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Administrative Instructions

June 1, 1995
ADMINISTRATIVE INSTRUCTION NO. 7-18

SUBJECT: Harassment/Sexual Harassment Policy

The city of Albuquerque is committed to providing a work environment free from all forms of harassment. Harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her race, color, religion, gender, national origin, ancestry, age, disability, medical condition, or sexual orientation; and that has the purpose or effect of creating an intimidating, hostile, or offensive work environment; and has the purpose or effect of unreasonably interfering with an individual's work performance; or otherwise adversely affects an individual's employment opportunities or ability to obtain public services. Harassment based on any of the forgoing statuses is a form of discrimination which is unlawful under local, state and federal civil rights laws. This policy applies to all forms of harassment, including sexual harassment.

The city of Albuquerque, as a public employer and a provider of services, **WILL NOT TOLERATE OR CONDONE HARASSMENT IN ANY FORM** from any employee regardless of his/her employment status, nor from a provider of services who is under contract with the City. All employees, supervisors and managers are responsible for maintaining a work environment free of any form of harassment and will be held fully accountable in complying with this policy and taking appropriate measures to insure that such conduct does not occur. Applicants for employment are entitled to employment consideration without being subjected to sexual or other forms of harassment. **Any employee found to have engaged in prohibited harassment will be subject to disciplinary action, up to and including termination.**

This policy supersedes all previous policies with the city of Albuquerque addressing harassment/sexual harassment and is made in accordance with City Council Bill No. C/S R-158, regarding sexual harassment. Departments may reinforce this policy with an additional departmental policy consistent with this policy and with the signature of the Chief Administrative Officer.

DEFINITION OF SEXUAL HARASSMENT

Title VII of the Civil Rights Act of 1964, in conjunction with the Equal Employment Opportunity Commission's guidelines for defining sexual harassment prohibits unwelcome sexual advances, requests for sexual favors, and verbal expression or physical conduct of a sexual nature.

Sexual harassment is defined as any unwelcome sexual advances, requests for sexually motivated physical contact, or other verbal expression or physical conduct or communication of a sexual nature when:

1. Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment or public services; or
2. Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment or obtaining public services; or

3. That conduct or communication has the purpose or effect of unreasonably interfering with an individual's employment or obtaining public services or creating an intimidating, hostile or offensive environment in which to work or obtain services.

The following criteria will be looked at to determine if sexual harassment exists:

1. **The frequency of the conduct.** A single instance of an unwelcome sexually explicit comment or request for a date may not constitute a hostile environment, but a barrage of such comments or requests could.
2. **The severity of the conduct.** A single instance of physically threatening conduct or public humiliation of someone, based on the person's sex could create a hostile environment if it is severe enough. Grabbing an employee's breasts, even once, could well be considered severe, for example. But a single offensive utterance is less likely to be viewed by a court creating a hostile environment.
3. **Whether the conduct unreasonably interferes with work performance.** A person is not required to have a nervous breakdown to make a valid hostile environment claim. It is enough that the conduct "unreasonably interferes" with work performance.

Unwelcome verbal or physical conduct which does not rise to the level of sexual harassment, may be a violation of other City policies and is prohibited.

Examples of Sexual Harassment

The following are examples of conduct which is considered sexual harassment. Conduct which is not on this list can also be sexual harassment if it meets the above definition.

A. Physical Assaults of a Sexual Nature, such as:

1. Rape, sexual battery, molestation, or attempts to commit these assaults;
2. Intentional physical conduct, such as touching, pinching, patting, grabbing, brushing against another employee's body, or poking another employee's body that is sexual in nature.

B. Unwanted Sexual Advances, Propositions, or Other Unwanted Sexual Comments, such as:

1. Threatening adverse actions in order to have a sexual favor performed;
2. Suggesting a desire for sexual relations or physical contact;
3. Propositions of sexual nature;
4. Continued requests for dates AFTER being informed that such requests are unwelcome;
5. Use of any offensive or demeaning terms which have a sexual connotation such as:
 - a. Verbal abuses of a sexual nature;
 - b. Graphic commentaries about a person's body;
 - c. Use of sexually degrading words to describe a person;
 - d. Telling jokes or making remarks of a sexual nature to, or in the presence of, persons who find such jokes or remarks offensive.

6. Whistling or calling another in such a manner as to attract unwelcome attention to another person, i.e. "wolf whistling" "cat calls";
 7. Initiating unwanted discussion of one's personal sex life.
 8. Non-verbal gestures such as:
 - a. Looking or staring at a person up and down;
 - b. Winking, throwing kisses, or licking lips;
 - c. Making sexual gestures with hands or through body movements.
- C. Sexual Displays or Publications Anywhere in Workplace by Employees, such as:
1. Displaying pictures, posters, calendars, graffiti, cartoons, objects, promotional materials, reading materials, or other materials that are sexually suggestive, sexually demeaning or pornographic, or bringing into the work environment or possessing any such material to read, display, or view at work.
 2. Reading or otherwise publicizing in the work environment materials that are in any way sexually revealing, sexually suggestive, sexually demeaning, or pornographic.

Examples of Other Harassment (related to race, sex, religion, national origin, ancestry, age, disability, medical condition or sexual orientation)

1. Epithets
2. Slurs
3. Negative stereotyping
4. Threats
5. Hostile acts
6. Denigrating or hostile written or graphic material posted or circulated in the workplace
7. Tolerance by supervisors of above harassment

Retaliation for Harassment/Sexual Harassment Complaints is prohibited, such as:

1. Disciplining, changing work assignments of, providing inaccurate work information to, or refusing to cooperate or discuss work-related matters with any employee because that employee has complained about or resisted harassment, discrimination, or retaliation; and
2. Intentionally pressuring, falsely denying, lying about or otherwise covering up or attempting to cover up conduct, such as that described in any item above.

The above is not to be construed as an all inclusive list of prohibited acts under this Policy. Harassment/Sexual Harassment is prohibited and hurts other employees, and contributes to a general atmosphere in which all employees suffer the consequences. Any of the prohibited conduct described here, has no legitimate business purposes; accordingly, the employee who engages in such conduct should be and will be made to bear the full responsibility for such conduct.

REPORTING HARASSMENT

Employees and applicants for employment who believe they have been subjected to sexual or other harassment are encouraged to tell the person responsible for the behavior that his or her actions are offensive and unwelcome. Employees and applicants for employment have an obligation to report the matter promptly to a supervisor OR the department director OR to the Employee Equity Manager within 180 days of the incident. An employee may also exercise his/her rights to pursue an action through any local (city of Albuquerque, Human Rights Office), state (Human Rights Commission of New Mexico) or federal (Equal Employment Opportunity Commission) regulatory agency responsible for enforcement of anti-discrimination laws. This policy does not extend the time limits to file any discrimination action.

ANY DEPARTMENT DIRECTOR, MANAGER OR SUPERVISOR WHO OBSERVES OR HAS KNOWLEDGE OF HARASSMENT, MUST IMMEDIATELY BRING THE MATTER TO THE ATTENTION OF THE EMPLOYEE EQUITY MANAGER. FAILURE TO DO SO MAY RESULT IN DISCIPLINARY ACTION.

The Employee Equity Office will investigate all reports of alleged harassment. To the extent possible, the City will keep the information confidential, consistent with its obligation to investigate promptly and thoroughly. If the City determines that harassment or other violations of City policy have occurred or that counseling, training, disciplinary measures or termination are appropriate, it will take appropriate measures to correct the problem.

No employee will be retaliated against in any way for reporting in good faith any allegations of harassment or assisting, testifying, or participating in an investigation. **Such retaliation in and of itself may result in disciplinary action, up to and including termination.**

All employees are required to cooperate with any investigation undertaken by the City in response to an allegation of harassment. Department Directors are responsible for assuring cooperation with investigations. **Refusal to cooperate in an investigation may result in disciplinary action, up to and including termination.**

Each department director shall adhere to and enforce the procedures established by the city of Albuquerque which provides work sites free of harassment/sexual harassment, so that instances of harassment/sexual harassment will be detected soon after their occurrences, and to provide for resolution of complaints within the department.

ALL EMPLOYEES OF THE CITY OF ALBUQUERQUE HAVE THE RIGHT TO AN EQUITABLE WORKING ENVIRONMENT.

The Employee Equity Office is available to discuss incidents, investigate whether the conduct appears to be harassment or sexual harassment, and explain the options for dealing with harassment. Any activity that may be harassment should be reported to determine if any corrective action should be taken.

For more information contact the Employee Equity Program at 764-1040.

Effective Date

This Administration Instruction is effective immediately.

Lawrence Rael
Chief Administrative Officer