NYC DCAS
Citywide Administrative Services

City of New York Equal Employment Opportunity Policy

City of New York
EEO Policy

The City of New York is an inclusive equal opportunity employer committed to recruiting and retaining a diverse workforce and providing a work environment that is free from discrimination and harassment based upon any legally protected characteristic including, but not limited to, an individual's sex, race, color, ethnicity, national origin, age, religion, disability, sexual orientation, veteran status, gender identity, or pregnancy.

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I. Introduction

The City of New York is committed to fostering an inclusive and respectful work environment that provides equal opportunities for all and is free of discrimination, harassment, and retaliation.

The New York City Charter (the Charter) provides that agency heads must ensure that their agencies do not discriminate in any manner prohibited by this EEO Policy, as well as federal, state, and local laws.[1]

In addition, the Charter requires agency heads to establish measures, programs, and an annual *Diversity, Equity, Inclusion, and Equal Employment Opportunity (EEO) Plan* (EEO Plan) to safeguard against discrimination and to communicate the agency's efforts to provide equal employment opportunities within city government.[2] A description of the EEO Plan is below in Section X. (Agency EEO Plans).

The Department of Citywide Administrative Services (DCAS) is required to establish uniform procedures and standards to assist city agencies in instituting annual EEO Plans, measures, and programs to ensure equal employment opportunity.[3] DCAS developed this EEO Policy,[4] and the standards and procedures contained herein, to implement the City's obligations under the Charter, as well as federal, state, and local laws, and the City's diversity and inclusion strategies and goals. In addition, in cases where an allegation of misconduct in violation of this EEO Policy concerns the specific actions of an agency EEO officer or agency head, the matter shall be reported to DCAS Citywide Equity and Inclusion (CEI) for appropriate review and follow up.

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[1] New York City Charter § 815(h).

[2] New York City Charter § 815(a)(19).

[3] New York City Charter § 814.1(c)(2).

[4] CEI drafted this EEO Policy in consultation with the New York City Law Department.

This Equal Employment Opportunity Policy (2024), hereafter referred to as the "EEO Policy," supersedes the previous Equal Employment Opportunity Policy (2021). Reasonable accommodation procedures are published separately.[5] This EEO Policy, any addenda, *EEO Process at a Glance*, and the EEO Policy Handbook, *What to Know About Equity, Inclusion, and EEO*, are to be distributed to each agency head, EEO officer,[6] general counsel, agency personnel officer (APO), manager and supervisor, and must be made readily available to all individuals covered under this EEO Policy. This EEO Policy and how to obtain a copy must be referenced in all employee handbooks and orientation materials. A link to an online version of this EEO Policy and/or an electronic copy of the EEO Policy should be provided as part of each agency's Annual Commitment, Accountability, and EEO Policy Statement (EEO Policy Statement).[7]

[5] *See* the City's *Reasonable Accommodation Procedural Guidelines*, *Reasonable Accommodation Brochure*, and *Reasonable Accommodations at a Glance*.

[6] Each agency head must appoint an EEO officer to assist with the implementation of the EEO Policy, standards, and procedures. The agency EEO officer and other personnel, including EEO counselors, investigators, liaisons, etc., are referred to in this EEO Policy as the "EEO Office" or "EEO personnel."

[7] This EEO Policy and the EEO Policy Handbook, *What to Know About Equity, Inclusion and EEO* are available on DCAS' Citywide Equity and Inclusion web page.

II. Applicability

This EEO Policy protects every individual who works for the City of New York and within its workplaces from discrimination, harassment, and retaliation. This protection covers all employees (*e.g.*, supervisory, non-supervisory, managers, executives, senior-level staff, board appointees, interns, whether paid or unpaid, volunteers, temporary, seasonal, part time, or short term), applicants for employment, "non-employees" (*e.g.*, contractors, subcontractors, vendors, consultants, and those they employ) and other persons conducting business or providing services in a City workplace, regardless of immigration status.[8] All are, hereinafter, referred to as "covered persons."

This EEO Policy protects covered persons from prohibited conduct because of their actual membership, and in some cases, their perceived membership, in a protected category (*e.g.*, race, religion, national origin, disability, etc.). This EEO Policy also protects covered persons from prohibited conduct motivated by the actual membership, and in some cases, perceived membership, in one or more protected categories of certain persons with whom covered persons are associated. For example, this EEO Policy applies to covered persons who are subjected to adverse action because of their marriage to, or domestic partnership or association with, persons perceived to be disabled or belonging to a particular race, religion, or national origin. These protections apply to actions that violate this EEO Policy, even if unintentionally offensive or unintentionally directed at a particular person or group.

This EEO Policy extends to prohibited conduct that occurs in any City workplace as well as prohibited conduct that occurs at any extension of the workplace, including, but not limited to, any field location, off-site location, training facility where City business is being conducted and discussed, any agency-sponsored event or party, or City vehicle. Additionally, this EEO Policy extends to certain prohibited conduct that occurs off-duty that impacts the workplace. For example, calls, text messages, emails, and social media usage impacting the workplace can constitute discrimination, harassment, or retaliation, even if away from the workplace premises, on personal devices, or during non-work hours.

[8] The City complies with federal law requiring the verification of employees' work status and prohibiting discrimination in that process. 8 U.S.C. § 1324b.

All persons covered by this EEO Policy are also expected to maintain a respectful work environment and to be sensitive to the effects of their behavior on others in accordance with this EEO Policy and their agency's Code of Conduct.

This EEO Policy prohibits City employees from aiding, abetting, inciting, compelling, or coercing any person, including non-employees, to engage in conduct that violates this EEO Policy.

III. Accountability Standards and EEO Reporting Structure

A. Department of Citywide Administrative Services

DCAS is required to: (1) establish uniform procedures and standards for use by city agencies in establishing measures, programs, and plans to ensure equal employment opportunity, including a schedule for the development, review, and adoption of EEO Plans; (2) establish a uniform format for city agencies for the presentation of statistical information concerning their workforce; and (3) develop resources regarding information on employment and educational programs.[9] DCAS is also required to publish and submit annual reports on the activities of DCAS and other city agencies with respect to equal employment opportunity.[10]

1. DCAS Commissioner

The Charter provides that the DCAS Commissioner shall have the authority to "[e]stablish and enforce uniform procedures and standards to be utilized by city agencies in establishing measures, programs and plans to ensure a fair and effective affirmative employment plan for equal employment opportunities for minority group members and women who are employed by, or who seek employment with, city agencies."[11]

2. Citywide Equity and Inclusion

Within DCAS, Citywide Equity and Inclusion (CEI) is responsible for aiding the commissioner in developing the EEO Policy, standards, and procedures.

CEI fosters the City of New York's global leadership in equitable, diverse, and inclusive employment practices and sets the standards for city agencies to implement the City's EEO Policy, procedures, laws, and City mandates designed to prevent workplace discrimination and to promote inclusivity, engagement, and

[9] New York City Charter § 814.1(c)(2)-(3), (5).

[10] New York City Charter § 814.1(c)(10).

[11] New York City Charter § 814.1(c)(2).

retention. CEI designs initiatives to operationalize legislation; ensures the City is compliant with reporting mandates; develops and updates the City's EEO and diversity, equity and inclusion (DEI) trainings portfolio that promotes awareness of rights, responsibilities, and resources for the City's workforce; organizes mandatory EEO best practices meetings, as well as other educational and professional development programs for EEO professionals; conducts confidential third party EEO investigations when the agency head or the EEO officer is a party in the matter;[12] promotes compliance with training programs and reporting; guides agencies in effective use of workforce metrics that inform agencies' recruitment and retention efforts; designs and maintains compliance tools and reference resources; provides guidance to agencies on emerging issues related to diversity, equity, and inclusion; and reviews and approves agency annual EEO Plans and quarterly updates required by the New York City Charter Chapter 35, Section 814.1.

B. Agency Heads

The Charter establishes certain requirements for agency heads. The agency head shall ensure that their agency does not discriminate against covered persons as prohibited by this EEO Policy, as well as federal, state, and local laws.[13] The agency head is responsible for implementing this EEO Policy within the agency in order to meet the City's obligations under the Charter and other laws, and to achieve the goals of the agency's EEO Plan. Agency heads are accountable to their respective deputy mayors for their agencies' EEO practices.

Each agency head must ensure that all employees are provided information that complies with the standards established by DCAS regarding employee rights and obligations contained within this EEO Policy, and with information about the complaint, investigation, and reasonable accommodation procedures.[14] At least once per year,

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[12] CEI does not conduct investigations or *de novo* reviews of already adjudicated cases, and it does not act as an appeal body. Generally, this EEO Policy's complaint process does not accord appellate review as part of an EEO investigative entity's functions.

[13] New York City Charter § 815(h).

[14] Each agency is required to conspicuously post on its website and to disseminate annually the City's EEO Policy, along with supplementary resources such as, the EEO Policy Handbook, *What to Know About Equity, Inclusion and EEO*, *EEO Complaint Process at a Glance*, *Reasonable Accommodation Procedural Guidelines*, *Reasonable Accommodation Brochure*, and *Reasonable Accommodations at a Glance*.

each agency shall disseminate this EEO Policy to its workforce and state where it is located and how to contact the agency EEO Office. The information shall be available in accessible and alternative formats to employees and job applicants with disabilities. The EEO Policy, standards, and procedures, as well as the agency's Annual Commitment, Accountability and EEO Policy Statement (EEO Policy Statement),[15] shall be posted at each site where the agency conducts business and may also include postings on electronic bulletin boards and intranet websites. Agency heads will also ensure that each of their agency's employees are accountable for compliance with EEO-related policies and complete the relevant mandated trainings and any other related trainings the agency head opts to require of its workforce.

Each agency head must appoint only one qualified individual as the agency EEO officer, who has relevant experience and qualifications in order to carry out their responsibilities competently.[16] The agency head must assign someone who is competent to oversee EEO operations in the temporary absence of an EEO officer or when an EEO officer leaves the role. The interim EEO officer should be qualified to fulfill the duties and responsibilities until the agency head appoints a new EEO officer. The agency head should promptly notify CEI so that it can update the EEO officer contact record. To ensure continuity of operations and the integrity of the EEO process, the interim appointment should not exceed six months.

The EEO officer must report directly to the agency head. This structure serves to reinforce the independence of judgment and authority of an EEO officer in carrying out their responsibilities objectively under this EEO Policy and free from any agency allegiances.[17]

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[15] *See* Section X. (Agency EEO Plans) for information on EEO Policy Statement components.

[16] *See* Section III.C., below, for description of key EEO officer competencies and responsibilities. In addition, mayoral agencies must submit the justification to appoint the EEO officer candidate to the Mayor's Office of Appointments, which handles a broader vetting process, including submitting the candidate for review by the Chief Citywide Equity and Inclusion Officer at DCAS. Thereafter, the agency finalizes its determination to make the appointment.

[17] This practice is consistent with the U.S. Equal Employment Opportunity Commission's Equal Employment Opportunity Management Directive for 29 CFR Part 1614, at pp. 1-4-1-5 (revised Aug. 5, 2015), which states:

> In order to maintain and exercise the independent authority required of the position, the EEO Director cannot be placed under the supervision of the agency's Chief Human Capital Officer or other officials responsible for executing and advising on personnel actions or providing the agency with a legal defense to claims of discrimination, such as the Office of General Counsel.

The EEO officer may have one Deputy EEO officer who shall report to the EEO officer. Depending on the size of the agency, the agency head should allocate a minimum of two employees to the EEO Office, in addition to the EEO officer and a Deputy EEO officer, to serve as EEO personnel to receive complaints and to assist in conducting investigations.[18] They shall report to the EEO officer.[19]

Agencies are also encouraged to have a chief diversity officer who is in charge of managing the diversity, equity, and inclusion programs and initiatives of the agency.[20]

The agency head should designate a disability rights coordinator, whose responsibility is to ensure compliance with all federal, state, and local laws, as well as City and agency policies pertaining to persons with disabilities, and to review and process reasonable accommodation requests. Typically, the agency EEO officer, who reviews reasonable accommodation requests at the agency, should also serve as the disability rights coordinator; however, when circumstances warrant, an agency head may designate another person to serve as the disability rights coordinator who must coordinate with the EEO officer to track and maintain confidential reasonable accommodation case data.

The agency head (or their designee) is responsible for reviewing and deciding a written appeal, if any, from any individual expressing dissatisfaction with the resolution of the individual's reasonable accommodation request.

The agency head is the final decision maker regarding the investigative findings of EEO complaints. The EEO officer will provide the agency head with a written Report of Investigation, which details the findings that the allegations are either supported or not supported by a preponderance of the evidence. An allegation that is supported by the preponderance of the evidence means that, based on the evidence, it is more likely than not that there was a violation of the EEO Policy. An allegation that is not supported by a preponderance of the evidence means that, based on the evidence, it is not likely that there was a violation of the EEO Policy. Within 30 days from receipt of

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[18] Every agency has specific factors that impact resource allocation; therefore, DCAS does not set standards for the full staffing structure of EEO offices, including relative to agency size.

[19] Each agency shall have one qualified EEO officer and may also have one Deputy EEO officer. "EEO officer" is not a catch-all title to be used for other EEO office support roles (*e.g.*, "Co-EEO officer," or "assistant EEO officer" are not appropriate business titles).

[20] This is distinct from the chief diversity officer/chief MWBE officer position that each agency is required to appoint pursuant to Executive Order 59 (July 28, 2020), for which the responsibilities pertain to equitable procurement practices.

the Report of Investigation, the agency head will review the findings and communicate a determination to the EEO Office that they either adopt or reject the findings. Such approval may be in written or in electronic form.[21] If the agency head is not able to make a determination, they may return the matter to the EEO Office requesting any necessary clarification regarding the investigation.

Each agency head shall adopt and implement annually an EEO Plan that communicates measures and programs that the agency will undertake to ensure fair and effective efforts to provide equal employment opportunity.[22] Therefore, agencies must develop and submit draft EEO Plans each fiscal year according to the timetable and format established by DCAS, which must review and approve them prior to the agency's final submission with the agency head's signature. Agencies shall file copies of their finalized EEO Plans with the mayor, city council, Equal Employment Practices Commission (EEPC), and city Civil Service Commission, and make EEO Plans available for reasonable public inspection.[23]

Further, the agency head shall approve and submit quarterly reports to DCAS, as well as to the mayor, city council, and EEPC, about the agency's efforts during the previous quarter to implement the agency's EEO Plan.[24] Pursuant to the Charter, Quarterly Diversity, Equity, Inclusion and EEO reports must be timely submitted to DCAS and the other entities mentioned above, no later than 30 days following the end of each quarter using the reporting format provided by DCAS.

The agency head shall meet regularly with the EEO officer to discuss EEO Plan objectives[25] and to review and make determinations on the investigative findings of EEO complaints.

The agency head shall be responsible for ensuring that the agency provides DCAS with data and information necessary to meet the agency's and the City's obligations under the Charter and other federal, state, and local laws.[26]

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[21] *See* Section VII.E. (Concluding the Investigation).

[22] *See* Section X. (Agency EEO Plans).

[23] New York City Charter § 815(a)(19).

[24] New York City Charter § 815(i).

[25] The discussion should include how to remediate underutilization with respect to race/ethnicity and gender, if any, in the relevant workforce job groups. *See* Section X. (Agency EEO Plans).

[26] New York City Charter § 815(a)(19).

C. EEO Officers

As stated above in Section III.B., the agency head must appoint only one qualified individual to the role of agency EEO officer.

The agency's EEO officer has primary responsibility for assisting the agency head in implementing the EEO Policy, standards, and procedures. Specifically, the EEO officer must be knowledgeable regarding EEO laws; the requirements of the EEO Policy, standards, and procedures; how to raise workforce awareness about rights, responsibilities, and protections under the EEO Policy; and how to investigate complaints of discrimination and harassment made on the basis of the protected categories covered by the EEO Policy. The EEO officer and/or disability rights coordinator must also assess requests for reasonable accommodations under the City's reasonable accommodation process. The EEO officer shall also be a resource to the agency, including agency managers, supervisors, and human resources professionals, for consultation on equity issues as well as rights, responsibilities, and protections under the EEO Policy.

The EEO officer will collaborate with other agency stakeholders to prepare the agency's annual EEO Plan and quarterly reports and will provide guidance to the agency head regarding reviewing and submitting the final drafts pursuant to the Charter.[27]

The EEO officer is also responsible for: (1) setting training objectives that ensure all agency employees receive diversity, inclusion, and EEO training; (2) supervising EEO personnel and ensuring they are trained to carry out their responsibilities; (3) ensuring that the EEO Policy, standards, and procedures are posted at each site where the agency conducts business and that they are accessible in alternative formats (*e.g.*, large print, audio tape, and/or Braille); (4) documenting all inquiries, complaints, requests, mediation efforts, investigations, requests for reasonable accommodations, and their outcomes; and (5) tracking and reporting EEO complaint and reasonable accommodation request data to DCAS and affirming quarterly that such data is current and entered accurately.

The independence of judgment and objectivity necessary to assess EEO complaints also requires that the EEO officer be free from conflicts of interest. Therefore, as stated above in Section III.B., the EEO officer must report directly to the agency head. Although the EEO officer may have to consult at times with agency general counsel or human resources, the EEO officer shall not report to the general counsel or the APO or another member of the agency's Human Resources Department.

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[27] *See* Section X. (Agency EEO Plans).

In order to ensure independence of judgment and objectivity, and to avoid conflicts of interest, the EEO officer must not be a member of the Office of the General Counsel.[28] Dual roles, such as also serving as the APO, are strongly discouraged.[29] In addition, as a best practice, EEO officers should not hold any other position that requires reporting to someone other than the agency head. In circumstances in which an EEO officer also functions as the agency's chief diversity officer, then such EEO officer should report directly to the agency head in connection with their role as EEO officer.

Each agency's EEO officer shall make available, upon request by an employee or applicant, a copy of the EEO Policy, these standards, procedures, and any subsequent revisions and supplemental materials.

D. Agency Personnel Officers

APOs have the primary responsibility to assist the agency head in the implementation of the City's personnel policies and shall be knowledgeable regarding the interplay of EEO-related laws and other work-related legal regulations, including the Family Medical Leave Act, New York State Civil Service Law, and Workers' Compensation Law.

To preserve the independence of judgment and objectivity of EEO officers, and to avoid conflicts of interest, the APO or another member of the agency's Human Resources Department should not simultaneously serve as the EEO officer.[30]

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[28] This principle also applies to agencies whose Discipline Unit, Office of the Advocate, and/or Labor Relations is not part of the Office of the General Counsel because serving in these offices while functioning as the EEO officer will generate conflicts of interest.

[29] Human resources works in the interest of carrying out managerial prerogatives, operational, and labor policies that can come into conflict with the independent and objective reviews of EEO complaints and reasonable accommodation requests.

[30] This practice is consistent with the U.S. Equal Employment Opportunity Commission's Equal Employment Opportunity Management Directive for 29 CFR Part 1614, at pp. 1-6-1-7 (revised Aug. 5, 2015), which states:

> To carry out this function in an impartial manner, the agency's personnel function must be kept separate from the EEO complaint process. The same agency official(s) responsible for executing and advising on personnel actions may not also be responsible for managing, advising, or overseeing the EEO pre-complaint or complaint processes. The EEO processes often scrutinize and challenge the motivations and impacts of personnel actions and decisions. In order to maintain the integrity of the EEO investigative and decision-making processes, those EEO functions must be kept separate from the personnel function.

APOs should cooperate with EEO officers in the implementation of this EEO Policy, standards, and procedures, including training objectives, implementation of reasonable accommodations, and complaint resolutions. APOs must ensure that any agency procedures and policies that conflict with this EEO Policy are modified to ensure equal employment opportunity for employees and applicants.

The responsibilities of APOs in relation to the EEO Policy include, but are not limited to, the following:

- Ensure that all new employees are advised of this EEO Policy and its standards and procedures, their rights and responsibilities under this EEO Policy, and the discrimination complaint process.
- Promptly report any known or suspected violation of this EEO Policy to the agency's EEO officer.
- Encourage employees to report any potential violations of this EEO Policy to the EEO officer.
- Ensure that managers and supervisors are reminded of their accountability and obligations to report violations of this EEO Policy to the EEO officer.
- Collaborate with the EEO officer in preparing mandated workforce data reports.
- Refer any known reasonable accommodation needs to the EEO officer and collaborate with the EEO officer on matters related to the processing of disability-related leaves or reasonable accommodations.
- Report the agency's 55-a program participants to the EEO officer quarterly, as well as the agency's efforts to employ, promote, and/or accommodate qualified individuals with disabilities.
- Address referrals of employee matters that do not qualify as prohibited conduct under this EEO Policy.
- Ensure that all employees have access to information regarding job responsibilities, performance evaluation standards, examinations, and training opportunities, and that all opportunities are posted as required.

E. Agency General Counsel

The agency general counsel advocates for the interests of the agency and represents the agency in enforcement and litigation matters. This may come into conflict with the objective reviews that the EEO officer must conduct. Therefore, with respect to EEO matters, the general counsel should: (1) assist the agency head in identifying and determining appropriate responses to EEO allegations that are supported by the preponderance of the evidence; (2) work cooperatively with the EEO officer in the implementation of this EEO Policy, standards, and procedures; (3) inform the EEO officer when external complaints or litigation involving EEO matters are brought against the agency; (4) investigate and respond to external EEO complaints; and (5) provide legal advice in internal EEO investigations that present a distinct legal issue.

To preserve the independence of judgment and objectivity of EEO officers, and to avoid conflicts of interest, a member of an agency's Office of the General Counsel must not simultaneously serve as the EEO officer.

While general counsel may provide occasional legal advice, such as consultation on the interpretation of the EEO Policy, general counsel should refrain from giving advice concerning the merits of an open investigation and must refrain from interfering with the independent judgment and objectivity of the EEO officer.[31]

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[31] This practice is consistent with the U.S. Equal Employment Opportunity Commission's Equal Employment Opportunity Management Directive for 29 CFR Part 1614, 1-9 (revised Aug. 5, 2015), which states:

> Ensuring a clear separation between the agency's EEO complaint program and the agency's defensive function is thus the essential underpinning of a fair and impartial investigation, enhancing the credibility of the EEO office and the integrity of the EEO complaints process. There must be a firewall between the EEO function and the agency's defensive function. The firewall will ensure that actions taken by the agency to protect itself from legal liability will not negatively influence or affect the agency's process for determining whether discrimination has occurred and, if such discrimination did occur, for remedying it at the earliest stage possible.

F. Managers and Supervisors

Managers and supervisors have a critical role and responsibility in ensuring that the workplace is free from discrimination, harassment, and retaliation. Managers and supervisors are responsible for maintaining a work environment that fosters sensitivity and respect of all individuals. Specifically, each agency manager and supervisor shall comply with all provisions and requirements of this EEO Policy, including, but not limited to, their obligations to:

- Carry out their responsibilities in a non-discriminatory manner consistent with this EEO Policy and its objectives.
- Cooperate with the EEO Office and support the implementation of this EEO Policy and its standards and procedures, including, but not limited to, training, interim measures, complaint resolutions, reasonable accommodations, adhering to equitable and non-discriminatory recruitment and selection standards, and modifying agency procedures to ensure equal employment opportunity for applicants and employees.
- Report any known, observed or suspected violation of this EEO Policy to the EEO Office promptly, and completely, in writing. Managers and supervisors must not investigate EEO complaints.
- Encourage employees to report any potential violation of this EEO Policy to the EEO Office. This is in addition to managers' and supervisors' obligation to promptly report EEO complaints.
- Allow employees to meet with EEO personnel at the earliest practical time consistent with the operational needs of their unit.
- Protect the confidentiality of all EEO-related matters, only sharing information on a need-to-know basis, for example, when implementing an approved reasonable accommodation.
- Notify the EEO Office of a request for a reasonable accommodation upon receiving the request or becoming aware of an employee's need. Managers and supervisors must not review and make determinations about reasonable accommodation requests. They can provide input to the EEO office on the business operations if asked and they must cooperate with the EEO Office for the implementation of approved accommodations.
- Refrain from any retaliatory behavior or encouraging or inciting any retaliatory behavior.
- Complete EEO training as required.

Managers and supervisors are discouraged from engaging in any romantic or sexual relationship with a subordinate they supervise, even when consensual. However, if either party anticipates starting a romantic or sexual relationship with the other, or such a relationship has already begun, both parties are obligated to contact the APO to ascertain whether such a relationship necessitates any personnel changes.[32]

Managers and supervisors who engage in conduct in violation of this EEO Policy, including failing to report suspected violations, concealing suspected violations, engaging in retaliation, or otherwise allowing violations of this EEO Policy to continue, will be subject to disciplinary action, up to and including termination.

G. Employees and Other Covered Persons

All employees are responsible for maintaining a work environment that fosters sensitivity and respect of all individuals and shall abide by all provisions and requirements of this EEO Policy, including, but not limited to:

- Reporting any conduct that may be a violation of this EEO Policy.
- Cooperating with the EEO Office in EEO investigations, including participating in an interview during the investigative process.
- Completing all mandatory EEO trainings.
- Respectfully managing differences experienced through everyday interactions with others in the workplace.

[32] Some city agencies have specific anti-fraternization policies.

IV. Protections and Prohibitions

The City of New York is committed to ensuring equity in the workplace. To that end, this EEO Policy is intended to educate our workforce about discrimination, harassment, and retaliation. This EEO Policy is designed to stop, correct, remediate, and prevent workplace discrimination and harassment by prohibiting discrimination that occurs intentionally or through disparate impact, as well as harassment that is based on one or more of the protected categories listed below.[33]

A. Protected Categories[34]

All covered persons are protected from the prohibited conduct described in this EEO Policy based on the following categories.[35] The City's Human Rights Law not only protects covered persons against discrimination and harassment because of their actual characteristics, but also in many categories, it protects covered persons based on perceptions that they have a certain characteristic. In addition, it prohibits discrimination and harassment against a covered person because of the actual or perceived race, religion or creed, color, national origin, disability, age, sexual orientation, uniformed service or immigration or citizenship status of another person with whom such person has a known relationship or association.[36]

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[33] Note that conduct prohibited by this EEO Policy may also be unlawful under federal, state, or local law. Information about the various external reporting agencies is listed in Appendix B.

[34] The City's EEO Policy prohibits discrimination and/or harassment based on any protected category, including discrimination and/or harassment based on the intersection of two or more protected categories (*e.g.*, race and gender).

[35] The descriptions of these protected categories are informed by federal, state, and local laws.

[36] New York City Administrative Code § 8-107(20).

1. Age

Except when there are specific age requirements established by law or regulation, covered persons are protected from discrimination and harassment based on their actual or perceived age.[37]

2. Arrest, Conviction Record, or Pending Case

Broadly, a combination of state and city laws establishes two categories of employment protections based on a person's history of criminal system involvement. Together, these laws prohibit most employers from *ever* asking about, or taking action against, an individual for certain types of low-level or sealed cases and cases with favorable outcomes for the defendant. Second, the New York City Human Rights Law provides "fair chance" protections to individuals with criminal convictions and pending cases, limiting when and to what extent most employers may consider individuals' criminal history and ensuring that individuals are not arbitrarily disciplined or excluded from employment opportunities when they do not pose an unreasonable risk of harm and there is no direct relationship between their criminal history and the job.[38]

New York City's Fair Chance Act generally prohibits agencies from making inquiries about an applicant's criminal history or any pending case until after making a conditional offer of employment. Agencies may only request and review criminal history information after favorably evaluating the candidate's non-criminal information.[39] Agencies may not deny employment to an applicant because of a prior criminal conviction unless hiring the applicant would pose an unreasonable risk to property or to public or individual safety, or the conviction has a direct bearing on

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[37] New York City Administrative Code § 8-107(1). *See also* New York City Commission on Human Rights, *Legal Enforcement Guidance on Employment Discrimination on the Basis of Age*, at p. 2 (July 2020)("Since 1977, the New York City Human Rights Law (NYCHRL) has included protections against age discrimination for all workers, regardless of one's age."); *see also* New York State Executive Law § 296(3-a)(prohibiting employment discrimination of employees 18 years of age or older).

[38] There are a number of positions and circumstances that are exempt from the Fair Chance Act. *See* New York City Administrative Code § 8-107(10), (11), (11-a); *see also* New York State Executive Law § 296(16)(listing exemptions pursuant to New York State law) and New York State Correction Law Article 23-A.

[39] Agencies utilizing background checks should have the consumer reporting agency separate reports so that reports containing criminal history information are only obtained and evaluated after all non-criminal information has been evaluated.

the applicant's fitness or ability to perform one or more duties or responsibilities of the job.[40] Additionally, agencies must analyze pending cases against an applicant or employee under the New York City Fair Chance factors.[41]

In general, agencies may not deny employment or act adversely against an employee because of a prior arrest or criminal accusation that was followed by a result favorable to the applicant or employee or resolved by a youthful offender adjudication, including a conviction that has been sealed.[42] (Note: This prohibition does not apply to law enforcement agencies with respect to arrests or accusations that were followed by a youthful offender adjudication or a conviction for a violation that has been sealed pursuant to certain provisions of the Criminal Procedure Law.)

3. Cannabis Use

Except as otherwise required by law, agencies may not discriminate against an individual based on their legal use of consumable products or legal recreational activities, including use of cannabis in accordance with state law, prior to the beginning or after the conclusion of the employee's work hours, and off the employer's premises and without use of the employer's equipment or other property.[43]

4. Caregiver Status

Covered persons are protected from discrimination and harassment based on their actual or perceived caregiver status. A "caregiver" is a person who provides direct and ongoing care for (a) a minor child or (b) a "care recipient" who (i) is a "covered relative," or a person who resides in the caregiver's household, and (ii) relies on the caregiver for medical care or to meet the needs of daily living. "Covered relatives"

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[40] Any agency that considers an applicant's prior conviction must look at the factors enumerated under Article 23-A.

[41] *See* the definition of "Relevant fair chance factors" in New York City Administrative Code § 8-102; *see also* New York City Commission on Human Rights, *Legal Enforcement Guidance on the Fair Chance Act and Employment Discrimination on the Basis of Criminal History* (Jan. 3, 2022). If an applicant has both a conviction history and a pending case, the agency must separately analyze each according to the relevant set of factors required under the law. The Fair Chance Act also protects current employees from arbitrary and unfair discipline, including termination, based on a conviction history or pending case. The protections are similar to those for job applicants.

[42] New York City Administrative Code § 8-107(11); New York State Executive Law § 296(16).

[43] New York State Cannabis Law § 127; New York State Labor Law § 201-d(2)(b), (c).

include a caregiver's child, spouse, domestic partner, parent, sibling, grandchild or grandparent, or the child or parent of the caregiver's spouse or domestic partner, or any other individual in a familial relationship with the caregiver as designated by the rules of the New York City Commission on Human Rights.[44]

5. Color

Covered persons are protected from discrimination and harassment based on their actual or perceived color. Discrimination and harassment against a covered person based on color includes discrimination based on an individual's complexion or skin color and may occur because of a preference for, or an aversion to, a particular complexion or pigmentation.[45]

6. Consumer Credit History

Covered persons are protected from discrimination based on their actual consumer credit history. Discrimination based on consumer credit history includes treating a covered person adversely with regard to hiring, compensation, or the terms, conditions, or privileges of employment because of credit worthiness, credit standing, and credit capacity, as well as payment history, credit card debt, child support, student loans, a foreclosure, missed or late payments, bankruptcies, judgments, and liens. Some positions, such as police and peace officers, and certain high-level positions are exempt from the law and are not covered by the prohibition in this EEO Policy.[46]

7. Disability

Covered persons are protected from discrimination and harassment based on their actual or perceived disability.

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[44] *See* the definition of "Caregiver" in New York City Administrative Code § 8-102; New York City Administrative Code § 8-107(1).

[45] New York City Administrative Code § 8-107(1); New York State Executive Law § 296(1). S*ee also* U.S. Equal Employment Opportunity Commission, *Facts About Race/Color Discrimination* (stating that the commonly understood meaning of color discrimination is discrimination based on "pigmentation, complexion, or skin shade or tone.").

[46] *See* the definition of "Consumer credit history" in New York City Administrative Code § 8-102; New York City Administrative Code § 8-107(24).

A disability includes any physical, medical, mental, or psychological disability or impairment, or a history or record of a disability or impairment.[47] Pregnancy, as well as any related condition or complication, and certain sexual or other reproductive health conditions may also be considered a disability.

Absent an undue hardship, agencies have a duty to provide a reasonable accommodation for applicants and employees with disabilities and must engage in a cooperative dialogue with an applicant or employee when they have requested a reasonable accommodation, or when an agency has notice that the person may require an accommodation.[48]

8. Familial Status

Covered persons are protected from discrimination and harassment based on their familial status. Discrimination or harassment based on familial status includes discrimination or harassment against (a) a covered person who is pregnant or has a child or is in the process of securing legal custody of any individual who has not attained the age of 18 years, or (b) one or more individuals (who have not attained the age of 18 years) being domiciled with: (1) a parent or another person having legal custody of such individual or individuals; or (2) the designee of such parent.[49]

9. Gender/Sex (Including Pregnancy, Childbirth, or Related Medical Conditions)[50]

Covered persons are protected from discrimination and harassment based on their actual or perceived gender or sex. This category encompasses an individual's actual

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[47] *See* the definition of "Disability" in New York City Administrative Code § 8-102; New York City Administrative Code § 8-107(15); New York State Executive Law §§ 292(21), 296(1).

[48] New York City Administrative Code § 8-107(15), (28); New York State Executive Law §§ 292(21)(e) 296(1).

[49] New York State Executive Law § 292(26).

[50] "Pregnancy discrimination under the NYCHRL is discrimination based on gender." New York City Commission on Human Rights, *Legal Enforcement Guidance on Discrimination on the Basis of Pregnancy, Childbirth, Related Medical Conditions, Lactation Accommodations, and Sexual or Reproductive Health Decisions, Legislative Intent*, at p. 1 (July 2021). Pregnancy discrimination is discrimination on the basis of sex and familial status. New York State Executive Law §§ 292.26(a), 296.1(a).

or perceived sex, as well as biological or socially determined characteristics used to classify individuals as male and female.[51]

Absent an undue hardship, agencies have a duty to provide a reasonable accommodation for applicants and employees if needed in relation to pregnancy, childbirth, or related medical conditions and must engage in a cooperative dialogue with an applicant or employee when they have requested a reasonable accommodation or when an agency has notice that the person may require an accommodation.[52]

10. Gender Identity or Expression

Covered persons are protected from discrimination and harassment based on their actual or perceived gender identity or expression. This includes an individual's actual or perceived gender identity and gender expression and consists of an individual's actual or perceived gender-related self-image, appearance, behavior, expression, or other gender-related characteristic, regardless of the sex assigned to that person at birth.[53] It also includes representation of gender through one's name, choice of pronouns, clothing, haircut, behavior, voice, or body characteristics. Gender identity or expression may not be distinctively male or female and may be different from an individual's sex assigned at birth,[54] including non-conforming and transgender.[55]

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[51] *See* the definition of "Gender" in New York City Administrative Code § 8-102; New York State Executive Law § 296(1).

[52] New York City Administrative Code § 8-107(22), (28); New York State Executive Law §§ 292(21)(e), 296(3).

[53] New York City Local Law No. 38 (2018); New York City Administrative Code § 8-102; New York State Executive Law §§ 292(35), 296(1)(a).

[54] Executive Order 16 (Mar. 7, 2016) requires that all city agencies ensure that employees and members of the public have access to single-sex facilitates such as bathrooms and locker rooms in City buildings and areas, consistent with their gender identity or expression without being required to show identification, medical documentation, or any other form of proof or verification of gender.

[55] *See* New York City Commission on Human Rights, *Gender Identity/Gender Expression: Legal Enforcement Guidance*, at p. 3 (Feb. 15, 2019).

11. Height

Covered persons are protected from discrimination and harassment based on their actual or perceived height.[56] An employer may not base an employment decision about hiring, compensation, or the terms, conditions, or privileges of employment on an individual's height, unless consideration of height is reasonably necessary for the normal operations of the agency or an individual cannot perform the essential requisites of the job and there is no alternative action that an agency can reasonably take to allow the individual who does not meet the height criteria to perform the essential requisites of the job.[57]

12. Immigration or Citizenship Status

Covered persons are protected from discrimination and harassment based on their actual or perceived immigration or citizenship status.[58] Agencies may give preference to a citizen or national of the United States over a non-citizen when a law or regulation clearly requires or expressly permits the employer to do so, and when the law or regulation does not provide that state or local law may be more protective of a person who is not a citizen or national of the United States. In addition, agencies must comply with citizenship requirements for certain positions in the city government.

Agencies may not rely on citizenship status to reject lawful documentation that verifies employment eligibility or demand additional documentation beyond what is legally required.[59]

13. Marital or Partnership Status

Covered persons are protected from discrimination and harassment based on actual or perceived marital or partnership status. This includes married, divorced, single, separated, or widowed persons, as well as all individuals in a domestic partnership.[60]

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[56] New York City Administrative Code § 8-107(1).

[57] New York City Administrative Code § 8-107(1)(g).

[58] New York City Administrative Code § 8-107(1).

[59] New York City Administrative Code § 8-107(14).

[60] New York City Administrative Code § 3-240(a); New York State Executive Law § 296(1)(a).

14. National Origin or Ethnicity

Covered persons are protected from discrimination and harassment based on their actual or perceived national origin or ethnicity. National origin discrimination involves treating covered persons unfavorably because they or their ancestors are from a particular country or part of the world, whereas discrimination based on ethnicity involves treating covered persons unfavorably because of their cultural characteristics, including accent, or other physical, linguistic, or ethnic characteristics or because they appear to be of a certain ethnic background.[61]

15. Predisposing Genetic Characteristics

Covered persons are protected from discrimination and harassment on the basis of predisposing genetic characteristics. This includes any covered person who may be discriminated against or harassed based on a predisposing genetic characteristic, which includes any inherited gene or chromosome, or alteration thereof, and determined by a genetic test or inferred from information derived from an individual or family member that is scientifically or medically believed to predispose an individual or the offspring of that individual to a disease or disability or to be associated with a statistically significant increased risk of development of a physical or mental disease or disability.[62]

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[61] New York City Administrative Code § 8-107(1)(stating that the NYCHRL prohibits unlawful discriminatory employment practices on the basis of national origin or ethnicity); New York State Executive Law § 292(8)(stating that national origin includes ancestry). *See generally* New York Commission on Human Rights, *Legal Enforcement Guidance on Discrimination on the Basis of Immigration Status and National Origin*, at p. 5 (Sept. 2019)("Discrimination based on immigration status often overlaps with discrimination based on national origin and/or religion. The 'line between discrimination based on ancestry or ethnic characteristics, and discrimination based on place or nation of . . . origin, is not a bright one,' and it is often difficult to disentangle the motivation behind discriminatory animus based on immigration status, national origin, and other protected categories. Individuals who feel they have experienced discrimination may file a complaint under any or all of these categories that relate to their claim."); U.S. Equal Employment Opportunity Commission, *National Origin Discrimination* (national origin discrimination means "treating you differently, or less favorably, because you or a friend, parent, or someone else you associate with come from a particular place, has a particular accent, or appears to have a particular ethnic background, perhaps because of physical characteristics or name.").

[62] New York State Executive Law § 296(1)(a)(h); *see also* New York State Executive Law § 292(21-a)(defining "pre-disposing genetic characteristics"). Discrimination on the basis of a genetic characteristic is unlawful pursuant to New York State Executive Law §§ 296.1, 296.19, 296-c (for interns) and 296-d (for non-employees working in the workplace).

In addition, federal law protects covered persons from discrimination and harassment on the basis of "genetic information," which is defined to include information about (i) an individual's genetic tests, (ii) the genetic tests of family members of such individual, and (iii) the manifestation of a disease or disorder in family members of such individual.[63]

16. Pre-employment Marijuana Testing

Agencies generally may not test job candidates for marijuana or tetrahydrocannabinols (THC) as a condition of employment. (Note: There are several exceptions in which testing job applicants for marijuana or THC for specific kinds of jobs is permitted.).[64]

17. Race

Covered persons are protected from discrimination and harassment on the basis of actual or perceived race. Discrimination or harassment based on race involves treating a covered person unfavorably because of race or because of personal characteristics associated with race (*e.g.*, hair texture, "protective hairstyles,"[65] skin color, or certain physical characteristics).[66]

18. Religion or Creed

Covered persons are protected from discrimination and harassment based on actual or perceived religion or creed. This includes covered persons who belong to organized religions, as well as covered persons who have sincerely held religious beliefs.[67]

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[63] Genetic Information Nondiscrimination Act, 42 U.S.C. § 2000ff-1; *see also* U.S. Equal Employment Opportunity Commission, *Genetic Information Discrimination*.

[64] New York City Administrative Code § 8-107(31). Under New York State Labor Law § 201-d(4-a), an employer cannot require an employee or applicant to undergo a test for cannabis except in very limited circumstances.

[65] The term "protective hairstyles" includes such hairstyles as braids, locks, and twists. *See* New York State Executive Law § 292(39).

[66] New York City Administrative Code § 8-107(1); New York State Executive Law § 296(1)(a); *see also* U.S. Equal Employment Opportunity Commission, *Race/Color Discrimination*.

[67] New York City Administrative Code § 8-107(1); New York State Executive Law § 296(1)(a); *see also* U.S. Equal Employment Opportunity Commission, *Religious Discrimination* (stating religious discrimination "involves treating a person (an applicant or employee) unfavorably because of his or her religious beliefs. The law protects not only people who belong to traditional, organized religions, such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but also others who have sincerely held religious, ethical or moral beliefs.").

Absent an undue hardship, agencies have a duty to provide a reasonable accommodation for applicants' and employees' religious needs and must engage in a cooperative dialogue with an applicant or employee when they have requested a reasonable accommodation or when an agency has notice that the person may require an accommodation.[68]

19. Salary or Pay History

Agencies may not ask about a job applicant's salary history during the hiring process, including on applications or in interviews. Salary history includes a covered person's current or prior wages, benefits, or other compensation in certain circumstances, but does not include any objective measure of productivity such as revenue, sales, or other production reports.[69] However, where an applicant voluntarily and without prompting discloses their salary history, agencies may consider that salary history in determining salary, benefits, and other compensation for such applicant, and may verify the applicant's salary history.[70]

The prohibition on salary history inquiries in New York City's Human Rights Law does not apply to certain applicants, including applicants for transfer or promotion either within or among city agencies, and public employee positions for which salary, benefits, or other compensation are determined pursuant to procedures established by collective bargaining.[71]

20. Sexual Orientation

Covered persons are protected from discrimination and harassment based on actual or perceived sexual orientation.[72]

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[68] New York City Administrative Code §§ 8-107(3), (28); New York State Executive Law § 296(10).

[69] New York City Administrative Code § 8-107(25); New York State Labor Law § 194-a. *See also* New York City Executive Order 21 (Nov. 4, 2016)(prohibiting city agencies from inquiring about the salary history of job applicants.).

[70] New York City Administrative Code § 8-107(25)(d); New York State Labor Law § 194-a(2).

[71] New York City Administrative Code § 8-107(25)(e)(2), (4).

[72] *See* the definition of "Sexual orientation" in New York City Administrative Code § 8-102; New York State Executive Law § 296(1)(a).

21. Sexual and Reproductive Health Decisions

Covered persons are protected from discrimination and harassment based on their actual or perceived sexual and reproductive health decisions. This includes any decision by a covered person to receive services relating to sexual and reproductive health, including the reproductive system and its functions. Such services include, but are not limited to, fertility-related medical procedures, sexually transmitted disease prevention, testing and treatment, family planning services and counseling, such as birth control drugs and supplies, emergency contraception, sterilization procedures, pregnancy testing, and abortion,[73] and hormone therapy or transition-related care for transgender persons.[74] Agencies are prohibited from retaliating against covered persons for exercising these rights.

Absent an undue hardship, agencies have a duty to provide a reasonable accommodation for the needs of an employee stemming from certain medical conditions or disabilities related to sexual and reproductive health decisions and must engage in a cooperative dialogue with an applicant or employee when they have requested a reasonable accommodation or when an agency has notice that the person may require an accommodation.[75]

Agencies are also prohibited from accessing an employee's personal information regarding reproductive health decision-making of an employee or an employee's dependent without informed written consent.[76]

22. Status as a Veteran or Active-Duty Military Service Member

Covered persons are protected from discrimination and harassment based on their actual or perceived uniformed service.[77] This includes current or prior service in the armed forces and the reserves. Agencies are not prohibited from affording preferences on the basis of uniformed service.[78]

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[73] *See* the definition of "Sexual and reproduction health decisions" in New York City Administrative Code § 8-102; New York State Labor Law § 203-e.

[74] *See* New York Commission on Human Rights, *FACT SHEET: Protections Against Employment Discrimination Based on Sexual and Reproductive Health Decisions* (Apr. 28, 2022).

[75] New York City Administrative Code § 8-107(22).

[76] *See* Executive Order 32 (Jun. 12, 2023); New York City Administrative Code § 10-184.

[77] New York City Administrative Code § 8-107(1).

[78] New York City Administrative Code § 8-107(26).

Federal and state law also protect current and former members of the armed forces from discrimination and harassment. In addition, the Uniformed Service Employment and Reemployment Rights Act (USERRA) protects persons who intend to enlist.[79]

23. Unemployment Status

Covered persons are protected from discrimination based on their unemployment status. An employer may not base an employment decision about hiring, compensation, or the terms, conditions, or privileges of employment on an applicant's unemployment, unless there is a substantial job-related reason for doing so. Certain actions taken by the mayor or DCAS, and actions of officers or employees of other public agencies with similar functions, are not subject to this prohibition. This prohibition does not apply to agency appointments to competitive positions from eligible lists or to the exercise of rights pursuant to a collective bargaining agreement.[80]

24. Victims of Domestic Violence, Sex Offenses, and Stalking[81]

Covered persons are protected from discrimination and harassment based on their status as victims of domestic violence, sex offenses and stalking. This protects any covered person who is subjected to certain acts or threats of violence, not including acts of self-defense, committed by a current or former spouse, by a person with whom the covered person shares a child, by a person who is cohabiting or has cohabited with the covered person, by a person who is or has been in a continuing social relationship of a romantic or intimate nature with the covered person or by a person who has continually or at regular intervals lived in the same household as

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[79] *See* the definition of "Uniformed service" in New York City Administrative Code § 8-102; *see also* U.S. Department of Labor, *Your Rights Under USERRA the Uniformed Service Employment and Reemployment Rights Act*, Basic Provisions/Requirements ("USERRA prohibits employment discrimination against a person on the basis of past military service, current military obligations, or intent to serve.").

[80] New York City Administrative Code § 8-107(21).

[81] Pursuant to Executive Order 85 (Oct. 27, 2021), the NYC Domestic and Gender-Based Violence Workplace Policy (2022) enhances trauma-informed support for City employees experiencing domestic and gender-based violence. The EEO Policy provides employees with a point of contact at every agency who can provide confidential support and direct connection to the Mayor's Office to End Domestic and Gender-Based Violence (ENDGBV) and the City's resources for survivors.

the covered person.[82] This EEO Policy also prohibits agencies from discriminating against a covered person who is the victim of sexual or stalking offenses.

Absent an undue hardship, agencies have a duty to provide a reasonable accommodation for applicants and employees for their needs as victims of domestic violence and/or sexual or stalking offenses and must engage in a cooperative dialogue with an applicant or employee when they have requested a reasonable accommodation or when an agency has notice that the person may require an accommodation.[83]

25. Weight

Covered persons are protected from discrimination and harassment based on their actual or perceived weight.[84] An employer may not base an employment decision about hiring, compensation, or the terms, conditions, or privileges of employment on an applicant's weight, unless consideration of weight is reasonably necessary for the normal operations of the agency or an individual cannot perform the essential requisites of the job and there is no alternative action that an agency can reasonably take to allow the individual who does not meet the weight criteria to perform the essential requisites of the job.[85]

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[82] New York City Administrative Code § 8-107(27); New York State Executive Law § 296(1)(a) (New York State Executive Law references only victims of domestic violence).

[83] New York City Administrative Code § 8-107(27), (28); New York State Executive Law § 296(1), (22)(c).

[84] New York City Administrative Code § 8-107(1).

[85] New York City Administrative Code § 8-107(1)(g).

B. Prohibited Conduct

This EEO Policy prohibits decisions and practices based on an individual's protected status 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. This includes, but is not limited to, assignments, working conditions, compensation, promotions, transfers, performance evaluations, training, career development and advancement, discipline, discharge, leaves of absence, fringe benefits, as well as recruitment, testing, hiring, or any other application or selection process relating to employment in which an individual is treated less well or is subjected to inferior terms, conditions, or privileges of employment because of actual or perceived membership in a protected class.

1. Discrimination

This EEO Policy prohibits discriminatory employment practices whether intentional or the result of disparate impact of a neutral policy, based, in whole or in part, on a covered person's actual membership, and in some cases, their perceived membership, in one or more of the above listed protected categories.

Discriminatory conduct may violate this EEO Policy even if it does not rise to the level of a violation of law. A single incident can be addressed under this EEO Policy.

2. Harassment and/or Hostile Work Environment

This EEO Policy prohibits harassment based on one or more protected categories or any other basis protected by this EEO Policy, which has the purpose or effect of unreasonably interfering with work performance or creating an intimidating, hostile, offensive, or abusive work environment.[86]

Prohibited harassment includes offensive or objectionable conduct relating to any protected category. This includes, but is not limited to, derogatory or demeaning statements, slurs, jokes, epithets, gestures, notes, materials, images, or communications in violation of this EEO Policy.

Harassing conduct may violate this EEO Policy even if it does not rise to the level of a violation of law. A single incident can be addressed under this EEO Policy.

[86] Remarks made and images displayed over virtual platforms and in messaging apps when individuals are working remotely can also create a hostile work environment.

The City's EEO Policy does not cover all workplace-related misconduct. Conduct that is not based on a protected category listed above in Section IV.A. falls outside the scope of this EEO Policy. Generally, allegations concerning performance issues, merely impolite behavior, or personality conflicts not based on any, or any combination of, protected categories are not covered by this EEO Policy. However, individuals with concerns or complaints about conduct outside the scope of this EEO Policy should raise such issues to their agency's Human Resources Department.

3. Sexual Harassment

This EEO Policy prohibits sexual harassment, which is a form of gender/sex discrimination. Sexual harassment includes harassment based on sex, sexual orientation, self-identified or perceived sex, gender expression, and gender identity.

Sexual harassment can occur between any individuals, regardless of their gender or sex. Harassers can be a supervisor, a subordinate, a coworker, or anyone in the workplace, including an independent contractor, contract worker, vendor, client, customer, or visitor.

Sexually harassing conduct may violate this EEO Policy even if it does not rise to the level of a violation of law. A single incident can be addressed under this EEO Policy.

There are two types of sexual harassment: "hostile work environment" and "quid pro quo."

a. Hostile Work Environment Sexual Harassment

Hostile work environment sexual harassment is conduct that is directed at an individual because of their sex, sexual orientation, gender identity, or gender expression and has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, offensive, or abusive work environment.[87] Hostile work environment sexual harassment includes, but is not limited to, the following examples:

- Unwanted verbal or physical advances, sexually explicit derogatory statements, or sexually discriminatory remarks that are offensive or objectionable to the recipient and that cause the recipient discomfort or humiliation, and/or interfere with the recipient's job performance.

[87] Remarks made and images displayed over virtual platforms and in messaging apps when individuals are working remotely can also create a hostile work environment.

- Visual material such as pictures, posters, calendars, graffiti, objects, promotional materials, reading materials, or other materials that are sexually demeaning or pornographic. This includes sexual displays on computers or cell phones and/or sharing such displays while in the workplace.
- Sexually oriented words, gestures, noises, remarks, jokes, pranks, or comments.
- Repeated requests for dates or romantic gestures, including gift-giving.
- Physical acts of a sexual nature, such as touching, pinching, patting, grabbing, kissing, hugging, brushing against, or poking another. Physical acts also include serious offenses such as rape, sexual battery, molestation, or attempts to commit these assaults, which may be considered criminal conduct outside the scope of this EEO Policy (Individuals should contact law enforcement if they wish to pursue criminal charges).
- Interfering with, destroying, or damaging a person's workstation, tools, or equipment, or otherwise interfering with the individual's ability to perform the job; sabotaging an individual's work; bullying, yelling, and name-calling; or intentional misuse of an individual's pronouns.
- Sex stereotyping, which occurs when someone's conduct or personality traits are judged based on other people's ideas or perceptions about how individuals of a particular sex should act or look, including remarks regarding an individuals' gender expression, such as wearing a garment typically associated with a different gender identity; or asking employees to take on traditionally gendered roles, such as asking a woman to serve meeting refreshments when it is not part of, or appropriate to, her job duties.

b. Quid Pro Quo Sexual Harassment

"Quid pro quo" translates to "this for that." Quid pro quo sexual harassment occurs when a person of authority trades, or tries to trade, something work-related in exchange for sexual favors. This can include hiring, promotion, continued employment, or any other terms, conditions, or privileges of employment and occurs between an employee and someone with authority, like a supervisor. Quid pro quo sexual harassment includes, but is not limited to, the following examples:

- Offering or granting better working conditions or opportunities in exchange for a personal or sexual relationship.

- Threatening adverse working conditions (*e.g.*, demotions, shift alterations, or work location changes) or denial of opportunities if a personal or sexual relationship is refused.
- Using pressure, threats, or physical acts to force a personal or sexual relationship.
- Retaliating for refusal to engage in a personal or sexual relationship.

While individuals are encouraged to file sexual harassment complaints with their agency's EEO Office, other external resources exist to provide all individuals in New York state with confidential support to get more information related to making complaints of workplace sexual harassment. New York State Human Rights Law Section 295.18 provides that the New York State Division of Human Rights shall "establish a toll-free confidential hotline to provide individuals with complaints of workplace sexual harassment counsel and assistance."

If you would like more information about filing a sexual harassment complaint, you may contact the Division's Office of Sexual Harassment Issues at **1-800-HARASS-3 (1-800-427-2773)**.

4. Retaliation for Protected Activity

It is a violation of this EEO Policy for any person to engage in retaliation by coercing, intimidating, threatening, interfering with, or attempting to coerce, intimidate, threaten, or interfere with, any person who exercises rights under this EEO Policy or who aids or encourages any other person to exercise rights protected by this EEO Policy.[88] It is also a violation of this EEO Policy to retaliate against someone because of their association with an individual who opposes discrimination or harassment. Retaliation can occur between a manager or supervisor and a subordinate or among co-workers. Retaliation includes any action taken directly or indirectly against a covered person that would have the effect of dissuading or discouraging any individual from coming forward to make or support a claim of discrimination or harassment.

Adverse employment actions include, but are not limited to, disciplinary actions such as reprimand, suspension, demotion, and discharge; loss of assignments and responsibilities; denial of promotion; loss of salary increase or job benefit; denial of training opportunities; transfer; negative evaluation; refusal to hire; and negative references to prospective employers. Adverse employment actions are prohibited when they are based on discriminatory, harassing, or retaliatory reasons.

[88] New York City Administrative Code § 8-107(19).

Adverse action need not be job-related or occur in the workplace to constitute prohibited retaliation. Threats of physical violence outside of work hours are an example of adverse action. Retaliation can also occur after an individual is no longer employed.

Retaliation can include adverse treatment of any covered person who, in good faith, reports discrimination or harassment; provides any information or otherwise supports such a report; participates in any activity protected by this EEO Policy, including without limitation, internal and external complaints, investigations, administrative proceedings, hearings and trials; or has opposed or complained in good faith that any conduct, practice, or policy violates this EEO Policy; or who requests a reasonable accommodation or leave. These actions constitute “protected activity.”

This protection extends to any covered person whose actions are based on a reasonable good faith belief that the conduct alleged violates this EEO Policy, even if the alleged discrimination or harassment is not supported by a preponderance of the evidence. The protection also extends to EEO personnel in the exercise of their official responsibilities.

Engaging in protected activity, however, does not shield an employee from employment actions based on non-retaliatory and non-discriminatory reasons.

5. Making a False Claim or Providing Misleading Information

It is a violation of this EEO Policy to knowingly make a false statement or otherwise deliberately provide false or misleading information during an investigation undertaken pursuant to this EEO Policy. After an investigative finding that false or misleading information was provided, such conduct may be grounds for discipline and other appropriate action in accordance with applicable laws, contracts, and policies. However, a complaint made in good faith, even if found to be not supported by a preponderance of the evidence, will not be considered a false claim.

It is also a violation of this EEO Policy to abuse the EEO process (*i.e.*, misuse the EEO process for ends or a purpose other than that for which the EEO Policy is intended). Numerous complaint filings alone are not a sufficient basis for determining that there has been an abuse of the EEO process.

V. Obligations

A. Duty to Cooperate

All employees are expected to cooperate with the EEO Office and in EEO investigations. Cooperation includes participating in an interview during the investigative process. Failure to cooperate may result in a referral for disciplinary action.

Non-employees covered by this EEO Policy may be expected to cooperate depending on the terms of their relationship to the agency.

B. Mandated Diversity, Inclusion, and EEO Trainings

The City provides several diversity, inclusion, and EEO trainings mandated by state and local laws, and executive orders, including, but not limited to annual sexual harassment prevention training.[89] All covered persons are required to comply with these requirements and take the City's mandatory trainings. An employee's failure to comply with these mandatory training requirements may result in a referral for disciplinary action.

[89] Mandated diversity, inclusion, and EEO trainings include trainings required by local laws, mayoral executive orders, or City policy, such as, but not limited to, *Everybody Matters: EEO and Diversity & Inclusion Training for NYC Employees* required through Local Law 121 (2021) and *The Power of Inclusion* in compliance with Mayoral Executive Order 16 (2016).

VI. Bystander Intervention

An individual who witnesses discriminatory or harassing behavior as a bystander is encouraged to report it to the EEO Office. A supervisor or manager who is a bystander to discrimination or harassment is required to report it to the EEO Office.

Though not exhaustive, and dependent on the circumstances, there are five standard methods of bystander intervention that individuals can use when they witness discrimination or harassment:

- A bystander can interrupt by engaging with the individual being discriminated against and/or harassed and distracting them from the behavior to deescalate the situation.
- A bystander who feels unsafe interrupting on their own can ask a third party to help intervene.
- A bystander can record (if permissible) or take notes on the incident to benefit a future investigation.
- A bystander might check in with the person who has been discriminated against and/or harassed after the incident, see how they are feeling, and let them know that the behavior was not acceptable.
- If a bystander feels safe, they can approach the harasser(s) and name the behavior as inappropriate.

When confronting discrimination and/or harassment, physically assaulting an individual is never an appropriate response.

VII. Procedures

A. Reporting Violations

Individuals who believe that they have been subjected to any conduct, action, or decision in violation of this EEO Policy, or who become aware of others being subjected to violations of this EEO Policy, are urged to promptly report the incident(s) directly to their agency EEO Office.

Individuals may also choose to report the incident(s) to a supervisor or manager, including agency personnel supervising an application, testing, or interview process.

Supervisors, managers, human resources personnel, or agency representatives in pending disciplinary matters who observe, learn about, or suspect violations of this EEO Policy, receive EEO complaints or otherwise become aware of any improper discrimination, discriminatory harassment, retaliation, or denial of an accommodation or leave must promptly notify the EEO Office and disclose all known facts. They shall also encourage individuals who believe that this EEO Policy has been violated to consult with the EEO Office directly.

Prompt reporting is essential because it enables agencies to conduct a thorough and effective investigation. Additionally, in many instances, the agency may be barred from taking appropriate disciplinary actions due to late reporting. The reporting responsibilities described in this EEO Policy are not altered by requests to remain anonymous, to refrain from reporting, or to keep information confidential.

If the allegation of misconduct in violation of this EEO Policy concerns the specific actions of the EEO Office or agency head, the matter must be reported to DCAS CEI for investigation.[90]

[90] DCAS CEI conducts confidential third party EEO investigations when the agency head or the EEO officer is a respondent, complainant, or witness.

When an individual chooses to file a complaint with the EEO Office, that complaint must be filed within one year of the event which is the subject of the complaint. In the event of an alleged continuing harm or violation of this EEO Policy, at least one act must fall within the one-year period. It is always best to contact the EEO Office promptly whenever there is any suspicion of discrimination, harassment, or retaliation in violation of this EEO Policy.[91]

Reports may be made orally or in writing. Persons reporting concerns are encouraged to use the agency's complaint form, but it is not required. Where the complaint is taken orally, the manager, supervisor, or EEO personnel shall document the complaint. The EEO Office will assess whether the conduct reported is appropriate for the EEO complaint process and will make appropriate referrals when the allegation is not based on prohibited conduct or protected activity covered by this EEO Policy.

All complaints or information about suspected violations of this EEO Policy will be investigated, whether that information was reported orally or in writing. Investigations shall be conducted in a timely manner and will be kept confidential to the extent possible. *See* Section VII.H. (Confidentiality Explained). Persons who wish to discuss a possible violation of this EEO Policy without revealing their identity may do so by telephoning or writing the EEO Office. In such cases, the EEO Office will take such action as may be appropriate and possible, given the constraints of anonymity. All persons involved, including complainants, witnesses, and respondents will be afforded rights as described in this EEO Policy and in accordance with applicable contracts or laws. This includes protection from retaliation. *See* Section IV.B.4. (Retaliation for Protected Activity).

If allegations involve conduct that may constitute a crime, the individual providing the information is encouraged to report the matter to the police and, in some instances, the EEO Office may do so directly. The EEO Office may also notify other agency or citywide units as appropriate and in accordance with agency Workplace Violence Prevention policies.

Persons covered by this EEO Policy who believe they have been a target of discrimination, harassment, or retaliation may also seek assistance in other available forums. *See* Section VII.G. (Other Places Where Complaints May Be Filed) and Appendix B.

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[91] In some circumstances, alleged incidents that occurred more than one year before the complaint may be reviewed by the EEO Office or referred to the appropriate unit in the agency if the allegations constitute continued misconduct, are criminal in nature, or should otherwise be addressed by the agency's Code of Conduct.

B. Contact with the EEO Office[92]

Persons covered by this EEO Policy have the right to meet privately with the EEO Office. Such a meeting may take place either during or outside of work hours. Employees who want to request to meet with the EEO Office during work hours should obtain approval from a manager or supervisor to leave their work location. Employees need not disclose the purpose for or the details of the meeting. Reasonable leave requests to meet with the EEO Office during work hours cannot be denied by managers or supervisors. Managers and supervisors shall allow employees to meet with the EEO Office at the earliest practicable time consistent with the operational needs of their units.

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, the employee need not disclose the meeting or obtain the consent or approval of a manager or supervisor. The EEO Office will arrange for EEO personnel to meet with an employee outside work premises where appropriate and/or necessary to ensure confidentiality. If necessary, the EEO Office will arrange for sign language interpreters and other forms of effective communication for persons with disabilities.

All persons interviewed as part of an EEO investigation have a right to be accompanied by a representative of their choice, except that the representative shall not be a member of the EEO Office, Office of the General Counsel, or anyone who is a fact witness in the investigation. Interview subjects must be notified of this right in writing. The EEO Office should receive advance notice that the person who is being interviewed will be bringing a representative, as well as the name of the representative. Representatives have a special duty to maintain the dignity of the EEO process and must act accordingly. A representative cannot answer questions on behalf of the witness and cannot impede the interview in any way.

Any person who is the subject of the complaint will also have an opportunity to supplement their interview in writing.

C. Interim Relief

The EEO Office may facilitate any further discussions with other agency personnel and facilitate interim relief including, but not limited to, relocating employees, coordinating training and making an appropriate referral for mediation, when warranted. All actions taken shall be in accordance with citywide policies, collective bargaining agreements, and applicable law.

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[92] Investigations should be conducted in accordance with this EEO Policy and the City's *EEO Complaint Procedural Guidelines*.

D. Withdrawing a Complaint

A complaint may be withdrawn at any time by the person who filed the complaint. Withdrawal of a complaint must be made or confirmed in writing. The EEO officer must ascertain that the complaint is being withdrawn voluntarily. In some instances, the EEO officer will find it appropriate to close the case administratively when the complaint is withdrawn. In the alternative, even though the complaint has been withdrawn, it may be necessary for the EEO officer to continue the investigation when there are sufficient facts about the allegation(s).

E. Concluding the Investigation

Absent extraordinary circumstances, the EEO Office shall conclude its investigation within 90 days from the date on which the complaint was accepted for investigation. If additional time is needed, the EEO Office shall inform the parties. The EEO Office shall submit a written Report of Investigation to the agency head no later than 30 days from conclusion of the investigation. The report shall document the allegation, the investigative and other actions taken by the EEO Office, as well as detail the findings that the allegations are either supported or not supported by a preponderance of the evidence.

To ensure fairness to the parties, within 30 days from receipt of the Report of Investigation, the agency head will review the findings and communicate a determination to the EEO Office that they either adopt or reject the findings. The EEO Office will then send a written notice to the parties informing them of the determination. If the agency head is not able to make a determination, they may return the matter to the EEO Office requesting any necessary clarification regarding the investigation of an issue.

If the agency head determination is to adopt factual findings that any of the allegations are supported by a preponderance of the evidence, the agency head may take whatever action the agency head deems appropriate. While the EEO process closes after the agency head makes a determination about the investigative findings, the agency head may request for the EEO Office to refer the matter to the proper entity (*e.g.*, agency representatives that handle the discipline process and/or can implement remedial action).[93]

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[93] After the agency head makes the determination about the investigative findings, the EEO Office's investigation closes and the EEO process ends. While the agency head may opt for the EEO Office to refer the matter for disciplinary action, the discipline process is separate and distinct from the EEO process and is governed by employee collective bargaining agreements and civil service law. The discipline process is managed by the agency's Discipline Unit, Office of the Advocate, or Labor Relations.

Any person found to have engaged in conduct or practices in violation of this EEO Policy may be subject to discipline including, without limitation, reprimand, suspension, probation, demotion, transfer, termination, or any other measures permitted by law and/or collective bargaining agreements. In addition to imposing disciplinary action on any responsible party, agencies must also take corrective, preventative, or remedial action as required.

F. Mediation

Mediation is a voluntary, informal, and confidential alternative dispute resolution process whereby parties attempt to resolve the issues raised by a complaint by mutual agreement. The mediation process is an alternative to resolve a complaint without an investigation. If the complaint is appropriate for mediation, the EEO Office will refer the parties to the Center for Creative Conflict Resolution (CCCR) at the Office of Administrative Trials and Hearing (OATH).

Mediation may be requested by any party involved; however, all parties must agree to mediation. Requests for mediation should be made to the EEO Office. The EEO Office will determine whether the complaint is appropriate for mediation.[94] This includes ensuring that each party's decision is voluntary and that no party has been coerced into agreeing to mediation.

Mediation may be terminated by any party at any point during the mediation. If the mediation is terminated or if mediation does not result in a resolution, the EEO Office shall continue the investigation.

G. Other Places Where Complaints May Be Filed

In addition to the internal process for filing complaints under this EEO Policy, covered persons may choose to pursue their complaint through federal, state, or local agencies charged with enforcing discrimination laws ("external agencies"). Some external agencies are listed in Appendix B; however, it is not an exhaustive list. Although a private attorney is not required to file a complaint with an external enforcement agency, complainants may choose to seek the advice of an attorney.

[94] Complaints concerning allegations of sexual harassment are not submitted for mediation. There may be other factual situations that the EEO Office may determine are complex and do not warrant submitting to mediation.

Filing an EEO complaint with the agency's EEO Office under this EEO Policy does not extend the time to file an external complaint and it is not a legal requirement that persons covered by this EEO Policy file an internal complaint before seeking an external remedy.

The agency general counsel is responsible for handling external complaints. When a covered person files an external complaint based on, or related to, the same facts and circumstances of an internal complaint, or seeks to file an internal complaint that is based on, or related to, the same facts and circumstances of an external complaint, the agency EEO Office will cease its investigation and transfer the matter to the agency's general counsel, who will be responsible to further handle the matter. The EEO Office will notify the parties, in writing, that the EEO Office has transferred the matter because of the filing of the external complaint.

H. Confidentiality Explained

The City of New York will protect the confidentiality of any complaints, investigations, and requests for reasonable accommodations and leave made pursuant to this EEO Policy and law, together with any associated records to the extent possible to protect the privacy of those involved and the integrity of the process, including until the investigative process is complete.

Complete confidentiality cannot be guaranteed because in order to effectively investigate the complaint, it may be necessary to disclose relevant information to some individuals.

Information regarding the complaint will be shared only with those who have a legitimate need to know based on their job responsibilities. Disclosure may also be necessary in order to implement interim relief, such as work location changes or referral to mediation.

All records relating to complaints under the EEO Policy will be maintained in a secure location separate from other personnel records.

To the extent that relevant information is needed for disciplinary action, it may be shared with agency representatives in pending discipline matters. Information may be disclosed during any resulting disciplinary proceeding, litigation, or as otherwise required by law.

VIII. Reasonable Accommodations and the Family and Medical Leave Act

A. Reasonable Accommodations

This EEO Policy requires all agencies to make reasonable accommodations in circumstances described in this section for all employees (full-time and part-time), applicants, interviewees, and independent contractors ("covered persons") to permit each to perform the essential functions of their position and equally enjoy the benefits and privileges of employment. This EEO Policy also requires agencies to ensure equal opportunity in the application process.[95] Agencies must provide such accommodations unless the accommodation creates an undue hardship in conducting the agency's business.

This EEO Policy prohibits the denial of reasonable accommodations for disabilities; religious beliefs, observances, and practices; victims of domestic violence, sexual and stalking offenses; and pregnancy, childbirth, and related medical conditions (including lactation needs) that do not create an undue hardship.

This EEO Policy requires all agencies to engage in a cooperative dialogue[96] with covered persons to determine an effective accommodation under which the employee can perform the essential functions of the job. The obligation to engage in a cooperative dialogue can arise when agencies know, or should have known, that the covered person may need an accommodation. Any accommodation is considered reasonable unless it causes an undue hardship for the agency. Agencies are responsible for the cost of providing any accommodation and their duty to provide an accommodation is ongoing. Where more than one accommodation would be a reasonable means of accommodating the need, the employer may select which accommodation to provide.

Retaliating or discriminating against any covered person for requesting an accommodation is a violation of this EEO Policy.

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[95] Employers may inform applicants what the hiring process involves – for example, an interview, a timed written test, or a presentation – and may ask applicants whether they will need a reasonable accommodation for any part of the process.

[96] Effective October 15, 2018, the NYCHRL mandates that covered entities engage in a "cooperative dialogue" with those persons who may be entitled to a reasonable accommodation. New York City Administrative Code § 8-107(28)(a). Prior to that, the City's EEO Policy has always recognized a responsibility for agencies to engage in an "interactive process" with employees who request accommodations.

Please see the City's *Reasonable Accommodation Brochure* for more information concerning requesting, reviewing, and processing reasonable accommodations.[97]

B. Family and Medical Leave Act

While human resources, and not the EEO Office, processes leave requests under the Family and Medical Leave Act (FMLA),[98] it is important to recognize when leave under the FMLA may overlap with a reasonable accommodation for the employee's disability.

It is also important to recognize that alleged retaliation for exercising an employee's right to FMLA may also implicate alleged retaliation based on an employee's right to a reasonable accommodation.[99] This EEO Policy prohibits agencies from retaliating against employees for requesting or taking FMLA leave.[100] Prohibited retaliation includes:

- Interfering with, restraining, or denying the exercise of, or the attempt to exercise, any FMLA right.
- Discriminating or retaliating against an employee or prospective employee for having exercised or attempted to exercise any FMLA right.
- Discharging or in any other way discriminating against any person, whether or not an employee, for opposing or complaining about any unlawful practice under the FMLA.
- Refusing to authorize FMLA leave for an eligible employee.
- Discouraging an employee from using FMLA leave.
- Manipulating an employee's work hours to avoid responsibilities under the FMLA.
- Using an employee's request for or use of FMLA leave as a negative factor in employment actions, such as hiring, promotions, or disciplinary actions.
- Counting FMLA leave under "no fault" attendance policies.

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[97] More detailed information about the City's reasonable accommodation process is in the *Reasonable Accommodation Procedural Guidelines*.

[98] The Family and Medical Leave Act (FMLA) entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons (*e.g.*, childbirth, adoption, personal, or family illness). Employee should consult with their agency's Human Resources Department to learn about threshold eligibility standards and other forms of applicable leave options based on the specific need.

[99] For example, an employee returning form FMLA may need a reasonable accommodation to carry out the essential functions of their job or an employee's request for a reasonable accommodation may be more appropriate for FMLA, depending on the employee's needs.

[100] *See also* 29 C.F.R. § 825.220.

IX. New York State Civil Service Law Section 55-a Program

Section 55-a of the New York State Civil Service Law allows a qualified person with a certified mental or physical disability to be hired into competitive civil service positions without having to take a competitive examination. Eligible individuals can request to be considered under the program and they are evaluated on the basis of their qualifications and interviews.

The Civil Service Law permits the City to convert as many as 700 competitive civil service lines to non-competitive civil service positions. City agencies are encouraged to use the 55-a program.

This equity and inclusion program is administered by the Department of Citywide Administrative Services, in collaboration with the Mayor's Office for People with Disabilities. More information about the 55-a program is available on the DCAS website.

X. Agency EEO Plans

Agency heads are required by the Charter to annually prepare, adopt, and implement a *Diversity, Equity, Inclusion, and Equal Employment Opportunity (EEO) Plan* (EEO Plan).[101] The EEO Plan should describe measures and programs that the agency will undertake to ensure fair and effective efforts to provide equal employment opportunity, including for minority group members and women. The EEO Plan must be prepared based on uniform procedures and standards established by DCAS through Citywide Equity and Inclusion. DCAS will provide agencies with a template specifying areas and functions that should be addressed in the EEO Plan, and recommendations for developing the draft that are consistent with employment practices recommended by human resources management organizations, enforcement entities and even requirements in new legislation.

Agencies must develop and submit draft EEO Plans each fiscal year according to the timetable and format established by DCAS, which must review and approve the draft EEO Plan prior to the agency's final submission with the agency head's signature. Agencies shall file copies of their finalized EEO Plans with the mayor, city council, Equal Employment Practices Commission (EEPC), and city Civil Service Commission, and make EEO Plans available for reasonable public inspection.[102]

Further, the agency head shall approve and submit quarterly reports to DCAS, as well as to the mayor, city council, and EEPC, about the agency's efforts during the previous quarter to implement the agency's EEO Plan.[103] Pursuant to the Charter, Quarterly Diversity, Equity, Inclusion and EEO reports must be timely submitted to DCAS and the other entities mentioned above, no later than 30 days following the end of each quarter using the reporting format provided by DCAS.

Given the necessity to stay abreast of quarterly updates, the agency head shall meet regularly with the EEO officer to discuss EEO Plan objectives. The EEO Plan should communicate the agency's intention to promote equal employment opportunity, equity, and diversity and inclusion by continuing fair and effective measures or, where

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[101] New York City Charter § 815(a)(19).

[102] New York City Charter § 815(a)(19).

[103] New York City Charter § 815(i).

necessary, 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 employment. Therefore, in preparation for the development of an EEO Plan, agency heads or, at their direction, the agency EEO officer and APO, shall review agency statistical information (including total employment, new hires, promotions, and underutilization[104] by race/ethnicity and gender), EEO complaints, in the aggregate, made during the previous fiscal year, and the agency's employment practices, policies, and programs. The agency head shall also work with the EEO officer, general counsel, and APO 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.

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

- A commitment to ensure fair employment practices and promote a workplace that values its employees in support of the City's diversity and inclusion strategy. This commitment will hold EEO officers, personnel, human resources professionals, managers, and supervisors accountable for ensuring that the agency does not discriminate against employees or applicants for employment and support the diversity and inclusion initiatives at the agency. This commitment should be reflected in the agency's strategic plan, mission, vision, and performance metrics.

  This commitment should also be communicated to all employees through an Annual Commitment, Accountability, and EEO Policy Statement (EEO Policy Statement). This statement issued and signed by the agency head is an opportunity to articulate, in their own language, the agency's commitment to the values of diversity, equity, and inclusion (DEI), and equal employment opportunity. It should reinforce the assurance of a discrimination-free workplace, integration of the annual EEO Plan into the agency's strategic mission, and a declaration that all senior executives, managers, supervisors, and employees are accountable for upholding these values and are charged, within their scope of responsibility, to effectively implement the agency's annual EEO Plan. It must also include the

[104] Underutilization occurs when individuals in a demographic group are employed at a rate lower than their labor market availability. The agency head should discuss and review strategies for how to remediate underutilization with respect to race/ethnicity and gender, if any, in the relevant workforce job groups.

name and contact information of the agency's EEO officer and an electronic link to this EEO Policy. Links to related process documents mentioned in this Policy may also be included, as well as a list of all protected class categories. The name and contact information of the disability rights coordinator for reasonable accommodation needs should also be included.

- A commitment to assess recruitment efforts to determine whether such efforts adversely impact any particular group, and what recruitment sources yield a diverse pool of qualified candidates. It should also include the agency's strategy to implement the best diversity and inclusion recruitment practices to ensure equal employment opportunity. 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 positions not filled through civil service lists become available, or where agencies may otherwise use discretion in hiring.

- A commitment to assess agency job postings to ensure appropriate diversity, inclusion, and equal opportunity employer messaging that is posted internally, as well as externally through the City's jobs website and according to City personnel rules.

- A commitment to assess the manner in which candidates are selected for employment and apply methods that are race/ethnicity-neutral and gender-neutral in job postings and interview questions, have the EEO officer review the interview questions for the position, and assemble interview panels that reflect gender, race, and ethnic diversity. The agency will also ensure that agency personnel involved in both the discretionary hiring and the civil service hiring pool process, including managers, supervisors, and human resources personnel, receive structured interviewing training and apply structured interviewing principles in the selection process.

- A commitment to assess criteria for selecting persons for mid-level to high-level discretionary positions.

- A commitment to ensure that all new employees are advised of this EEO Policy, their rights and responsibilities under it, the discrimination complaint and investigation procedures, and the reasonable accommodation procedures.

- A commitment to establish a diversity, inclusion, and EEO training plan to ensure that all individuals who work within the agency, including managers and supervisors, are trained concerning equity, diversity, inclusion, and EEO-related rights and responsibilities in a manner consistent with the minimum standards for equity, diversity, inclusion, and EEO training established by DCAS. The training

plan must include a commitment and strategy for complying with all mandated diversity, inclusion, and EEO trainings, including, but not limited to, the annual training on sexual harassment prevention, as required under the New York State Labor Law (Section 201-g), New York City Charter (Chapter 35, Section 815.1), and the Stop Sexual Harassment in NYC Act (2018) (New York City Administrative Code § 8-107(30)).

- A commitment to review, on a regular basis, and 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 laws, and/or the City's official records retention schedule.
- A commitment to implement and fulfill all obligations mandated by local laws, Mayoral Executive Orders, and other relevant regulations and guidelines regarding training, collection of data and information, reporting, etc.
- 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 recommended measures that agencies are encouraged to use to ensure fair employment practices may include the following:

- Ensure that employees are offered opportunities to be trained for competency in other EEO, equity, diversity, and inclusion topics such as unconscious bias, microaggressions, and disability etiquette awareness.
- Encourage developing and perfecting inclusive skills and behavior standards for managers to ensure that they are able to maximize their professionalism, performance, and communication skills, and managing a diverse and inclusive workforce.
- Conduct or encourage the use of training and development programs to improve skills, performance, and career opportunities of all employees.
- Actively search for and create talent pools of agency employees to promote cross-training, mentoring, coaching, stretch assignments, cross divisional assignments, and rotation programs for career enhancement and development experiences, and to identify potential talents.
- Plan and administer employee incentive, quality of work life and recognition programs, engagement surveys, performance evaluations, employee resource groups and diversity councils.

- Foster employee awareness of opportunities for promotion and transfer within the agency.

The City of New York, through DCAS, will also: (1) provide the uniform procedures, formats, and reports required by the 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; (2) assess qualifications required for most civil service positions and ensure that civil service examinations are job-related and consistent with business necessity; (3) provide assistance to agencies to ensure that recruitment efforts fit particular human resources needs; (4) conduct case practice reviews of agency EEO complaints and reasonable accommodations; (5) continue efforts to better ensure the accuracy of race, ethnicity, and gender data as required by law and policy; and (6) assist in promoting the practice that agency job vacancies be posted internally as well as externally through the City's website: https://nyc.gov/jobs.

XI. Appendices

Appendix A

EEO Complaint Process at a Glance

The City of New York's EEO Policy protects applicants and employees from discrimination and harassment that is based on legally protected categories and protects them from retaliation for involvement in the EEO process. Below is an outline of the EEO complaint process. If you have questions, please contact your agency's EEO officer.

1

Contact Agency's EEO Officer

Complainant meets with the EEO Office to discuss their complaint.

EEO Office notifies complainant whether complaint is accepted for investigation.

Referral:
Non-EEO issues will be referred to a manager, human resources, disciplinary office, or another unit, as appropriate.

Mediation:
A voluntary option for dispute resolution that the EEO officer may determine is appropriate. If the parties agree, the EEO officer will refer the matter for mediation. If the parties are unable to resolve the matter, the EEO Office will continue the investigation.

2

Investigation

The EEO Office interviews the complainant, respondent, and any witnesses, and reviews the evidence. Absent extraordinary circumstances, the EEO Office shall conclude its investigation within 90 days and then will have 30 days to submit a investigative report to the agency head.

3

Determination

Within 30 days from receipt of the report, the agency head will review the findings and communicate a determination to the EEO Office.

An allegation that is **not supported by a preponderance of the evidence** means that, based on the evidence, it is not likely that there was a violation of the EEO Policy.

An allegation that is **supported by a preponderance of the evidence** means that, based on the evidence, it is more likely than not that there was a violation of the EEO Policy.

4

Closing Notices

EEO Office will send closing notices to the parties after the agency head has made a determination.

Remedial Action:
After the EEO process has concluded, the agency head may refer allegations to the Discipline Unit for appropriate action, if warranted.

Appendix B

External Enforcement Agencies

In addition to the internal process for filing complaints under the EEO Policy, individuals may choose to pursue their complaint through federal, state, or local enforcement agencies charged with enforcing discrimination laws. Some external agencies are listed below; however, this is not intended to be an exhaustive list.

New York City Commission on Human Rights
22 Reade Street, First Floor
New York, NY 10007
(718) 722-3131

New York State Division on Human Rights
One Fordham Plaza, Fourth Floor
Bronx, NY 10458
(888) 392-3644

United States Equal Employment Opportunity Commission
33 Whitehall Street, Fifth Floor
New York, NY 10004
(800) 669-4000

United States Department of Justice
Civil Rights Division
950 Pennsylvania Avenue N.W.
Washington, D.C. 20530
(888) 848-5306

NYC DCAS
Citywide Administrative Services