

City of
JERSEY CITY
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~~E.O. 2006-008~~
Superseding E.O. #1998-015
E.O. #2004-001

September 25, 2006

Report of Director
8.b
Meeting 10/11/06

**REISSUANCE OF
EXECUTIVE ORDER OF THE MAYOR
OF THE
CITY OF JERSEY CITY**

**PROHIBITING UNLAWFUL AND PROHIBITED DISCRIMINATION,
HARASSMENT OR HOSTILE WORK ENVIRONMENTS BASED UPON
PROTECTED CHARACTERISTICS**

Pursuant to the authority vested in the Mayor of the City of Jersey City by law, I confirm and reissue the following Executive Order to restate and reaffirm Jersey City's policy and complaint procedure pertaining to unlawful and prohibited discrimination (including sexual harassment).

I. POLICY

The City of Jersey City prohibits any form of discrimination, including unlawful and prohibited harassment, based upon race, creed, color, natural origin, ancestry, sex or gender, or a typical hereditary cellular or blood trail, religion, age, handicap or disability (to the extent covered by New Jersey or Federal statutes), marital status, sexual orientation, genetic test to the City, political activities or political affiliations, except as provided by law, or any other status or condition protected by applicable law (collectively referred to as "Protected Characteristics"), including but not limited to the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1, et seq.), as well as in Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the New Jersey Civil Service Act. Any person found guilty of engaging in unlawful and prohibited discrimination will be subject to appropriate discipline, up to and including discharge.

The City of Jersey City is committed to maintaining and promoting a healthy, productive and non-threatening work environment that is built upon mutual respect and is free from unlawful and prohibited discrimination. In keeping with this commitment, unlawful and prohibited discrimination of City employees by anyone, including any supervisor, co-worker, or non-employee of Jersey City will not be tolerated.

This order applies to all employment practices such as recruitment, selection, hiring, training, promotion, transfer, assignment, layoff, return from layoff, termination, compensation, fringe benefits, working conditions and career development.

This order also applies to third party harassment. Third party harassment is unwelcome behavior of a sexual, racial or derogatory nature regarding any protected category, that is not directed at an individual but is a part of that individual's work environment. Third party harassment based upon any of the aforementioned Protected Characteristics is prohibited by this order.

All Jersey City employees have a responsibility to maintain high standards of honesty, integrity and impartiality in the performance of Jersey City's official business. Employee conduct which violates these standards, or which violates the principles of this order, will not be condoned and may result in the discipline, up to and including termination.

This Order shall apply to all City employees both in the uniformed and non-uniformed services. This Order shall rescind all prior Orders and procedures, which may have been used to report, investigate and remediate unlawful and prohibited discrimination or harassment complaints, including those set forth in E.O. 04-001, 1998-015, 1994-032 and 1992-047.

A. Discrimination or Harassment

It is the policy of the City of Jersey City that all employees are responsible for assuring that the workplace is free from harassment based upon any Protected Characteristic. Because of the City of Jersey City's prohibition of offensive or inappropriate conduct at work, all employees must avoid any such action or conduct, as set forth herein.

It is a violation of this order to engage in any employment practice or procedure which treats an employee less favorably based upon a person's Protected Characteristics. It is also a violation of this order to use derogatory or demeaning slurs to refer to a person's Protected Characteristics, which have the effect of harassing an employee or creating a hostile work environment. Harassment or the creation of a hostile work environment can occur even if there was no intent on the part of an individual to harass or demean another.

Examples of Behaviors That May Constitute Prohibited Workplace Discrimination or Harassment Include, But Are Not Limited To:

Discriminating against an individual with regard to terms and conditions of employment because of that individual's Protected Characteristic.

Treating an individual differently because of a Protected Characteristic, or because an individual has the physical, cultural or linguistic characteristics of a racial or national origin group.

Treating an individual differently because of marriage to or association with persons of a Protected Characteristic, or due to membership in or association with an organization identified with the interests of a racial, religious or national origin group; or because an individual's name or spouse's name is associated with a racial, religious or national origin group.

Calling another by an unwanted nickname which refers to one or more of the above characteristics, or telling ethnic jokes which harass an employee or create a hostile work environment.

Using derogatory references regarding any of the above characteristics in any job-related communication.

Engaging in threatening, intimidating, or hostile acts, in the workplace, based on a Protected Characteristic.

Displaying or distributing material in the workplace that contains language or images that are derogatory or demeaning, based upon a Protected Characteristic.

This policy is intended to apply to all Jersey City employees, including any supervisor or co-worker or non-employee of Jersey City. All such individuals are expected to conduct themselves with respect and consideration for others.

B. Sexual Harassment.

This policy prohibits sexual harassment in any form. It does not matter whether the harasser is male or female.

For the purpose of this Order, sexual harassment is defined to include: unwelcome sexual advances (either verbal or physical), requests for sexual favors, with or without accompanying promises, threats, or reciprocal favors or actions, and other verbal or physical conduct of a sexual nature made to an employee when:

1. Submission to such conduct is either an explicit or implicit term or condition of employment; or
2. Submission to our rejection of such conduct by an individual is used as the basis for making employment decisions; or
3. Such conduct has the purpose or effect of substantially interfering with an individual's work performance, or creating an intimidating, hostile or offensive work environment.

Other examples of such prohibited unlawful and prohibited harassment may include, but are not limited to, explicit sexual propositions, sexual innuendo, slurs, lewd or sexually suggestive comments, sexual oriented "kidding" or "teasing," graphic or physical conduct related to an individual's body or gender, foul or obscene language or gestures of a sexual nature display in the work place of sexually suggestive or explicit objects, pictures, symbols, greeting cards, articles, books, magazines, photos or cartoons, and intentional physical contact such as patting, pinching, or brushing against another's body.

Sexual Harassment generally falls into three categories: quid pro quo, hostile work environment harassment and third party sexual harassment.

I. Quid Pro Quo Sexual Harassment is a form of harassment that may include unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct based on the gender of the affected employee when: (a) submission to such conduct is made either explicitly or implicitly a term or condition of employment; (b) submission to or rejection of such conduct by an individual is used as a basis for employment decisions.

It shall be a violation of this order for any person to use his or her authority to make any sexual advance toward an individual over whom the person is authorized to make, recommend or otherwise to influence personnel actions; to grant, recommend, or refuse to take personnel action on the basis of an employee's gender or sexual orientation or in exchange for sexual favors; or to take or fail to take a personnel action as reprisal against any employee for rejecting or reporting a sexual advance. Sexual advances or requests for sexual favors can be in the form of either expressed or implied comments, writings, or actions.

ii. Hostile Work Environment Sexual Harassment is a form of harassment that may include unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature which has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment. Gender-based harassment may give rise to a claim of a hostile environment whether or not sexual activity or language is involved, if it has the purpose or effect of abusing, devaluing or subordinating the members of one sex and it adversely affects an individual's employment opportunities.

iii. Third party sexual harassment is unwelcome behavior of a sexual nature or based on sex that is not directed at an individual but is a part of an individual's work environment.

C. General.

This policy also applies to all communications, whether oral or written communications by telephone, e-mail, voicemail, text message, and Internet usage, including the transmission or forwarding of communications to others, or other graphic

images that denigrate individuals on the basis of a Protected Characteristic, including sex.

The commission of harassment based upon a Protected Characteristic, including unlawful and prohibited sexual harassment, is a violation of this policy which constitutes conduct unbecoming a public employee and is cause for disciplinary action up to and including discharge.

II. COMPLAINT PROCEDURE.

A. Department Directors and Supervisors.

It is the responsibility of all Department Directors and Supervisors to ensure that their department is in full compliance with this Policy. Directors or Supervisors who permit unlawful and prohibited discrimination, including unlawful and prohibited harassment as previously explained, to exist in their department violate this policy and are subject to discipline, up to and including discharge.

Department Directors and Supervisors are expected to take the following measures to ensure that the work environment is free from unlawful and prohibited discrimination:

Monitor the work place for signs of prohibited conduct;

Immediately report all allegations of violations to the Business Administrator for investigation;

Direct all aggrieved employees to report violations to the Business Administrator as set forth in Section B, below.

B. Employee Complaints.

Any employee who believes that she or he has been subjected to any form of prohibited discrimination/harassment, including sexual harassment, or who witnesses others being subjected to such harassment or discrimination is encouraged to promptly report the incident(s) to either their supervisor or manager or directly to the Affirmative Action Officer.

However, employees are not required to report any prohibited conduct to a supervisor, manager or Affirmative Action Officer who may be hostile, who has engaged in such conduct, who is a close associate of the person that has engaged in the conduct in question, or with whom the employee is uncomfortable discussing such matters. If such circumstances arise, the employee must make his or her report to the City of Jersey City Law Department. To ensure confidentiality, employees who report a complaint must not discuss it with any other person (including other employees).

No employee shall be subject to discipline for going outside the "chain of command" in reporting unlawful and prohibited discrimination, including unlawful and prohibited harassment as previously explained.

The City of Jersey City directs that its employees report all instances of unlawful and prohibited discrimination as soon as they occur. In this way, the City of Jersey City can prevent future misconduct and stop the discrimination before it escalates into a violation of Federal or State law.

Pursuant to the foregoing, the Business Administrator for the City of Jersey City is located at 280 Grove Street, 1st Floor, Jersey City, NJ 07302; the Affirmative Action office is located at 280 Grove Street, 1st Floor, Jersey City, NJ 07302; and the Jersey City Law Department is located at 280 Grove Street, 3rd Floor, Jersey City, NJ 07302.

C. Confidentiality.

It is the City of Jersey City's policy to investigate all such complaints thoroughly and promptly. All complaints will be held in as much confidence as possible, consistent with the policy to investigate and take corrective action where appropriate.

If an investigation confirms that unlawful and prohibited discrimination, including harassment as previously explained, has occurred, the City of Jersey City will take corrective action, including discipline, up to and including the discharge of the offending party or whatever other corrective action may be appropriate. Individuals who provide intentionally false information in the course of an investigation may be subject to discipline, up to and including discharge.

D. Complaint Form.

Annexed to this policy is the City of Jersey City's Unlawful and Prohibited Discrimination Complaint Form. In the event an employee determines to report an incident of unlawful and prohibited discrimination, the attached Complaint Form should accompany the report. The Complaint Form should contain the employee's description regarding the claim of unlawful and prohibited discrimination with as much detail as possible.

III. INVESTIGATION.

After notification of an employee's complaint, the Corporation Counsel and the Business Administrator or their designee will immediately initiate a confidential investigation.

To the fullest extent possible, consistent with the City of Jersey City's policy to investigate each complaint thoroughly and promptly and to take corrective action where appropriate, the investigation and facts uncovered will be held in as much confidence as possible.

After the investigation has been completed, a determination will be made regarding the allegations in the Complaint. If the investigation confirms that unlawful and prohibited discrimination has occurred, the City of Jersey City will take prompt, remedial action, including discipline, up to and including discharge.

In certain circumstances deemed appropriate by the Corporation Counsel or Business Administrator and where both the complainant and accused employee consent, a non-disciplinary mediation process may be utilized to resolve the Complaint.

IV. NON-RETALIATION.

The City of Jersey City expressly prohibits and forbids retaliation against anyone who reports unlawful and prohibited discrimination covered by this policy, assists in making a discrimination complaint, or cooperates in a discrimination investigation. Any employee who has a complaint for unlawful and prohibited discrimination, including harassment based upon a Protected Characteristic, or retaliation at work by any other employee (including supervisors) is urged to bring the matter to the attention of the Business Administrator so that the City may promptly investigate and deal with the problem.

V. MISCELLANEOUS.

All employees are expected to cooperate with investigations undertaken pursuant to the order. Failure to cooperate in an investigation may result in disciplinary action, up to and including termination.

Discourtesy or Rude Behavior:

Discourtesy or rudeness should not be confused with racial or ethnic harassment, and a lack of racial or ethnic sensitivity does not, alone, amount to actionable harassment. Thus, simple teasing, offhand comments, and isolated incidents will not amount to discriminatory changes in the terms and conditions of employment and is not actionable as a private cause of action. Indeed, a hostile work environment discrimination claim cannot be established by epithets or comments which are merely offensive.

False Accusations and Information:

If any employee knowingly makes a false accusation of unlawful and prohibited discrimination/harassment or knowingly provides false information in the course of an investigation of a complaint, such conduct may be grounds for discipline. Complaints

made in good faith, however, even if found to be unsubstantiated, shall not be considered a false accusation.

Disciplinary Action:

Any employee found to have violated this order may be subject to appropriate disciplinary action which may include: reprimand, suspension, reassignment, or termination of employment. Referral to another appropriate authority for review for possible violation of State and Federal statutes may also be appropriate.

VI. INTERPRETATION OF ORDER.

Any questions concerning the interpretation of this policy or questions on procedural matters arising from the implementation of this policy are within the exclusive jurisdiction of and are to be directed to the Office of the Corporation Counsel.

This Order shall take effect immediately. A copy of this Executive Order must be distributed to each and every employee of the City of Jersey City, who will be required to sign for receipt of same. Further, the City Clerk, Business Administrator and each Department Director shall post copies of this Executive Order in conspicuous places and maintain copies in their files. This policy shall be redistributed when updated or amended.

This Order shall take effect immediately.

Very truly yours,


**JERRAMIAH T. HEALY,
MAYOR**

JTH/he

cc: Brian O'Reilly, Business Administrator
Robert Byrne, City Clerk
William C. Matsikoudis, Corporation Counsel
Larry Ross, Personnel Director
Jeana F. Abuan, Affirmative Action Officer
All Department and Division Directors.

CITY OF JERSEY CITY

UNLAWFUL AND PROHIBITED DISCRIMINATION (INCLUDING SEXUAL
HARASSMENT)
COMPLAINT FORM

DEPARTMENT: _____

DIVISION: _____

EMPLOYEE NAME: _____

JOB TITLE: _____

DATE OF COMPLAINT: _____

DETAILS OF COMPLAINT: _____

(Please describe as clearly as you can exactly what happened to you that leads you to believe that you have been unlawfully discriminated against or harassed as set forth in the City's anti-discrimination and harassment policy. Include, dates, if you can, and the names of everyone who was involved in the discrimination or saw or heard what happened. If there was more than one incident of discrimination or harassment, please describe each incident separately. You may use the back of this form or any other sheet of paper.)

REMEDY REQUESTED:

Employee signature

Date

Employee Printed Name