



ORLEANS PARISH COMMUNICATION DISTRICT / 9-1-1

STANDARD OPERATING PROCEDURE NUMBER: 1.2.0.

SUBJECT: EQUAL EMPLOYMENT OPPORTUNITY (EEO) AND HARRASSMENT POLICY

DATE ISSUED/REVISED: May 3rd, 2018

RELATIVE REFERENCE(S):

ACCREDITATION STANDARD(S):

APPROVED BY *Jayce T. Monin* **DATE** 05/03/2018
OPS Director, OPCD

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Executive Director, OPCD

POLICY: It is the policy of OPCD to comply with all federal and state laws concerning the employment decisions. Employment decision made by OPCD are based on business needs, job requirements and individual qualifications, without regard to race, color, religion or belief, national, social or ethnic origin, sex (including pregnancy), age, physical, mental or sensory disability, HIV Status, sexual orientation, gender identity and/or expression, marital, civil union or domestic partnership status, past or present military service, family medical history or genetic information, family or parental status, or any other status protected by the laws or regulations in the locations where we operate. OPCD decisions that involve employment, advancement, discharge, compensation, training and other conditions or privileges of employment are made in accordance with regulations and guidance issued by the Equal Employment Opportunity Commission (EEOC) and the Louisiana Commission on Human Rights (LCHR).

This SOP shall be signed and acknowledged by all OPCD employees, annually.

PURPOSE: The intent of this procedure is to provide clear expectations and guidelines around the communicating electronically.

1. Complaints of Discrimination

1.1. Any employee or applicant for employment who believes that he or she has been discriminated against based on discrimination including harassment may file a

- complaint as outlined in Section 9 below.
- 1.2. Supervisors have a mandatory duty to report to OPCD's EEO Officer all complaints, allegations, and/or conduct that may constitute discrimination including harassment.
 - 1.3. Employees who become aware of a complaint of any form of discrimination including harassment are urged to contact OPCD's EEO Officer.
 - 1.4. A supervisor or manager shall not take, or threaten to take, a prohibited personnel action or otherwise retaliate against an employee because of the employee's protected disclosure or because of an employee's furnishing of information in an investigation regarding discrimination including harassment.
 - 1.5. All complaints filed with the OPCD EEO Officer, and any statements and documents collected in connection therewith, shall be kept confidential to the extent possible, unless criminal activity is alleged, and shall only be disclosed to authorized individuals and in limited circumstances to investigate a matter. In the event disclosure is required, documents may be redacted as determined by appropriate agency officials.
2. **Request for Reasonable Accommodation under the ADA**
- 2.1. When an individual with a disability requests accommodation and can be reasonably accommodated without creating an undue hardship or causing a direct threat to workplace safety, he or she will be given the same consideration for employment as any other applicant. Applicants who pose a direct threat to the health, safety and well-being of themselves or others in the workplace when the threat cannot be eliminated by reasonable accommodation will not be hired.
 - 2.2. OPCD will reasonably accommodate qualified individuals with a disability so that they can perform the essential functions of a job unless doing so causes a direct threat to these individuals or others in the workplace and the threat cannot be eliminated by reasonable accommodation or if the accommodation creates an undue hardship to the OPCD. Contact human resources (HR) with any questions or requests for accommodation.
 - 2.3. All employees are required to comply with the company's safety standards. Current employees who pose a direct threat to the health or safety of themselves or other individuals in the workplace will be placed on leave until an organizational decision has been made in regard to the employee's immediate employment situation.
 - 2.4. Individuals who are currently using illegal drugs are excluded from coverage under the company ADA policy.
 - 2.5. The HR department is responsible for implementing this policy, including the resolution of reasonable accommodation, safety/direct threat and undue hardship issues.

3. Examples of Discrimination.

- 3.1. Disparate Treatment – may occur when an employer or other person treats someone differently because of that person’s membership in a protected class, or intentionally excludes individuals from an employment opportunity on the basis of actual or perceived discrimination with regard to an employment action, or a term and condition of employment.
- 3.2. Adverse Impact – can involve a facially neutral pattern or practice of discrimination against a particular group, and/or a claim that there is an *adverse effect* of an agency’s policy or procedure on a particular group.
- 3.3. Harassment conduct is sufficiently severe or pervasive that it unreasonably interferes with the individual’s (or groups) work performance or creates an intimidating, hostile, or offensive work environment.
- 3.4. Sexual Harassment is a form of harassment and is also unlawful.
 - 3.4.1. In accordance with civil laws of the United States and the State of Louisiana, it is OPCD’s policy to provide a work environment free from sexual harassment.
 - 3.4.2. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when any one of the following criteria is present: submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment; submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual; or such conduct has the purpose or effect of unreasonably interfering with the individual’s work performance or creating an intimidating, hostile, or offensive work environment.
 - 3.4.3. The prohibitions against sexual harassment apply to all OPCD employees and applicants, as well as to third parties such as volunteers, interns, fellows, and contractors.
 - 3.4.4. Sexual harassment is recognized as one of the most demeaning and demoralizing types of workplace misconduct. It creates an environment that is incompatible with an employee’s right to work or receive services without fear, intimidation, coercion, or exploitation. Therefore, OPCD has established a “zero tolerance” for sexual harassment in the workplace.
 - 3.4.5. The following are examples of conduct that may create an intimidating, hostile, or offensive work environment: sexually oriented or sexually degrading language describing an individual or his/her body, clothing, hair, accessories, or sexual experiences; sexually offensive comments, or off-color language, jokes, or innuendos that a reasonable person would consider to be of a sexual nature or belittling or demeaning to an individual’s or a group’s sexuality or gender; the display or dissemination of sexually suggestive objects, books, magazines, photographs, music, cartoons, computer internet sites or references, or pictures; unnecessary and inappropriate touching or physical contact (e.g., brushing against a colleague’s body, touching or brushing a colleague’s hair or clothing, massaging, groping, patting, pinching, or hugging, etc.) that a reasonable person would consider to be of a sexual nature; leering or sexually suggestive facial expressions, gestures, or sounds

(e.g., whistling or kissing noises, etc.); workplace sexual comments, conduct, displays, or suggestions between two willing parties that would cause a reasonable third party to be offended; any unwanted repeated contact, including, but not limited to, in-person, telephonic, or e-mail or text communications, for romantic or sexual purposes; and/or sexual assault.¹

3.5. Hostile Work Environment –

3.5.1. The determination of what constitutes a hostile work environment requires a case-by-case review of facts and circumstances that explain:

- 3.5.1.1. whether the conduct was physically threatening or intimidating; how frequently the conduct was repeated;
- 3.5.1.2. whether the conduct was clearly hostile and/or offensive; the context in which the harassment occurred; and
- 3.5.1.3. whether management responded appropriately when it learned of the harassment.

3.5.2. The following are some examples of conduct which, if unwelcomed, may constitute unlawful harassment, depending upon the totality of the circumstances:

- 3.5.2.1. Use of electronic media to harass employees based on a protected category;
- 3.5.2.2. Oral or written abuse and/or threats that may include teasing, jokes, insults, gestures, epithets, or remarks based on sex or gender identity, race, age, disability, religion, national origin, color, or retaliation;
- 3.5.2.3. Comments on an individual's body, sexual activity, or lewd or obscene comments;
- 3.5.2.4. Visual displays, including electronic media (screen savers) or printed media material (posters, cartoons), in the workplace that are sexually explicit or derogatory or demeaning to a particular color, national origin, race, religion, sex or gender identity, age, or disability; or
- 3.5.2.5. Unwelcome or unsolicited physical contact, including touching, patting, pinching, hugging, grabbing, cornering, or brushing against another person's body.

3.6. A hostile work environment may also occur, but is not limited to, circumstances

¹ **Consensual Relationships.** Sexual/intimate relationships between employees and supervisors in the employee's chain of command are strongly discouraged. The existence of a sexual/intimate relationship between an employee and a supervisor will be factor in any proceeding in which the relationship is alleged to have contributed to a hostile work environment or adversely affected the terms and conditions of employment. If legal action is commenced against OPCD and a supervisor who engaged in a sexual/intimate relationship with an employee, the existence of the relationship will be a factor in the OPCD's decision to provide legal representation to the supervisor. Employees involved in any such relationship should disclose the relationship to OPCD's human resources office. In order to comply with the goals of this policy and to avoid conflicts of interest, the agency may require individuals involved in a relationship to transfer to a different work site and/or shift to alternative supervisory assignments.

involving alleged sexual harassment as follows:

- 3.6.1. Quid Pro Quo sexual harassment action (sexual advances) involving an abuse of power by someone such as a supervisor, manager, or a co-worker with authority to make job decisions who can withhold a job benefit from an employee who does not succumb to his or her advances.
 - 3.6.2. Alternatively, sexual behavior targeted at the complainant, or nonsexual behavior directed at the complainant because of a protected class.
 - 3.6.3. A finding of sexual harassment requires proof that the harassing actions are so severe or pervasive that they effectively change the complainant's working conditions, or sexual behavior that is not directed at the complainant, but adversely affects the complainant's working conditions.
4. **Proving Discrimination**
- 4.1. In informal claims, the burden of proof is a preponderance of the evidence – complainants must prove that it is *more likely than not* that the unlawful discriminatory acts complained of occurred. Methods of proof may include:
 - 4.1.1. Direct Evidence – facts revealing intentional discrimination -- that an adverse action was motivated by an individual's membership in a protected class. If revealed, there is no need to resort to circumstantial evidence.
 - 4.1.2. Circumstantial Evidence – facts showing that other similarly-situated employees outside the complainant's protected category are treated differently (disparate treatment).
 - 4.1.3. Statistical Evidence – numerical evidence revealing an adverse impact on members of a protected class even if the specific employment practice is facially neutral.
5. **Responsibilities.**
- 5.1. The EEO complaint process goals include:
 - 5.1.1. Resolving complaints informally at the earliest stage possible;
 - 5.1.2. Ensuring equal employment opportunity is provided to all employees;
 - 5.1.3. Ensuring impartiality, confidentiality, and system integrity;
 - 5.1.4. Mediating informal complaints, if possible, to avoid costly litigation; and
 - 5.1.5. Informing employees of their rights and responsibilities through periodic training and through the employees' requirement to participate in their own annual training.
6. **Responsibilities of OPCD Supervisors, Managers, Directors and Commissioners**
- 6.1. All OPCD supervisors, managers, directors and commissioners are responsible for furthering the goals of equal employment opportunity, and must ensure:
 - 6.1.1. Complainants: are free from restraint, interference, coercion, discrimination, or reprisal; are provided a reasonable amount of official time for preparation of the complaint (if they are an employee); and have the right to be accompanied, represented, and advised by a representative of his or her own choosing (if the representative is an OPCD employee, the representative shall be free from restraint, interference, coercion, discrimination, or reprisal and shall have a reasonable amount of official time to assist the employee).
 - 6.1.2. EEO Officers will be free from restraint, interference, coercion, discrimination, or reprisal.
7. **Mandatory Duty of Supervisors or Managers to Report Sexual Harassment**

- 7.1. Supervisors have a mandatory/affirmative duty to report to the OPCD EEO Officer (1) any and all sexual harassment allegations or complaints brought to the Supervisor or Manager's attention and (2) any conduct that a supervisor observes that may constitute sexual harassment. If a supervisor or manager fails to comply with this mandatory duty to report any such allegations, complaints, or conduct, such failure may be a basis for disciplinary action against the supervisor, up to and including removal.
- 7.2. OPCD maintains a central process for reporting and investigating sexual harassment complaints. Supervisors and Managers have an obligation to report but are not authorized to investigate or resolve complaints of sexual harassment unless he or she has received written delegation from OPCD's HR Manager.
- 7.3. Any employee, irrespective of status or position, found to have engaged in unlawful discrimination or harassment in violation of this policy, and any employee in a position of authority who fosters an environment that allows such unlawful discrimination or harassment to exist, shall be subject to appropriate disciplinary action, up to and including removal.
- 7.4. Written notices of non-discrimination containing the names and contact information for OPCD's EEO Officer shall be posted at all OPCD sites in a location that is accessible to employees working at that site. If an employee is unable to locate the notice, that employee should contact his or her Supervisor or Manager and report a missing notice. Employees may also contact the OPCD HR office to request a new or replacement notice for notices that are missing or damaged.

8. Role of EEO Officer

8.1. EEO Officer will:

- 8.1.1. Assess complaints carefully, to include the employee's account, management's position and agency vulnerability;
- 8.1.2. Exercise impartiality and ethics;
- 8.1.3. Develop an early intervention and resolution strategy for complaints;
- 8.1.4. Process complaints as indicated in Section 10 below;
- 8.1.5. Document efforts to achieve a resolution; and
- 8.1.6. Preserve confidentiality.

Note: the EEO Officer is not an advocate for either the complainant or the agency, but acts strictly as a neutral party in the EEO process to facilitate a prompt and fair resolution of the complaint.

9. Training

- 9.1. All OPCD employees must enroll in and attend or participate through electronic or other means, at least one training session on EEO and one sexual harassment during each fiscal year of employment. Supervisors and Managers must attend one additional training session during each fiscal year covering their duty to respond to and report discrimination and sexual harassment.
- 9.2. Employees are responsible to show OPCD HR evidence of annual participation in EEO and Sexual Harassment training.

10. Procedures for Filing Discrimination Complaints

- 10.1. OPCD is committed to resolving complaints of discrimination as quickly and efficiently as possible. Employees or applicants are encouraged to consult with OPCD's EEO Officer regarding complaints of discrimination as the agency is interested in addressing such concerns as soon as possible. **Notwithstanding the procedures regarding filing discrimination complaints contained in this policy, employees have the right to representation of their choosing.**
- 10.2. Below are the procedures and timelines for filing a discrimination complaint (note that failure to file a complaint within the stated time periods may lead to a dismissal or loss of the claim):
 - 10.2.1. An employee or qualified applicant may consult and/or submit any informal complaint to the EEO Officer within 180 calendar days after the alleged unlawful employment practice occurred or within 180 calendar days of the discovery of the occurrence giving him or her cause to believe that he or she has been discriminated against, whichever is.
 - 10.2.2. Employees of OPCD have certain additional rights to file complaints with the United States Equal Employment Opportunity Commission ("EEOC") pursuant to § 706 of the Civil Rights Act, and to pursue remedies provided for in the Age Discrimination in Employment Act, as amended (29 U.S.C. § 626 and 633). Employees are encouraged to consult with the OHR regarding such additional rights twenty-four (24) hours of receipt.
- 10.3. Complaints received by the EEO Officer shall be reviewed and processed promptly for counseling, investigation, and/or other remedial steps (if needed):
 - 10.3.1. Upon receiving a complaint of discrimination, which may be verbal or in writing, the EEO Officer shall create a complaint file and immediately note the date the complaint was received, the name of the complainant, the name of the accused, the nature of the complaint, and assign the complaint a sequential number.
 - 10.3.2. To ensure the integrity of the EEO process, the EEO Officer shall not participate in the investigation, mediation, and/or resolution of any complaint of discrimination when a conflict of interest exists.
 - 10.3.3. If a conflict of interest exists, as defined below, the EEO Officer shall not mediate or investigate the complaint, but shall immediately refer the complaint to their next level supervisor. A "conflict of interest" exists when an EEO Officer receives a complaint from or about any person who(m): is the EEO Officer's supervisor or manager; the EEO Officer has a personal relationship with; is under the supervision of the EEO Officer; is assigned to the same division as the EEO Officer.
 - 10.3.4. The EEO Officer shall meet with the complainant as soon as practical but no later than five (5) business days after the complaint is received and document the following:
 - 10.3.4.1. Make a thorough review of the circumstances underlying the complaint, including the treatment of members of the complainant's group, if any, identified by the complaint, as compared with the treatment of other employees in, or applicants to, the organizational unit in which the alleged discrimination occurred;

- 10.3.4.2. Examine all pertinent records;
 - 10.3.4.3. Review any policies and practices related to the work situation or application process which may constitute, or appear to constitute, discrimination, even though they have not been expressly cited by the complainant;
 - 10.3.4.4. Discuss with the complainant all the pertinent employees who need to be interviewed, including supervisors;
 - 10.3.4.5. Advise the complainant or his or her representative concerning the process;
 - 10.3.4.6. Seek a solution of the matter on an informal basis; and
 - 10.3.4.7. Keep a record of counseling activities so as to brief the agency at least once a month of those activities.
- 10.3.5. The EEO Officer shall, insofar as is practicable, conduct the final interview with the complainant and/or his or her representative not later than thirty (30) days after first being consulted by the complainant. During the final interview, the EEO Officer shall provide to the complainant and/or his or her representative written notice, the Exit Letter, of the complainant's right to file a formal complaint with the Director within fifteen (15) days of the final interview, if the matter has not been resolved to complainant's satisfaction.
- 10.3.6. If the EEO Officer determines that additional time is needed to conduct the final interview, the EEO Officer will communicate in writing to the complainant that an additional period of time, up to thirty (30) days (the "Extension Period"), is needed.
- 10.3.7. When the investigation into a complaint of discrimination is concluded, the EEO Officer shall complete a "Resolution Letter", if appropriate, which shall be signed by the complainant, the agency representative and the EEO Officer. The "Resolution Letter" shall be placed in the OPCD file and a copy shall be provided to the complainant and the agency representative.
- 10.3.8. Regardless of whether the matter is resolved the EEO Officer shall issue to the complainant a written notice (the "Exit Letter") of the complainant's right to file a formal complaint with the OHR within fifteen (15) calendar days of the final interview. NOTE: During the Extension Period, the complainant may demand an Exit Letter at any time. In addition, during the Extension Period, the complainant may file a formal complaint with the LHRC or EEOC, notwithstanding whether the Exit Letter has been demanded or issued.
- 10.4. During the course of the EEO Officer's inquiry into a complaint of discrimination, the EEO Officer shall secure the file so that it is not accessible to others. The OPCD EEO Officer shall keep the completed file in a

locked file cabinet. The EEO Officer shall develop a numbering system to track all OPCD EEO complaints.

- 10.5. Pending final resolution of a discrimination complaint, and in order to protect the rights of the alleged victim as well as person(s) being accused, OPCD management may initiate temporary personnel actions that do not result in any adverse employment action. These remedial actions are administrative rather than disciplinary and may include, but are not limited to, transfers, reassignment of duties or reporting requirements, placing an employee on mandatory administrative leave with pay, or other appropriate measures that do not result in a reduction of pay, loss of employee benefits, or negative performance evaluation.

11. Penalties

- 11.1. OPCD shall impose stringent penalties against persons found to be in violation of this policy. Penalties for conduct in violation of this policy or the applicable laws and regulations cited herein are set forth in the OPCD Employee Protection and Conduct Policy.
- 11.2. Managers and Supervisors who fail to report sexual harassment or harassment based on any of the protected classes, or fail to take appropriate action to resolve sexual harassment complaints when directed by the agency shall be subject to disciplinary action as set forth in the OPCD Employee Protection and Conduct Policy, up to and including removal.
- 11.3. Employees found to have filed false charges of sexual harassment shall be subject to disciplinary action as set forth in the OPCD Employee Protection and Conduct Policy, up to and including removal. Persons accused of discriminating deserve the full protection afforded them under the law until there is a finding by a preponderance of the evidence by the agency.

12. Definitions

- a) Disability: A physical or mental impairment that substantially limits one or more major life activities of the individual, a record of such an impairment, or being regarded as having such an impairment.
- b) Major life activities: Term includes caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working.
- c) Major bodily functions: Term includes physical or mental impairment such as any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin and endocrine. Also covered are any mental or psychological disorders, such as intellectual disability (formerly termed "mental retardation"), organic brain syndrome, emotional or mental illness and specific learning disabilities.
- d) Substantially limiting: In accordance with the ADAAA final regulations, the determination of whether an impairment substantially limits a major life activity

requires an individualized assessment, and an impairment that is episodic or in remission may also meet the definition of disability if it would substantially limit a major life activity when active. Some examples of these types of impairments may include epilepsy, hypertension, asthma, diabetes, major depressive disorder, bipolar disorder and schizophrenia. An impairment, such as cancer that is in remission but that may possibly return in a substantially limiting form, is also considered a disability under EEOC final ADAAA regulations.

- e) Direct threat: A significant risk to the health, safety or well-being of individuals with disabilities or others when this risk cannot be eliminated by reasonable accommodation.
- f) Qualified individual: An individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.
- g) Reasonable accommodation: Includes any changes to the work environment and may include making existing facilities readily accessible to and usable by individuals with disabilities, job restructuring, part-time or modified work schedules, telecommuting, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.
- h) Undue hardship: An action requiring significant difficulty or expense by the employer. In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include:
 - i) The nature and cost of the accommodation.
 - ii) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, the effect on expenses and resources, or the impact of such accommodation on the operation of the facility.
 - iii) The overall financial resources of the employer; the size, number, type and location of facilities.
 - iv) The type of operations of the company, including the composition, structure and functions of the workforce; administrative or fiscal relationship of the particular facility involved in making the accommodation to the employer.
- i) Essential functions of the job: Term refers to those job activities that are determined by the employer to be essential or core to performing the job; these functions cannot be modified.
- j) ADA: Americans With Disabilities Act
- k) Complainant: an employee or applicant for employment who makes or files an oral or written complaint of discrimination.
- l) Discrimination: treatment or consideration based on a person's actual or perceived membership in a particular category or class of persons rather than individual merit.
- m) EEO: Equal Employment Opportunity.
- n) EEO Officer: is a person designated who is responsible for developing and implementing the EEO policy and procedures, and who administers the complaint process with accountability to the Board of Commissioners.

- o) EEOC: United States Equal Employment Opportunity Commission.
- p) LHRC: Louisiana Human Rights Commission
- q) Formal EEO Complaint : Complaint filed through LHRC or EEOC.
- r) Harassment: is a form of discrimination that results in the interference with an employee's ability to perform their job responsibilities.
- s) Informal EEO Complaint: Complaint filed at OPCD.
- t) Protected Activity or Disclosure: includes lawful actions or information provided by an employee that furthers the interest and/or upholds the rights of protected categories under the EEOC LHRC.
- u) Retaliation: taking or threatening to take adverse employment action against an employee because he/she has filed a complaint alleging unlawful discrimination, participated in a discrimination investigation, or engaged in other activity protected under Title VII of the Civil Rights Act of 1964 and the Louisiana Human Rights Act.

13. Appointment

- 13.1. The OPCD Human Resources manager will be designated EEO Officer upon the issuing of this policy.