



EQUAL EMPLOYMENT OPPORTUNITY POLICY

STANDARDS AND PROCEDURES
TO BE UTILIZED BY CITY AGENCIES

CITY OF NEW YORK

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**NEW YORK CITY
EQUAL EMPLOYMENT OPPORTUNITY POLICY**

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NEW YORK CITY EQUAL EMPLOYMENT OPPORTUNITY POLICY

Introduction

The New York City Charter provides that each agency head must ensure that his or her agency does not discriminate against employees or applicants for employment in any manner prohibited by federal, state and local law.¹ In addition, the Charter requires agency heads to establish measures, programs and annual plans that communicate each agency's efforts to provide equal employment opportunity ("EEO") to City employees and applicants for employment within City government.² The Department of Citywide Administrative Services ("DCAS") is required to establish uniform procedures and standards to assist City agencies in establishing annual EEO plans, and other measures and programs to ensure equal employment opportunity.³ DCAS has developed this policy⁴, and the standards and procedures contained herein, to implement DCAS' and the City's obligations under the City Charter, and other federal, state and local laws.

In addition to this EEO Policy, DCAS developed the EEO Policy Handbook, *"About EEO: What You May Not Know."*⁵ The EEO Policy Handbook was created to provide City government employees with a user-friendly summary of the relevant laws and the City's EEO Policy.

This Policy and the EEO Policy Handbook replace the previous Equal Employment Opportunity Policy of the City of New York (1996). Detailed uniform complaint and reasonable accommodation procedures are published separately. This Policy and any addenda to this Policy or the EEO Policy Handbook are to be distributed to each agency head, EEO representative, General Counsel, personnel officer, manager and supervisor.

I. Equal Employment Opportunity Policy

The City of New York is an equal opportunity employer and prohibits discriminatory employment actions against and treatment of City employees and applicants for employment based on actual or perceived race, color, national origin, alienage or citizenship status, religion or creed, gender (including "gender identity" -- which refers to a person's actual or perceived sex, and includes self-image, appearance, behavior or expression, whether or not different from that traditionally

¹ See Charter Section 815(h).

² See Charter Section 815(a)(19).

³ See Charter Section 814(a)(12).

⁴ This policy was drafted in consultation with the Equal Employment Practices Commission, the New York City Law Department and EEO Officers from various City agencies.

⁵ The EEO Policy may be downloaded at <http://nyc.gov/html/dcas/html/eeopol.html>. The EEO Policy Handbook, *"About EEO: What You May Not Know,"* may be downloaded at http://nyc.gov/html/dcas/html/eeo_booklet.html.

associated with the legal sex assigned to the person at birth), disability, age (18 and over), military status, prior record of arrest or conviction, marital status, genetic predisposition or carrier status, sexual orientation, or status as a victim of domestic violence, a sex offense or stalking.⁶

A. Types of Prohibited Conduct:⁷

Decisions and practices based on an individual's protected status (e.g., race, religion, age and the other categories listed above) that unlawfully affect employment or the compensation, terms, conditions or privileges of an individual's employment or potential employment with the City of New York are prohibited by this policy. This includes unlawful decisions, actions and practices that occur in the course of recruitment, testing, hiring, work assignments, salary and benefits, working conditions, performance evaluations, promotions, training opportunities, career development and advancement, transfers, discipline, discharge or any other application or selection process relating to employment.

The City's EEO Policy also prohibits sexual harassment—that is, conduct or language of a sexual nature—and harassment based on gender or any other protected characteristic (such as race, religion, disability or sexual orientation). Forms of harassment may include, but are not limited to, the use of vulgar language, abusive acts or language, hostility, physical aggression, intimidation, or unequal treatment.

Harassment and/or retaliation against a person who opposes or complains about prohibited conduct or participates in any way in the complaint, investigation or reasonable accommodation processes are strictly prohibited.

This policy also prohibits the denial of reasonable accommodations (for disabilities; religious beliefs, observances and practices; or for victims of domestic violence, sex offenses or stalking) that do not create undue hardship.

Some offensive acts or remarks may violate this policy, even if they are not so severe that they violate federal, state or local discrimination laws. The City and its agencies may discipline conduct that violates this policy even if the conduct does not violate a law prohibiting discrimination.

B. Applicability:

Everyone who works within New York City government or its workplaces, or

⁶ Some employment actions motivated by the reasons listed are permitted by law, such as where an employer may deny employment on the basis of an applicant's prior record of arrest or conviction if there is a direct relationship between one or more of the applicant's criminal offenses and the specific employment sought, or where employing the applicant poses an unreasonable risk to property or to the safety or welfare of specific individuals or the general public. (*See* Correction Law, Art. 23-A, Section 752.)

⁷ See also, EEO Policy Handbook "*About EEO: What you May Not Know*," for more examples of prohibited conduct.

who seeks employment within City government, is covered by federal, state and local employment laws and this policy. This includes all current employees, managers (including executives and senior level staff members), supervisors, co-workers, and job applicants.

This policy not only protects individuals from prohibited conduct because of their own protected status (such as their own actual or perceived race, religion, national origin or disability), but also protects individuals from conduct motivated by the actual or perceived race, religion, national origin or disability, etc., of other persons with whom they are associated. For example, this policy applies to individuals who are subjected to adverse actions because of their marriage to, or domestic partnership or association with, persons of a particular racial, religious or national origin group, or persons who have a disability. Moreover, discrimination based on an individual's name(s) or spouse's or domestic partner's name(s) that is associated with a particular racial, religious or national origin group is prohibited.

These protections apply to actions, whether or not intentionally offensive or directed at a particular person or group, that violate this policy.

This policy extends to conduct which occurs at any location that could be reasonably regarded as an extension of the workplace, such as any field location, off-site business-related social function, City vehicle or facility where City government business is being conducted and discussed.

All City employees are expected to be respectful of all of their co-workers and members of the public, and to be sensitive to the effects of their behavior on those around them. All employees must be trained in the requirements of this policy and must receive a copy of the EEO Policy Handbook, *"About EEO: What You May Not Know."*

II. Specific Protections

The following sections are provided to enable individuals to understand the unique definitions, issues, rights and responsibilities under this policy pertaining to sexual harassment and discrimination based on disability, religion, retaliation and status as a victim of domestic violence, a sex offense or stalking.

A. Sexual Harassment:

Sexual harassment is a form of employment discrimination which is prohibited by law. The federal government has created guidelines which define sexual harassment as "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature . . . when: 1) submission to the conduct is made either explicitly or implicitly a term or condition of an individual's employment; 2) submission to or rejection of such conduct by an individual is used as

the basis for employment decisions affecting such individual; or 3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.”⁸

Sexual harassment may involve individuals of the same or different gender(s). A broad range of behavior may be considered sexual harassment, including sexually suggestive remarks, pictures or gestures, verbal abuse or harassment of a sexual nature, subtle or direct propositions for sexual favors, and any unnecessary touching, patting, or pinching.

B. Disabilities:

Discrimination against a person based on that person's actual or perceived disability, record of disability, or relationship with a person with a disability will not be tolerated by the City of New York. For the purpose of this policy, a disability is: 1) a physical, medical, mental or psychological impairment; 2) a history or record of such impairment; or 3) being regarded as having such impairment.

The City of New York and its agencies will take appropriate action to provide reasonable accommodations to qualified employees and applicants with disabilities, unless providing such accommodations creates an undue hardship. Reasonable accommodations include the provision of equipment, changes in workplace policies and practices, and other forms of assistance that allow people with disabilities to apply for a position, to perform their jobs, or to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without disabilities.

Whether an accommodation is reasonable will depend upon the circumstances of the particular request. Some examples of accommodations that may be reasonable include: making facilities physically accessible to, and usable by, persons with disabilities; job restructuring; modifying work schedules; providing or modifying equipment or devices; providing qualified readers, interpreters, auxiliary aides and/or other support services; and providing leave and/or arranging for transfer or reassignment to a vacant position, if such transfer or reassignment does not violate the Civil Service Law, Personnel Rules and Regulations or other applicable laws, regulations and/or collective bargaining agreements.

Undue hardship may exist when an accommodation is significantly difficult, unduly costly, extensive, substantial, or disruptive, or would change the nature or operation of an agency's business.

The City of New York encourages employment of and promotional opportunities for qualified persons with disabilities. For example, pursuant to Section 55-a of the New York State Civil Service Law, where agency needs and availability

⁸ Code of Federal Regulations, Title 29, Section 1604.11.

permit, the City encourages agencies to utilize the 55-a program, which will allow City agencies to employ qualified persons who have been certified as disabled in competitive positions on a non-competitive basis. Individuals who wish to apply for the 55-a program are encouraged to seek assistance from the agency personnel officer or 55-a Coordinator.

C. Religion:

The City's EEO Policy prohibits adverse employment actions based on a person's religion. This includes discriminatory practices and decisions, harassment, hostility or other adverse actions because of a person's creed, religious affiliation, or religious beliefs, observances or practices.

In addition, depending on the circumstances, agencies must try to reasonably accommodate the religious observances, beliefs or practices of an employee or applicant, unless the accommodation creates an undue hardship. A reasonable accommodation for religion may be a change in a workplace rule or practice that allows an individual to respect his or her religious observances, beliefs or practices. City agencies may be required to provide accommodations for religion such as: flexible arrival and departure times; leave; voluntary exchanges of shifts or assignments; time and/or place to pray; accommodations relating to appearance and dress; and modifying workplace practices, policies and/or procedures.

The City's agencies are not required to provide accommodations that are too costly or difficult to provide, that would be disruptive or that would interfere with job performance.

D. Retaliation:

It is a violation of this policy to retaliate against or harass any person who asserts his or her rights regarding employment discrimination by: 1) opposing discriminatory practices in the workplace; 2) complaining about prohibited conduct; or 3) participating in any way in the complaint, investigation or reasonable accommodation processes. It is also a violation of this policy to retaliate against or harass someone because of his or her association with such an individual.

Behaviors which may be considered retaliatory include, but are not limited to: threats, reprimands, negative evaluations, harassment, refusal to hire, denial of promotion or job benefits, demotion, suspension, discharge, negative references to prospective employers, or other actions affecting the terms, conditions or privileges of employment.

Examples of behavior that is protected against retaliation under this policy include, but are not limited to: expressing an intent to file a charge or complaint alleging prohibited conduct; participating as a witness in an EEO investigation,

administrative proceeding, hearing or trial; and/or seeking a reasonable accommodation.

E. Domestic Violence, Sex Offenses or Stalking:

The New York City Human Rights Law prohibits employment discrimination against persons who are victims of domestic violence, or victims of sex offenses or stalking, as defined by that law and the New York State Penal Law. Agencies shall provide reasonable accommodations that do not create undue hardship and that enable such persons to satisfy the essential requisites of a job, provided that the status as a victim of domestic violence or victim of sex offenses or stalking is known, or should have been known, by the agency.

III. Procedures

A. Reporting Violations:

Anyone who believes that he or she has been subjected to any action, decision or harassment in violation of this policy, or who witnesses others being subjected to improper conduct, is urged to promptly report the incident(s) to his or her supervisor or manager, to agency personnel supervising the application, testing and interviewing process, or directly to an EEO representative at the agency where the violation has actually occurred, or which is the employer of the individual who has purportedly committed the act(s) complained of. Supervisors, managers, or human resources personnel who receive EEO complaints, or who otherwise become aware of any improper discrimination, must notify the EEO office. Supervisors and managers should also encourage individuals who believe that the City's EEO Policy has been violated to consult with an EEO representative.

An individual who believes that this policy has been violated may report the incident orally or in writing. Where the complaint is taken orally, the manager, supervisor, or EEO representative shall document the complaint. The EEO office will assist any individual to determine whether the conduct or decision is appropriate for the complaint process. Where an individual chooses to file an internal complaint with the agency EEO office, that complaint must be filed within one year of the event which is the subject of the complaint.

Persons who wish to discuss a possible violation of this policy without revealing their identity may do so by telephoning or writing the EEO office. In such cases, an EEO Officer or representative will provide counseling and take such follow-up action as may be appropriate and possible, given the restraints of anonymity.

If any employee knowingly makes a false accusation of discrimination or knowingly provides false information in the course of an investigation of a complaint, such conduct may be grounds for discipline. A complaint made in good faith, even if

found to be unsubstantiated, will not be considered a false accusation.

B. Contact with the EEO Office:

An employee has a right to meet privately with an EEO representative. Such a meeting may take place either during or outside of office hours. If an employee makes a request to meet with an EEO representative during office hours, the employee should obtain approval from a manager or supervisor in order to leave his or her work assignment. An employee need not disclose the purpose for or details of the meeting with an EEO representative. Reasonable leave requests to meet with an EEO representative during work hours cannot be denied by managers or supervisors. Managers and supervisors shall allow employees to meet with EEO representatives at the earliest practicable time consistent with the operational needs of their units. Where an agency has more than one EEO representative, an employee is not required to meet with an EEO representative who works in the employee's division.

At the employee's request, arrangements may also be made to hold the meeting before or after office hours, or during the employee's lunch period. Should such a meeting take place entirely on the employee's own time, he or she need not advise a manager or supervisor of the meeting, or obtain the consent or approval of a manager or supervisor. The EEO representative will arrange to meet with an employee at outside premises where appropriate and/or necessary in order to ensure confidentiality. If necessary, EEO representatives will make arrangements for sign language interpreters and other forms of effective communication with persons with disabilities to facilitate access to EEO services.

The EEO representative will discuss and research appropriate options, including actions an individual could take on his or her own behalf, referrals to other offices and/or agencies, mediation, investigation and/or interim relief. The EEO representative may also facilitate any further discussions with other agency personnel.

In appropriate cases, an EEO investigation may be conducted in conjunction with or by an agency's General Counsel's office, Inspector General, or disciplinary officer. In addition, there may be exceptional circumstances under which an investigation may be conducted by another individual or entity, as deemed appropriate by the Law Department or DCAS.

Any person who is interviewed during the course of an EEO investigation has a right to be accompanied by a representative of his or her choice. This includes individuals who make complaints, persons against whom complaints are made or witnesses. It is preferable that the EEO representative have advance notice that the person who is being interviewed will be bringing a representative.

Any person who is the subject of the complaint will have an opportunity to respond in writing.

All employees are expected to cooperate with EEO investigations. Failure to cooperate in an investigation may result in disciplinary action.

C. Withdrawing Complaints:

A complaint of discrimination may be withdrawn at any time by the person who filed the complaint. In some instances, the agency EEO Officer will find it appropriate to end the investigation when the complaint is withdrawn. Prior to ending the investigation, the EEO Officer must determine whether the agency should take corrective action to address inappropriate conduct. If the EEO Officer determines that corrective action is required, it may be necessary for the EEO Officer to continue the investigation or recommend action to remedy inappropriate behavior.

D. Mediation:

Mediation is a voluntary, informal and confidential process that provides an opportunity for everyone involved in a complaint to come to a mutual agreement about how the complaint should be resolved. It is an alternative that may quickly resolve complaints without a full investigation.

All requests for mediation should be made to the EEO office. Mediation may be requested by any party involved and may be declined by any party.

The EEO Officer will determine whether the complaint is appropriate for mediation. The EEO Officer may choose to conduct the mediation internally within the agency, or through the Center for Mediation Services (the “Center”) at the City’s Office of Administrative Trials and Hearings. If the Center is chosen, the EEO Officer will advise the Center of the names of the parties, and their contact information. The Center will then arrange a date and time for the mediation with the parties. If the parties agree to a resolution of the situation during mediation at the Center, and any action needed to resolve the matter has received all necessary approvals, the Center will forward a copy of the resolution agreement to the EEO Officer.

Mediation may be terminated by any party to the mediation. If this occurs, the EEO Officer or the Center will inform the other party or parties in writing that the mediation has been terminated. In the event that mediation does not result in a resolution, the EEO Officer or the Center will provide the parties with a written statement informing the parties of the complainant’s right to an investigation of the allegation. Where efforts to mediate complaints are unsuccessful, complaints will be investigated by the EEO office. Additional information about the Center is available online at <http://nyc.gov/html/oath/html/mediation.html>.

E. Concluding the Complaint Investigation:

The EEO Officer will advise all parties in writing of the outcome of a complaint. If the EEO Officer concludes that a violation of this policy has occurred, the EEO Officer will recommend appropriate corrective action. The agency head will review the EEO Officer's report and promptly issue a determination adopting, rejecting or modifying the recommended action. Such determination shall be in writing and may be issued electronically.

Any person found to have engaged in conduct or practices in violation of this policy may be subject to discipline which may include a reprimand, suspension, probation, demotion, transfer, termination, or any other measures permitted by law and/or collective bargaining agreements. In addition to implementing such disciplinary action, agencies may take such steps as may be necessary to address the impact that any violation of this policy has had on the complainant or within the agency.

F. Other Places Where Complaints May Be Filed:

The following federal, state and local agencies enforce laws against discrimination: The New York City Commission on Human Rights, the New York State Division of Human Rights, the United States Equal Employment Opportunity Commission (the "EEOC") or the Department of Justice. Information about how to contact these agencies can be found in the EEO Policy Handbook, "*About EEO: What You May Not Know*," at <http://nyc.gov/html/dcas/pdf/abouteeo.pdf> agency EEO offices, the DCAS website at <http://nyc.gov/html/dcas/html/k2eeo.html> or the Office of Citywide EEO at 1 Centre Street, 17th Floor South, New York, NY 10007, (212) 669-8648. Please note that there are statutory deadlines for filing complaints with each of these agencies.⁹

Where a person exercises his or her right to file a complaint with a federal, state or local administrative agency (known as an "external complaint") based on or related to the same facts and circumstances of an internal complaint, the agency EEO Officer will transfer the matter to the agency General Counsel, who will be responsible for any further handling of the matter. The EEO Officer will notify the complainant and the parties who are the subject of the complaint, in writing, that the investigation by the EEO Officer has been transferred because of the filing of the external complaint. The agency General Counsel will be responsible for handling external complaints regardless of the timing of such complaints (whether filed before the internal complaint is filed, at the same time that the internal claim was filed, or after the internal complaint was filed but prior to the completion of the agency's internal EEO

⁹ The deadline in some instances is as short as 180 days. Therefore, to preserve their rights, individuals who believe that they have been discriminated against and wish to file a complaint with an external agency should promptly contact the City Commission on Human Rights, the State Division of Human Rights, the EEOC, the Department of Justice, or a private attorney for further guidance.

procedures). The transfer of the complaint to the agency General Counsel's Office should in no way preclude the EEO Officer from cooperating with the General Counsel's Office with respect to the ultimate resolution of the complaint.

G. Requests for Reasonable Accommodations:

The City's agencies may be required to provide reasonable accommodations, when requests are made in connection with disabilities, religion and/or to accommodate individuals who are victims of domestic violence, sex offenses or stalking. The reasonable accommodation process should be flexible and interactive, involving agency representatives who are necessary to the reasonable accommodation process and the individual who is requesting a reasonable accommodation. In all instances, the agency EEO Officer should be notified of the request in order to facilitate discussions, research appropriate accommodations and assist in the resolution of the matter.

EEO representatives, agency personnel supervising any phase of the application process, and/or managers and supervisors involved in the process shall notify individuals who request reasonable accommodations whether the request has been granted. Where the specific accommodation requested is impracticable, agency representatives will seek to implement an appropriate alternative reasonable accommodation. The following procedures detail the specific aspects of each type of request.

1) **Disabilities:** An employee or applicant requesting reasonable accommodations for disabilities may make such requests to his or her manager or supervisor, agency personnel supervising the application, process, or directly to the agency EEO office or Disabilities Rights Coordinator. A request for a reasonable accommodation may be made orally or in writing. Where the request is made orally, it shall be documented by that person who receives the request.

EEO representatives and/or Disabilities Rights Coordinators, agency personnel supervising the application process, and managers and supervisors involved in the process shall provide reasonable assistance (such as help in completing forms) to an individual requesting an accommodation. Additionally, if a reasonable accommodation is requested to facilitate an individual's ability to apply for employment, the agency staff supervising the application procedures may be required to assist the applicant in completing the application process.

By law, all documentation and information concerning the medical condition or history of an individual requesting a reasonable accommodation for a disability must be collected and maintained on separate forms, and in separate medical files, apart from other personnel data. Such information must be treated as confidential medical records, except that managers and supervisors may be informed of necessary restrictions on work and accommodations required. Furthermore, medical

information may be provided: 1) to first-aid and safety personnel, if the disability might require emergency treatment; 2) to government officials investigating the agency's compliance with applicable laws; 3) to workers' compensation offices in accordance with Workers' Compensation Law; and 4) for insurance purposes.

2) Religious Accommodations: An employee or applicant requesting reasonable accommodations for religion may make such requests to his or her manager or supervisor, agency personnel supervising the application process, or directly to the agency EEO office. Requests for religious accommodation should be documented by the individual receiving the request.

3) Victims of Domestic Violence, Sex Offenses or Stalking: An employee or applicant requesting reasonable accommodations for domestic violence, sex offenses or stalking may make such requests to his or her manager or supervisor, agency personnel supervising the application process, or directly to the agency EEO office.

Agencies may require a person requesting a reasonable accommodation to provide certification that the person is a victim of domestic violence, sex offenses, or stalking. The person requesting the reasonable accommodation shall provide a copy of such certification to the agency within a reasonable period after the request is made. A person may satisfy the certification requirement by providing documentation from an employee, agent, or volunteer of a victim services organization, an attorney, a member of the clergy, or a medical or other professional service provider from whom the individual seeking a reasonable accommodation, or that individual's family or household member, has sought assistance in addressing domestic violence, sex offenses, or stalking and the effects of the violence or stalking; a police or court record; or other information consistent with the disclosure and the request for accommodation.

All information, including a statement of the person requesting a reasonable accommodation or any other documentation, record, and the fact that the individual has requested or obtained a reasonable accommodation, shall be retained in the strictest confidence by City agencies, except to the extent that disclosure is requested or consented to in writing by the person requesting the reasonable accommodation, or is otherwise required by applicable federal, state or local law.

Where an employee or applicant has requested a reasonable accommodation consistent with these procedures and the agency representative has not provided the reasonable accommodation, an appeal may be made to the agency head. Within 10 business days of receipt of an appeal, the agency head, or his or her designee, shall:

1. obtain the request for reasonable accommodation made by the employee or applicant and review all related documentation, standards, procedures and potential accommodations;

2. meet and/or consult with the employee or applicant, the EEO officer, and any agency representative that the agency head deems necessary to the reasonable accommodation request;
3. evaluate the reasonableness of employee or applicant and supervisor preferences regarding the accommodation request, giving primary consideration to the employee's or applicant's preferences; and
4. consult with the Office of Citywide EEO or the Law Department.

Within 15 business days of receipt of the appeal, the agency head shall issue a written determination on the request for reasonable accommodation, specifying what accommodation shall be provided, if any, and, where necessary, directing the appropriate agency representative to implement such accommodation promptly. The EEO officer shall monitor implementation of the reasonable accommodation.

H. Confidentiality:

All complaints, investigations, requests for accommodations and records will be handled, to the extent possible, in a manner that will protect the privacy interests of those involved. EEO matters may be discussed with other persons who may have information about a complaint or who are necessary to implement reasonable accommodations for disability, religion or based on status as a victim of domestic violence, a sex offense or stalking. Therefore, it may be necessary to disclose information to persons with a legitimate need to know about the matter.

I. Documentation:

All inquiries, complaints, requests, mediation efforts, investigations, requests for accommodation and their outcomes will be documented by the EEO office.

IV. Agency-Specific Plans

Agency heads are required by the New York City Charter to annually prepare, adopt and implement a plan to provide equal employment opportunity. The plan must be prepared based on uniform procedures and standards provided by DCAS. DCAS will work with agency heads to help them develop realistic and achievable objectives.

Each agency head or, at his or her direction, the agency EEO officer and/or personnel officer, should review agency statistical information (including total employment and new hires and promotions, by race/ethnicity and gender), EEO complaints made during the previous fiscal year and the agency's employment practices, policies and programs. The agency head should then work with the EEO officer, the General Counsel and the personnel officer to identify: (1) whether there

are any barriers to equal opportunity within the agency; (2) the agency's obligations as a result of government grants and/or contracts; and (3) what, if any, corrective actions are required under court decrees and/or governmental audits. Agencies may wish to seek the advice of the Law Department or consult with the Office of Citywide EEO regarding the development of agency plans.

The plan should communicate the agency's intention to promote equal employment opportunity by continuing effective measures or implementing new strategies and programs (i.e., preventive, corrective and risk management strategies in areas such as recruitment, training, selection, promotion and policy dissemination standards) that prevent, diminish or eliminate barriers to equal opportunity. DCAS will provide agencies with formats as well as recommendations for plan development that are consistent with employment practices recommended by human resources management organizations and enforcement entities.

Although each agency's plan will be tailored to the specific issues of that agency, there are some general measures that all agencies are required to implement. Each agency's plan must, at a minimum, include the following:

- A commitment from each agency head to ensure fair employment practices pursuant to the requirements of the City Charter, and to hold EEO representatives, human resources professionals, managers and supervisors accountable for ensuring that the agency does not discriminate against employees or applicants for employment.
- A commitment that each agency will assess recruitment efforts to determine whether such efforts adversely impact any particular group. Minimally, agencies should identify relevant professional and community organizations serving women and minorities throughout the City, review and update listings of recruitment outreach sources, and contact such organizations when provisional positions become available or where agencies may otherwise use discretion in hiring.
- A commitment that, when the agency advertises vacancies in discretionary positions, the agency will include a statement that the agency and City of New York is an equal opportunity employer, and when pictures are used in recruitment advertisements, diversity will be displayed.
- A commitment that the agency will assess the manner in which candidates are selected for employment, to determine whether there is any adverse impact upon any particular racial, ethnic, disability, or gender group. To the extent that adverse impact is discovered, the agency head will determine whether the criteria being utilized are job-related. If the criteria are not job-related, the agency will discontinue using that method. Methods which diminish adverse

impact will be preferred over those with greater impact, provided that the agency's job-related aims are not compromised by using the method with a diminished impact. Examples of selection methods which may diminish adverse impact include race/ethnicity-neutral and gender-neutral questions in interview materials and assembling interview panels that reflect gender, race and ethnic diversity.

- A commitment that the agency will assess criteria for selecting persons for mid-level to high-level discretionary positions.
- A commitment to make career counseling about civil service jobs available for employees.
- A commitment to ensure that all new employees are advised of the City's EEO policies, their rights and responsibilities under such policies, and the discrimination complaint and investigation procedures.
- An EEO training plan to ensure that all individuals who work within the agency, including managers and supervisors, are trained concerning EEO-related rights and responsibilities in a manner consistent with the minimum standards for EEO training established by DCAS.
- A commitment to retain information about personnel actions, discretionary hiring, applicants, promotions, demotions, transfers, rates of pay, terms of compensation and selection for training or apprenticeship as required by federal, state and local law and/or the City's official records retention schedule.
- A plan to meet obligations or remedies required or recommended as a result of government grants or contracts, court orders, consent decrees or any audit/review conducted by a governmental agency.

Other measures which may be used to ensure fair employment practices include, for example:

- Advertising job vacancy notices in periodicals with large minority and female readership, or other periodicals, as appropriate.
- Sending job vacancy notices to professional and community organizations serving minorities, women and persons with disabilities.
- Participating in career and job fairs.
- Whenever possible, promoting public service as a career choice at schools,

colleges and universities.

- Using internships, work/study, co-op, and scholarship programs to attract interested persons and to develop and hire interested and qualified candidates.
- Sponsoring open houses (i.e., networking events, facilities tours).
- Working with DCAS to review the competencies, skills and abilities required (as presented in job vacancy notices and notices of examination) for available positions to ensure that these standards are updated, job-related and required by business necessity.
- Reviewing application forms and agency materials and products in order to ensure that they do not contain discriminatory language or images.
- Ensuring that human resources personnel, managers, supervisors, and other personnel involved in the recruitment and hiring process are trained in interviewing, selection, hiring skills and EEO to enable such individuals to correctly identify the most capable candidates.
- Implementing or encouraging skills and behavior standards for managers to ensure that they are able to maximize their professionalism, performance and communication skills (i.e., through DCAS leadership training).
- Conducting or encouraging the use of training and development programs to improve skills, performance and career opportunities of all employees.
- Creating talent pools through employee surveys and databases, to promote cross-training, cross divisional assignments, job transfer, and rotation programs for career enhancement and development experiences.
- Planning and administering employee incentive, quality of work life and recognition programs.
- Publicizing promotions into or changes in the managerial ranks.
- Promoting employees' awareness of opportunities for promotion and transfer within the agency, and ensuring that the agency considers its own employees for such opportunities.

The agency head will submit a draft plan to DCAS for review and approval prior to its final adoption. Plans will be developed in accordance with the time schedule set by DCAS for the development and review of draft plans and will be

submitted each fiscal year. All plans must receive the approval of DCAS.

Each agency head will then submit quarterly reports on the agency's efforts to implement the agency plan, culminating in a final report, which must be submitted to DCAS at the end of the fourth quarter.

The City of New York and/or DCAS will also:

- Provide the uniform procedures, formats and reports required by the New York City Charter to facilitate the planning and review of the City's efforts to provide equal employment opportunity for employees and applicants for City government employment.
- Assess qualifications required for most civil service positions and ensure that civil service examinations are job-related and consistent with business necessity.
- Provide assistance to agencies to ensure that recruitment efforts fit particular human resource needs.
- Encourage agency job postings and post the Exams for Jobs bulletin. DCAS will continue to provide access to the bulletin via the intranet and the internet.
- Continue to conduct on-site EEO monitoring visits to agencies.
- Continue efforts to better ensure the accuracy of ethnicity and gender data.

V. Enforcement and Accountability Standards

A. Department of Citywide Administrative Services:

DCAS is required to: 1) establish and enforce uniform procedures and standards for use by City agencies in establishing measures, programs and plans to ensure equal employment opportunity, including a time schedule for the development, review and adoption of EEO plans; 2) establish a uniform format for use by City agencies for the presentation of statistical information on the workforce of City agencies; and 3) develop resources regarding information on employment and educational programs.¹⁰ DCAS is also required to publish and submit annual reports on the activities of DCAS and the other City agencies with respect to equal employment opportunity.¹¹

Within DCAS, the Office of Citywide EEO assists the Commissioner to develop and enforce the City's EEO policies, standards and procedures. The Office

¹⁰ See Charter Sections 814(a)(12)-(15).

¹¹ See Charter Section 814(b)(8).

of Citywide EEO will assist the City's agencies by developing or collaborating on solutions, strategies and initiatives to effectively implement the provisions of the City Charter and other federal, state and local laws; and monitoring the EEO-related activities of City agencies. In addition, DCAS maintains the data that is necessary in order to fulfill the City's EEO obligations under the City Charter and other federal, state and local laws.

B. Agency Heads:

Each agency head will ensure that his or her agency does not discriminate against employees or applicants for employment as prohibited by federal, state and local laws.¹² Agency heads are accountable to their respective Deputy Mayors for their agencies' EEO practices. Agency heads will also ensure that legal, human resource and EEO representatives, managers and supervisors: 1) receive a copy of this policy (and any addenda); 2) are trained in EEO laws and procedures; and 3) know how to carry out their responsibilities under this policy. Agency heads must distribute a copy of the EEO Policy Handbook, "*About EEO: What You May Not Know*" to all employees and ensure that a copy is available via the agency's website.

As discussed in Section IV, each agency head must annually adopt and implement a plan that communicates measures and programs that the agency will undertake to ensure fair and effective efforts to provide equal employment opportunity. Draft EEO plans are to be developed and submitted each fiscal year according to the timetable and format established by DCAS, and must be reviewed and approved by DCAS. Agencies are required to file copies of finalized agency EEO plans with the Mayor, the City Council, the Equal Employment Practices Commission ("EEPC") and the City Civil Service Commission, and to also make EEO plans available for reasonable public inspection.¹³

Each agency head is also required to publish and submit quarterly to the Mayor, City Council, DCAS and the EEPC a report on the agency's efforts during the previous quarter to implement the agency plan. Additionally, each agency head shall submit to DCAS a final report on the agency's activities with respect to equal employment opportunity which will enable DCAS to fulfill its reporting obligations under New York City Charter Sections 814(a)(12)-(15).¹⁴ All reports shall follow a format developed by DCAS and will be submitted no later than thirty (30) days following the reporting period.

In order to meet the City's obligations under the City Charter and other federal, state and local laws, and to achieve the goals of the agency plan, each agency head must appoint a trained EEO officer whose responsibility it will be to implement the City's EEO policy within that agency. Because EEO officers will need independence

¹² See Charter Section 815(h).

¹³ See Charter Section 815(a)(19).

¹⁴ See Charter Section 814(a)(13) and 815(i).

of judgment as well as the authority of the agency head in order to carry out their responsibilities, the EEO Officer must report directly to the agency head, or if approved by DCAS, to a direct report to the agency head. In order to avoid potential conflicts of interest, under no circumstances should the EEO Officer report to the General Counsel. Where the agency's organizational structure necessitates multiple EEO representatives, such individuals should be selected from different office locations and, where possible, from a variety of levels within the organizational structure. The agency head must ensure that the responsibilities of the EEO Officer are competently discharged.

Agency heads should appoint at least two EEO representatives, who may not be of the same gender, to receive discrimination complaints and conduct investigations. Each agency head must designate a Career Counselor with appropriate training and knowledge, who is familiar with civil service jobs, to provide career counseling to employees who request such guidance. The agency head should also designate a Disabilities Rights Coordinator, whose responsibility it will be to ensure compliance with all federal, state, and local laws, as well as City and agency policies, pertaining to persons with disabilities. Usually the EEO Officer of each agency should serve as the Disabilities Rights Coordinator; however, when circumstances warrant, an agency head may designate a person other than the EEO Officer of the agency.

Agency heads are required to sign off on all agency EEO plans and final determinations concerning EEO complaint resolutions and should conduct a quarterly review of EEO complaints and requests for accommodations. Such sign off may be in written or electronic form. Each agency head will ensure that all employees are provided with information that complies with the standards provided by DCAS regarding employee rights and obligations regarding this policy, and with information about the complaint, investigation and reasonable accommodation procedures. The agency head will also ensure that the City's EEO policies and complaint procedures are posted at each site where the agency conducts business. Such posting may include postings on electronic bulletin boards and intranet sites. Each agency head will ensure that each of the agency's employees is accountable for his or her compliance with EEO-related policies, and receives training in EEO laws.

Agency heads should ensure that information regarding employee rights and obligations, and the complaint, investigation and reasonable accommodation procedures are available in appropriate alternative formats to employees with disabilities.

C. EEO Officers:

The agency's EEO Officer has primary responsibility for assisting the agency head in implementing the City's EEO policies and standards. Specifically, the agency's EEO Officer must be knowledgeable regarding EEO laws, the requirements

of the City's EEO policies, standards and procedures, and how to prevent, investigate, and resolve discrimination complaints. The EEO Officer and/or Disability Rights Coordinator will also receive requests for accommodations, and recommend appropriate action to the agency head regarding EEO-related issues. The EEO Officer will also provide guidance to the agency head in submitting the agency's annual EEO plan and in preparing and reviewing quarterly reports. The EEO Officer should work closely and cooperatively with the agency's General Counsel and the DCAS Office of Citywide EEO, and provide guidance and assistance to agency managers, supervisors and human resource professionals in addressing issues relating to equal employment opportunity.

The EEO Officer will also: 1) set training objectives that ensure that all agency employees receive EEO training; 2) supervise the EEO-related activities of EEO counselors and/or investigators; 3) ensure that EEO policies and complaint procedures are posted at each site where the agency conducts business; and 4) ensure that EEO policies and procedures are available in alternative formats (i.e., large print, audio tape and/or Braille). Each agency's EEO Officer shall make a copy of these standards and procedures, and any subsequent revisions and supplemental materials, available upon request by an employee or applicant.

D. Agency General Counsels:

Agency General Counsels should: 1) assist the agency head in identifying and determining appropriate responses to EEO issues; 2) work cooperatively and closely with the EEO Officer in the implementation of the City's EEO policies and related procedures; 3) inform the EEO Officer when external complaints or litigation involving EEO matters are brought against the agency; 4) be available to consult on internal EEO investigations; and 5) be responsible for the investigation of, and response to, external EEO complaints.

E. Managers and Supervisors:

Managers and supervisors will make every effort to maintain a work environment that fosters sensitivity and respect for the diversity of all individuals. Specifically, each agency manager or supervisor shall: 1) be accountable to the agency head for effectively implementing EEO-related policies; 2) perform managerial or supervisory responsibilities in a non-discriminatory manner; 3) receive training in EEO laws; 4) cooperate with the EEO Officer in the implementation of EEO policies and standards (including training, complaint resolutions, processing, recording and reporting reasonable accommodation requests, EEO-related recruitment and selection standards; and modifying agency procedures to ensure equal employment opportunity for applicants and employees); 5) promptly consult with the agency's EEO Officer if he or she observes, learns about, or suspects that a violation of this policy has occurred; 6) where appropriate, encourage subordinates to consult with the EEO office; 7) allow employees to meet with EEO representatives at the earliest

practical time consistent with the operational needs of his or her unit; and 8) maintain confidentiality with respect to EEO-related matters.

F. Personnel Officers:

Personnel Officers have primary responsibility for assisting the agency head in implementing the City's personnel policies and shall be knowledgeable regarding the interplay of EEO-related laws and other work-related statutory schemes including the Family Medical Leave Act, the Civil Service Law, and the Workers' Compensation Law. Personnel Officers should cooperate with the EEO Officers in the implementation of EEO policies and standards, including training objectives, complaint resolutions, and modifying agency procedures to ensure equal employment opportunity for applicants and employees.

Personnel Officers will also: 1) ensure that employees know the identity of the agency career counselor and ensure that all employees have access to information regarding job responsibilities, performance evaluation standards, examinations, training opportunities and job postings; 2) ensure that all new employees are advised of the City's EEO policies, the employees' rights and responsibilities under such policies, and the discrimination complaint procedures; 3) inform the EEO Officer on a quarterly basis of the number of 55-a program participants and efforts that the agency has made to employ, promote or accommodate qualified individuals with disabilities; 4) involve the agency EEO Officer in the review of EEO-related decisions, actions and practices; and 5) promptly consult with the agency's EEO Officer if he or she knows, has been informed of, or suspects that a violation of the City's EEO policy has occurred.

Appendix

Guidelines Regarding "Gender Identity" Discrimination, A Form of Gender Discrimination Prohibited by The New York City Human Rights Law

(Title 8 of the Administrative Code of the City of New York)

New York City Commission on Human Rights
40 Rector Street New York, NY 10006
www.nyc.gov/cchr

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I. PURPOSE

In April 2002, the New York City Human Rights Law, located in Title 8 of the Administrative Code of the City of New York, was amended to make it clear that an individual's gender identity is an area of protection under the Law.

It is the law and policy of the City of New York to eliminate discrimination based upon an individual's "actual or perceived gender."

"Gender" is defined in the City's Human Rights Law to include:

- actual or perceived sex;
- gender identity;
- self-image;
- appearance; and,
- behavior or expression, whether or not that gender identity, self-image, appearance, behavior or expression

is different from that traditionally associated with the legal sex assigned to an individual at birth.

The Human Rights Commission developed these guidelines:

- To educate the public about the prohibition of gender discrimination, particularly as it protects transgender and gender-variant people in New York City;
- To inform individuals of their rights under the Law; and,
- To assist employers, housing providers, businesses, organizations, service providers (including government) and other entities in understanding their responsibilities under the Law.

These guidelines do not constitute legal advice and do not cover every aspect of the Law. For specific questions regarding the coverage of the Human Rights Law, see the Administrative Code of the City of New York, contact the New York City Commission on Human Rights, or seek legal counsel.

II. DEFINITIONS

A. Gender Identity/Gender Expression

Gender identity is an individual's sense of

being either male or female, man or woman, or something other or in-between.

Gender expression describes the external characteristics and behaviors that are socially defined as either masculine or feminine, such as dress, mannerisms, speech patterns and social interactions.

B. Transgender

"Transgender" is an umbrella term that includes anyone whose gender identity and/or gender expression does not match society's expectations of how an individual who was assigned a particular sex at birth should behave in relation to their gender. The term includes, but is not limited to:

- pre-operative, post-operative and non-operative transsexuals who may or may not use hormones;
- intersex individuals;
- persons exhibiting gender characteristics and identities that are perceived to be inconsistent with their gender at birth;
- persons perceived to be androgynous;
- transvestites;
- cross-dressers; or,
- drag queens or kings.

1. Transsexuals

Transsexuals are individuals whose gender expression or identity is perceived to conflict with the sex assigned to them at birth, and who may or may not begin or continue the process of hormone replacement therapy and/or gender confirmation surgery.

Transsexuals are often described as female-to-male (FTM) or male-to-female (MTF).

2. Gender Variant, Gender Non-conforming or Gender Different

Gender variant, gender non-conforming, or gender different individuals have a gender identity and/or gender expression that is not completely male or female. This includes individuals who do not conform to expectations of a specific gender role and individuals who express both masculine and feminine qualities. These individuals are sometimes referred to as "androgynous."

C. Intersex Individuals

Intersex individuals are born with chromosomes, external genitalia, and/or an internal reproductive system that varies from what is considered "standard" for either males or females.

III. AREAS OF APPLICATION

A. Employment

(Administrative Code: Section 8-107(1))

It is an unlawful discriminatory practice for an employer, or an employee or agent thereof, to discriminate against any employee or applicant for employment based upon actual or perceived gender (including the individual's actual or perceived sex, gender identity, self-image, appearance, behavior or expression, whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to an individual at birth) with regard to recruitment, hiring, firing, promotions, wages, job assignments, training, benefits, and other terms and conditions of employment.

B. Public Accommodations

(Administrative Code: Section 8-107(4))

"Public accommodations" refer to providers of goods and/or services to the public.

Restaurants, hospitals, stores, theaters, and service providers (including government) are some examples of public accommodations.

It is an unlawful discriminatory practice for a place or provider of public accommodation

directly or indirectly to refuse, withhold from, or deny a person any of the accommodations, advantages, facilities, services or privileges of an accommodation based upon the person's actual or perceived gender (including the individual's actual or perceived sex, gender identity, self-image, appearance, behavior or expression, whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to an individual at birth).

C. Housing & Lending Institutions

(Administrative Code: Section 8-107(5))

The housing discrimination provisions apply to the owner, lessor, managing agent or other person having the right to sell, rent or lease or approve the sale, rental or lease of a housing accommodation.

It is an unlawful discriminatory practice for such persons to refuse to sell, rent, lease, approve the sale, rental or lease or otherwise deny to or withhold a housing accommodation or an interest therein from, or otherwise discriminate against any person on the basis of actual or perceived gender (including the individual's actual or perceived sex, gender identity, self-image, appearance, behavior or expression, whether or not that gender identi-

ty, self-image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to an individual at birth).

Real estate brokers, real estate sales persons, employees or agents thereof may not discriminate on the basis of actual or perceived gender (including the individual's actual or perceived sex, gender identity, self-image, appearance, behavior or expression, whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to an individual at birth) in the rental or sale of property based upon an individual's actual or perceived gender. The prohibited behavior includes all aspects of real property transactions, such as the refusal to show, rent, or sell real property that is available for sale or lease, the addition of different or additional terms or conditions in a lease or mortgage, and the refusal to provide services or make repairs or improvements for any tenant or lessee.

Banks and other lending institutions may not discriminate against an applicant for credit on the basis of actual or perceived gender (including the individual's actual or perceived sex, gender identity, self-image, appearance, behavior or expression, whether or not that

gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to an individual at birth).

D. Civil Action for Discriminatory Harassment or Violence

(Administrative Code: Section 8-602)

It is illegal to interfere by force or threat of force, or knowingly injure, intimidate or interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the constitution or laws of this state or by the constitution or laws of the United States or local law of the city when such injury, intimidation, interference, oppression or threat is motivated in whole or in part by the victim's actual or perceived gender (including the individual's actual or perceived sex, gender identity, self-image, appearance, behavior or expression, whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to an individual at birth).

It is also illegal to knowingly deface, damage or destroy the real or personal property of any person for the purpose of intimidating or interfering with the free exercise or enjoyment of any right or privilege secured

to the other person by the constitution or laws of this state or by the constitution or laws of the United States or by local law of the city when such defacement, damage or destruction of real or personal property is motivated in whole or in part by the victim's actual or perceived gender (including the individual's actual or perceived sex, gender identity, self-image, appearance, behavior or expression, whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to an individual at birth).

In addition to coming to the New York City Commission on Human Rights, victims of bias-related harassment or violence are encouraged to report the incident immediately to the police and/or the County District Attorney's Offices.

E. Retaliation

It is against the law for an employer, housing provider, lending institution, or provider of a public accommodation to retaliate against an individual because the individual opposed an unlawful discriminatory practice or made a charge, or because the individual testified, assisted or participated in an investigation, proceeding or hearing.

IV. AVOIDING DISCRIMINATORY PRACTICES

A. Preventing Discrimination

Discrimination on the basis of actual or perceived gender (including the individual's actual or perceived sex, gender identity, self-image, appearance, behavior or expression, whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to an individual at birth) is a violation of the Human Rights Law. Discrimination may take the form of unwelcome verbal or physical conduct, including, but not limited to, derogatory comments, jokes, graffiti, drawings or photographs, touching or gestures.

To avoid the appearance of discrimination, individuals should be addressed with names, titles, pronouns, and other terms appropriate to their gender identity.

The refusal to address individuals in a manner appropriate to their gender identity is a factor that the Commission will consider when determining if discrimination exists.

- In general, individuals in New York may change their names without having to go

through a formal legal process, as long as the new name is used consistently and without intent to defraud others. Prefixes such as "Ms." and "Mr." and suffixes such as "Jr." and "Sr." do not have legal significance.

- When an individual is uncertain about which name, pronoun (he/she; him/her) or title (Ms./Miss/Mrs./Mr.) to use in addressing or referring to another individual, it is generally appropriate to ask the individual.

Requesting proof of an individual's gender, except when legally required, challenging an individual's gender, or asking inappropriate questions about intimate details of an individual's anatomy, are factors that the Commission will consider when determining if discrimination exists.

B. Ensuring that Dress Codes Allow for Expression of Individuals' Gender Identity

When developing and enforcing dress codes that are gender-specific, employers should permit employees to comply with the gender-specific provisions in the codes in an appropriate manner that is consistent with their gender identity and gender expression.

C. Providing Access to Restrooms and Other Sex-Segregated Facilities

Nothing in the Human Rights Law prohibits restrooms from being designated by gender.

With respect to facilities that are restricted on the basis of sex, the following are some of the factors that suggest that discriminatory conduct related to gender identity has occurred:

- Not allowing individuals to use a restroom or other sex-segregated facility consistent with their gender identity or gender expression; or
- Requiring individuals to provide identification as a means of identifying their gender before allowing them to use the restroom or other sex-segregated facility.

Policies and practices aimed at preventing or addressing lewd behavior or conduct that violates the privacy of others should apply to and protect all individuals.

The Commission recommends that, where single occupancy restrooms are available, they be designated as "gender neutral." The Commission also encourages covered entities to provide accommodations to individuals who have concerns about use of public restrooms because of gender identity or gen-

der expression. Such accommodations could include, for example, offering the use of a private restroom to a member of the public.

If an individual feels uncomfortable using a particular restroom because of another individual's presence in the restroom, he or she may be encouraged to wait until that individual has left, or to use another restroom.

D. Public Accommodations Where Nudity is Unavoidable (e.g., health clubs, dressing or changing rooms, etc.)

Public accommodations should provide access to appropriate facilities for all individuals.

The Human Rights Commission recommends that public accommodation facilities, such as locker rooms which are designated for use based on sex, take steps to create private spaces within them (for example, by installing curtains or cubicles).

Factors that suggest discriminatory conduct has occurred will include not allowing individuals to use a dressing or changing room consistent with their gender identity or gender expression.

E. Policy/Training

The Commission recommends that employers, housing providers, providers of public accommodations, and banks/lending institutions implement anti-discrimination policies that address gender identity and gender expression issues, as well as all other areas covered by the Human Rights Law, and institute training for employees and agents on an ongoing basis.

V. ENFORCEMENT AND PENALTIES

The City Human Rights Law is enforced in a number of ways:

- The Commission on Human Rights provides opportunities for mediation of complaints and also investigates and prosecutes violations of the Law. If the Commission, after a hearing, finds that violation of the Law has occurred, it may award damages and order other affirmative relief such as, for example, hiring, reinstating, or upgrading an employee and requiring admission to an organization. In addition, the Commission may order civil penalties up to \$100,000. A person who fails to comply with an order issued by the Commission may also be liable for a civil penalty of not more than \$50,000 and an additional civil penalty of not more than \$100 per day for each day the violation continues.
- A private cause of action may be brought under the City's Human Rights Law. Upon finding that a violation of the Law has occurred, a court may award damages, injunctive relief, and attorney's fees.
- The New York City Corporation Counsel may bring a civil action when there is reasonable cause to believe that a person or group is engaging in a pattern or practice that denies to any person the full enjoyment of rights under the City Human Rights Law. In this instance, the court may award damages, injunctive relief, and attorney's fees, and may also award civil penalties of not more than \$250,000.
- In a case involving discriminatory harassment or violence, where a person has been found to have interfered or attempted to interfere by threats, intimidation or coercion with rights protected under law, and the interference or attempted interference was motivated in whole or in part by the victim's actual or perceived gender, the New York City Corporation Counsel may ask a court to award civil penalties of not more than \$100,000.

ACKNOWLEDGEMENTS

The Commission on Human Rights thanks the following individuals for their assistance in the creation of these guidelines:

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VI. APPENDIX

LOCAL LAW 3

LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2002

No. 3

Introduced by Council Members Perkins, Lopez, Quinn, Reed, the Speaker (Council Member Miller), Moskowitz, Rodriguez, Boyland, Avella, Davis, DeBlasio, Gennaro, Gerson, Katz, Koppell, Liu, McMahon, Monserrate, Rivera, Sears, Weprin, Brewer, Barron, Serrano and Stewart; also Council Members Addabbo, Jr., Martinez, Yassky, Clarke, Baez and Recchia, Jr.

A Local Law to amend the administrative code of the city of New York, in relation to gender-based discrimination.

Be it enacted by the Council as follows:

Section 1. Legislative findings and intent. The City Council finds and declares that it is in the interest of the City of New York to protect its citizens from discrimination. Discrimination, prejudice, intolerance and bigotry directly and profoundly threaten the rights and freedom of New Yorkers. The City Council established the Human Rights Law to protect its inhabitants from these dangers. Included in the City’s Human Rights Law is a prohibition of discrimination against individuals based on gender. The scope of this gender-based protection, however, requires clarification. This local law is intended to make clear that all gender-based discrimination – including, but not limited to, discrimination based on an individual’s actual or perceived sex, and discrimination based on an individual’s gender identity, self-image, appearance, behavior, or expression – constitutes a violation of the City’s Human Rights Law.

Gender-based discrimination effects a broad range of individuals. But the impact of gender-based discrimination is especially debilitating for those whose gender self-image and presentation do not fully accord with the legal sex assigned to them at birth. For those individuals, gender-based discrimination often leads to pariah status including the loss of a job, the loss of an apartment, and the refusal of service in public accommodations such as restaurants or stores. The impact of such discrimination can be especially devastating for those who endure other prejudices due to their race, ethnicity, national origin, or citizenship status, in addition to gender-based discrimination. In

adopting this legislation, the City Council declares that the ability of all New Yorkers to work and to live free from invidious discrimination based on gender is the guiding principle of public policy and law.

§2. Section 8-102 of chapter one of title eight of the administrative code of the City of New York is amended by adding a new subdivision 23 to read as follows:

23. The term "gender" shall include actual or perceived sex and shall also include a person's gender identity, self-image, appearance, behavior or expression, whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to that person at birth.

§3. This local law shall take effect immediately.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of the city of New York, passed by the Council on April 24, 2002 and approved by the Mayor on April 30, 2002.



VICTOR L. ROBLES
City Clerk, Clerk of the Council

