

Department of Behavioral Health
TRANSMITTAL LETTER

SUBJECT DBH Equal Employment Opportunity (EEO)		
POLICY NUMBER DBH Policy 760.4A	DATE APR 04 2017	TL# 313

Purpose. The purpose of this policy is to establish Equal Employment Opportunity (EEO) workplace requirements and procedures for complaints at the Department of Behavioral Health (DBH) which supersedes Policy 760.4 EEO. This policy expressly incorporates the Mayor's Order 2017-313, Sexual Harassment Policy, Guidance and Procedures.

Applicability. DBH employees (see definition in sec. 5d) and applicants relating to terms and conditions of employment, including recruiting, hiring, placement, promotion, termination, layoff, recall, transfer, leaves of absence, compensation and training.


Policy Clearance. Reviewed by affected responsible staff and cleared through appropriate Behavioral Health Authority (BHA) offices.

Effective Date. This policy is effective immediately.

Superseded Policy. DBH Policy 760.4, same subject, dated December 17, 2013.

Distribution. This policy will be posted on the DBH web site at www.dbh.dc.gov under Policies and Rules. Applicable entities are required to ensure that affected staff is familiar with the contents of this policy.


Tanya A. Royster, MD
Director, DBH

GOVERNMENT OF THE DISTRICT OF COLUMBIA  DEPARTMENT OF BEHAVIORAL HEALTH	Policy No. 760.4A	Date APR 04 2017	Page 1
	Supersedes: DMH Policy 760.4, same subject, dated December 17, 2013.		

Subject: Equal Employment Opportunity (EEO)

1. **Purpose.** To establish EEO workplace requirements and procedures for complaints at the Department of Behavioral Health (DBH).

2. **Applicability.** DBH employees (see definition in sec. 5d below) and applicants relating to terms and conditions of employment, including recruiting, hiring, placement, promotion, termination, layoff, recall, transfer, leaves of absence, compensation and training.

3. **Authority.** Title VII of the Civil Rights Act of 1964, as amended, 42 USC §2000e; the D.C. Human Rights Act (HRA) of 1977, as amended, D.C. Official Code § 2-1401.01 *et seq.*; Title 4 of the District of Columbia Municipal Regulations (DCMR); Mayor's Order 2017-313, Sexual Harassment Policy, Guidance and Procedures, which is expressly incorporated herein (see Exhibit 1- Sexual Harassment Policy, Guidance and Procedures).

4. **Background.** Employment discrimination including sexual harassment is prohibited under Title VII of the Civil Rights Act of 1964 and the D.C. Human Rights Act of 1977, as amended. As part of its mission and function, DBH implements and adheres to the mandates of federal and local laws that prohibit unlawful discrimination in employment based on enumerated protected traits (see sec. 5i below). Both federal and local law further prohibit retaliation against an employee who has engaged in a protected activity.

5. **Definitions.**

5a. Complainant. Refers to an employee (see 5d) or applicant for employment with DBH who makes or files an oral or written complaint of discrimination.

5b. Discrimination. Refers to treatment or consideration based on a person's actual or perceived membership in a particular category or class of persons rather than individual merit.

5c. Equal Employment Opportunity (EEO) Manager/Sexual Harassment Officer (SHO). A DBH employee who is a part of the DBH Human Resources Division (HRD) who takes complaints regarding any discrimination and acts as an Agency Counselor and acts as the Sexual Harassment Officer (SHO).

5d. Employees. They are employees, contractors, interns, and any other persons engaged by the District of Columbia to provide permanent or temporary employment services at District of Columbia worksites inside and outside District of Columbia agencies. Also, to applicants for District government employment, although not every procedure set forth in this Order applies to persons not working for the government.

5e. **Facially neutral.** A description of a government law, regulation, or rule that does not, as written, discriminate against a particular group; however, in the context of this policy (see section 7b), disparate impact discrimination occurs when an employer's facially neutral policy or procedure unduly burdens employees from one of the protected classes of individuals. The employer may have been attempting to act in the best interest of its employees and with no intent to discriminate when enacting the new rule or policy, but may still be liable under Title VII (Civil Rights Act) if, when applied, the rule has discriminatory effects. An employer can overcome liability for race, national origin, sex, and religion discrimination by showing it had a business necessity for the discriminatory policy or practice.

5f. **Formal EEO Complaint.** External complaint filed through the United States Equal Employment Opportunity Commission (U.S. EEOC) or the District of Columbia Office of Human Rights (OHR) after complainant receives an Exit Letter from the EEO Counselor (OHR).

5g. **Harassment and Sexual Harassment.** Is a form of discrimination based on any of the protected class or traits (see sec. 7c). Sexual Harassment is a form of sex discrimination prohibited by Title VII of the Civil Rights Act of 1964, as amended, the D.C. Human Rights Act of 1977, and Mayor's Order 2017-313. Types of Sexual Harassment are found in the Mayor's Order sec. III (see Exhibit 1).

5h. **Office of Human Rights (OHR).** The District agency that enforces local and federal anti-discrimination laws, including the HRA.

5i. **Protected Activity.** Includes lawful actions by an employee that furthers the interest and/or upholds the rights of protected traits or protected classes under the HRA (see 5i below).

5j. **Protected traits¹.** The twenty (20) protected traits per HRA include: (1) race, (2) color, (3) religion, (4) national origin, (5) sex, (6) age, (7) marital status, (8) personal appearance, (9) sexual orientation, (10) gender identity or expression, (11) familial Status, (12) family responsibilities, (13) matriculation, (14) political affiliation, (15) genetic information, (16) disability, (17) source of income, (18) status as a victim of an intra-family offense, (19) place of residence or business, and (20) credit information.

5k. **United States Equal Employment Opportunity Commission (US EEOC).** The federal agency charged with eliminating discrimination based on race, color, religion, sex, national origin, disability, or age, in all terms and conditions of employment (see sec. 9e).

6. **Policy.** DBH has zero tolerance for any type of discrimination against employees and applicants based on the protected traits (see sec. 5j above). All DBH employees are responsible in ensuring that the workplace is free of mistreatment and sexual harassment.

6a. All DBH employees are expected to comply with this policy. Violations of this policy will be subject to discipline, up to and including termination (see sec. 8e).

¹ <https://ohr.dc.gov/protectedtraits>

6b. No DBH employee shall retaliate against another employee for engaging in protected activity. DBH does not tolerate retaliation against any employee who reports acts of discrimination or provides information in connection with any such complaint (e.g., actions resulting from employee's assertion of rights provided under the Human Rights Act (HRA) or providing truthful information in connection with an investigation; whether on behalf of a complainant or a respondent).

6c. All DBH employees are expected to cooperate in the investigation of sexual harassment complaints or any other type of discrimination complaint.

6d. All DBH employees who know of sexual harassment and those who believe they have been victimized in the workplace shall report the incident (sec. 8, 9, and Exhibit 2 and 3) to:

Equal Employment Opportunity Manager/Sexual Harassment Officer (SHO):

Tel. # (202) 671-4072 or email to: david.prince@dc.gov

Director, Human Resources Division/designee

Tel. # (202)673-3460 or email frankie.wheeler@dc.gov

Office of General Counsel/designee

Tel. # (202)673-2254 or email matthew.caspari@dc.gov

7. Examples of Discrimination:

7a. Disparate Treatment. May occur when an employer or other person subject to the HRA 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.

7b. Adverse Impact. Can involve a facially neutral (see definition in section 5e) 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.

7c. Harassment of an employee will be deemed unlawful if submission to or rejection of such conduct by an employee is made as the basis for an employment decision affecting the employee; or, such conduct is sufficiently severe or pervasive to create a hostile work environment. Examples of harassing actions based upon an individual's gender identity or expression include, but is not limited to, any conduct such as: (1) Refusal to provide any facility, service, program, or benefit; (2) Verbal or physical harassment; (3) Creating a hostile environment; or (4) Denying access to restroom facilities and other gender specific facilities that are consistent with a person's gender identity or expression.

7d. Hostile Work Environment (see Exhibit 1, sec. III)

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

(a) whether the conduct was physically threatening or intimidating;

- (b) how frequently the conduct was repeated;
- (c) whether the conduct was clearly hostile and/or offensive;
- (d) the context in which the harassment occurred; and
- (e) whether management responded appropriately when it learned of the harassment.

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

- (a) Use of electronic media to harass employees based on a protected category;
- (b) Oral or written abuse and/or threats that may include teasing, jokes, insults, gestures, epithets, or remarks based on sex, race, age, disability, religion, national origin, color, or retaliation;
- (c) Comments on an individual's body, sexual activity, or lewd or obscene comments;
- (d) 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, age, or disability;
- (e) Unwelcome or unsolicited physical contact, including touching, patting, pinching, hugging, grabbing, cornering, or brushing against another person's body.

(3) Other conduct – behaviors that are severe or sufficiently pervasive as to alter working conditions may create a “hostile environment” (e.g., conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment) - see Exhibit 1, see III.

7e. 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 the HRA and Title VII of the Civil Rights Act of 1964.

(1) Retaliating against an employee for reporting or filing a claim of sexual harassment, assisting another person in filing or asserting a claim of sexual harassment, opposing sexual harassment, acting as a witness in a sexual harassment investigation, refusing to follow orders that would result in sexual harassment, intervening to protect others from sexual harassment or advances, or challenging an allegation of sexual harassment, is strictly prohibited.

(2) Retaliatory behavior can include but is not limited to unwarranted reprimands, unfairly downgrading personnel evaluations, transfers to less desirable positions, verbal or physical abuse, and altered and more inconvenient work schedules.

(3) Employees found to have engaged in retaliatory behavior shall be recommended for termination.

(4) Employees who believe they have been retaliated against must file a complaint with an EEO Counselor within 180 days of the alleged retaliation and subsequently file a complaint with OHR within fifteen (15) days of receipt of the Exit Letter, if the employee is not satisfied with the outcome of EEO Counseling.

8. Responsibilities and Procedures.

8a. DBH Internal Reporting: All complaints of sexual harassment shall be reported as promptly as possible.

(1) Employees who know of incidents of sexual harassment, as well as behavior which may create an intimidating, hostile or offensive work environment, or who are victims of sexual harassment or inappropriate conduct, shall report the incident to the supervisor or manager of the employee engaging in inappropriate conduct, or to their own supervisor who, in turn, must report the incident to the DBH EEO/Sexual Harassment Officer (SHO).

(2) If the alleged harasser is the employee's immediate supervisor, then the employee should report to the alleged harasser's supervisor, or directly to the DBH EEO Manager/SHO.

(3) If the complaint is against an agency director, the report shall be submitted to the appropriate Deputy Mayor for review.

(4) The SHO will inform the DBH Office of General Counsel (GC). The GC/designee will report the incident to the Mayor's Office of Legal Counsel (MOLC).

(5) The employee has the option to report the conduct directly to the DBH General Counsel who, in turn, will notify the SHO.

(5) The SHO will, then, conduct an investigation of the reported incident and DBH will issue a finding within sixty (60) days. Based on the finding from the investigation, DBH will take the appropriate steps to ensure that the conduct stops. The Human Resources Division may also take actions prior to the completion of the investigation.

8b. Acting on the Complaint/Report:

(1) Any supervisor or manager who receives a complaint or concern regarding sexual harassment or inappropriate conduct must take immediate steps to notify the DBH EEO Manager/ SHO (see 5c), who will ensure that an investigation is conducted and take other appropriate action. Any such effort shall be documented.

(2) If an employee who alleges sexual harassment, or is believed to have been the victim of sexual harassment, declines to assist and/or participate in the investigation of the allegation, the DBH Human Resource Director (HRD) may initiate and conduct an investigation.

(3) DBH HRD shall recommend appropriate disciplinary action, up to and including termination of any employee found to have engaged in sexual harassment as defined in Exhibit 1, Sec. III).

8c. Ethical Components:

(1) Some claims of sexual harassment may also involve ethical violations, such as if an employee is giving gifts to an employee for sexual favors or to a potential reporter of sexual harassment, or if an employee is using government resources to copy and disseminate inappropriate pictures.

(2) Credible violations of the Code of Conduct should be reported to Board of Ethics and Government Accountability (BEGA). Its penalties are in addition to any personnel actions taken by DBH.

(3) The complaint file, including all information and documents contained in the file as well as information received during investigation of the complaint, shall be confidential. DBH HRD will take all reasonable efforts during the investigation to protect the identities of the alleged harasser and the alleged victim, as well as witnesses for either party. The alleged harasser shall be promptly advised of the complaint and its substance and be given an opportunity to respond to the allegations.²

8d. Where there is an allegation of criminal misconduct (e.g., sexual assault, kidnapping, stalking, and threats to do bodily harm):

(1) The HRD Director may, after consulting with the DBH General Counsel shall place the victim and/or the alleged harasser on administrative leave with pay pending final administrative resolution of the complaint or any criminal proceeding. The complainant at his or her choice may report the alleged criminal violation to a law enforcement agency, including the Metropolitan Police Department (MPD). Where either the DBH or an appropriate law enforcement officer determines that a criminal violation occurred, HRD shall recommend disciplinary action towards the perpetrator up to, and including, termination.

(2) When an allegation of sexual harassment is reported, including allegations of criminal conduct, DBH shall notify the DBH General Counsel, who in turn must notify Mayor's Office of Legal Counsel (MOLC) of the allegation [also, see section 8a (4)].

(3) Allegations of sexual harassment shall be investigated and resolved as soon as practicable, but no later than sixty (60) days after reporting. The DBH EEO manager or EEO Counselor/SHO investigating the charges must provide the employee and the alleged harasser with a written notification of its findings and conclusions after the sixty (60) day period, and shall convey the same to MOLC.

(4) Any employee found to have engaged in inappropriate conduct who is not terminated must attend mandatory sexual harassment training within sixty (60) days of receipt of the findings. Such training is supplemental to any disciplinary actions and must occur even if the employee recently received training.

² This confidentiality requirement does not preclude DBH from reporting a suspected illegal or improper act, or conduct related to the investigation, to an appropriate enforcement, investigating and/or legal organization or from cooperating in any related investigation.

(5) Interim Actions. Pending final resolution of a sexual harassment complaint, and in order to protect the rights of the alleged victim as well as the alleged harasser,

a. DBH HRD will take prompt temporary personnel actions that do not result in any adverse employment action to either party.

- Interim remedial actions are administrative rather than disciplinary (e.g., transfers, reassignment of duties or reporting requirements, mandatory administrative leave with pay, or other appropriate measures that do not result in reduction of pay, demotion in title or responsibility, or other loss of employee benefits).
- Where a request for separation (e.g., job reassignment, from the alleged harasser is made by the alleged victim), DBH HRD must require the victim to make the request in writing³.

b. Once aware of an allegation of sexual harassment, the DBH HRD shall notify the alleged harasser of the reported behavior to ensure that any such conduct ceases immediately and is not repeated.

8e. Responsibilities:

(1) DBH Director - The Director has overall authority and responsibility for administering and implementing this DBH policy.

(2) DBH Human Resources Division - The DBH Human Resources Division (HRD) through the DBH EEO Manager is responsible for developing and implementing the DBH EEO policy and procedures, and administers the complaint process with accountability to the Office of the Director, DBH. The EEO complaint process goals include:

- Resolving complaints informally at the earliest stage possible;
- Ensuring equal employment opportunity is provided to all employees;
- Safeguarding impartiality, confidentiality, and system integrity;
- Mediating informal complaints, if possible, to avoid costly litigation; and
- Informing employees of their rights and responsibilities through periodic training.
- Affording full protections to accused and accusers under the law in administrative matters (e.g., right to respond to allegations of sexual harassment; to counsel⁴ and representation, including a union representative or other representative of their choosing, and including the presumption of innocence, unless and until there is a finding of harassment after an investigation by DBH or where appropriate, OHR).
- Supporting the EEO Counselor in performance of duties.

³ DCHR is encouraged to find alternative, reasonably comparable placements, even in different agencies, during the pendency of an investigation for the accuser or accused in lieu of administrative leave with pay, where possible.

⁴ The right to counsel does not include the right to have counsel paid for by the government.

(3) Role of DBH EEO Counselor/SHO⁵ - EEO Counselors/SHO⁶sare to:

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

(4) DBH supervisors and managers - are responsible for complying with and implementing this policy and have the duty to act on complaints and the reporting of any violation of this policy. Supervisors and managers shall not discriminate or retaliate against any employee or applicant in accordance with this policy. Furthermore, DBH supervisors and managers must ensure that:

a. 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 a District 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).
- reporting on violations of this policy are acted upon promptly.

b. Employees cooperate in investigations.

(5) Employees - Responsible for treating fellow employees with basic respect and dignity, and not practicing themselves, nor condoning in others, discriminatory behavior in employment based on the protected traits and classes (see sec. 5i). DBH employees have the duty to report and cooperate in investigations for sexual harassment and any violations of this policy (Also, see sections 6d, 6e and 6f).

9. Complaint Processing and Filing Deadlines with the Office of Human Rights. (Also see Exhibit 2 and 3).

9a. Any employee or applicant for employment who believes that he or she has been discriminated against based on an unlawful employment practice may file an informal complaint as outlined in Sec. 9d below (or, in the case of sexual harassment, directly with

⁵ Note: The DBH EEO Counselor 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.

⁶ The DBH Equal Employment Officer (EEO) may not serve as EEO Counselor and, EEO for complaints received from employees within DBH. The DBH EEO will refer the employee to the list of approved counselor – www.ohr.dc.gov

the OHR). Eligible DBH employees hired prior to October 1, 1987 alleging employment discrimination, may opt to consult or file complaints of discrimination directly with the U.S. EEOC (see www.eeoc.gov).

9b. DC government employees and applicants alleging employment discrimination who wish to file a complaint with the Office of Human Rights (OHR) must first consult an DC Equal Employment Opportunity (EEO) Counselor within one hundred (180) calendar days of the occurrence of discrimination or discovery in order to attempt informal resolution (see Exhibit 1). Complainant may consult with any EEO Counselor in the District. See below for the most current list of EEO Counselors and Officers⁷. A listing of agency EEO Counselors may be found at www.ohr.dc.gov.

9c. Complainants will have 30 calendar days to work with the EEO Counselor to seek resolution. Once the EEO Counseling process ends, the Counselor will issue an Exit Letter. If complainants wish to file a formal complaint with DC Office of Human Rights (OHR), he/she must bring a copy of the Exit Letter and file the complaint with OHR within 15 calendar days of the Exit Letter⁸.

9d. Informal EEO Complaint Process (see sec. 8a).

(1) Although the complainant may go directly to OHR for reporting, informal complaints may be filed with an EEO Counselor or the DBH EEO Office (DBH Human Resources Division) within 180 calendar days of the occurrence of the alleged unlawful discrimination in employment practice or the discovery thereof (See exception for sexual harassment claims - see 9a).

(2) The EEO Counselor/DBH Counselor must then resolve the complaint within thirty (30) days, or at maximum sixty (60) days, and issue an Exit Letter outlining the rights of the individual reporting the claim as well as the counselor's efforts to resolve the claim. If the employee is not satisfied with the outcome of the counseling effort, the employee may file a formal complaint with OHR within fifteen (15) days of receiving the Exit Letter. EEO Counselors will not conduct an investigation. They will simply review the case and try to achieve an informal resolution.

(3) The EEO Counselor/Sexual Harassment (SH) Office will:

(a) Provide the complainant a copy of the EEO Counseling Procedures Rights and Responsibilities for Individuals, and ask him/her to sign the certification of receipt form (Exhibit 3);

(b) Make an inquiry and review the matter;

⁷ <https://dchr.dc.gov/sites/default/files/dc/sites/ohr/publication/attachments/EEO-CounselorsList.pdf>

⁸ EEO Counseling is not required for claims regarding sexual harassment - see sec. 9b (1). Individuals may file those claims directly with OHR. For more information on the District government's policy on sexual harassment, visit <https://dchr.dc.gov/sexual-harassment>

- (c) Counsel the complainant concerning the issues of the matter;
- (d) Keep a record of counseling activities, including dates and times of interviews;
- (e) Seek a solution of the matter on an informal basis; and
- (f) In so far as practical, complete the review, conduct the final interview with the complainant, and provide an exit letter within 30 calendar days after the matter is brought to the counselor's attention.

(4) The complainant also has the option of providing the EEO Counselor additional time up to 60 calendar days to complete the review, which typically requires interviews with managers, supervisors, and other employees.

(5) If the outcome is favorable to the employee, the matter will be referred to management for appropriate resolution.

(6) If the EEO Counselor is unable to resolve the issue to the complainant's satisfaction, the counselor will conclude informal counseling and issue an exit letter (notice of right to file a formal complaint). The complainant may then file a formal complaint with OHR within 15 calendar days of receipt of the exit letter. Complaints filed after the 15-day period may be deemed untimely and dismissed by the Director, OHR.

(7) 60-Day Rule. If the EEO Counselor does not conduct a final interview and does not provide an exit letter, then the complainant has the right to file a formal complaint with the OHR within 60 calendar days of the date on which the matter was called to the attention of the EEO Counselor.

(8) Complaints filed beyond the 60-day period may be deemed untimely and dismissed by OHR (see sec. 6d, 6d, and 6f).

9e. Special Filing Procedures (Exhibit 2).

(1) Sexual Harassment Complaints may be filed directly with the District of Columbia Office of Human Rights (OHR) – see Exhibit 2, page 2. DBH must document the complaint and advise the complainant of his/her rights, if filed informally with DBH. Or, in addition to pursuing action within the agency, an alleged victim of sexual harassment, or a person acting on the victim's behalf with or without the victim's consent, may report a sexual harassment claim within one year of the alleged harassment or its discovery to OHR using its Intake Questionnaire Form⁹.

- (a) Current employees of the District government have one (1) year to file complaints of sexual harassment directly with OHR.

⁹ <https://ohr.dc.gov/service/file-complaint>

(b) Former employees who leave the District government because of sexual harassment may file a complaint with OHR within 180 calendar days of separation from the District government (see sec. 5a).

(2) All other complaints may be filed through the DBH informal process or filed as a civil action with the appropriate court, or where applicable, filed directly with OHR, or the U.S. EEOC.

10. **Training.** The DBH EEO Manager will ensure that appropriate and standardized training is conducted to include: Employee Rights and Responsibilities under the District of Columbia Human Rights Act of 1977, at least annually. The DBH EEO Manager will also support the DBH HRD and the DC Department of Human Resources (DCHR) in ensuring employees' completion of EEO training (e.g., online and classroom).

11. **Reporting Requirements.** The DBH EEO Manager or assigned EEO Counselor will submit a quarterly report and periodic reports, as requested, to OHR that lists the status of all informal complaints received during the quarter.

12. **Exhibits.**

Exhibit 1 – The Mayor's Order 2017-313, December 18, 2017, is expressly incorporated herein (see Exhibit 1, Sexual Harassment Policy, Guidance and Procedures)

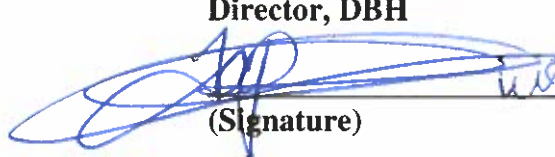
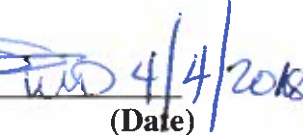
Exhibit 2 - EEO Filing Deadlines Informal EEO Complaint Process

Exhibit 3 – Notice of Rights and Responsibilities of Individuals Reporting EEO Claims

Attachment C and D¹⁰ of OHR EEO Training Material, June 2016

Approved By:

Tanya A. Royster, MD
Director, DBH

 (Signature)  (Date)

¹⁰ Source: DC Office of Human Rights EEO Training Material for EEO Officers and Counselors, June 2016

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DBH Policy 760.4A
Exhibit 1 - Mayor's Order 2017-313
December 18, 2017

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-313
December 18, 2017

**SUBJECT: SEXUAL HARASSMENT POLICY, GUIDANCE AND
PROCEDURES**

ORIGINATOR: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by sections 422(2), (3), and (11) of the District of Columbia Home Rule Act, 87 Stat. 790; Pub. L. No. 93-198, D.C. Official Code § 1-204.22(2), (3), and (11) (2016 Repl.), and the District of Columbia Human Rights Act of 1977, D.C. Law 2-38, D.C. Official Code §§ 2-1401.01 *et seq.* (2016 Repl.), it is hereby **ORDERED** that:

I. Purpose

The purpose of this Order is to reaffirm and make clear that that the District of Columbia Government (the "**District of Columbia**") does not tolerate any form of sexual harassment in the workplace. Sexual harassment is recognized as one of the most unjust, demeaning, and demoralizing examples of workplace misconduct.

II. Individuals Affected

(a) Prohibitions

The District of Columbia prohibits workplace sexual harassment by all District of Columbia employees, officials, and all employees under the Mayor's jurisdiction. The prohibition also applies to third parties doing business with, or carrying out the goals and objectives of the District of Columbia government, such as vendors, contractors, grantees, customers, and other persons visiting or working at District of Columbia worksites inside and outside District of Columbia agencies, who may not sexually harass District employees. Further, while carrying out their duties as contractors or grantees for the government, contractors and grantees of the District of Columbia may not engage in workplace sexual harassment, although not every procedure set forth in this Order applies to persons not working for the District government. In the course of their duties as members of District of Columbia Boards and Commissions that report up to the Mayor, board members are bound by the procedures and deadlines set forth herein.

(b) Protections

The protections against workplace sexual harassment extend to employees, contractors, interns, and any other persons engaged by the District of Columbia to provide permanent or temporary employment services at District of Columbia worksites inside and outside District of Columbia agencies, and to applicants for District government employment, although not every procedure set forth in this Order applies to persons not working for the government. District of Columbia employees are protected from sexual harassment by contractors, grantees, clients, applicants, and members of the public with whom they interact as part of their District of Columbia employment. Members of Boards and Commissions that report up to the Mayor are also protected as employees. Without limiting this broad definition, persons protected by this Mayor's Order will be referred to as "employees."

(c) Agencies Not Reporting To Mayor

Laws prohibiting sexual harassment apply throughout the District government. Agencies not reporting up to the Mayor are asked to ensure that their employees are given training, information, protections, and processes afforded in this Order to employees of agencies reporting to the Mayor.

III. Definitions of Sexual Harassment**(a) *Quid Pro Quo* Sexual Harassment**

Quid pro quo 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:

1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
2. submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting the individual.

(b) Hostile Environment Sexual Harassment

Other conduct – if severe or sufficiently pervasive as to alter working conditions – may create a "hostile environment" and is also prohibited. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment. Unless the conduct was particularly severe or pervasive, where no warning or admonition is necessary, the person creating such an environment must have been told that the conduct is unwelcome or must stop.

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The following are examples of unwelcome conduct that may create an intimidating, hostile or offensive work environment and that are not acceptable in the District of Columbia employment environment, including during work related travel:

1. sex acts;
2. display of sexual organs;
3. giving a preference to a third party who is engaged in a sexual or romantic relationship, to the disadvantage of an employee who is not engaged in a sexual relationship with a supervisor, hiring official, or person exercising authority over the disadvantaged party, (described legally as a "paramour preference");
4. using sexually oriented or sexually degrading language describing an individual or his/her body, clothing, hair, accessories or sexual experiences;
5. sexually offensive comments or off-color language, jokes, or innuendo that a reasonable person would consider to be of a sexual nature, or belittling or demeaning to an individual or a group's sex, sexual orientation, or gender identity;
6. "sexting" or seeking or sending pictures of intimate body parts, or taking or displaying pictures of body parts meant to be covered up (such as "upskirting" pictures), including by sending messages of a suggestive nature on self-destructive messaging apps where documentation of the written word or images is difficult to document;
7. displaying or disseminating sexually suggestive objects, books, screensavers, magazines, photographs, music, cartoons, or computer internet sites or references;
8. unnecessary and inappropriate touching or physical contact, such as intentional and repeated brushing against a colleague's body, touching or brushing a colleague's hair or clothing, massages, groping, patting, pinching, or hugging, that a reasonable person would consider to be of a sexual nature;
9. leering, ogling, or making sexually suggestive gestures or sounds, such as whistling or kissing noises;
10. making inquiries about someone's private sex life or describing one's own sex life;
11. workplace sexual comments, conduct, displays and suggestions between two willing parties that would cause a reasonable third party to be offended;
12. any unwanted repeated contact, including, but not limited to in-person, or telephonic, for romantic or sexual purposes; and

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13. sexual assault, stalking, trapping someone such that they are not free to leave and a sexual encounter is expected or threatened, threats of bodily harm relating to sex or the refusal to have sex, or other crimes related to egregious acts of sexual harassment.

(c) Sexual Harassment is Prohibited by and Between All Persons

1. Sexual harassment may be committed by persons of the same sex, or perceived sex, and by those who share the same sexual orientation or the same gender identity or expression, as well as by persons of the opposite sex or gender identity, and shall be prohibited.
2. Sexual harassment is not limited to inappropriate exercise of authority by persons in power over an employee. It can even occur by an employee towards a supervisor.
3. Supervisors are responsible for ensuring a workplace free of sexual harassment.
4. When sexual harassment occurs between colleagues or by clients or customers upon an employee, and it is brought to an appropriate person's attention, the agency must investigate and remedy the situation.

IV. Consensual Relationships

- (a) Sexual or romantic relationships between employees and supervisors in the employee's chain of command are strongly discouraged.
- (b) The Director of the Department of Human Resources (DCHR) is directed to develop and propose reporting mechanisms to help guard against conflicts of interest and "paramour preferences" that could arise when sexual or romantic relations develop within the chain of command.
- (c) The existence of a consensual sexual or romantic relationship between an employee and a supervisor may be a factor in any proceeding in which the relationship is alleged to have contributed to a hostile work environment and/or adversely affected the terms and conditions of employment of the involved parties or a third party.
- (d) Employees who engage in a limited consensual relationship with a supervisor or colleague, such as going out to dinner or on dates, remain free to refuse further sexual overtures and have the right to demand that sexual or sexually harassing conduct going beyond that which was consented to must stop. Alternatively, they also may seek the assistance of a supervisor or manager, the agency General Counsel, or the person designated by the agency pursuant to Section V, below, to demand that sexually harassing conduct cease.

- (e) Conduct that was once welcome or consensual may become unwelcome. Once the conduct is no longer welcome, and the formerly-consenting employee, or a supervisor, agency designee or counsel, tells the other party to stop, all unwelcomed behavior of a sexually harassing nature must cease.
- (f) If legal action is commenced against the District of Columbia and/or a supervisor who engaged in a sexual/intimate relationship with an employee, or a person engaged in a potentially-conflictual relationship, the existence of the sexual or romantic relationship will be a factor in the District of Columbia's decision to provide legal representation to the supervisor or the employee(s) engaged in a potentially-conflictual relationship.

V. Procedures for Stopping Sexual Harassment; Reporting, and Investigating Sexual Harassment Claims

(a) Agency Responsibilities

1. Agencies shall immediately disseminate to all employees the Mayor's letter dated December 18, 2017 discussing our DC Values and condemning sexual harassment, as well as this Mayor's Order. Within thirty (30) days after the effective date of this Order, agencies shall follow up to ensure delivery to difficult-to-reach employees, including employees on leave and work-related travel. Each employee shall confirm receipt of these documents by email or signed copy as instructed by the agency.
2. Within thirty (30) days after the effective date of this Order, all agencies shall designate an Equal Employment Opportunity (EEO) Officer, HR Manager, or any other individual competent in EEO laws to accept sexual harassment complaints and review (henceforth, "Sexual Harassment Officer") and investigate claims, and an office to which claims should be reported, in the event the Sexual Harassment Officer is unavailable. The name of such designated Sexual Harassment Officer and office must be submitted to the Office of Human Rights at OHR@dc.gov. Changes or updates to this list must be provided to OHR via OHR@dc.gov within ten (10) business days of any such change. Smaller agencies may by agreement obtain assistance from a sister or superior agency in handling these matters provided its employees are notified of who will review and investigate claims of sexual harassment. For the purpose of this Order, agencies availing themselves of another agency's help will still be referred to as the "agency," even if another agency is providing investigation, human resource, and legal help through a jointly-designated Sexual Harassment Officer and office.
3. Within thirty (30) days after the effective date of this Order, each agency shall display, in noticeable and conspicuous locations accessible and used by a substantial number of agency employees, notices setting forth the District of Columbia's policy prohibiting sexual harassment. Each notice shall contain the identity and location of the agency's designated Sexual Harassment Officer, and office, who is responsible for receiving claims of sexual harassment and ensuring

that they are investigated. The notice shall advise employees that a sexual harassment complaint and any subsequent investigation shall be kept confidential to the greatest extent possible consistent with their investigation and resolution.

4. DCHR and the Office of Human Rights (OHR) shall develop and deliver ongoing sexual harassment trainings for employees of the District of Columbia. OHR and DCHR shall conduct workshops for approximately 1500 managers by March 14, 2018 and shall ensure that all agencies have the capacity to respond effectively to allegations of sexual harassment, directly or through agreements with other agencies.
5. The Mayor's Office of Legal Counsel (MOLC) and OHR shall conduct a training on sexual harassment law before January 31, 2018 for all agency General Counsels or their designees.
6. Managers shall give all employees time to take a course or refresher course on sexual harassment, to be provided by DCHR or OHR, by February 28, 2018, and all current employees shall take such a course, in person or online. New employees shall take a course on sexual harassment as part of the on-boarding process and in no event more than fourteen (14) days of being on-boarded. All employees shall take a refresher course at least once every two (2) years.
7. Those entering into contracts or grants with the District government must affirm that they will abide by the District of Columbia Human Rights Act including its prohibitions on sexual harassment, consistent with 4 DCMR 1100 *et seq.* District agencies drafting contracts and grants shall include such covenants as part of the contract or grant agreement.
8. The best preventative measure to combat sexual harassment is for the workplace to be a place of respect for all persons, at all times. At work, at all times, we seek to serve the residents of the District of Columbia, a mission that is compromised whenever and wherever sexual harassment occurs.

(b) Employee Communication

1. An employee must either: (A) tell the person who is engaging in offensive or inappropriate sexual conduct to stop and that such conduct is unwelcome; or (B) ask the employee's supervisor or counsel or the agency's designated Sexual Harassment Officer to advise the person that the conduct is offensive and unwelcome. Employees and others engaged in intervention are encouraged to document all intervention efforts or requests to cease reported inappropriate sexual conduct, including conversations, text, or email exchanges. Some conduct is so egregious that no warning is necessary before personnel action or other consequences ensue; other times, it is necessary to indicate that the conduct is unwelcome.

2. Employees who believe they are being sexually harassed are urged to collect and preserve evidence of any offensive conduct. However, even in the absence of emails, pictures, or other physical evidence, employees should report sexual harassment as described below.

(c) Reporting Inappropriate or Potentially Inappropriate Conduct of a Sexual Nature

1. All District of Columbia employees are responsible for ensuring the workplace is free of sexual harassment. Employees who know of incidents of sexual harassment, as well as behavior which may create an intimidating, hostile or offensive work environment, or who are victims of sexual harassment or inappropriate conduct, should report the sexual harassment or inappropriate conduct to the Sexual Harassment Officer or office designated by the agency, or the supervisor or manager of the employee engaging in inappropriate conduct, or to their own supervisor. If the alleged harasser is the employee's immediate supervisor, then the employee should report the conduct to the alleged harasser's supervisor, or to the Sexual Harassment Officer.
2. If the complaint is against an agency director, the report shall be submitted to the appropriate Deputy Mayor for review. If the complaint is against a Deputy Mayor the report shall be submitted to the City Administrator. If the report is against the City Administrator, the report shall be submitted to the Mayor's General Counsel, who shall also receive complaints against any agency director in the Executive Office of the Mayor. If the complaint is against the Mayor's General Counsel or the Mayor, an independent consultant shall be hired to conduct an investigation, and a final investigative report shall be submitted to the Inspector General for the District of Columbia for review.
3. If the alleged harasser is the employee's immediate supervisor, then the employee should report the conduct to the alleged harasser's supervisor, or to the Sexual Harassment Officer.
4. The procedures and remedies specified herein are not intended to preclude an employee from seeking any remedies he or she may have in a court of law.

(d) Agency Review and Investigation of Reported Claims

1. Any supervisor or manager who receives a complaint or concern regarding sexual harassment or inappropriate conduct must take immediate steps to notify the Sexual Harassment Officer, who will ensure that an investigation is conducted and take other appropriate action. Any such effort shall be documented.
2. Where there is an allegation of criminal misconduct, including for example, sexual assault, kidnapping, stalking, and threats to do bodily harm, the agency may, after consulting its General Counsel, place the victim and/or the alleged harasser on administrative leave with pay pending final administrative resolution

of the complaint or any criminal proceeding. The complainant at his or her choice may report the alleged criminal violation to a law enforcement agency, including the Metropolitan Police Department (MPD). Where either the agency or an appropriate law enforcement officer determines that a criminal violation occurred, the agency shall recommend discipline of the perpetrator up to, and including, termination.

3. When an allegation of sexual harassment is reported, including allegations of criminal conduct, the agency shall notify the agency's General Counsel, who in turn must notify MOLC of the allegation.
4. Allegations of sexual harassment shall be investigated and resolved as soon as practicable, but no later than sixty (60) days after reporting. The agency or office investigating the charges must provide the employee and the alleged harasser with a written notification of its findings and conclusions after the sixty (60) day period, and shall convey the same to MOLC.
5. The agency shall also require that any employee found to have engaged in inappropriate conduct who is not terminated must attend mandatory sexual harassment training within sixty (60) days of receipt of the findings. Such training is supplemental to any disciplinary actions and must occur even if the employee recently received training.
6. The agency shall also remind complainants of sexual assault or other possible crimes of the existence of the DC Victim Hotline. The Hotline, 1-844-443-5732, is available 24/7 by telephone, text or online chat to seamlessly connect victims of crime to free resources to help them navigate the physical, financial, legal, and emotional repercussions of crime. In particular, through the Hotline, victims may be matched with an advocate who can help them decide whether to pursue a matter through the criminal justice process.

(e) Employee Responsibility to Participate in Agency Investigation

1. All District of Columbia employees are expected to cooperate in the agency's investigation of sexual harassment complaints.
2. If an employee who alleges sexual harassment, or is believed to have been the victim of sexual harassment, declines to assist and/or participate in the investigation of the allegation, the agency may on its own initiative initiate and conduct an investigation.
3. Agencies must balance the need to respect a victim's wishes not to proceed or cooperate with an investigation, with the responsibility of the agency to ensure a respectful workplace free of sexual harassment. Employees who were not themselves victimized, who, after a direct request of the agency, decline to

participate in a sexual harassment investigation, may be subject to disciplinary action. Any consideration of whether to recommend disciplinary action for failure to cooperate in an investigation requires heightened sensitivity on the part of the agency, and should be conducted in consultation with the agency's General Counsel and MOLC.

(f) Timely Filing; Statute of Limitations

All complaints of sexual harassment shall be reported as promptly as possible. Agencies may consider alleged acts of sexual harassment for disciplinary purposes beyond the legal statute of limitations, consistent with the District Personnel Manual and any collective bargaining agreements, taking into consideration the sensitive nature of the alleged offense, the pressure the complainant may have felt not to report the conduct, when the victim became aware of behavior that was not immediately apparent, or a pattern of harassing behavior that developed over time. The statute of limitations for complaints filed at OHR is within one year of the harassment or its discovery.

(g) Rights of the Alleged Harasser

Persons accused of sexual harassment deserve the full protections afforded to them under the law in administrative matters, including, but not limited to, the right to respond to allegations of sexual harassment; to counsel and representation, including a union representative or other representative of their choosing, and including the presumption of innocence, unless and until there is a finding of harassment after an investigation by the agency or where appropriate, OHR. The right to counsel does not include the right to have counsel paid for by the government.

(h) Interim Remedial Actions

Pending final resolution of a sexual harassment complaint, and in order to protect the rights of the alleged victim as well as the alleged harasser, the agency may take prompt temporary personnel actions that do not result in any adverse employment action to either party. When an agency becomes aware of an allegation of sexual harassment, the agency shall notify the alleged harasser of the reported behavior to ensure that any such conduct ceases immediately and is not repeated.

Interim remedial actions are administrative rather than disciplinary and may include, but are not limited to, transfers, reassignment of duties or reporting requirements, mandatory administrative leave with pay, or other appropriate measures that do not result in reduction of pay, demotion in title or responsibility, or other loss of employee benefits. Where a request for separation, such as a job reassignment, from the alleged harasser is made by the alleged victim, the agency must require the victim to make the request in writing. DCHR is encouraged to find alternative, reasonably comparable placements, even in different agencies, during the pendency of an investigation for the accuser or accused in lieu of administrative leave with pay, where possible.

(i) Discipline for Making False Statements or Representations

In recognition of the seriousness of workplace sexual harassment charges, the agency shall recommend disciplinary action, up to and including termination, of any employee found to have knowingly and intentionally made materially false statements or representations in relation to a sexual harassment claim or investigation. Termination is only available if such statements were in writing and the allegations were formally made with warnings as to their legal force, or under oath.

Consideration of whether to recommend disciplinary action against an employee who is also the alleged victim of sexual harassment requires heightened sensitivity on the part of the agency and should be conducted in consultation with the agency's General Counsel and MOLC.

(j) Discipline after a Finding of Sexual Harassment

The agency shall recommend appropriate disciplinary action, up to and including termination of any employee found to have engaged in sexual harassment as defined in Section III of this Order.

(k) Referral to the Board of Ethics and Government Accountability (BEGA)

Some claims of sexual harassment may also involve ethical violations, such as if an employee is giving gifts to an employee for sexual favors or to a potential reporter of sexual harassment, or if an employee is using government resources to copy and disseminate inappropriate pictures. Credible violations of the Code of Conduct should be reported to BEGA. Its penalties are in addition to any personnel actions taken by the agency.

VI. Concurrent Remedies and Jurisdiction

(a) Filing a Formal Complaint with the Office of Human Rights

In addition to pursuing action within the agency, an alleged victim of sexual harassment, or a person acting on the victim's behalf with or without the victim's consent, may report a sexual harassment claim within one year of the alleged harassment or its discovery to OHR using its Intake Questionnaire Form.

(b) EEO Counseling Option When Filing a Claim with OHR

EEO Counseling is not required prior to the filing of a complaint with OHR; however, if the employee wishes to first seek informal resolution, EEO Counseling is available. To exercise this option, the employee must contact a certified EEO Counselor within 180 days of the alleged harassment. The EEO Counselor must then resolve the complaint within thirty (30) days, or at maximum sixty (60) days, and issue an Exit Letter outlining the rights of the individual reporting the claim as well as the counselor's efforts to resolve

the claim. If the employee is not satisfied with the outcome of the counseling effort, the employee may file a formal complaint with OHR within fifteen (15) days of receiving the Exit Letter. EEO Counselors will not conduct an investigation. They will simply review the case and try to achieve an informal resolution.

VII. Prohibition against Retaliation

(a) Retaliation Prohibited

Retaliating against an employee for reporting or filing a claim of sexual harassment, assisting another person in filing or asserting a claim of sexual harassment, opposing sexual harassment, acting as a witness in a sexual harassment investigation, refusing to follow orders that would result in sexual harassment, intervening to protect others from sexual harassment or advances, or challenging an allegation of sexual harassment, is strictly prohibited. Employees shall not be penalized as a result of their assertion of rights provided under the District of Columbia Human Rights Act or providing truthful information in connection with an investigation (whether on behalf of a complainant or a respondent). Retaliatory behavior can include but is not limited to unwarranted reprimands, unfairly downgrading personnel evaluations, transfers to less desirable positions, verbal or physical abuse, and altered and more inconvenient work schedules. Employees found to have engaged in retaliatory behavior shall be recommended for termination.

(b) Process for Alleging Retaliation

Employees who believe they have been retaliated against must file a complaint with an EEO Counselor within 180 days of the alleged retaliation and subsequently file a complaint with OHR within fifteen (15) days of receipt of the Exit Letter, if the employee is not satisfied with the outcome of EEO Counseling.

(c) Limits

Lodging a sexual harassment claim or triggering an investigation does not shield an employee from all discipline or discharge. Agencies are free to discipline or terminate employees if the agency is motivated by non-retaliatory and non-discriminatory reasons that would otherwise result in such consequences.

VIII. Confidentiality

The complaint file, including all information and documents contained in the file as well as information received during investigation of the complaint, shall be confidential. The agency shall take all reasonable steps to ensure that no information contained in the complaint file is disseminated except in furtherance of the investigation; resolution of the allegations; execution of any consequences stemming from the investigation; when lawfully released; or when required by court order.

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The agency must take all reasonable efforts during the conduct of an investigation to protect the identities of the alleged harasser and the alleged victim, as well as witnesses for either party. However, the alleged harasser shall be promptly advised of the complaint and its substance and be given an opportunity to respond to the allegations.

This confidentiality requirement does not preclude the agency from reporting a suspected illegal or improper act, or conduct related to the investigation, to an appropriate enforcement, investigating and/or legal organization or from cooperating in any related investigation.

IX. Applicability of Personnel Rules

Any proposed personnel action instituted under this Order is subject to the District of Columbia Personnel Regulations as set forth in the District of Columbia Personnel Manual.


X. Implementation

Where responsibility is not otherwise specified, the Director of the Office of Human Rights, or the designee of the Director of the Office of Human Rights, is authorized and directed to implement this Order and to monitor the compliance of executive departments and agencies with its directives.

XI. Rescission/Repeal


To the extent that any provision of this Order is inconsistent with the provisions of any Commissioner's Order, Order of the Commissioner, or previous Mayor's Order, the provisions of this Order shall prevail and shall be deemed to supersede the earlier provisions. Mayor's Order 2004-171, dated October 20, 2004, is rescinded.

XII. EFFECTIVE DATE: This Order shall become effective immediately.



**MURIEL BOWSER
MAYOR**

ATTEST:



**LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA**

EEO Filing Deadlines

Informal EEO Complaint Process

Within
180 calendar days

Complainant must file complaint with EEO Counselor or the DBH EEO Manager (Human Resources Division) within 180 calendar days of the occurrence or discovery of the occurrence of the alleged unlawful discrimination in employment practice. *See below for exception for sexual harassment.



Within
30 calendar days

In so far as practical, the EEO Counselor or DBH EEO Manager will complete the review, conduct the final interview with complainant, and provide an exit letter within 30 calendar days after the matter was brought to the EEO Counselor's attention.

Complainant has option of providing th EEO Counselor additional time -- up to 60 calendar days to complete review, which typically requires interviews with managers, supervisor, and other employees.

If the outcome is favorable to the employee, the matter will be referred to management for resolution.

If the issue is not resolved to the Complainant's Satisfaction:

Within
15 Calendar Days
of receipt of
Exit letter

Complainant may file a formal complaint with OHR within 15 calendar days of conclusion of informal counseling and receipt of the exit letter (notice of right to file a formal complaint). Complaints filed after the 15-day period may be deemed untimely and dismissed by the Director, OHR.

If the EEO Counselor does not conduct a Final Interview and does not provide an Exit Letter:

Within
60 Calendar Days

Complainant has the right to file a formal complaint with OHR within 60 calendar days after the matter was brought to the EEO Counselor's attention. Complaints filed beyond the 60- day period may be deemed untimely and dismissed by OHR.

***Special Filing Procedures for Sexual Harassment Complaints**

Sexual Harassment Complaints may be filed directly with the D.C. Office of Human Rights (OHR).

- Current employees of the District government have one (1) year to file complaints of sexual harassment directly with the OHR.
- Former employees who left the District government because of sexual harassment may file a complaint with OHR within 180 calendar days of separation from the District government.
- See Filing Procedures for Sexual Harassment allegations on page 2, Exhibit 1



All other complaints must be filed through the DBH informal process or filed as a civil action with the appropriate court, or where applicable, directly with OHR or the U.S. EEOC (Eligible DBH employees hired prior to October 1, 1987).

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DBH Policy 780.4A
Exhibit 2, page 2

Filing Procedures for Sexual Harassment (SH) Complaints

- LEGAL OPTION 1 Complainant may file SH Complaint with DC Superior Court within one (1) year

- LEGAL OPTION 2 Complainant may file SH Complaint directly with OHR within one (1) year of incident

- LEGAL OPTION 3 Complainant may file with EEO Counselor within one hundred eighty (180) days of incident

- LEGAL OPTION 4 Complainant report to DBH SH Officer who must investigate and issue findings and recommendations within sixty (60) days.

ATTACHMENT C

Overview of the D.C. Government EEO Complaint Process

Individuals who believe they have been subject to discrimination in relation to any aspect of employment with the District of Columbia government (including current and former employees and applicants) must first participate in equal employment opportunity (EEO) counseling and attempt resolution before filing a formal complaint with the District of Columbia Office of Human Rights (OHR).

Note: EEO Counseling/Informal Resolution Process is not required for claims regarding sexual harassment. Individuals may bring those claims directly to OHR.

EEO Counseling/ Informal Resolution Process

1. Individuals must report discrimination claim(s) to an EEO Counselor within **180 calendar days** of discrimination or discovery thereof in order to attempt resolving their claim(s).
 - a. Individuals may report to an EEO Counselor from their agency or another agency; a list of EEO Counselors is available at OHR (www.ohr.dc.gov)
 - b. Individuals have a right to representation
2. Upon contacting the EEO Counselor, he or she will schedule an Initial Interview with the complainant, review the claims, request documents, speak with witnesses, and attempt to resolve the case.
3. The EEO Counselor will complete reviewing the case and schedule a Final Interview with complainant within **thirty (30) calendar days** of the initial date of contact with complainant; however, this time may be extended by 30 days for good cause.
4. During the Final Interview, the EEO Counselor will provide complainant with an Exit Letter outlining the claims reported to the counselor and the right to file a formal complaint with OHR.
5. If the case was not resolved to complainant's satisfaction during the EEO Counseling process, complainant may file a formal complaint with OHR, but the complaint **MUST** be filed within **fifteen (15) calendar days** of receiving the Exit Letter.
6. The Exit Letter may be requested if counselor does not conduct final interview within the thirty (30) calendar days.

Formal Complaint with OHR

1. In order to file a formal complaint with OHR, complainants **MUST** fill out an Intake Questionnaire and submit it to OHR within **fifteen (15) calendar days** of receiving the Exit Letter.
2. Once the Intake Questionnaire is submitted to OHR, OHR will require a copy of the Exit Letter and conduct an intake interview to obtain more information regarding the claim.
3. OHR will determine whether to dismiss or accept the claim for investigation. Once accepted, a charge of discrimination will be drafted and signed by the complainant. OHR will then docket the charge and schedule mandatory mediation.
4. If no agreement is reached after mediation, OHR will investigate the case and issue a Letter of Determination (LOD) as to whether there is probable cause to believe discrimination occurred.
5. If probable cause is found, the parties will be sent to conciliation to attempt settlement.
6. If no agreement is reached after conciliation, complainant may request summary determination or a hearing.
7. If a hearing is selected, OHR will make a final decision based on recommendations of the hearing examiner.
8. OHR decisions can be appealed to the D.C. Superior Court by filing a Petition for Review within 30 days of the final decision.

ATTACHMENT D

Notice of Rights and Responsibilities of Individuals Reporting EEO Claims

In accordance with the District of Columbia Human Rights Act of 1977, as amended, and the District of Columbia Municipal Regulations, Title 4, you are herein advised of your rights and responsibilities as you proceed with Equal Employment Opportunity (EEO) Counseling/Informal Resolution Process and the D.C. Office of Human Rights (OHR), if you choose to file a formal complaint of discrimination. Your rights and responsibilities are as follows:

- a. **CLAIMS:** You have the right to allege discrimination in employment because of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, disability, political affiliation, genetic information, gender identity or expression, in connection with any aspect of District government employment or as a beneficiary or participant of any programs financially assisted under Title 1 of the Workforce Investment Act of 1998 (WIA).
- b. **TIMELINESS:** If you wish to allege a claim of discrimination in accordance with section (a) above, you are responsible for reporting your claim(s) to an EEO Counselor within one-hundred eighty (180) calendar days of the occurrence of alleged unlawful discrimination practice; or within one hundred-eighty (180) calendar days of your discovery of the unlawful discrimination practice. If you have a sexual harassment complaint, you have the right to file a formal complaint directly with OHR without first reporting to an EEO Counselor. If you choose to file a complaint with OHR for sexual harassment, you must do so within one (1) year of the harassment, or discovery thereof. However, you are strongly encouraged to file the claim as soon as possible.
- c. **FREE FROM RETALIATION:** You have the right to be free from restraint, interference, coercion, discrimination, or reprisal for reporting or filing a claim of discrimination or retaliation.
- d. **CONTACTING AN EEO COUNSELOR:** You have the right to contact ANY EEO Counselor on the List of EEO Counselors on OHR's website.
- e. **ROLE OF EEO COUNSELORS:** The EEO Counselor is not an advocate for either the Complainant or the agency, but acts strictly as a neutral party in the EEO Process.
- f. **IMPARTIAL EEO COUNSELING PROCESS:** You have the right to an impartial EEO counseling process; the EEO Counselor shall be free from restraint, interference, coercion, discrimination, or reprisal and shall be given the assistance and cooperation of the agency in connection with the performance of their duties.
- g. **DUTY TO PROVIDE INFORMATION:** You are responsible for providing full and truthful information to the EEO Counselor, so that the counselor can attempt to resolve the case.
- h. **CONTACT INFORMATION:** You have the responsibility to keep the EEO Counselor and the OHR, if you go to OHR, informed of your current mailing address and telephone number(s).
- i. **RIGHT TO REPRESENTATION:** You have the right to representation throughout the complaint process, including the counseling stage. You have the right to designate an employee of the District government as your representative, as long as that representative is not involved in your case; the representative shall be free from restraint, interference, coercion, discrimination, or reprisal. If you, at any time, retain counsel or a representative, it is your responsibility to immediately inform the EEO Counselor, or OHR, if you are filing directly with OHR.
- j. **DUTY TO ENGAGE IN INFORMAL RESOLUTION:** During the EEO Counseling process, your EEO Counselor will attempt to resolve the case. You have the responsibility to make a good faith attempt to engage in this informal resolution process by providing possible resolution options to the EEO Counselor.
- k. **EXPEDITIOUS COUNSELING PROCESS:** You have the right to an expeditious EEO Counseling process. The EEO Counselor shall, insofar as is practicable, conduct the final interview with the Complainant and issue an Exit Letter no later than thirty (30) calendar days of initial contact by the Complainant. This time may be extended by thirty (30) days for good cause.
- l. **RIGHT TO RECEIVE EXIT LETTER:** At the expiration of the thirty (30) day period as set forth above, you have the right to request the EEO Counselor for an Exit Letter and the EEO Counselor shall issue the Exit Letter. If more than sixty (60) calendar days have expired since you contacted the EEO Counselor, you may proceed to OHR with or without an Exit Letter.

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DBH Policy 760.4A

Exhibit 3 - Notice of Rights and Responsibilities of
Individuals Reporting EEO Claims

- m. **RIGHT TO FILE A FORMAL COMPLAINT:** Once you have an Exit Letter from the EEO Counselor, or more than sixty (60) calendar days have expired since you contacted the EEO Counselor, you have the right to file a formal complaint with OHR or the United States Equal Employment Opportunity Commission ("EEOC"). It is your responsibility to timely file the formal complaint with OHR or EEOC within fifteen (15) days of receipt of the Exit Letter or of the 60-day expiration period. Complaints filed after fifteen (15) calendar days shall be deemed untimely and dismissed by the Director of OHR.
- n. **FILING LIMITATION WITH OHR:** If you proceed to file a formal complaint with OHR, you have the right to pursue only those claims reported at the counseling stage or claims that are like or related to those that were raised at the counseling stage.

Certification of Receipt of Rights and Responsibilities

1. I certify that I have been provided a copy of "Notice of Rights and Responsibilities of Individuals Making EEO Claims."
2. If I do not currently have a representative, and later choose to have representation (attorney or non-attorney), I will inform the EEO Counselor immediately and provide the name and contact information (telephone number, mailing address, and email address, if available) of that person.
3. I understand that if my representative is an attorney, all official correspondence, documents, and decision(s) will be served to my attorney, and not to me.
4. If my representative is not an attorney, all official correspondence will be served to me, with a copy to my representative.
5. I understand that I must inform the EEO Counselor of a change of address immediately, and that my failure to do so may be a basis for dismissal.

Signature: _____

Date: _____

Print Name: _____