



HUMAN RESOURCES DEPARTMENT

DATE: November 25, 2016
FROM: Robert McConnell, Director of Human Resources
ITEM: Discrimination & Harassment / EEO policy changes

REQUEST

Please consider approval of changes to the Discrimination & Harassment and the Equal Employment Opportunity policies.

Please place this item on the December 13, 2016 City Commission meeting.

BACKGROUND INFORMATION

The City of Bismarck has updated these two policies to add and include sexual orientation and gender identity to other protected statuses recognized under the United States or North Dakota.

RECOMMENDED CITY COMMISSION ACTION

The Human Resource department recommends approval of both policy changes.

STAFF CONTACT INFORMATION

Robert McConnell, Director Human Resources, 701-355-1332, rmcconnell@bismarcknd.gov

EQUAL EMPLOYMENT OPPORTUNITY

An employee or applicant for employment may not be appointed, promoted, demoted, dismissed, or in any way favored or discriminated against on the basis of race, color, religion, sex, national origin, age, physical or mental disability, sexual orientation, gender identity or expression, or status with regard to marriage or public assistance. No individual(s) involved in the selection process will deny any individual employment because of a disability, because of a record of a disability, or because he/she is perceived as having a disability.

Approval Date: 01/28/97

Revision Date:

DISCRIMINATION AND HARASSMENT

Purpose

The City of Bismarck believes in respecting the dignity of each employee and expects each employee to show respect and consideration for fellow employees, customers, and vendors. All employees are advised that discrimination and harassment in the workplace is a violation of Title VII of the Civil Rights Act of 1964 and of N.D.C.C. Chapter 14-02.4. Respectful, professional conduct furthers the City's mission, promotes productivity, minimizes disputes, and enhances the City's reputation. It is the policy of the City to insure that all of its employees can perform their assigned duties in an environment that is free from discrimination and harassment. This policy forbids unlawful conduct that is based on an individual's race, color, religion, gender, national origin, age, disability, sexual orientation, gender identity or expression, marital status, or any other protected status recognized under the United States or North Dakota Constitutions.

Coverage

This policy applies to all employees of the City and forbids any employee, or official of the City from committing any act of discrimination or harassment against any other person while engaged to work on behalf of the City.

Prohibited Conduct

The conduct prohibited by this policy includes any discriminatory employment action and any unwelcome harassing conduct because of that individual's protected status. Among the types of unwelcome conduct prohibited by this policy are verbal, physical or visual epithets, slurs, negative stereotyping, intimidating acts, and the circulation or posting of written or graphic materials that show hostility toward individuals because of their protected status. Where conduct is not sufficiently severe or pervasive to constitute actionable harassment, this policy prohibits any such conduct in the workplace.

Sexual Harassment

Sexual harassment is harassing conduct based on gender which is usually sexual in nature. This policy forbids any discrimination or harassment based on gender regardless of whether the offensive conduct is sexual in nature. Sexual harassment can occur even if the individual engaged in harassment and the individual being harassed are of the same genders.

According to the U.S. Equal Employment Opportunity Commission ("EEOC"), unwelcome sexual advances, requests for sexual favors, and other verbal, physical or visual conduct based on sex constitute unlawful sexual harassment when: 1. submission to such conduct becomes an implicit or explicit term or condition of employment, 2. submission to or rejection of the conduct is used as a basis for any employment decision, or 3. the conduct has the purpose or effect of unreasonable interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

This policy forbids harassment based on gender regardless of whether it rises to the level of a violation actionable under federal or state law. Examples of gender-based harassment forbidden by this policy include (1) offensive and unwanted sex-oriented verbal kidding, teasing or jokes; (2) repeated unwanted sexual flirtations, advances or propositions; (3) continued or repeated verbal abuse of a sexual nature; (4) graphic or degrading comments about an individual's appearance or sexual activity; (5) offensive visual conduct, including leering, making sexual gestures, the display of offensive sexually suggestive objects or pictures, cartoons or posters; (6) unwelcome pressure for sexual activity; (7) offensively suggestive or obscene letters, notes or invitations; or (8) offensive physical contact such as patting, grabbing, pinching, or brushing against another's body.

Employee Responsibility

Every employee or official of City can help assure that the workplace is free from discrimination or harassment. Every employee or official is expected to avoid any behavior or conduct that could reasonably be interpreted as discrimination or harassment based upon the victims membership in a protected class. Any employee, official or other person who feels that they are being subjected to discrimination or harassment prohibited by this policy should: ask the perpetrator to stop; report the situation to a supervisor or to the department head if the supervisor takes no action or is the perpetrator; or to the Director of Human Resources or an Ethics Committee member if the department head is the perpetrator or takes no action. Any manager or supervisor who is aware of conduct inconsistent with this policy or who receives a report of conduct inconsistent with this policy is to report immediately to the department head or if the department head is the perpetrator, to the Human Resources Director or an Ethics Committee member. This policy does not require reporting harassment or discrimination to any individual who is creating the harassment or discrimination.

Reporting Procedures

If an employee, official or other person experiences or witnesses any conduct in violation of this policy, he/she should immediately notify a supervisor or department head as stated above. The department head should immediately notify the Human Resources Director or a member of the Ethics Committee who are authorized by this policy to receive and act upon complaints of discrimination or harassment for the City.

City of Bismarck Response

All reports describing conduct alleged to be discrimination or harassment inconsistent with this policy will be investigated promptly. The City may take reasonable interim measures to protect the parties and the investigation while the investigation proceeds. The City will take further action, if appropriate, after the complaint has been thoroughly investigated and the City has made its findings as to whether or not a violation has occurred. Upon completion of the investigation, the City may enter a finding that a violation occurred, that no violation occurred, or that there is not sufficient evidence to conclude whether or not a violation occurred.

If an investigation reveals a violation of this policy or of another City policy, then the City will take corrective action against the perpetrator including discipline up to and including dismissal, as is appropriate under the circumstances. The City may discipline an employee for conduct inconsistent with this or any other policy of the City discovered in investigating reports made under this policy regardless of whether the conduct is a violation of Federal or State law or even a violation of City policy. If the person who engaged in discrimination or harassment is not employed by the City, the City will take whatever corrective action is reasonable and appropriate under the circumstances.

Policy Against Retaliation

The City will not tolerate any form of retaliation by an employee or official against any person for reporting discrimination or harassment, for assisting another employee or applicant in making a report, for cooperating in a discrimination or harassment investigation, or for filing any administrative claim with the EEOC or a state governmental agency. Any employees who experiences or witnesses any conduct they believe to be retaliatory should immediately follow the reporting procedures stated above.

Confidentiality

Subject to the North Dakota open records law, the City will attempt to preserve confidentiality to the extent that the situation permits.

Acceptance of Policy

Each City employee and official has a responsibility to conduct in a respectful and considerate manner and in compliance with this policy and to report any conduct inconsistent with this policy. If there are any questions concerning this policy, please contact the Human Resources Director.

Approval Date: 01/28/97

Revision Date: 11/15/06

DISCRIMINATION AND HARASSMENT

Policy is attached

RECEIPT OF POLICY BY EMPLOYEE:

I acknowledge that I have received a copy of the City of Bismarck's Discrimination and Harassment Policy. I agree to read the policy thoroughly, including the purpose and definitions. I agree that if there is any item in the policy that I do not understand, I will seek clarification from my supervisor. I agree to comply with the policy and seek further clarification if I have questions about compliance. I understand that nothing contained in the policy may be construed as creating a promise of future benefits or a binding contract with the City of Bismarck for benefits or for any other purpose. I also understand that this policy and procedure is continually evaluated and may be amended, modified, or terminated at any time.

Please sign and date this receipt and return it to the Human Resources Department.

Signature

Print Name

Date