

SPRINGFIELD POLICE DEPARTMENT

<input checked="" type="checkbox"/> DEPARTMENT DIRECTIVE <input type="checkbox"/> DIVISION DIRECTIVE		DIRECTIVE NUMBER 18-134	ROC-05
<input checked="" type="checkbox"/> GENERAL ORDER <input type="checkbox"/> NOTICE <input type="checkbox"/> SPECIAL ORDER <input type="checkbox"/> LEGAL NOTICE			ISSUE DATE 05/16/18
SUBJECT: WORKPLACE HARASSMENT POLICY AND COMPLAINT PROCEDURES	DISTRIBUTION A,B	REVISION DATES 01/29/01, 06/08/01 10/30/08, 11/01/08, 05/16/18	EFFECTIVE DATE 05/16/18
REFERENCES:			RESCINDS: ROC 08-014

I. POLICY – This General Order is meant to adopt the City of Springfield’s policy on non-discrimination and anti-harassment.

The City of Springfield (hereafter, the “City”) is committed to maintaining an environment that encourages and fosters appropriate conduct among all persons and respect for individual values. Accordingly, the City is committed to enforcing this Non-Discrimination and Anti-Harassment Policy and Complaint Procedure at all levels in order to create an environment free from discrimination, harassment, sexual harassment, retaliation and/or sexual assault. Discrimination or harassment based on inclusion in any protected class – race, gender and/or gender identity or expression, color, creed, religion, age, national origin, ethnicity, disability, veteran or military status, sex, sexual orientation, pregnancy, genetic information, marital or parental status, citizenship status or on any other legally prohibited basis – is unlawful and undermines the character and purpose of the City. Such discrimination or harassment violates City policy and will not be tolerated.

Any form of retaliation against anyone who has complained of or formally reported discrimination, harassment, sexual harassment, or sexual assault or has participated in an investigation of such a complaint, regardless of whether the complaint relates to the complaining person or someone else, will not be tolerated and violates both this policy and applicable law.

The City prohibits discrimination, harassment, sexual harassment, retaliation, and sexual assault. Furthermore, the City expects management-level personnel to serve as models of appropriate conduct for other employees and will hold them to a higher standard of accountability. Management personnel must not only refrain from actions that violate this policy but also refrain from any activity that would give the appearance of impropriety.

This policy applies to all employees of the City and applies regardless of whether the alleged wrongdoer is an employee. Employees represented by a labor organization retain all rights under their collective bargaining agreements and labor law. This policy also applies to contractual employees.

II. DEFINITIONS

A. Discrimination is adverse treatment of any employee based on the protected class or category of persons to whom he/she belongs, rather than on the basis of his/her individual merit, with respect to the terms, conditions or privileges of employment including, but not limited to, hiring, firing, promoting, disciplining, scheduling, training or deciding how to compensate that employee. Discrimination of this kind is also strictly prohibited by a variety of federal, state and local laws, including Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1975, and the Americans with Disabilities Act of 1990 as well as the ADA Amendments Act of 2008. This policy is intended to comply with all the prohibitions stated in these antidiscrimination laws.

B. Harassment is unwelcome verbal or physical conduct prohibited by law directed toward, or differential treatment of, an employee because of his/her membership in any protected group or on any other prohibited basis (e.g., race, gender and/or gender identity or expression, color, creed, religion, age, national origin, ethnicity, disability, veteran or military status, sex, sexual orientation, pregnancy, genetic information, marital or parental status or citizenship status). The harasser can be the employee’s supervisor, a supervisor in another area, a co-worker or someone who is not an employee of the City, such as a client or customer.

Examples of such conduct include, but are not limited to, the following:

1. Offensive or degrading remarks, verbal abuse or other hostile behavior such as insulting, teasing, mocking,

- degrading or negatively stereotyping another person or group;
 2. Racial slurs, derogatory remarks about a person's accent or display of racially offensive symbols;
 3. Unwelcome or inappropriate physical contact, comments, questions, advances, jokes, epithets or demands;
 4. Physical assault or stalking;
 5. Distribution, display, discussion or electronic transmission of derogatory, demeaning or hostile materials;
 6. Unwillingness to train, evaluate, assist, or work with an employee.
- C. A hostile work environment results from harassing conduct that has the purpose or effect of unreasonably interfering with an employee's work performance or creates an intimidating, hostile or offensive working environment.
- D. Sexual harassment is a form of harassment that consists of making unwelcome sexual advances or requests for sexual favors or engaging in other verbal or physical acts of a sexual or sex-based nature where such conduct interferes with the employee's work performance or creates an intimidating, hostile or offensive working environment.
1. Sexual harassment may also occur where a supervisor/manager demands that an employee/subordinate satisfy sexual demands in order to receive job benefits, to continue employment or as a basis for making any other employment decision. Such sexual harassment occurs between a manager/supervisor and an employee due to the nature of the manager/subordinate relationship. A manager/supervisor for this purpose is someone who can affect or impact an employee's terms, conditions, or privileges of employment because he/she can take or impact action such as hiring, firing, promoting, disciplining, scheduling, training or deciding how to compensate that employee.

Examples of such conduct include, but are not limited to, the following:

- a. Verbal: sexual innuendos, suggestive comments, insults, humor, and jokes about sex, anatomy or gender-specific traits, sexual propositions, threats, repeated requests for dates, or statements about other employees, even outside of their presence, of a sexual nature.
 - b. Non-verbal: suggestive or insulting sounds (whistling), leering, obscene gestures, sexually suggestive bodily gestures, "catcalls", "smacking" or "kissing" noises.
 - c. Visual: posters, signs, pin-ups or slogans of a sexual nature, viewing pornographic material or websites.
 - d. Physical: touching, unwelcome hugging or kissing, pinching, brushing the body, any coerced sexual act or actual assault.
 - e. Textual/Electronic: "sexting" (electronically sending messages with sexual content, including pictures and video), the use of sexually explicit language, harassment, cyber stalking and threats via all forms of electronic communication (e-mail, text/picture/video messages, intranet/on-line postings, blogs, instant messages and social network websites like Facebook and Twitter).
2. The most severe and overt forms of sexual harassment are easier to determine. On the other end of the spectrum, some sexual harassment is more subtle and depends, to some extent, on individual perception and interpretation
- E. Retaliation is any adverse action taken against an individual (applicant or employee) because he/she filed a charge of discrimination, complained to the City or a government agency about discrimination on the job or participated in an employment discrimination proceeding (such as an internal investigation or lawsuit), including as a witness. Retaliation also includes adverse action taken against someone who is associated with the individual opposing the perceived discrimination, such as a family member.
1. Examples of retaliation include termination, demotion, refusal to promote or any other adverse action that would discourage a reasonable person from opposing perceived discrimination.
- F. Sexual assault is a sexual act against the will and without the consent of the employee- victim or where the employee-victim is incapable of giving consent. This includes conduct that would be considered criminal under the Illinois State Penal Code.
1. Discrimination, harassment, retaliation, and sexual assault are unacceptable in the workplace. This behavior violates City policy even when it does not constitute a violation of law.

III. REPORTING DISCRIMINATION, HARASSMENT, SEXUAL HARASSMENT, RETALIATION, OR SEXUAL ASSAULT

- A. Any employee who believes that he/she has been a victim of discrimination, harassment, retaliation or sexual assault prohibited by this policy or any employee who has witnessed such discrimination, harassment, retaliation or sexual assault, should immediately report the circumstances in accordance with the procedure set forth below. The City may investigate any conduct that violates this policy, even in the absence of a complaint, and take remedial action where appropriate.
- B. An employee may make a complaint to any of the following individuals:
 - 1. Immediate Supervisor
 - 2. Department/Division Head
 - 3. Director, Human Resources
 - 4. Labor Relations Manager
 - 5. Human Resources Manager
 - 6. Corporation Counsel
 - 7. Mayor's Office
- C. Department Personnel may also make a complaint to any of the following individuals:
 - 1. Any Supervisor within or outside their division, section, etc.
 - 2. Any Division Commanding Officer
 - 3. Internal Affairs
- D. While a complaint may be received by the any of the individuals listed above, all complaints under this policy will be referred to the Internal Affairs Division who will work in conjunction with the Office of Human Resources for investigation and resolution. If the complaint is against a member of the Human Resources staff, a member of the Internal Affairs Division, or otherwise poses a conflict of interest, the matter shall then be investigated and resolved by the Office of Corporation Counsel. Confidential reporting can be made with one of the following:
 - 1. Inspector General of the City of Springfield
 - 2. Inspector General/Ethics Officer of the State of Illinois
 - 3. Illinois Department of Human Rights (IDHR)
 - 4. Equal Employment Opportunity Commission (EEOC)
- E. The City encourages prompt reporting of complaints so that it may respond appropriately and conduct an investigation while the matter is freshest in witnesses' memory and other evidence is most likely to be available. Because it is not always easy to interpret words or actions, employees are further encouraged to bring forward any concerns under this policy before they rise to the level of violating the law.
- F. While reporting such incidents can often be a difficult personal experience, allowing prohibited behaviors to continue will most likely lead to less desirable outcomes. For that reason, employees are strongly encouraged to utilize this reporting procedure. However, filing groundless or malicious complaints is an abuse of this policy and is prohibited.
- G. If the person(s) committing the harassment is part of the employee's chain of command, the employee should bypass that person(s) and report the harassment to one of the other persons described above.
- H. Any supervisor who observes inappropriate behavior or receives a harassment complaint will notify the Director of Human Resources and the Internal Affairs Division as soon as possible, but by the beginning of the next business day at the latest.
- I. Upon the receipt of a harassment complaint, the Internal Affairs Division shall notify the Office of the Chief of Police and conduct an initial investigation to make a determination as to whether there is any merit to the complaint. If no merit is found, the Internal Affairs Division and/or Human Resources designee may still meet with the parties involved to attempt to conciliate the complaint or conflict between the parties.

J. Review of Response and Findings:

1. Factual information gathered through the investigation will be reviewed to determine whether the alleged conduct constitutes harassment, giving consideration to all factual information, the totality of the circumstances including the nature of the verbal, physical, visual or sexual conduct and the context in which the alleged incident(s) occurred;
2. The results of the investigation and the determination as to whether harassment occurred will be reported to appropriate persons including the complainant, the alleged harasser(s), the supervisor, and the Chief of Police following current Department guidelines.

K. Responsibilities of Managers and Supervisors

It is imperative that managers and supervisors set the tone for the enforcement of this policy. Managers and supervisors have a special obligation not to engage in discrimination, harassment, retaliation or sexual assault. All management and supervisory personnel have an affirmative duty and are required to promptly report any discrimination, harassment, retaliation or sexual assault that they observe, learn about from others, or reasonably suspect has occurred with respect to an employee.

IV. CONSEQUENCES FOR KNOWINGLY MAKING A FALSE REPORT

- A. A false report is a report of sexual harassment made by an accuser using the sexual harassment report to accomplish some end other than stopping sexual harassment or retaliation for reporting sexual harassment. A false report is not a report made in good faith which cannot be proven. Given the seriousness of the consequences for the accused, a false or frivolous report is a severe offense that can itself result in disciplinary action. Any person who intentionally makes a false report alleging a violation of any provision of this policy shall be subject to discipline or discharge pursuant to applicable municipal policies, employment agreements, procedures, employee handbooks and/or collective bargaining agreements.
- B. In addition, any person who intentionally makes a false report alleging a violation of any provision of the State Officials and Employees Ethics Act to an ethics commission, an inspector general, the State Police, a State's Attorney, the Attorney General, or any other law enforcement official is guilty of a Class A misdemeanor. An ethics commission may levy an administrative fine of up to \$5,000 against any person who intentionally makes a false, frivolous or bad faith allegation.

V. INVESTIGATION AND DISPOSITION OF COMPLAINTS

- A. The City shall conduct a prompt, thorough and impartial investigation as deemed necessary and appropriate and will make every effort to complete its investigation within thirty (30) days of a report of discrimination or harassment. However, the Human Resources investigator may find it necessary to extend the time period for completing an investigation in some circumstances. The investigator will provide the complainant, the alleged wrongdoer, and the department head with notice of any extension and provide a new timetable for completion of the investigation.
- B. The investigation will include an interview with the alleged employee-victim. It also may include interviews with the person who made the initial report, the complainant (if not the alleged victim), the alleged wrongdoer and/or any other person who may have information regarding the incident, each of whom is encouraged to cooperate with any investigation. The investigator may also review relevant documents.
- C. The investigation process is strictly internal to the City. Any union-represented employee retains his or her right to have union representation during the investigation process.

VI. Findings and Recommendations

- A. The Human Resources investigator will report his or her findings to the person who made the initial report, the alleged victim of discrimination, harassment, retaliation or sexual assault, the alleged wrongdoer, and relevant managers and supervisors.

- B. Where the investigator concludes that a violation of this policy has occurred, the relevant department will take prompt and appropriate remedial action, including disciplinary action. Depending on the circumstances, disciplinary action may include, but is not limited to the following courses of action: reprimand/verbal counseling, training, censure, removal of privileges, letters of warning or suspension, and dismissal. Discipline for a violation of this policy need not be progressive, so a first violation of this policy may warrant suspension or discharge.
- C. The Investigatory File
 - 1. Every complaint will trigger the creation of an investigatory file. The investigatory file will consist of the initial complaint, the final investigative report, including a record of the remedial action to be taken, if any, and any documents created or used during the investigation.
 - 2. For the duration of the investigation, the Human Resources investigator will maintain the investigatory file. Upon completion of the investigation, all files will be centralized in the Office of Human Resources whereby records of all complaints will be maintained in accordance with the City's documentation retention policies.
- D. Responsibilities of Managers and Supervisors

In cases where an investigation confirms a violation of this policy, management in the appropriate department or division must ensure that the prescribed remedial action, including disciplinary action, is implemented. Managers must provide confirmation to the Human Resources investigator within 14 days that the recommended action has occurred. Only upon such confirmation will the Human Resource investigator close the investigatory file. Management is also responsible for regular monitoring to ensure that all remedial and/or disciplinary steps are completed, and no further discrimination or harassment occurs in the work environment.

VII. CONSEQUENCES OF A VIOLATION OF THE PROHIBITION ON SEXUAL HARASSMENT

In addition to any and all other discipline that may be applicable pursuant to municipal policies, employment agreements, procedures, employee handbooks and/or collective bargaining agreement, any person who violates this policy or the Prohibition on Sexual Harassment contained in 5 ILCS 430/5-65, may be subject to a fine of up to \$5,000 per offense, applicable discipline or discharge by the municipality and any applicable fines and penalties established pursuant to local ordinance, State law or Federal law. Each violation may constitute a separate offense. Any discipline imposed by the municipality shall be separate and distinct from any penalty imposed by an ethics commission and any fines or penalties imposed by a court of law or a State or Federal agency.

VIII. CONFIDENTIALITY

The City will maintain the confidentiality of the complaint and the privacy of the persons involved, to the greatest extent possible, consistent with its goal of conducting a thorough and complete investigation and to the extent permitted by law.

IX. NON-RETALIATION

- A. The City will not retaliate against an individual who reports a perceived violation of this policy, participates in any investigation, or otherwise opposes perceived discrimination, harassment, or retaliation, including as a witness. It will also not retaliate against anyone associated with the individual who engages in such protected conduct, such as a family member. The City further will not tolerate retaliation by any employee. Retaliation is a serious violation of this policy, as well as federal, state, and local law. Anyone who believes he/she is a victim of retaliation should report the matter immediately according to the same procedure provided in this policy for making complaints of discrimination, harassment, or sexual assault. Any person found to have retaliated against another individual will be subject to the same disciplinary action provided under this policy for other violations. No individual making a report will be retaliated against even if a report made in good faith is not substantiated. In addition, any witness will be protected from retaliation.
- B. Similar to the prohibition against retaliation contained herein, the State Officials and Employees Ethics Act (5 ILCS 430/15-10) provides whistleblower protection from retaliatory action such as reprimand, discharge, suspension,

demotion, or denial of promotion or transfer that occurs in retaliation for an employee who does any of the following:

1. Discloses or threatens to disclose to a supervisor or to a public body an activity, policy, or practice of any officer, member, State agency, or other State employee that the State employee reasonably believes is in violation of a law, rule, or regulation,
 2. Provides information to or testifies before any public body conducting an investigation, hearing, or inquiry into any violation of a law, rule, or regulation by any officer, member, State agency or other State employee, or
 3. Assists or participates in a proceeding to enforce the provisions of the State Officials and Employees Ethics Act.
- C. Pursuant to the Whistleblower Act (740 ILCS 174/15(a)), an employer may not retaliate against an employee who discloses information in a court, an administrative hearing, or before a legislative commission or committee, or in any other proceeding, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation. In addition, an employer may not retaliate against an employee for disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation. (740 ILCS 174/15(b)).
- D. According to the Illinois Human Rights Act (775 ILCS 5/6-101), it is a civil rights violation for a person, or for two or more people to conspire, to retaliate against a person because he/she has opposed that which he/she reasonably and in good faith believes to be sexual harassment in employment, because he/she has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under the Illinois Human Rights Act.
- E. An employee who is suddenly transferred to a lower paying job or passed over for a promotion after filing a complaint with IDHR or EEOC, may file a retaliation charge of the alleged retaliation.

X. SEXUAL ASSAULT

The medical, emotional, and legal needs of a sexual assault victim may differ from those of other harassment complainants. Sexual assault victims who are employees should, therefore, in addition to filing a complaint under this policy, report the assault to the police and pursue EAP counseling and other medical and support services available at the City. Any reported Officer-involved criminal sexual assault while the Officer is on duty will be investigated pursuant to the Law Enforcement Criminal Sexual Assault Act (5 ILCS 815) as defined in ROC-03 Add. 3, IV, E.

XI. CONSENSUAL RELATIONSHIPS

- A. Consensual relationships involving sexual behavior that is welcome and voluntary do not constitute sexual harassment under the law. Romantic relationships in situations where one individual has greater power or authority over another, however, frequently result in claims of harassment when the relationship ends and perceptions of favoritism while they continue. Such relationships are inappropriate in the workplace. A "consensual" relationship between a supervisor and a subordinate is an example of an inappropriate relationship. If a consensual relationship occurs, any situation of authority must be discontinued, and appropriate action may be taken.
- B. Any dating relationship involving personnel at different levels in the chain of command, (or where one party has functional supervision over another) will be reported by the person of higher rank to his or her supervisor immediately. Failure to report this relationship is a violation of this policy. The supervisor receiving this information will immediately contact the Deputy Chief of Administrative Services and inform them of the relationship. The Deputy Chief of Administrative Services will contact the Chief of Police and make recommendations to guard against the relationship detracting from a sound professional work environment. Such recommendations shall include the transfer of either individual to meet Departmental needs.
- C. All Behavior between employees involved in a dating relationship will be conducive to a sound, professional work environment at all times when on Department time or property.

XIII. ADDITIONAL DISCIPLINARY ACTION

If harassment is determined to have occurred, the Chief of Police shall take and/or recommend to the appointing authority prompt and effective remedial action against the harasser(s) up to and including termination from employment.

Kenneth D. Winslow, CHIEF OF POLICE

Reviewed for Legal Sufficiency:

Assistant Corporation Counsel