14) days after being on-boarded. Agencies shall by December 11, 2023 circulate this Order to all current employees.
- d. Agencies shall follow up to provide delivery to difficult-to-reach employees, including employees on leave and work-related travel. Agencies are responsible for confirming that each employee has received this Order by email, verification through Peoplesoft, or return of a signed copy.
- e. By December 11, 2023, each agency shall email the names of the agency's primary and alternate SHOs to all its employees and shall send reminders or updates of who the agency's SHOs are at least annually to agency employees.

- f. Each agency shall prominently post notices in conspicuous locations accessible and used by a substantial number of agency employees, identifying the agency SHO and Alternate SHO, how to report sexual harassment, and that sexual harassment investigations are to be kept confidential to the greatest possible extent consistent with their investigation and resolution. Agencies shall post the notices no later than thirty (30) days after receipt of the template notice from the Office of Human Rights required by Section V.K. of this Order.
- g. Agencies shall take a digital photograph of each posting and transmit it to the SHO program coordinator at DCHR with a description of the location at the time of each posting.
- h. Individuals and entities entering into contract or grant agreements with the District Government must affirm that they will abide by the D.C. Human Rights Act including its prohibitions on sexual harassment, consistent with 4 DCMR § 1100 *et seq.*
- i. District agencies drafting contracts and grants shall require such affirmations as part of the contract or grant agreement.

E. Employee Responsibility to Participate in Agency Investigations

- 1. District Government employees are required to cooperate fully in a SHO or independent investigation of a workplace sexual harassment complaint.
- 2. If an employee who alleges sexual harassment or is believed to have been the victim of sexual harassment declines to assist and/or participate in the investigation of the allegation, or requests the agency not conduct an investigation, the agency may on its own initiative investigate or refer the matter for investigation.
- 3. Employees who were not themselves victimized, who, after a direct request by the SHO or other investigator, decline to participate in a sexual harassment investigation, may be subject to disciplinary action.
- 4. Any consideration of whether to recommend disciplinary action for failure to cooperate in an investigation on the part of an alleged victim requires heightened sensitivity on the part of the agency and should be conducted in consultation with the agency's General Counsel and MOLC.

F. Discipline for Making False Statements or Representations

- 1. Making materially false statements, and misrepresentation, falsification or concealment of material facts or records in an investigation of allegations

of sexual harassment is conduct warranting disciplinary action, up to and including termination.

2. Consideration of whether to recommend disciplinary action against an employee who is also the alleged victim of sexual harassment requires heightened sensitivity on the part of the agency and should be conducted in consultation with the agency's General Counsel and MOLC.

G. Discipline after a Finding of Sexual Misconduct or Harassment

The agency shall recommend appropriate disciplinary action, such as described in Section 1607.2(k) of the District Personnel Manual, 6B DCMR § 1607.2(k), up to and including termination of any employee found to have engaged in sexual misconduct or sexual harassment as defined in Section III of this Order.

H. Rights of the Alleged Harasser

Persons accused of sexual harassment deserve the full protections afforded to them under the law in administrative matters, including, but not limited to, the right to respond to allegations of sexual harassment; to counsel and representation, including a union representative or other representative of their choosing, and including the presumption of innocence, unless and until there is a finding of harassment after an investigation by the agency or where appropriate, OHR. The right to counsel does not include the right to have counsel paid for by the government.

I. DCHR Responsibilities

1. DCHR shall quarterly reach out to all designated primary and alternate SHOs to confirm that they continue to serve in those roles. If DCHR is unable to reach a designated SHO or to confirm that the individual still serves as the agency's primary or alternate SHO, DCHR shall work with the agency to identify a new primary or alternate SHO for the agency. DCHR shall post a list of agency SHOs on its website and update it as necessary.
2. DCHR shall develop reporting forms for disclosure of dating, romantic, and sexual relationships and for applications for waivers of the prohibition on relationships in the chain of command.
3. DCHR shall work with agencies to verify that all employees have completed the annual training on sexual harassment required by Section V.A.1.e. of this Order.

4. DCHR, working with the Office of the Chief Technology Officer, shall create a means through Peoplesoft for employees to acknowledge their receipt of the Order and agreement to comply with its provisions.
5. DCHR, in consultation with OHR, shall review, update, and provide training materials for agency SHOs, including training on investigative techniques.
6. DCHR shall establish qualification standards for SHOs and verify each SHO's qualification to serve as a SHO.
7. DCHR, in consultation with OHR and the Sexual Harassment Task Force, shall create and disseminate training and collateral materials on this Order, the sexual harassment provisions of the D.C. Human Rights Act, and other sexual harassment law and policy, to all agencies under the direct authority of the Mayor and to such independent agencies as may request access to DCHR materials. The training and collateral materials should be tailored to employees in various roles, such as senior officials, managers, attorneys, human resources personnel, and new or existing employees, and should take into account that many District Government employees work primarily in the community and may not have regular access to computer-based training modules.

J. Office of Human Rights (OHR)

1. OHR shall develop training for EEO officers on the standards of the D.C. Human Rights Act, including the changes made by the Human Rights Enhancement Amendment Act of 2022.
2. OHR shall provide consultative services to DCHR and the Sexual Harassment Task Force in creating and disseminating training and collateral materials on this Order, the sexual harassment provisions of the D.C. Human Rights Act, and other sexual harassment law and policy, to all agencies.
3. OHR shall provide a template notice to agencies for agencies to post where the agencies can fill in the name of their SHO and alternate SHO and providing basic information on the prohibition against sexual harassment, how to report, and confidentiality, pursuant to Section V.E.4.d. of this Order.

VI. PROHIBITION AGAINST RETALIATION

A. Retaliation Prohibited

Retaliating against a District Government employee for reporting or filing a claim of sexual harassment, assisting another person in reporting or asserting a claim of sexual harassment, opposing sexual harassment, acting as a witness in a sexual harassment investigation, refusing to follow orders that would result in sexual harassment, intervening to protect others from sexual harassment or advances, or challenging an allegation of sexual harassment, is strictly prohibited. Employees shall not be penalized as a result of their assertion of their rights under the D.C. Human Rights Act or providing truthful information in connection with an investigation (whether on behalf of a complainant or a respondent). Retaliatory behavior may include, but is not limited to, unwarranted reprimands, unfairly downgrading personnel evaluations, transfers to less desirable positions, verbal, or physical abuse, and altered and more inconvenient work schedules. Employees found to have engaged in retaliatory behavior shall be recommended for appropriate disciplinary action, up to and including termination.

B. Process for Alleging Retaliation

Claims of retaliation are generally beyond the scope of the investigatory authority of agency SHOs because SHOs may not be trained in assessing the legality or validity of managerial decisions such as evaluations and assignments and investigations into retaliation would be difficult to conduct in the rapid timeframe set forth in this Order. Employees who believe they have been retaliated against must file a complaint with an EEO Counselor within one hundred and eighty (180) days of the alleged retaliation and subsequently file a complaint with OHR within fifteen (15) days of receipt of the Exit Letter if the employee is not satisfied with the outcome of EEO counseling.

VII. LIMITS

Lodging a complaint regarding sexual harassment does not shield an employee from all discipline or discharge. Agencies may discipline or separate a complainant if the agency is motivated by non-retaliatory and non-discriminatory reasons that would otherwise result in such discipline or separation.

VIII. CONFIDENTIALITY

A. Protecting confidentiality is critical to encouraging victims of sexual harassment to come forth and share their stories. It encourages witness cooperation and protects the reputations of those involved. For those reasons, SHO investigations should be kept confidential.

- B. Confidentiality is not absolute. SHOs must disclose information to the alleged harasser for the alleged harasser to have a full and fair opportunity to respond. SHOs may have to disclose information to witnesses to gather more information from them. SHOs must keep agency General Counsels updated for reporting purposes and for investigation support purposes. SHOs also may have to disclose criminal conduct or threats to law enforcement. SHOs should not make pledges of total confidentiality.
- C. Investigative reports are confidential, highly private, and deliberative and shall not be released without a court order. Neither the complainant nor the alleged harasser shall be provided with a copy of the investigative report.
- D. SHOs, the agency, and MOLC shall take all reasonable steps to ensure that no information contained in the complaint file is disseminated except in furtherance of the investigation; for entry into E-risk or another risk management system; to assist in resolution of the allegations; as necessary for execution of any consequences stemming from the investigation; when lawfully released; or when required by court order.

IX. TIMELY FILING AND STATUTE OF LIMITATIONS

Complaints of sexual harassment shall be reported as promptly as possible. Agencies should investigate alleged acts of sexual harassment beyond the legal statute of limitations, or deadlines otherwise provided by regulation or collective bargaining agreement, taking into consideration the sensitive nature of the alleged offense, the pressure the complainant may have felt not to report the conduct, when the victim became aware of behavior that was not immediately apparent, or a pattern of harassing behavior that developed over time. Some remedies or sanctions may be unavailable due to delays in filing, but even delayed investigations may yield information to the agency in its ongoing efforts to prevent and remediate sexual harassment or may add to the credibility of similar, future allegations should a pattern emerge of allegations against a particular person or practice.

X. RECORDS

- A. Agencies shall maintain records of complaints and investigations conducted for three (3) years from the date of the complaint.
- B. For each fiscal year, each agency shall track how many complaints of sexual harassment were made by the agency's employees; were made about its agency employees by customers/clients of the agency; grantees or contractors of the agency, and how many complaints were made of sexual harassment of the agency's employees by customers/clients, grantees or contractors, or members of the public during the agency's duties.

- C. In addition to the number of complaints, agencies shall track how many matters were investigated; were resolved by mediation; were substantiated; were deemed unsubstantiated; resulted in administrative or disciplinary action against one or more individuals determined to have violated this Order or sexually harassed the complainant; have resulted in legal action; have resulted in a settlement (including the amount of any financial settlement); and how many are pending. Pursuant to the Sexual Harassment Data Collection Act, annual fiscal year data required to be produced under D.C. Official Code § 1-546.02 shall be transmitted to the Office of Human Rights on or before October 15 of each year.
- D. Centralized reporting, however, should be ongoing, and agencies are directed to submit such interim, monthly, or quarterly reports as may be requested by DCHR, the MOLC, OHR, or the Sexual Harassment Task Force, and to enter incidents into E-Risk as directed.
- E. Any warnings to an employee(s) to halt a particular type of behavior – whether generally or as to a particular employee(s) – shall be recorded and transmitted to the agency's human resource office and to the Mayor's Office of Legal Counsel. In the context of addressing complaints of sexual harassment, any other interventions made for an employee, customer/client, grantee or contractor shall also be recorded, whether or not they arose from an informal counseling session, a complaint of sexual harassment, a complaint regarding behavior in a dating, romantic, or sexual relationship, anonymous report, or any other means.

XI. CONCURRENT REMEDIES AND JURISDICTION

A. Non-Exclusivity of Remedies

This policy is intended to supplement or be an alternative to other processes that allow persons to complain of sexual harassment. The procedures established by this Order are separate and distinct from other options persons with grievances relating to sexual harassment may have, through the Office of Human Rights, the Equal Employment Opportunity Commission, any grievance procedure available under their collective bargaining agreement, ethics complaint and investigation processes administered by the Board of Ethics and Government Accountability, or any other statutory or regulatory complaint process. Filing a complaint under this Order does not stay or delay any filing deadlines in any other forum.

B. Filing a Formal Complaint with the Office of Human Rights

In addition to pursuing action within the agency, an alleged victim of sexual harassment, or a person acting on the victim's behalf with or without the victim's consent, may report a sexual harassment claim within one year of the alleged harassment or its discovery to OHR using its Intake Questionnaire Form. EEO counseling is not required prior to the filing of a complaint with OHR.

C. Filing a Complaint with the Equal Employment Opportunity Commission

Some complaints may fall within the jurisdiction of the federal Equal Employment Opportunity Commission.

D. Relationship and Remedies under Negotiated Grievance Claims

Filing a report or complaint under this policy does not satisfy the requirements for filing a negotiated grievance and obtaining remedies under a collective bargaining agreement, nor does the complaint under this Order delay the time limits for initiating such a procedure. To pursue a negotiated grievance claim, the employee should file a grievance in accordance with the provisions of the applicable collective bargaining agreement.

E. Criminal Remedies and Referrals

1. Where there is an allegation of criminal misconduct, including for example, sexual assault, kidnapping, stalking, or a threat to do bodily harm, the agency may, after consulting its General Counsel, place the victim and/or the alleged harasser on administrative leave with pay pending final administrative resolution of the complaint or any criminal proceeding.
2. The complainant at his or her choice may report the alleged criminal violation to a law enforcement agency, including the Metropolitan Police Department ("MPD"). Where a criminal violation occurred, the agency shall recommend discipline of the perpetrator up to, and including, termination.
3. While it is generally the alleged victim's decision to report sexual harassment offenses for possible criminal prosecution, if during an investigation the agency uncovers evidence of ongoing crimes (such as sexual extortion of beneficiaries of government services) or criminal activity collateral to or extending beyond the reported allegations of sexual harassment, such as gun-related offenses, the agency shall notify law enforcement.

F. Crime Victim Hotline

The agency shall also remind complainants of sexual assault or other possible crimes of the existence of the DC Victim Hotline. The hotline, 1-844-443-5732, is available 24/7 by telephone, text, or online chat to seamlessly connect victims of crime to free resources to help them navigate the physical, financial, legal, and emotional repercussions of crime. Through the hotline, victims may be matched with an advocate who can help them decide whether to pursue a matter through the criminal justice process.

G. Courts of Law

This Mayor's Order is directed towards preventing and remedying sexual harassment in District Government operations and it does not preclude complainants from obtaining counsel and pursuing any remedies they may have in courts of law. The options discussed in this Order do not constitute legal advice; deadlines for filing, procedures, and substantive offenses or remedies may change over time.

XII. APPLICABILITY OF PERSONNEL RULES

Any proposed personnel action instituted under this Order is subject to the regulations set forth in the District of Columbia Personnel Manual at Title 6B of the District of Columbia Municipal Regulations.

XIII. SEXUAL HARASSMENT TASK FORCE

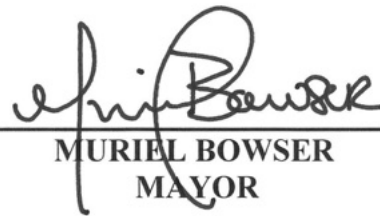
- A.** There is hereby established the Sexual Harassment Task Force as an internal task force comprised of representatives of the Office of Human Rights, the Mayor's Office of General Counsel, the Department of Human Resources, the Assistant City Administrator, and the Mayor's Office of Legal Counsel, as designated by the head of each office, and such other individuals as these members may invite to serve as additional members of the task force. The task force shall meet from time to time to develop and advise on trainings, make recommendations about needed policies, review draft regulations, and otherwise take action or recommend measures to fulfill the intent of this Order: including to reduce the incidence of sexual harassment, train employees on what to do when faced with inappropriate workplace conduct, including harassment, and provide additional, effective procedures for addressing inappropriate conduct of a sexual nature. The task force may invite experts and other individuals to participate in the meetings and deliberations of the task force.
- B.** The Sexual Harassment Task Force shall, no later than May 1, 2024, make recommendations in the following areas and shall provide such recommendations to the appropriate agencies with authority to carry out the recommendations or make final decisions regarding them. The recommendations need not be in the form of a report and may remain deliberative discussion items until finalized and accepted:
1. Communications to District Government employees about the District's sexual harassment policies;
 2. Updates to required trainings for SHOs and agency General Counsels;
 3. Recommendations for building a workplace free from sexual harassment;

4. Any recommended adjustments to prohibitions and disclosures regarding dating, romantic, and sexual relationships; and
5. The performance and progress by the agencies named in this Order in completing the responsibilities assigned to them.


XIV. SUPERSESSION

This Order supersedes Mayor's Order 2017-313 and any other provision of a previous Mayor's Order or practice pursuant to that Mayor's Order, to the extent of any inconsistency.

XV. EFFECTIVE DATE: This Order shall become effective November 10, 2023.



MURIEL BOWSER
MAYOR

ATTEST: 

KIMBERLY A. BASSETT
SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA