



# City of Phoenix

<b>ADMINISTRATIVE REGULATION</b>	A.R. NUMBER 2.35 (A) Revised
	FUNCTION Personnel and Payroll Page 1 of 6
SUBJECT  <b>SEXUAL HARASSMENT</b>	EFFECTIVE DATE March 22, 2005
	REVIEWED DATE

## I. STATEMENT OF COMMITMENT

The City of Phoenix is committed to providing a harassment-free environment for all employees. The City will not tolerate sexual harassment in the workplace.

## II. PURPOSE

This regulation defines sexual harassment, reaffirms the City's policy prohibiting sexual harassment, outlines City department responsibilities for compliance with this policy, and clarifies complaint procedures and investigative processes for employees and job applicants who wish to pursue sexual harassment complaints.

See Administrative Regulation 2.35 for discrimination issues and Administrative Regulation 2.35(B) for protected category harassment.

## III. DEFINITION OF SEXUAL HARASSMENT

Sexual harassment is behavior directed at an individual due to gender that is not welcome, that is offensive, demoralizing, and/or interferes with work effectiveness. It may be conduct toward an individual of the opposite sex or the same sex and it may occur between peers or between individuals in a hierarchical relationship.

Sexual harassment does not refer to occasional compliments or personal interactions of a general socially acceptable nature. Determining whether specific conduct constitutes sexual harassment depends upon the facts and the context in which the conduct occurs. It should also be understood that certain behaviors that do not fit the definition of sexual harassment may nevertheless be unprofessional and inappropriate in the workplace and are also prohibited under other City policies and regulations.

There are two forms of sexual harassment:

**Quid Pro Quo** occurs when a supervisor or other person in authority conditions the granting of an economic or other job benefit, such as a raise or advancement, upon the receipt of sexual favors from a subordinate, withholds such benefits, or punishes that subordinate for refusing sexual favors.

**Hostile Environment** is created by persons in the workplace through unwelcome sexual advances or other verbal or physical conduct of a sexual nature that has the purpose or effect of unreasonably interfering with an individual's work performance or job conditions.

#### **IV. POLICY**

The City of Phoenix will not tolerate sexual harassment in the workplace. No employee, either male or female, should be subject to unwelcome verbal or physical conduct that is sexual in nature or that shows hostility to the employee because of the employee's gender. No employee of the City is permitted to engage in sexual harassment. This includes supervisors, managers, and executives, who are entrusted with authority to enforce and uphold the policies of the City. Supervisors, managers, and executives are required to take proactive steps to prevent sexual harassment and to take prompt corrective action whenever it occurs.

#### **V. EXAMPLES OF PROHIBITED CONDUCT**

Examples of conduct prohibited by this policy include:

- Offering or implying an employment-related reward or opportunity, such as a merit pay increase or promotion, in exchange for sexual favors or submission to sexual conduct.
- Threatening, verbally or physically, or taking a negative employment action such as termination, demotion, denial of a leave of absence, merit pay increase, or withholding any other benefit of employment if sexual conduct is rejected.
- Unwelcome intentional touching, hugging, or holding of another person, or other unwanted intentional physical contact (including patting, pinching, brushing against another person's body, or blocking of physical movement).
- Unwelcome non-verbal/non-physical conduct such as whistling, staring, or leering at another person.
- Asking unwelcome questions or making unwelcome comments about another person's sexual activities, dating, personal or intimate relationships, or appearance.
- Sending unwelcome sexually suggestive or flirtatious letters, gifts, notes, or voice mail.
- Sending unwelcome sexually suggestive letters, notes, and jokes on e-mail, including pictures, photographs or graphics that may or may not be sent as electronic attachments or copied from electronic messages.
- Saying unwelcome sexual jokes, pranks, teasing, obscenities or rude gestures or noises, slurs, derogatory or abusive names.

- Displaying or circulating pictures, objects, or written materials of a sexual nature (including graffiti, cartoons, photographs, pinups, calendars, magazines, figurines, novelty items).
- Engaging in other unprofessional conduct that technically may not be considered "sexual harassment" but may have a similar effect on the work environment. While it is not possible to provide an exhaustive list, such conduct might include verbal or physical nonsexual conduct that denigrates or shows hostility toward an individual because of his or her gender, jokes including derogatory slurs, improper relationships between supervisors and subordinates, profane or vulgar language, or improper sexual behavior in the workplace.
- Retaliating against a person for opposing, reporting, or threatening to report harassment, or for participating in an investigation, proceeding or hearing conducted by an investigating agency.

## VI. WHAT TO DO IF SEXUAL HARASSMENT OCCURS

1. **Tell the offending person to stop.** An employee who believes that he or she has been subjected to sexual harassment by anyone is encouraged – but not required – to promptly tell the person that the conduct is unwelcome and ask the person to stop the conduct. A person who receives such a request **must** immediately comply with the request and **must not** retaliate against the employee for rejecting the conduct.
2. **Duty to report.** The City requires all employees to report conduct which is prohibited by this policy whether or not they are personally involved. Any employee who believes s/he has been harassed on the job based on gender or subjected to conduct prohibited by this policy, or is aware of others who have been harassed or subjected to prohibited conduct, needs to report the behavior immediately. (See Section VII [3] entitled, "How to Make a Report.") Failure to report harassment can be a serious offense and *may* be grounds for disciplinary action.

Supervisors, managers, and executives are required to monitor their respective workplaces and immediately intervene if they determine sexual harassment has occurred. They are also required to report any suspected sexual harassment even if the person or persons engaged in the conduct are not their subordinates, or they have not received a complaint. The failure of a supervisor, manager, or executive to monitor, intervene, or report sexual harassment as set forth below can be a serious offense and *will* result in discipline.

## VII. REPORTING HARASSMENT

If you believe you are a victim of sexual harassment, you should use the procedure outlined in this policy to file a complaint and have it investigated.

1. **When to make a report.** Any employee who believes s/he has been subjected to sexual harassment by anyone must report it immediately. Any employee or supervisor who knows or believes that sexual harassment is occurring, or has occurred, also must file a report immediately.
2. **Where to make a report.** Any employee who believes s/he has been subjected to sexual harassment should report the harassment to the immediate supervisor, department management, department Personnel Officer/Equal Opportunity Liaison, or to the Equal Opportunity Department's Compliance and Enforcement Division at (602) 262-7486 (voice) or (602) 534-1557 (TTY). **Complaints must be filed within 180 days of the alleged act(s) of sexual harassment.**

Any employee or supervisor who knows, or believes, that sexual harassment is occurring, or has occurred, must report that information immediately to the respective department Personnel Officer/Equal Opportunity Liaison or to the Equal Opportunity Department's Compliance and Enforcement Division at (602) 262-7486 (voice) or (602) 534-1557 (TTY).

Applicants for employment should file their complaints or discuss their concerns with the Equal Opportunity Department. **Complaints must be filed within 180 days of the alleged act(s) of sexual harassment.**

If there is uncertainty as to whether or not a situation constitutes sexual harassment, the concerned individual is encouraged to discuss the matter with the Personnel Officer/Equal Opportunity Liaison or Equal Opportunity Department before determining whether or not to file a formal complaint.

An employee or applicant may choose to raise the complaint with a state or federal agency without first pursuing it through City channels. Pursuant to state and federal law, complaints may also be filed with the Civil Rights Division of the Arizona State Attorney General's Office (ACRD) at (602) 542-5263 (voice) or (602) 542-5002 (TTY), or the U.S. Equal Employment Opportunity Commission (EEOC) at (602) 640-5000 (voice) or (602) 640-5072 (TTY).

3. **How to make a report.** All employees have a right to redress for prohibited sexual harassment. In order to secure this right, the employee should provide a complaint, preferably in writing and as soon as possible following the incident, to any of the following City of Phoenix staff:
  - Supervisor or another person in the chain of command
  - Department Personnel Officer
  - Department Equal Opportunity Liaison, or
  - Equal Opportunity Department, Compliance and Enforcement Division

## VIII. INVESTIGATION OF COMPLAINTS

All incidents of harassment that are reported will be investigated. The following procedures will be followed when a report of sexual harassment is made:

1. **Department investigation.** When an employee or applicant reports a possible sexual harassment concern to a City department, the department may, if it has the resources and expertise to do so, conduct its own investigation. In such an instance, the investigation must be done in consultation with the Equal Opportunity Department and in a manner that is generally consistent with the procedure outlined below for the Equal Opportunity Department.
2. **Equal Opportunity Department investigation.** When a possible sexual harassment concern is brought to the Equal Opportunity Department, the Compliance and Enforcement Division will help evaluate the situation and decide on a proper course of action. Among the actions that can be taken are:
  - a. The Equal Opportunity Department can facilitate an informal resolution between the parties if it deems it appropriate after reviewing the complaint. This can include consulting with the parties involved to settle the issue.
  - b. If a formal complaint is filed, the Equal Opportunity Department will:
    - i. Notify the appropriate Deputy City Manager, Department Head, and Equal Opportunity Liaison of the complaint; and
    - ii. Immediately initiate an investigation to gather all relevant facts concerning the complaint.
  - c. The Equal Opportunity Department may:
    - i. Schedule interviews with various employees, supervisors, witnesses, or officials. Interviews may be tape-recorded or a written statement of the testimony may be provided for the signature of the witness;
    - ii. Review personnel records or other documents; and
    - iii. Make site visits to acquire all pertinent facts.
  - d. The Equal Opportunity Department will work with the department(s) involved to obtain and evaluate all relevant evidence with respect to what has occurred.
  - e. The Equal Opportunity Department will analyze all pertinent information and reach a conclusion as to whether or not a violation of this policy has occurred.
  - f. Notice of the conclusion of the investigation will be given to the complainant, the appropriate Deputy City Manager, the Department Head, the department Equal Opportunity Liaison, and the respondent.

All persons involved in an investigation of sexual harassment must attempt to keep the matter confidential.

## IX. RESOLUTION OF COMPLAINTS

If the City determines that harassment has occurred, it will take remedial action commensurate with the circumstances. Appropriate action will also be taken to deter any future harassment.

An employee who engages in sexual harassment is acting contrary to City policy and will be subject to discipline, up to and including termination.

1. When it is determined that this policy has been violated, the Equal Opportunity Department will make recommendations for resolution of the complaint.
2. Management personnel will take prompt corrective action. If warranted, verbal counseling up to and including involuntary termination will be imposed. Other appropriate actions will be taken to correct problems caused by the conduct.
3. A finding that the conduct does not constitute sexual harassment does not limit a department's right and responsibility to discipline or take remedial action for unacceptable conduct that may amount to conduct unbecoming a City employee and/or is in violation of any other City policy or regulation.


## X. NON-SEXUAL HARASSMENT INCIDENTS

Alleged acts of unfair or unequal treatment that do not involve discrimination, sexual harassment, or other protected category harassment should be addressed through the established grievance procedure and other provisions outlined in Administrative Regulation 2.61.

## XI. RETALIATION

1. No supervisor, manager, executive, or coworker may retaliate against an employee who makes a report of sexual harassment or cooperates with an investigation. **Retaliation is unlawful and will not be tolerated.** Retaliation must be reported and handled in the same way as complaints of sexual harassment. Retaliation is a serious offense that may result in discipline up to and including termination.
2. A person found to have retaliated in response to a charge of sexual harassment will be subject to discipline. Exoneration on the underlying sexual harassment complaint will have no effect on the investigation of or possible discipline imposed for retaliation.

FRANK FAIRBANKS, City Manager

By   
Lisa Takata  
Assistant to the City Manager