

NO HARASSMENT & NO RETALIATION
(Sexual Harassment, Discriminatory Harassment, Workplace Violence, & Retaliation)
Revised January 2016

SECTION: 16

A. PURPOSE

This Section:

1. Establishes and communicates Tooele City's no-harassment and no-retaliation policy;
2. Gives employees examples of conduct that is inappropriate;
3. Informs employees of the avenues available to address or report harassment or retaliation including the City's internal reporting and complaint procedures;
4. Communicates employee and management responsibilities; and,
5. Communicates the City's procedural guidelines used to review and investigate reported violations of this Section and/or complaints.

B. POLICY SUMMARIZED

1. Employees may not engage in unwelcome verbal or physical conduct based on sex, race, color, religion, national origin, age, disability, pregnancy, genetics, gender identity, sexual orientation, and/or any other legally protected status under state or federal law.
2. Employees may not engage in conduct that creates or has the potential to create a violent workplace.
3. Employees may not be retaliated against for engaging in a legally protected activity.
4. Employees may, but are not required to, speak with any individual engaging in offensive conduct and ask that it stop immediately. If any employee chooses not to do so, or has done so but the conduct continues, employees have a duty to promptly report it to management, regardless of whether the harassment was committed by a manager, elected official, coworker, customer, vendor, or anyone else with whom the employee had contact as a result of his/her employment with Tooele City and whether or not the conduct occurred in or outside the workplace.
5. Employees who violate this Section may be subject to disciplinary action, consistent with Tooele City's disciplinary policy, up to and including dismissal from employment.

C. TYPES OF HARASSMENT & CITY'S EXPECTATIONS

For purposes of this Section, Tooele City defines harassment as follows:

1. Sexual Harassment.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when: (1)(a) submission to such conduct is made either explicitly or implicitly as a term or condition of employment; or (b) submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual (i.e. "quid-pro-quo" harassment), or

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(2)(a) such conduct is severe or pervasive; and (b) has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, offensive, or hostile work environment (i.e. "hostile work environment" harassment).

Examples of inappropriate conduct include, but are not limited to:

- Sexual comments or innuendos; adult-oriented language, turning work discussions to sexual topics; sexual or "dirty" jokes or stories; innuendos of a sexual nature including rumors of a sexual nature or gossip about sexual matters; asking about sexual fantasies, preferences, or history;
- Whistling at someone or making "cat calls," kissing sounds, howling, and smacking lips; massaging others in the workplace or other physical contact that may be viewed as intimate;
- Unwelcome sexual advances; looking a person up and down (elevator eyes), staring at someone; blocking a person's path, or refusing to let a person leave a room;
- Engaging in sexual harassment outside of work with a co-worker;
- Obscene, sexual, or pornographic photos, images, telephone calls, e-mails, electronic communications, letters, notes, or other objects; pornography or sex objects/toys;
- Demanding/requesting sexual favors or actions in exchange for favorable employment conditions or treatment or for continued employment;
- Posting sexual material about other employees on social networking or other electronic mediums; or,
- Illegal activity such as sexual assault, rape, lewdness, or groping; unwelcome physical contact such as touching, patting, pinching, or brushing against another's body.

2. Discriminatory Harassment.

Conduct that disparages an individual based on their protected characteristic of race, ethnicity, color, religion, gender, marital status, pregnancy, national origin, age, disability, veteran status, gender identity, sexual orientation, or any other legally protected characteristic constitutes harassment when it is: (1) unwelcome; (2) creates an intimidating, hostile, or offensive work environment; and (3) is sufficiently severe or pervasive as to alter the terms and conditions of employment in the mind of the victim and from the perspective of a reasonable person in the victim's position.

Some examples of inappropriate conduct include, but are not limited to:

- Derogatory or offensive comments, gestures, innuendos, jokes, or actions based on a protected characteristic, such as: racial slurs, jokes, stereotypes, mimicking the way someone speaks or moves;
- Mocking, mimicking, or otherwise making offensive or derogatory sounds or put-downs based on a protected characteristic;
- Continuing to express religious or moral beliefs and commitments in the workplace (including preach, proselytize, or direct other forms of religious solicitation and expression) in an unreasonable, disruptive, or harassing way such as continuing solicitation and expressions to another employee after being asked to not do so or when the expression is in direct conflict with the essential business-

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- Targeting an individual because he/she chooses to practice a specific religion, mocking another's religious beliefs;
 - Telephone calls, e-mails, electronic communications, letters, notes, photos, or other objects that are offensive and based on a protected characteristic;
 - Accessing websites that are offensive, discriminatory, and based on a protected characteristic.
- related interests of the employer such as derogatory comments about a particular religious segment of the community the employee serves; or,

3. Workplace Violence.

Violence can include more than inflicting physical harm to others or self. Violent behavior also consists of threats of harm to others and acts of aggression. Such behavior constitutes prohibited harassment if it is: (1) unwelcome; (2) creates an intimidating, hostile, or offensive work environment; and (3) is sufficiently severe or pervasive as to alter the terms and conditions of employment in the mind of the victim and from the perspective of a reasonable person in the victim's position.

Examples of inappropriate conduct include, but are not limited to:

- Threatening statements, telephone calls, letters, or other communications including threats made by electronic devices or mediums including social media;
- Vandalism of personal or City property;
- Assaults on employees or their families or pets;
- Direct or implied threats of physical harm to an employee or someone the employee cares about;
- Pushing, fighting, shoving, or touching in an angry, aggressive, or threatening manner;
- Violence or retaliation toward an employee;
- Following or stalking an employee;
- In an intimidating manner, carrying, showing, or displaying dangerous weapons, except for police officers using such devices in performance of their duties or in necessary self-defense.

4. Not Harassment.

For purposes of this Section, the following generally does not constitute harassment for purposes of this Section:

- Although unprofessional for the workplace and may be addressed as a performance or other workplace conduct matter:
 - The occasional use of swear words or language that is characterized as merely rude, unprofessional, or unpleasant;
 - General workplace disagreements, boorish conduct, juvenile conduct, personality differences, or verbal "butting of heads"; or,
 - The incidental rising of voices during workplace discussions or disagreements.
- Bona fide changes in the workplace even though the employee objects;
- Expressing religious or moral beliefs and commitments in a reasonable, non-disruptive, and non-harassing way, unless the expression is in direct conflict with the City's essential business-related interests.
- Bona fide requests or demands by a supervisor that the employee improve performance, change methods of performing work, comply with City or department policies, procedures, rules, or regulations,

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and other appropriate work-related communication between supervisor and employee even though the employee may not welcome the communication or may feel uncomfortable with the communication; or,

- Acts or omission based on occupational qualifications under the law, e.g., a peace officer making a lawful arrest or brandishing a weapon in official police capacity.

D. RETALIATION

In general, retaliation is conduct that dissuades an employee from exercising his/her legally protected rights. Retaliation may consist of, but is not limited to, actions such as taking adverse action against an employee because he/she has: (1) opposed employment discrimination or harassment (2) participated in investigative proceedings such as conducting, testifying, assisting, or participating in any manner; or (3) engaged in legally protected “whistle blowing” activities such as communicating, in good faith, allegations of waste, misuse of public funds, property, or labor (see Utah Code 67-21-1 known as the “Utah Protection of Public Employees Act”), or reporting violations of health, safety, or environmental standards; or (4) otherwise asserted rights under laws or policy. Conduct may be retaliation regardless of whether it occurred on- or off-duty, in or outside of the workplace, or whether a victim is employed or separated from the City.

In the context of retaliation, examples of adverse actions include, but are not limited to:

- Open hostility, threats, name calling, or intentional actions that the reasonable person would find to embarrass;
- Exclusion/ostracism;
- Tokenism or patronizing conduct;
- Unwarranted negative remarks, reprimands, or evaluations;
- Giving unwarranted negative job references;
- Increased supervisory attention such as: increased review of work product, intentionally searching computer e-mail or other records for no legitimate business reason or inconsistent reasons, asking others to pay more attention to an employee and to report any violations, reviewing problems that occurred before the employee filed the complaint and that the supervisor knew about but at the time did not take action;
- Unwarranted demotion, suspension, or termination without cause;
- Refusal to hire or promote an otherwise best qualified individual;
- Taking adverse action against or conduct towards an employee because he/she supported someone in the workplace in his/her complaint or participation in an investigation (i.e. retaliating against an employed family member of someone who opposed allegedly unlawful employment practices);
- Substantial and unjustified changes in individual work assignments including unwarranted change in over-time, on-call rotation, or other specialty assignments; or,
- Unreasonable supervisory-imposed time restrictions.

E. MANAGEMENT RESPONSIBILITY TO ENFORCE & ACT

1. Management plays a key role in helping to achieve a workplace culture that is free from harassment or retaliation. Disciplinary action, up to and including dismissal,

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may result if a manager engages in harassing behavior, condones such behavior, neglects to take appropriate measures to prevent or stop such behavior, neglects to properly report such behavior (whether observed first-hand, suspected, or reported), neglects to take appropriate corrective or disciplinary action against offenders, or retaliates against a person in violation of this Section.

2. In addition, managers who engage in harassment or retaliation in violation of federal or state laws while employed by the City may be sued and held personally liable for their actions.

F. EMPLOYEE RESPONSIBILITY TO REPORT

1. Employees play a key role in helping to achieve a workplace culture that is free from harassment or retaliation. Tooele City wants to know about inappropriate conduct so that it may be corrected promptly.
2. Employees may, but are not required to, speak with any individual engaging in offensive conduct and ask that it stop immediately. If any employee chooses not to do so, or has done so but the conduct continues, employees are expected to report harassment or retaliation promptly.
3. Any employee with knowledge of inappropriate conduct that may be in violation of this Section, are encouraged to report it promptly, even if they are not a victim or a party to the alleged inappropriate conduct.
4. To provide employees with reporting avenues that are free from bias, collusion, intimidation, or reprisal employees may use any of the following avenues to report conduct in violation of this Section:
 - a. Employees who are victims may file a report pursuant to Section 13: Grievance Procedure herein this Manual; or,
 - b. Employees may notify their supervisor, department head, director of human resources, the city attorney, or the mayor. Employees do not have to follow their chain-of-command to file a Report. Reports may be done through either verbal or written notification; however, written notification is preferred. Reports should be as detailed as possible, including the names of the individuals involved, the names of any witnesses, direct quotations when language is relevant, dates, times and any documentary evidence such as notes, pictures, cartoons, etc.

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5. To the extent possible, reports will be handled with confidentiality but they will need to be reviewed and/or investigated.
6. In most circumstances, employees are expected to continue to report to work. However, if they reasonably believe doing so would place them in danger, they are expected to report immediately to their supervisor, department head, the director of human resources, or the city attorney for further guidance.

G. REVIEW & INVESTIGATION PROCEDURE

1. Preliminary Review

- a. The individual to whom the report was made is expected to initiate a Preliminary Review of the allegations by convening the Preliminary Review Committee (“Committee”). The Committee generally consists of the department head of the accused and the department head of the alleged victim, the director of human resources, and the city attorney. If a Committee member believes that a conflict of interest exists or may arise, the Committee may be modified by the Committee members not conflicted, at their discretion.
- b. Reports of illegal conduct should be reported promptly to law enforcement.
- c. The Committee determines if a formal investigation is either warranted or needed. The Committee takes into consideration such things as whether the employee has shown a prima facie case of harassment or retaliation or whether there are any material facts in dispute and if so, whether a formal investigation may give a better picture of the material facts. The Committee may take preliminary steps such as reviewing records or witness statements, speaking with individuals to clarify information, or requesting additional documentation or information.
- d. The Committee will make a finding regarding whether a formal investigation is needed or warranted.
- e. The accused may be instructed to not contact the reporting employee or alleged victim regarding the conduct reported.
- f. If the Committee determines that an investigation is not warranted or needed, the alleged victim and accused should be notified accordingly.

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2. Resolution by Mutual Agreement

If the Committee determines that a formal investigation should be conducted, the Committee may attempt to resolve the complaint by discussing the possibility of resolving the matter by mutual agreement with the complainant and accused separately. Agreements are voluntary, and no party may be required to resolve a complaint by mutual agreement as a term of employment. Agreements must be in writing, signed by the accused and the alleged victim, with all parties receiving a copy. If a party refuses to comply with the terms of the agreement, or if harassment continues, a formal investigation may still be initiated.

3. Formal Investigation

- a. If a report of harassment cannot be resolved by Preliminary Review or by Mutual Agreement, as applicable, the Committee will promptly begin, or cause to begin, a Formal Investigation. From this point in time, the Preliminary Review Committee operates as an Investigative Committee. At the discretion of the Investigative Committee, the Investigative Committee may be modified and/or outsourced to an investigator outside of the City.
- b. The Formal Investigation differs from the Preliminary Review process. Its purpose is to discover relevant facts regarding the alleged misconduct and to render a finding. The formal investigation may include such actions as compelling employees to testify before investigators, speaking with a broad range of witnesses, and seeking out and reviewing information not otherwise provided by the reporting employee, the alleged victim, or the accused.
- c. When the investigation is complete, the Committee, investigator, or designee, will inform those in the “need to know” group (i.e. involved department heads, supervisors, the Mayor, City Council Chair, etc.), the complainant/victim, and the accused of the disposition.

4. Procedure for Reports Against Elected Officials

- a. If a complaint is made against an elected official, the individual to whom the report was made is expected to initiate a Preliminary Review of the allegations by convening the Preliminary Review Committee (“Committee”). The Committee generally consists of the department head of the alleged victim, the director of human resources, and the city attorney. If a Committee member believes that a conflict of interest exists or may arise, the Committee may be modified by the Committee members not conflicted, at their discretion.

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- b. The Committee makes no determination as to the validity of the complaint whatsoever. The Committee determines only if the topic of the complaint falls within the parameters of this Section.
- c. If the complaint does fall within the parameters of this Section, the complaint is sent for investigation to a qualified, external law firm or otherwise neutral external individual who is trained and competent in conducting harassment and retaliation investigations. The selection of such is made as follows:
 - (1) If the accused is the Mayor, the complaint is forwarded to the City Council who then shall select a qualified external individual to conduct a preliminary review and/or formal investigation.
 - (2) If the accused is a City Councilperson, the complaint is forwarded to the Mayor who then shall select a qualified external individual to conduct a preliminary review and/or formal investigation.

H. RECORDS

- 1. Tooele City's human resource office maintains protected files for harassment complaints for a minimum of 5 years and thereafter may be destroyed. Related material such as disciplinary actions, are maintained in the employee's personnel file.
- 2. Pursuant to this Section, all information contained in the file is classified as Protected and Private records pursuant to requirements of law, Government Records Access and Management Act, Section 63G-3-101 et. Seq. Information contained in the file is released by the Director of Human Resources or the City Attorney and only when classified in compliance with the requirements of law.
- 3. Participants in any harassment proceeding will treat all information as Private and Protected.