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Joni Kletter
Commissioner and Chief Administrative Law Judge
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100 Church Street, 12th Floor
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Audit Status:
Evaluation of Sexual Harassment Prevention and Response Practices for Audit
Period January 1, 2018 to December 31, 2019.
Determination: **PRELIMINARY**

Dear Commissioner Kletter:

On behalf of the members of the Equal Employment Practices Commission (EEPC), thank you and your agency for the cooperation extended to our staff thus far. This letter contains the EEPC's evaluation and preliminary determinations pursuant to the Office of Administrative Trials and Hearings' Sexual Harassment Prevention and Response Practices for the period covering January 1, 2018 to December 31, 2019.

Purpose

Chapter 36, Sections 830(a) and 831(d)(2) and (5) of the New York City Charter (Charter) authorize the EEPC to audit, review, evaluate, and monitor the employment practices, procedures, and programs of city agencies and other municipal entities, hereinafter "entities," and their efforts to ensure fair and effective equal employment opportunity (EEO) for women and minority employees and applicants. Charter Sections 831(d)(2) and 832(c) authorize the EEPC to make a determination that any plan, program, procedure, approach, measure, or standard does not provide equal employment opportunity, require appropriate corrective action, and monitor the implementation of the corrective action prescribed.

The Office of Administrative Trials and Hearings, hereinafter simply termed "agency" or "entity," falls within the EEPC's purview under Chapter 36, Sections 830(a) and 831(a) of the Charter, to review, evaluate, and monitor the coordination and implementation of affirmative employment programs of equal employment opportunity for any "city, county, borough or other office, administration, board, department, division, commission, bureau, corporation, authority, or other agency of government where the majority of the board members of such agency are appointed by the mayor or serve by virtue of being city officers or the expenses of which are paid in whole or in part from the city treasury..."

The purpose of this audit and analysis is to evaluate the subject matter referenced, not to issue findings of discrimination pursuant to the New York City Human Rights Law.

Scope

The EEPC has adopted uniform standards for auditing municipal entities¹ and minimum standards for auditing Community Boards (collectively “Standards”) to review, evaluate, and monitor entities’ employment and EEO-related practices, procedures, approaches, measures, standards, and programs. These standards are founded upon, and consistent with federal, state, and local laws and regulations, and policies and procedures to increase equal opportunity for women, minorities, and other employees and job applicants identified for protection from discrimination. Corrective actions prescribed are consistent with the aforementioned parameters including, but not limited to, the City of New York’s *Equal Employment Opportunity Policy, Standards and Procedures to Be Utilized by City Agencies 2014*, as amended (Citywide EEO Policy); the New York City Human Rights Law (New York City Administrative Code Title 8); New York State Human Rights Law (New York Executive Law, Article 15); the New York State Civil Service Law §55-a; and the equal employment opportunity requirements of the New York City Charter.

Policy and Plan Requirements

The aforementioned Standards require, at minimum, that mayoral entities distribute the Citywide EEO Policy; non-mayoral entities establish or adopt a comprehensive EEO policy; and Community Boards, which are comprised of members appointed by the respective Borough Presidents, adopt and distribute the corresponding Borough President’s EEO Policy.

Because the EEPC is authorized to review and recommend actions that each entity should consider including in its annual plan of measures and programs to provide equal employment opportunity, or Annual EEO Plan, entities are also required to incorporate the EEPC’s corrective actions in prospective Annual EEO Plans and programs.

Methodology

The EEPC communicates with EEO professionals (including, but not limited to, past or current EEO Officers, Deputy or Co-EEO Officers, EEO Counselors, EEO Trainers, EEO Investigators, Disability Rights Coordinators, Career Counselors, and 55-a Program Coordinators) and other employees identified as having involvement in EEO program administration such as the Principal Human Resources Professional and relevant Counsel.

The EEPC’s audit methodology includes review of the agency’s Annual EEO Plans and Quarterly EEO Reports; analysis of workforce and utilization data; and the collection and analysis of documents, records, and data an entity and its representatives provide in response to the Sexual Harassment Prevention and Response Preliminary Interview Questionnaires (PIQs). All PIQs contain requests to attach supporting documentation for the answer options selected.

EEO Professionals designated for online interviews are assigned a three-week deadline to complete and return the PIQs. The EEPC’s PIQ(s)/requests were sent to the Office of Administrative Trials and Hearings on January 3, 2020; the completed PIQ(s) were returned on January 23, 2020. Supporting documentation was attached. Additional requests for information were made on March 12, 2020 and June 3, 2020.

The following determination indicates where the Office of Administrative Trials and Hearings has or has not complied, in whole or in part, with the established Standards.

¹ Corresponding audit/analysis standards are numbered throughout the document.

Description of the Agency

Created in 1979 by mayoral executive order and established as a charter agency in 1988, the Office of Administrative Trials and Hearings (OATH) is the City's independent administrative law court and is authorized to conduct adjudicatory hearings for all agencies of the City. The Mayor appoints the Chief Administrative Law Judge. Administrative Law Judges are appointed by the Chief Administrative Law Judge to five-year terms. Administrative Law Judges (ALJ) preside over the proceedings at OATH's Trials Division. The OATH Trials Division conducts trials on complex administrative matters, such as civil servant disciplinary cases, contract disputes, zoning issues, car seizures by the police, and human rights and discrimination cases. City enforcement agencies that issue summonses or notices for alleged violations of the City's rules and regulations file their summonses at the OATH Hearings Division. OATH Hearing Officers preside over OATH hearings. OATH also offers mediation services to all City employees to help resolve workplace disputes in a safe, confidential, and efficient manner at its Center for Creative Conflict Resolution (CCCR) and OATH provides resources, support and training for all City and State hearing officers and ALJs through its Administrative Judicial Institute. (Source: The Green Book, 3/2019) At the end of the period in review, OATH had 708 employees. (CEEDS Report: *Work Force Composition Summary*, 2nd quarter of fiscal year 2020 is attached as Appendix – 1.)

PRELIMINARY DETERMINATIONS AFTER AUDIT AND ANALYSIS

Following are the corresponding audit standards for each subject area along with the EEPC's findings and required corrective actions, where appropriate:

I. Issuance, Distribution and Posting of EEO Policies

Determination: The agency is in compliance with the standards for this subject area.

1. Issue a Policy Statement or memorandum reiterating commitment to the prevention of sexual harassment annually.
- ✓ On May 22, 2018, OATH's Agency Head (Commissioner and Chief Administrative Law Judge) issued a *Sexual Harassment Policy Statement* that was distributed to all employees on May 25, 2018 via email from the principal EEO Professional. The email sent to all employees included the statement, "[p]lease take a moment to review OATH's *Sexual Harassment Policy Statement*. If you have any questions regarding this policy, feel free to contact OATH's [principal EEO Professional] at [phone number]." The *Sexual Harassment Policy Statement* reiterated the Commissioner and Chief Administrative Law Judge's commitment to the prevention of sexual harassment by stating that, "[s]exual harassment is a form of employment discrimination prohibited by the EEO Policy and law. All OATH employees should be familiar with the EEO Policy's protections against sexual harassment...OATH urges anyone covered by the NYC EEO Policy who believes he or she has been subjected to sexual harassment or any unwelcome sexual attention to report the conduct to a supervisor or manager or to the agency [principal EEO Professional, name] who may be contacted at [telephone number]. Attached is also a list of OATH's EEO Counselors and how they may be contacted. It is important to report all concerns about sexual harassment or inappropriate sexual conduct to the [principal EEO Professional] or a supervisor or manager as soon as possible." On June 24, 2019, OATH's Commissioner and Chief Administrative Law Judge issued and distributed a *Sexual Harassment Policy Statement*² to all employees via email. The 2019 *Sexual Harassment*

² The *Sexual Harassment Policy Statement* issued in 2019 was dated June 24, 2018. OATH confirmed via email that the June 24, 2018 *Sexual Harassment Policy Statement* was distributed to all employees on June 24, 2019.

Policy Statement contained the same commitment to the prevention of sexual harassment as the 2018 *Sexual Harassment Policy Statement*.

2. Distribute/Post a paper or electronic copy of the Equal Employment Opportunity Policy, Standards and Procedures to Be Utilized by City Agencies – or an agency Policy that conforms to city, state and federal laws against sexual harassment– for use by managers, supervisors, and legal, human resources and EEO professionals. Include, or attach as addenda: uniform and responsive procedures for investigating discrimination/sexual harassment complaints, and current contact information for the agency’s EEO professionals as well as federal, state and local agencies that enforce laws against discrimination/sexual harassment.

- ✓ During the period in review, OATH directed its employees to utilize the *Equal Employment Opportunity Policy, Standards and Procedures to Be Utilized by City Agencies, City of New York, 2014* (EEO Policy) via its 2018 and 2019 *Sexual Harassment Policy Statements*, which stated, “[c]omplaints of sexual harassment will be handled under the New York City Equal Employment Opportunity Policy and Procedures. See links below.” The *Sexual Harassment Policy Statement* links directed employees to online versions of the EEO Policy and *EEO Complaint Procedural Guidelines, City of New York, 2018* (Complaint Procedures). The EEO Policy and Complaint Procedures both conformed to city, state, and federal laws against sexual harassment. The Complaint Procedures contained uniform and responsive procedures for investigating discrimination/sexual harassment complaints as well as the office address, telephone number, and website address of federal, state and local agencies that enforce laws against discrimination/sexual harassment. Along with directing employees to utilize its EEO Policy and Complaint Procedures, OATH’s *Sexual Harassment Policy Statements* distributed during the period in review also contained the name and telephone number of the principal EEO Professional. (The EEO Policy is attached as Appendix – 2; and the Complaint Procedures are attached as Appendix – 3.)

NOTE: The electronic links to the EEO Policy and Complaint Procedures in OATH’s *Sexual Harassment Policy Statement* are no longer active. If OATH plans to continue to distribute its EEO Policy and Complaint Procedures via the entity’s *Sexual Harassment Policy Statement*, it should update the electronic links within the document.

II. Training for the Agency

Determination: The agency is in partial-compliance with the standards for this subject area.

3. Establish and implement a training plan for new and existing employees to ensure that all individuals who work within the agency, including managers and supervisors, receive training on the prevention of sexual harassment as well as discrimination complaint and investigation procedures.

- ✓ The *Local Law 92: Annual Sexual Harassment Prevention Training* section of OATH’s fiscal year 2019 *Diversity and Equal Employment Opportunity Plan* stated, “[t]he agency plans to train all new employees on Sexual Harassment Prevention within 30 days of start date. Current employees will be trained annually.” OATH training logs demonstrated that in calendar year 2018 and 2019, 561

and 646 employees (approximately 79% and 91% of the workforce at the end of the period in review) respectively, completed the Department of Citywide Administrative Services' (DCAS) *Sexual Harassment Prevention: What to Know About Unlawful and Inappropriate Behaviors in the Workplace* computer-based training. The course objective on DCAS' Human Capital website stated that the training, "...will facilitate awareness of the City's prohibition on sexual harassment in its workplaces under applicable laws and the City's Equal Employment Opportunity (EEO) Policy. Participants will learn the definitions of sexual harassment, relevant legislation, prevention techniques and a procedure for filing a complaint. This course will help participants to create an environment that is free from sexual harassment."

- OATH did not demonstrate that all individuals who work within the agency, including managers and supervisors completed sexual harassment prevention training as outlined in its 2019 *Diversity and Equal Employment Opportunity Plan*. **Corrective Action Required**.

Corrective Action #1: Establish and implement a training plan for new and existing employees to ensure that all individuals who work within the agency, including managers and supervisors, receive training on the prevention of sexual harassment as well as discrimination complaint and investigation procedures.

III. Complaint and Investigation Procedures

Summary of Complaint Activity: The agency reported **2** internal and **6** external complaints were filed during the period in review³.

Determination: The agency is in partial-compliance with the standards for this subject area.

4. Include in the complaint file a completed Complaint Intake Form, or a written complaint that captures facts (including pertinent dates) that identify the respondent(s) with reasonable specificity and provide the essence of the circumstances which gave rise to the complaint.
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- ✓ OATH complaint file 2019 - 2 contained a *Discrimination Complaint Form* that captured the following information from the complainant: *Name; Employee Reference Number; Title; Supervisor; Date; What is the alleged basis of discrimination; Please provide name, title and division of the person(s) you believe discriminated against you; When and where did the alleged discrimination occur; Were there witnesses to the discrimination (do not list witnesses names here. Please provide the name(s) and division where any witness is employed on the attached sheet marked - CONFIDENTIAL); Did you report this incident to anyone? If so, please state the name, title, and division of the person to whom you reported it; and Have you filed a complaint about the alleged discrimination with any of the following agencies? If so, please state the date and number of the complaint (the New York City Commission on Human Rights, New York State Division of Human Rights, United States Equal Employment Opportunity Commission, and the United States Department of Labor were listed). The second page of the *Discrimination Complaint Form* was entitled *Description of Incident* and provided space to capture the following: *Describe what happened to you, which you believe is unlawful discrimination, and how other persons were**

³ None of the complaints filed during the period in review were due to sexual harassment. The two internal complaint files from the period in review were numbered 2019 - 2 and 2018 - 3.

treated differently. This statement may be amended to correct mistakes or omissions. Please use extra pages if necessary. Please be specific; and What corrective action would you suggest/seek. The complainant signed and dated the bottom of the Discrimination Complaint Form under the following statement, "I certify that I have read the above charge, that it is true to the best of my knowledge, information and belief and that I have read the attached notice concerning my rights to file a complaint with federal, state, and local civil rights enforcement agencies." In addition, the bottom of the Discrimination Complaint Form contained a For Use By EEO Office Only section that provided space to capture the Complainant; Respondent, Case Number, and Date Filed.

OATH complaint file 2018 – 3 contained an *Incident Report* that captured the following information from the complainant: *Date of Incident; Time of Incident; Date Incident was Reported; Time Incident Was Reported; Reason for Delay of Reporting (if any); Complainant/Person Reporting; Position/Relationship to OATH; Was Person Reporting Involved in Incident; If no, describe the relationship of person reporting; Names of Parties Involved; Names of Witnesses or Other Parties Present; Specific Location of Incident; Describe Incident (which provided essences of the circumstances which gave rise to the complaint); Did Injury Result (give details); Was Medical Attention Required (give details).* The *Incident Report* also contained space to capture *Report Prepared By* (space was provided to capture the name and date); *Reviewing Supervisor* (space was provided to capture the name and date); *Supervisor Comments*; and *Additional Pages Attached*.

5. Provide the option to file a complaint anonymously.

- ✓ OATH reported that it did not receive any anonymous complaints during the period in review therefore, the following finding is based on OATH's policies and procedures. OATH's EEO Policy stated "[p]ersons who wish to discuss a possible violation of this Policy without revealing their identity may do so by telephoning or writing the EEO [O]ffice. In such cases, the EEO [O]ffice will provide counseling and take such follow-up action as may be appropriate and possible, given the restraints of anonymity." In addition, The *Intake Phase* section of the Complaint Procedures stated that "[t]he EEO complaint or inquiry process begins when a person (the "Complainant") contacts the EEO Office regarding an alleged discriminatory incident. The person making the complaint may do so anonymously, if he or she so chooses. Anonymous complaints must be treated the same as identified complaints, to the extent possible."

6. Serve the respondent with a notice of the complaint that includes the respondent's right to respond to the allegations and right to be accompanied by a representative of his/her choice. Maintain in the complaint file documentation regarding the service of notice on the respondent.

- ✓ Complaint file 2019 – 2 contained notices to each respondent that included the respondent's right to respond to the allegations and right to be accompanied by a representative of his/her choice.
- Complaint file 2018 – 3 did not contain a notice to the respondent that included the respondent's right to respond to the allegations and right to be accompanied by a representative of their choice.
Corrective Action Required.

Corrective Action #2: Serve the respondent with a notice of the complaint that includes the respondent's right to respond to the allegations and right to be accompanied by a representative of his/her choice. Maintain in the complaint file documentation regarding the service of notice on the respondent.

7. Issue/maintain written confirmation when an internal complaint/mediation is terminated, withdrawn or resolved by agreement of the parties or EEO Office.

- ✓ Documents in complaint file 2018 – 3 indicated that an attempt was made to resolve the complaint via mediation that was subsequently terminated by agreement of the parties. OATH's EEO Policy contained a *Mediation* section that stated, "[a]ll requests for mediation should be made to the EEO Officer. Mediation may be requested by any party involved and may be declined by any party. The EEO Officer will determine whether the complaint is appropriate for mediation. The EEO Officer may choose to conduct the mediation internally within the agency, or externally through entities that provide mediation services. Mediation may be terminated by any party to the mediation. If this occurs, the EEO Officer will inform the other party or parties in writing that the mediation has been terminated. In the event that mediation does not result in a resolution, the EEO Officer will provide the parties with a written statement informing the parties of the complainant's right to an investigation of the allegation. Where efforts to mediate complaints are unsuccessful, complaints will be investigated by the EEO [O]ffice." In addition, the Complaint Procedures contained a *Mediation* section that stated, "[i]f the parties agree to a resolution during mediation, a resolution agreement will be drafted and provided to the parties and the referring EEO Officer. The resolution agreement will resolve the pending EEO complaint. Any resolution agreement requiring agency action or approval will only become effective subject to agency approval. If a resolution is not reached, the matter is returned to the EEO Officer and the 90-day investigative period resumes. The EEO Officer may also determine if an agreement has been violated and if so, whether to refer it for further mediation or declare the agreement void. A party may withdraw from mediation at any time. The EEO Office may also terminate the mediation process if it deems that the effort has been unproductive. The EEO Office must inform all parties to the complaint, in writing, of the termination of mediation. The notice must also inform the parties that the EEO Office will resume its investigation of the complaint."

- The conclusive report in complaint file 2018 – 3 indicated that internal mediation was terminated by agreement of the parties however, the complaint file does not include documentation that all parties to the complaint were informed, in writing, that the mediation was terminated and that the EEO Office would resume its investigation of the complaint, as required in OATH's EEO Policy. **Corrective Action Required.**

NOTE: Documentation in complaint file 2019 – 2 indicated that the associated complaint was resolved after an investigation.

Corrective Action #3: Issue/maintain written confirmation when an internal complaint/mediation is terminated, withdrawn or resolved by agreement of the parties or EEO Office.

8. Take thorough notes, of words spoken and facts provided, during each interview. Include these notes in each complaint file.

- ✓ Complaint file 2019 – 2 and 2018 – 3 each contained both typed and handwritten notes of words spoken and facts provided during each interview. The interview notes contained the date, location, and name of the interviewee.

9. Issue a conclusive report within 90 days of the date the complaint was filed. Commence an investigation immediately if allegations raised sufficiently warrant an investigation.

- ✓ Complaint file 2019 – 2 contained a conclusive report that was issued 33 days after the date the complaint was filed. Documents within the complaint file demonstrated that an investigation commenced immediately.
- After accounting for the pause in the complaint investigation due to mediation efforts, the conclusive report in complaint file 2018 – 3 was issued 236 days after the date the complaint was filed. **Corrective Action Required.**

Corrective Action #4: Issue a conclusive report within 90 days of the date the complaint was filed. Commence an investigation immediately if allegations raised sufficiently warrant an investigation.

10. In rare circumstances where a complaint investigation cannot commence immediately, or where a conclusive report cannot be issued within 90 days, specify in the complaint file the reason for the delay and project a time frame for completion of the report. Notify the complainant and respondent of the delay.

- ✓ The conclusive report in complaint file 2018 – 3 was issued after 90 days; the *Background* section of the conclusive report in complaint file 2018 – 3 specified the reason for the delay in the investigation.
- Complaint file 2018 – 3 did not contain documentation that specified a projected time frame for completion of the conclusive report or contain documentation that the complainant and respondent were notified of the delay. **Corrective Action Required.**

NOTE: The conclusive report for complaint 2019 – 2 was issued within 90 days.

Corrective Action #5: In rare circumstances where a complaint investigation cannot commence immediately, or where a conclusive report cannot be issued within 90 days, specify in the complaint file the reason for the delay and project a time frame for completion of the report. Notify the complainant and respondent of the delay.

11. Generate at the end of each complaint investigation, a conclusive confidential report which includes a summary of the allegations and responses, a summary of the procedural history of the investigation, a statement of the relevant facts gathered, a determination, a recommendation and documentation of the Agency Head's Review.

- ✓ Complaint files 2019 – 2 and 2018 – 3 each contained a conclusive report that included the following sections: *Summary of Complaint*; *Background*; *Scope of Investigation* (which contained a summary of the procedural history of the investigation); *Investigation*; *Discussion* (which contained statements of the relevant facts gathered); and *Recommendation* (which also contained a determination of the complaint investigation). In addition, complaint file 2019 – 2 contained a memorandum from the principal EEO Professional to the agency head entitled *Complaint Closing*. The *Complaint Closing* memorandum stated, “[a]ttached is the closing report regarding [complaint 2019 – 2]. Please review the recommendation and respond in writing whether or not you agree with or amend the recommended action.” Below the statement on the *Complaint Closing* memo was the handwritten statement, “[r]ecommendation accepted” followed by the date and signature of the Agency Head to demonstrate their review.
- Complaint file 2018 – 3 did not contain documentation of the Agency Head's review of the complaint investigation's conclusive confidential report. **Corrective Action Required.**

Corrective Action #6: Generate at the end of each complaint investigation, a conclusive confidential report which includes a summary of the allegations and responses, a summary of the procedural history of the investigation, a statement of the relevant facts gathered, a determination, a recommendation and documentation of the Agency Head's Review.

12. Maintain complaint files in a secure area and ensure that they can be located and reviewed by the agency head, agency general counsel, and other appropriate staff identified by the agency head.

- ✓ OATH reported that its complaint files were secured in the principal EEO Professional's office; both physically in a locked file cabinet, and electronically in a secured folder on the principal EEO Professional's computer.

13. Establish and implement a policy whereby the agency head (or an approved direct report other than the General Counsel) reviews the principal investigator's conclusive report; issues a written/electronic determination adopting, rejecting, or modifying the recommended action; and signs each determination, via writing or electronically, to indicate it has been reviewed and adopted.

- ✓ OATH's EEO Policy contained a *Concluding the Complaint Investigation* section that stated, "[t]he EEO Officer will submit a confidential report of the complaint investigation to the agency head at the conclusion of the investigation...The agency head will review the EEO Officer's report and promptly issue a determination adopting, rejecting or modifying the recommended action. Such determination shall be in writing and may be issued electronically." OATH's Complaint Procedures further established in its *Preparing The Final Report* section that, "[t]he Agency Head must sign each written report and indicate that it has been reviewed and whether the determination and recommendation, if any, is adopted, rejected or modified." Complaint file 2019 - 2 contained a memorandum from the principal EEO Professional to the agency head entitled *Complaint Closing*. The *Complaint Closing* memorandum stated, "[a]ttached is the closing report regarding [complaint 2019 - 2]. Please review the recommendation and respond in writing whether or not you agree with or amend the recommended action." Below the statement on the *Complaint Closing* memorandum was the handwritten statement, "[r]ecommendation accepted" followed by the date and signature of the agency head.
- Complaint file 2018 - 3 did not contain documentation that demonstrated that the agency head (or an approved direct report other than the General Counsel) reviewed the principal investigator's conclusive report; issued a written/electronic determination adopting, rejecting, or modifying the recommended action; and signed the determination, via writing or electronically, to indicate it has been reviewed and adopted. **Corrective Action Required.**

Corrective Action #7: Establish and implement a policy whereby the agency head (or an approved direct report other than the General Counsel) reviews the principal investigator's conclusive report; issues a written/electronic determination adopting, rejecting, or modifying the recommended action; and signs each determination, via writing or electronically, to indicate it has been reviewed and adopted.

14. Inform each complainant and respondent of the conclusion and outcome of their complaint investigation in writing as part of the agency's complaint procedure.

- ✓ Complaint files 2019 - 2 and 2018 - 3 each contained notices that informed each complainant and respondent of the conclusion and outcome of their complaint investigation in writing as required by OATH's EEO Policy and Complaint Procedures. The *Concluding the Complaint Investigation* section of the EEO Policy stated, "[t]he EEO Officer will advise all parties in writing of the outcome of a complaint." In addition, the *Informing Parties of Outcome* section of the Complaint Procedures detailed, "[t]he decision after investigation should be communicated to the parties, in writing, in a discreet and confidential manner, indicating the conclusion reached, whether the misconduct alleged has been substantiated, and the agency's opposition to that kind of activity."

15. Ensure each internal discrimination complaint file contains a written determination of its outcome and corrective action(s) taken as a result.

- ✓ Both complaint file 2019 – 2 and 2018 – 3 documented the written determination of the internal discrimination complaint outcome and corrective action(s) taken as a result via a conclusive report, as well as notices to the complainant and respondent.

16. Notify the complainant and respondent in writing when the investigation by the EEO professional has been transferred because of the filing of an external complaint.

- ✓ Neither complaint 2019 – 2 or 2018 – 3 were transferred due to the filing of an external complaint therefore, the following finding is based on analysis of OATH's policies and procedures. The *Other Places Where Complaints May Be Filed* section of the EEO Policy stated, "[w]hen a person exercises his or her right to file a complaint with a federal, state, or local administrative agency (known as an 'external complaint') based on or related to the same facts and circumstances of an internal complaint, the agency EEO Officer will transfer the matter to the agency General Counsel, who will be responsible for any further handling of the matter. The EEO Officer will notify the complainant and the parties who are the subject of the complaint, in writing, that the investigation by the EEO Officer has been transferred because of the filing of the external complaint." In addition, the Complaint Procedures contained *The Intake Phase* section that stated, "[i]f an external complaint or lawsuit is filed subsequent to the filing of the internal complaint, the matter must also be transferred to the agency's Office of General Counsel. The EEO Office must notify Complainant (and Respondent, if any) in writing of the transfer."

17. Establish and utilize a complaint tracking and monitoring system that permits the agency to identify the location, status, and length of time elapsed in the complaint investigation process, the issues and the bases of the complaints, the aggrieved individuals, and other information necessary to analyze complaint activity to identify trends.

- ✓ OATH reported that, during the period in review, it utilized DCAS' Complaint Tracking System. DCAS' Complaint Tracking System permitted the agency to identify the location, status, and length of time elapsed in the complaint investigation process, the issues and the bases of the complaints, the aggrieved individuals, and other information necessary to analyze complaint activity to identify trends. In addition, OATH utilized its own complaint tracking system entitled, *Summary of EEO Complaints Internal and External Filed Between January 1, 2018 and December 31, 2019* (OATH Complaint Tracking System). The OATH Complaint Tracking System listed both internal and external complaints and identified: [c]ase [n]umber; [b]asis (which listed the protected classes affected); [l]ocation (which identified the office location where the complaint was filed); [s]tatus; [d]ate [f]iled; [t]ime [e]lapsed; [d]etermination; and [d]ate [r]esolved.
- OATH did not demonstrate that it utilized a complaint tracking and monitoring system that permitted the agency to identify the aggrieved individuals. **Corrective Action Required.**

Corrective Action #8: Establish and utilize a complaint tracking and monitoring system that permits the agency to identify the location, status, and length of time elapsed in the complaint investigation

process, the issues and the bases of the complaints, the aggrieved individuals, and other information necessary to analyze complaint activity to identify trends.

18. Ensure that the General Counsel assists the agency head in identifying and determining appropriate responses to sexual harassment; works with the principal EEO Professional in the implementation of the City's policies and procedures pertaining to sexual harassment; informs the principal EEO Professional when external complaints or litigation involving sexual harassment is brought against the agency; is available to consult on internal sexual harassment complaint investigations; and is responsible for the investigation of, and response to, external sexual harassment complaints.

- ✓ Emails during the period in review between the General Counsel and principal EEO Professional regarding an external complaint demonstrated that the General Counsel was responsible for the responsibilities outlined in the *Agency General Counsels* section of the EEO Policy which stated that, "[a]gency General Counsels should: 1) assist the agency head in identifying and determining appropriate responses to EEO issues; 2) work cooperatively and closely with the EEO Officer in the implementation of the Policy, standards, and procedures; 3) inform the EEO Officer when external complaints or litigation involving EEO matters are brought against the agency; 4) be available to consult on internal EEO investigations; and 5) be responsible for the investigation of, and response to, external EEO complaints."

NOTE: OATH reported no complaints during the period in review were related to sexual harassment, therefore compliance was determined by review of the EEO Policy and Complaint Procedures.

IV. Annual Review of Practices, Policies and Programs

Determination: The agency is in non-compliance with the standards for this subject area.

19. Ensure that the principal EEO Professional, HR Professional, and General Counsel, review the number of sexual harassment complaints, and the agency's employment practices, policies and programs on an annual basis to identify whether there are barriers to employment opportunities that may be related to sexual harassment and determine what, if any, actions are required to correct deficiencies.

- OATH did not demonstrate that, during the period in review, the principal EEO Professional, HR Professional, and General Counsel reviewed the agency's employment practices, policies and programs on an annual basis to identify whether there are barriers to employment opportunities that may be related to sexual harassment and determine what, if any, actions are required to correct deficiencies. **Corrective Action Required.**

NOTE: OATH reported it received no sexual harassment complaints during the period in review, therefore, analysis of the principal EEO Professional, HR Professional, and General Counsel's review of the number of sexual harassment complaints was impractical.

Corrective Action #9: Ensure that the principal EEO Professional, HR Professional, and General Counsel, review the number of sexual harassment complaints, and the agency's employment practices, policies and programs on an annual basis to identify whether there are barriers to employment opportunities that may be related to sexual harassment and determine what, if any, actions are required to correct deficiencies.

V. Responsibility for Implementation - EEO Professionals

Determination: The agency is in partial-compliance with the standards for this subject area.

20. Appoint a principal EEO Professional to implement EEO policies and standards within the agency. Ensure the principal EEO Professional is trained regarding city, state, federal EEO laws; the requirements of the agency's EEO policies, standards and procedures; and the prevention, investigation, and resolution of discrimination and sexual harassment complaints.

- ✓ On May 4, 2017, an email entitled, "OATH's new [principal EEO Professional]" was emailed to all employees. The email stated, "[p]lease join us in welcoming [principal EEO Professional name] as OATH's new [principal EEO Professional]...Please feel free to contact [principal EEO Professional name] at [telephone number] or [email] for any reasonable accommodation requests, to obtain EEO related information, or any other questions you may have regarding EEO issues." Certificates of completion from DCAS' Citywide Training Center (CTC) demonstrated that the principal EEO Professional completed a four-day *Diversity and Equal Employment Opportunity Basic Training* in 2011 regarding city, state, federal EEO laws; the requirements of the agency's EEO policies, standards and procedures; and the prevention, investigation, and resolution of discrimination and sexual harassment complaints. The principal EEO Professional also completed the following trainings provided by DCAS' CTC; *Conflict Resolution: Achieving Best Practices*, and *Training on Effective Complaint Investigations and How to Handle Challenging Situations* in 2012; *Everybody Matters* in 2014; *Understanding Unconscious Bias: Train - the - Trainer*, and *Equal Employment Opportunity* computer-based training in 2015; *Initiating and Managing Difficult Conversations* in 2018; and *Sexual Harassment Prevention: What to Know About Unlawful and Inappropriate Behaviors in the Workplace* computer-based training in 2018 and 2019. Training logs from the Practising Law Institute demonstrated that in 2013 the principal EEO Professional completed a course titled, *Internal Investigations 2013*.

21. Ensure that the responsibilities of the principal EEO Professional are competently discharged by providing adequate resources such as opportunities for continuing education and professional development, and/or support staff to meet EEO obligations.

- ✓ A certificate of completion from 2019 demonstrated that the principal EEO Professional was provided opportunities for continuing education and professional development. In addition, OATH's 2018 *Sexual Harassment Policy Statement* indicated that the principal EEO Professional was supported by six EEO Counselors. OATH's PIQ response indicated that the EEO Counselors were interchangeably referred to as EEO Liaisons.

22. Where the agency's organizational structure necessitates multiple EEO professionals, select such individuals from different office locations and, where possible, from a variety of levels within the organizational structure. Appoint EEO professionals who are trained in EEO laws and procedures, and their responsibilities under the EEO Policy.

- ✓ At the end of the period in review, OATH had 708 employees located in six offices, with at least one office located in the boroughs of Queens, Brooklyn, the Bronx, and Manhattan (three offices are located in Manhattan, with two of the offices located in the same building on different floors). OATH's *Sexual Harassment Policy Statement*, 2018 indicated that the principal EEO Professional was supported by six EEO Liaisons. OATH reported that in 2019 the principal EEO Professional was supported by six EEO Counselors, with at least one EEO Counselor located at each office location. Certificates of completion from DCAS' CTC demonstrated that the EEO Liaison located at one of the three Manhattan offices completed a four-day *Diversity and Equal Employment Opportunity Basic Training* in 2012, and *Sexual Harassment Prevention: What to Know About Unlawful and Inappropriate Behaviors in the Workplace* computer-based training in 2018 and 2019. Certificates of completion from DCAS' CTC demonstrated that the EEO Liaison located at the Bronx office completed *Everybody Matters*, *Diversity & Inclusion* and *Equal Employment Opportunity* computer-based trainings in 2016; *Conflict Resolution Strategies*, *Building an Inclusive Culture: Understanding Unconscious Bias*, and *Reasonable Accommodation Procedural Guidelines* in 2017; and *Sexual Harassment Prevention: What to Know About Unlawful and Inappropriate Behaviors in the Workplace* computer-based training in 2018 and 2019. Training logs from DCAS' CTC demonstrated that the EEO Liaisons located in the Queens, Brooklyn, and two of the three remaining Manhattan offices completed *Sexual Harassment Prevention: What to Know About Unlawful and Inappropriate Behaviors in the Workplace* computer-based training in 2018 and 2019.

- OATH did not demonstrate that all of its EEO Liaisons were trained in EEO laws and procedures. In addition, OATH did not indicate the EEO Liaisons' job responsibilities therefore, the EEOC was unable to determine whether they were trained in their responsibilities. OATH also did not indicate whether the title change from EEO Liaisons to EEO Counselors included job responsibilities as well.
Corrective Action Required.

Corrective Action #10: Where the agency's organizational structure necessitates multiple EEO professionals, select such individuals from different office locations and, where possible, from a variety of levels within the organizational structure. Appoint EEO professionals who are trained in EEO laws and procedures, and their responsibilities under the EEO Policy.

23. Ensure that the principal EEO Professional works cooperatively and closely with the General Counsel in the implementation of policies and procedures concerning EEO and sexual harassment.

- ✓ Emails during the period in review between the principal EEO Professional and the General Counsel regarding external discrimination complaints demonstrated that the principal EEO

Professional worked cooperatively and closely with the General Counsel in the implementation of policies and procedures concerning EEO and sexual harassment.

24. Assign the principal EEO Professional (or EEO-related designee) the responsibility to supervise the activities of EEO professionals, and ensure that: the policies against sexual harassment and complaint procedures are distributed/posted at all agency locations; employees/managers receive sexual harassment prevention training; EEO-related policies are made available in alternative formats (i.e., large print, audio recording and/or Braille) upon request; managers, supervisors and human resource professionals receive guidance on issues pertaining to sexual harassment; and allegations of sexual harassment are promptly investigated.

- ✓ OATH's *Job Description Notice* for its principal EEO Professional assigned the following responsibilities to ensure that policies against sexual harassment and complaint procedures were distributed/posted at all agency locations and that employees and managers received sexual harassment prevention training: "[t]he [principal EEO Professional] will be responsible for supporting the agency's compliance with EEO/ADA policies and procedures, as well as other city, state and federal equal opportunity laws and regulations. Responsibilities include, but are not limited to: ...[r]eview, organize, administer, and monitor the agency's Equal Employment Opportunity/ADA complaint policy and investigate and recommend appropriate action to resolve or reconcile discrimination complaints... [a]dminister mandatory EEO training to agency employees and distribute all related materials; [m]aintain EEO statistical data and process agency reports as required." OATH's principal EEO Professional demonstrated these responsibilities via emails distributing the entity's EEO Policy and Complaint Procedures (which were each available as a PDF that was capable of large print format) to all employees, and advising all employees, including managers and supervisors, of mandated sexual harassment prevention training. In addition, the *EEO Officers* section of the EEO Policy stated, "[t]he [principal EEO Professional] should... provide guidance and assistance to agency managers, supervisors, and human resource professionals in addressing issues relating to equal employment opportunity. The [principal EEO Professional] will also: ... 2) supervise the EEO related activities of EEO counselors and/or investigators."

NOTE: OATH's internal discrimination complaints during the period in review were not due to sexual harassment, therefore analyzing whether sexual harassment complaints were promptly investigated was impractical.

- OATH did not demonstrate that, during the period in review, the principal EEO Professional was responsible for supervising the activities of the entity's EEO professionals, and that managers, supervisors, and human resources received guidance on issues pertaining to sexual harassment.
Corrective Action Required.

Corrective Action #11: Assign the principal EEO Professional (or EEO-related designee) the responsibility to supervise the activities of EEO professionals, and ensure that: the policies against sexual harassment and complaint procedures are distributed/posted at all agency locations; employees/managers receive sexual harassment prevention training; EEO-related policies are made available in alternative formats (i.e., large print, audio recording and/or Braille) upon request; managers, supervisors and human resource professionals receive guidance on issues pertaining to sexual harassment; and allegations of sexual harassment are promptly investigated.

25. Ensure that the principal EEO Professional reports directly to the agency head (or a direct report other than the General Counsel) in order to exercise the necessary authority and independent judgment to fulfill EEO responsibilities.

- OATH did not demonstrate that, during the period in review, the principal EEO Professional reported directly to the agency head (or a direct report other than the General Counsel) in order to exercise the necessary authority and independent judgment to fulfill EEO responsibilities.
Corrective Action Required.

Corrective Action #12: Ensure that the principal EEO Professional reports directly to the agency head (or a direct report other than the General Counsel) in order to exercise the necessary authority and independent judgment to fulfill EEO responsibilities.

26. Maintain documentation regarding directives or decisions between the agency head (or a direct report other than the General Counsel) and the principal EEO Professional that impact the administration and operation of programs, policies or procedures concerning sexual harassment.

- ✓ A February 2018 memo to file contained the principal EEO Professional's name and title on entity letterhead with the subject, *Monthly Meeting with the Commissioner*. The memo to file indicated that directives and decisions were made between the principal EEO Professional and agency head regarding the entity's *Diversity and Equal Employment Opportunity Plan*. A September 2019 memo to file contained the principal EEO Professional's name and title on entity letterhead with the subject, *1st Monthly Meeting with Acting Commissioner [name]*. The memo to file indicated that directives and decisions were made between the principal EEO Professional and agency head regarding the updating of agency documents to reflect more recent laws and additional protected classes against discrimination in EEO. Both memos to file demonstrated that documentation was maintained between the principal EEO Professional and agency head that impacted the administration and operation of programs, policies or procedures concerning sexual harassment.

VI. Responsibility for Implementation – Supervisors/Managers

Determination: The agency is in partial-compliance with the standards for this subject area.

27. Ensure that managers and supervisors are held accountable for enforcing the agency's sexual harassment prevention policies and complaint procedures. Document this expectation and its implementation.

- ✓ OATH's policies and procedures established the expectation that managers and supervisors enforce the entity's sexual harassment prevention policies and complaint procedures. The *Sexual Harassment Policy Statements* stated that, "[m]anagers and supervisors must promptly notify the agency EEO Officer in writing, either via email or a memorandum, if they receive a complaint alleging sexual harassment or if they observe, learn about, or suspect that any violation of the

Policy has occurred. Managers and supervisors should encourage subordinates to consult with the EEO Officer." In addition, the EEO Policy stated that, "[m]anagers and supervisors will make every effort to maintain a work environment that fosters sensitivity and respect for the diversity of all individuals. Specifically, each agency manager or supervisor shall: 1) be held accountable to the agency head for effectively implementing EEO-related policies... 4) cooperate with the EEO Officer in the implementation of the Policy, standards, and procedures (including training, complaint resolutions, processing, recording, and reporting reasonable accommodation requests, EEO-related recruitment, and selection standards; and modifying agency procedures to ensure equal employment opportunity for applicants and employees)." In addition, the Complaint Procedures' The Intake Phase section stated, "[s]upervisors and managers are required under the Policy to timely notify their EEO Office of any alleged discriminatory conduct they observe or become aware of."

- OATH did not demonstrate implementation of the expectation that managers and supervisors are held accountable for enforcing the agency's sexual harassment prevention policies and complaint procedures. **Corrective Action Required.**

Corrective Action #13: Ensure that managers and supervisors are held accountable for enforcing the agency's sexual harassment prevention policies and complaint procedures. Document this expectation and its implementation.

28. Ensure the managerial performance evaluation form contains a rating for EEO (which covers responsibilities and processes for assuring their ability to make employment decisions based on merit and equal consideration, or treat others in an equitable and impartial manner).

- OATH reported that its managerial performance evaluation form did not contain a rating for EEO (which covers responsibilities and processes for assuring their ability to make employment decisions based on merit and equal consideration, or treat others in an equitable and impartial manner). **Corrective Action Required.**

Corrective Action #14: Ensure the managerial performance evaluation form contains a rating for EEO (which covers responsibilities and processes for assuring their ability to make employment decisions based on merit and equal consideration, or treat others in an equitable and impartial manner).

VII. Reporting Standard for Agency Head

Determination: The agency is required to comply with the standards for this subject area.

29. Submit to the EEOC an Annual Plan of measures and programs to provide equal employment opportunity, and quarterly reports on efforts to implement the Plan within 30 days following each quarter. Include a breakout of sexual harassment complaint activity in each quarterly report.

- ✓ OATH provided its *Diversity and Equal Employment Opportunity Plan* for fiscal year 2018 and 2019. The entity also provided its *Agency Quarterly Diversity and EEO Reports* for the third and fourth quarters of fiscal years 2018 and 2019, and the first and second quarter of fiscal year 2020. OATH's *Agency Quarterly Diversity and EEO Reports* for the third and fourth quarter of fiscal year 2018 each contained an *Agency Affirmation of No Complaint/Reasonable Accommodation Request Activity* that demonstrated that no discrimination complaints were filed during the quarter. OATH's *Agency Quarterly Diversity and EEO Reports* for the third and fourth quarter of fiscal year 2019 and the first and second quarter of fiscal year 2020 each contained a *Local Law 97: Annual Sexual Harassment Reporting* section in which the agency certified that it utilized DCAS' Citywide Complaint Tracking System to enter initial complaints (including sexual harassment complaints) and updates as they occurred.
- OATH did not provide its *Diversity and Equal Employment Opportunity Plan* for fiscal year 2020 and its *Agency Quarterly Diversity and EEO Reports* for the first and second quarter of fiscal year 2019. In addition, the *Agency Quarterly Diversity and EEO Reports* for the third and fourth quarter of fiscal year 2019, and the first and second quarter of fiscal year 2020 did not contain a breakout of sexual harassment complaint activity. **Corrective Action Required.**

Corrective Action #15: Submit to the EEPCC an Annual Plan of measures and programs to provide equal employment opportunity, and quarterly reports on efforts to implement the Plan within 30 days following each quarter. Include a breakout of sexual harassment complaint activity in each quarterly report.

30. Upon the EEPCC's determination that the entity does not require further review or monitoring: Distribute a memorandum signed by the agency head that re-emphasizes the commitment of agency administrators to the EEO program, including the prevention of sexual harassment, and informs employees of any changes to the agency's employment practices as a result of the EEPCC's audit/monitoring. This final action is required to conclude the audit and monitoring process.

FINAL ACTION: Upon the EEPCC's determination that the entity does not require further review or monitoring: Distribute a memorandum signed by the agency head that re-emphasizes the commitment of agency administrators to the EEO program, including the prevention of sexual harassment, and informs employees of any changes to the agency's employment practices as a result of the EEPCC's audit/monitoring. This final action is required to conclude the audit and monitoring process.

Summary of Corrective Actions:

The Office of Administrative Trials and Hearings has **16** required corrective action(s) at this time. This includes the aforementioned final action.

Conclusion

Pursuant to Charter Chapter 36, the Office of Administrative Trials and Hearings has the *option* to respond to this Preliminary Determination, but must respond to our Final Determination if corrective action is required. **Any response must be signed by the agency head and submitted to the EEPCC's Executive Director.**

Optional Response to Preliminary Determination: If submitted, the Office of Administrative Trials and Hearings' optional response to the EEPD's Executive Director should indicate, with attached documentation, what steps have been or will be taken to correct outstanding areas of non-compliance, and must be received in our office within 14 days from the date of this letter. No extensions will be granted for the *option* to respond to the Preliminary Determination.

(Optional Conference) If requested, at the Optional Conference the EEPD will discuss the immediate steps that should be taken to correct outstanding areas of non-compliance and address questions regarding the Office of Administrative Trials and Hearings' implementation of the prescribed corrective action(s).

(No Response Option) If the Office of Administrative Trials and Hearings does not respond to this Preliminary Determination within 14 days, it will become the EEPD's Final Determination.

Mandatory Response to Final Determination: Following this Preliminary Determination, the EEPD will issue a Final Determination where we may modify or eliminate the corrective action(s) based on verified information submitted as part of the response to the Preliminary Determination; identify remaining corrective action(s) that require further monitoring to ensure implementation; and assign a mandatory compliance-monitoring period of up to 6 months for this purpose. Pursuant to Charter Chapter 36, upon receipt, the Office of Administrative Trials and Hearings must submit a response, signed by the agency head, to our Final Determination within 30 days. Your response to the Final Determination will initiate the compliance-monitoring period.

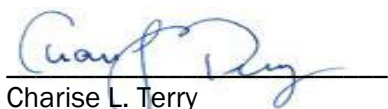
In closing, we want to thank you and your staff for the cooperation extended to the Equal Employment Practices Commission's EEO Program Analysts during the course of our audit and analysis.

Respectfully Submitted by,



Imani Bowen, EEO Program Analyst

Approved by,



Charise L. Terry
Executive Director

c: Sharina DeRoberts, principal EEO Professional, Labor Relations Officer, OATH
William B. Peterson, Manager, Labor Relations Analysis and Audit, EEPD

Appendix – 1

Office of Administrative Trials and Hearings

Citywide Equal Employment Database System (CEEDS) Report: *Work
Force Composition Summary*

2nd quarter of fiscal year 2020

RUN DATE: 01/03/20
RUN TIME: 13:44:06.7

NEW YORK CITY DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES
CITYWIDE EQUAL EMPLOYMENT DATABASE SYSTEM (CEEDS)
WORK FORCE COMPOSITION SUMMARY

PAGE: 203
REPORT: EBEP210

QUARTER 2 YEAR 2020 AGENCY 820 OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS (OATH)

AGENCY CODE : 820 OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS (OATH)
EEO JOB GROUP : 001 ADMINISTRATORS

TITLE CODE	TITLE DESCRIPTION	MALE						FEMALE						OTHER	TOTAL EMP
		WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN	WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN		
94350	MEMBER OF THE ENVIRONMENTA	1	1	0	0	0	1	0	0	0	0	0	1	0	4
EEO JOB GROUP TOTAL.....:		1	1	0	0	0	1	0	0	0	0	0	1	0	4
		25.00	25.00	0.00	0.00	0.00	25.00	0.00	0.00	0.00	0.00	0.00	25.00	0.00	100.00

AGENCY CODE : 820 OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS (OATH)
EEO JOB GROUP : 002 MANAGERS

TITLE CODE	TITLE DESCRIPTION	MALE						FEMALE						OTHER	TOTAL EMP
		WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN	WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN		
10001	ADMINISTRATIVE ACCOUNTANT	0	0	0	1	0	0	0	0	0	0	0	0	0	1
1002F	ADMINISTRATIVE COMMUNITY R	0	3	1	0	0	0	0	1	0	0	0	0	0	5
10022	ADMINISTRATIVE COMMUNITY R	0	0	0	0	0	0	0	0	1	0	0	0	0	1
10026	ADMINISTRATIVE STAFF ANALY	1	0	0	0	0	0	2	0	1	0	0	0	0	4
10050	COMPUTER SYSTEMS MANAGER	2	0	1	1	0	0	0	0	1	0	0	0	0	5
10053	ADMINISTRATIVE CITY PLANNE	1	0	0	0	0	0	0	0	0	0	0	0	0	1
13219	EXECUTIVE ASSISTANT TO THE	0	1	0	0	0	0	0	0	0	0	0	0	0	1
82950	AGENCY CHIEF CONTRACTING O	0	1	0	0	0	0	0	0	0	0	0	0	0	1
82994	ADMINISTRATIVE LABOR RELAT	0	0	0	0	0	0	0	0	1	0	0	0	0	1
95005	EXECUTIVE AGENCY COUNSEL	9	1	1	0	0	0	10	4	0	2	0	0	0	27
EEO JOB GROUP TOTAL.....:		13	6	3	2	0	0	12	5	4	2	0	0	0	47
		27.65	12.77	6.38	4.26	0.00	0.00	25.53	10.64	8.51	4.26	0.00	0.00	0.00	100.00

AGENCY CODE : 820 OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS (OATH)
EEO JOB GROUP : 003 MANAGEMENT SPECIALISTS

TITLE CODE	TITLE DESCRIPTION	MALE						FEMALE						OTHER	TOTAL EMP
		WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN	WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN		
1002A	ADMINISTRATIVE STAFF ANALY	1	0	0	0	0	0	0	0	1	0	0	0	0	2
1002C	ADMINISTRATIVE MANAGER NON	0	1	0	0	0	0	1	11	0	0	0	0	0	13
1002D	ADMINISTRATIVE STAFF ANALY	1	0	0	0	0	0	0	1	0	0	0	0	0	2
12158	PROCUREMENT ANALYST	0	0	0	0	0	0	0	1	0	0	0	0	0	1
12626	STAFF ANALYST	0	0	0	0	0	0	0	1	0	1	0	0	0	2
12627	ASSOCIATE STAFF ANALYST	0	0	0	1	0	0	0	2	0	0	0	0	0	3
8297A	ADMINISTRATIVE PROCUREMENT	0	0	0	0	0	0	0	0	0	1	0	0	0	1
EEO JOB GROUP TOTAL.....:		2	1	0	1	0	0	1	16	1	2	0	0	0	24
		8.32	4.17	0.00	4.17	0.00	0.00	4.17	66.67	4.17	8.33	0.00	0.00	0.00	100.00

AGENCY CODE : 820 OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS (OATH)
EEO JOB GROUP : 004 SCIENCE PROFESSIONALS

RUN DATE: 01/03/20
RUN TIME: 13:44:06.8

NEW YORK CITY DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES
CITYWIDE EQUAL EMPLOYMENT DATABASE SYSTEM (CEEDS)
WORK FORCE COMPOSITION SUMMARY

PAGE: 204
REPORT: EBEPR210

QUARTER 2 YEAR 2020 AGENCY 820 OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS (OATH)

TITLE CODE	TITLE DESCRIPTION	MALE						FEMALE						OTHER	TOTAL EMP
		WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN	WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN		
13621	COMPUTER ASSOCIATE (OPERAT	0	0	0	0	0	0	0	0	0	1	0	0	0	1
13631	COMPUTER ASSOCIATE (SOFTWA	0	1	0	1	0	0	0	0	0	0	0	0	0	2
13632	COMPUTER SPECIALIST (SOFTW	1	0	0	0	0	0	1	0	0	2	0	0	0	4
13643	CERTIFIED IT DEVELOPER (AP	0	0	0	1	0	0	0	0	0	0	0	0	0	1
13652	CERTIFIED IT ADMINISTRATOR	0	0	0	0	0	0	0	1	0	0	0	0	0	1
EEO JOB GROUP TOTAL.....:		1	1	0	2	0	0	1	1	0	3	0	0	0	9
		11.12	11.11	0.00	22.22	0.00	0.00	11.11	11.11	0.00	33.33	0.00	0.00	0.00	100.00

AGENCY CODE : 820 OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS (OATH)
EEO JOB GROUP : 008 LAWYERS

TITLE CODE	TITLE DESCRIPTION	MALE						FEMALE						OTHER	TOTAL EMP
		WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN	WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN		
30085	*ATTORNEY AT LAW	0	0	0	0	0	0	2	0	0	0	0	0	0	2
30086	AGENCY ATTORNEY INTERNE	1	0	0	0	0	0	1	0	0	1	0	0	0	3
30087	AGENCY ATTORNEY	10	0	2	1	0	1	11	3	2	1	0	2	0	33
30181	ADMINISTRATIVE LAW JUDGE	4	0	1	0	0	0	3	2	0	0	0	1	0	11
95937	HEARING OFFICER (PER SESSI	100	13	13	7	0	3	138	36	10	7	0	5	1	333
EEO JOB GROUP TOTAL.....:		115	13	16	8	0	4	155	41	12	9	0	8	1	382
		30.11	3.40	4.19	2.09	0.00	1.05	40.58	10.73	3.14	2.36	0.00	2.09	0.26	100.00

AGENCY CODE : 820 OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS (OATH)
EEO JOB GROUP : 009 PUBLIC RELATIONS

TITLE CODE	TITLE DESCRIPTION	MALE						FEMALE						OTHER	TOTAL EMP
		WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN	WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN		
60816	ASSOCIATE PUBLIC INFORMATI	0	0	0	0	0	0	0	0	1	0	0	0	0	1
EEO JOB GROUP TOTAL.....:		0	0	0	0	0	0	0	0	1	0	0	0	0	1
		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	100.00	0.00	0.00	0.00	0.00	100.00

AGENCY CODE : 820 OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS (OATH)
EEO JOB GROUP : 012 CLERICAL SUPERVISORS

TITLE CODE	TITLE DESCRIPTION	MALE						FEMALE						OTHER	TOTAL EMP
		WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN	WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN		
10124	PRINCIPAL ADMINISTRATIVE A	0	3	0	0	0	0	2	4	1	0	0	0	0	10
EEO JOB GROUP TOTAL.....:		0	3	0	0	0	0	2	4	1	0	0	0	0	10
		0.00	30.00	0.00	0.00	0.00	0.00	20.00	40.00	10.00	0.00	0.00	0.00	0.00	100.00

NEW YORK CITY DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES
CITYWIDE EQUAL EMPLOYMENT DATABASE SYSTEM (CEEDS)
WORK FORCE COMPOSITION SUMMARY
020 AGENCY 820 OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS (OATH)

QUARTER 2 YEAR 2020 AGENCY 820 OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS (OATH)

TITLE CODE	TITLE DESCRIPTION	MALE						FEMALE						OTHER	TOTAL EMP.	
		WHITE	BLACK	HISPAN	ASIAN PACIS	AM IND ALASK	UN- KNOWN	WHITE	BLACK	HISPAN	ASIAN PACIS	AM IND ALASK	UN- KNOWN			
10250	CLERICAL AIDE	1	1	0	0	0	0	0	0	0	0	0	0	0	0	2
10251	CLERICAL ASSOCIATE	1	2	1	2	0	1	2	15	6	1	0	0	0	0	31
10252	SECRETARY	0	0	0	1	0	0	0	1	0	0	0	0	0	0	2
12800	CONFIDENTIAL SECRETARY OF	0	0	0	0	0	0	2	0	0	0	0	0	0	0	2
40526	BOOKKEEPER	0	0	0	1	0	0	0	0	2	0	0	0	0	0	3
60215	PUBLIC RECORDS AIDE	0	1	0	0	0	0	0	6	1	0	0	0	0	0	8
60888	CUSTOMER INFORMATION REPRE	0	1	0	0	0	0	0	1	1	0	0	0	0	0	3
EEO JOB GROUP TOTAL.....:		2	5	1	4	0	1	2	25	8	3	0	0	0	0	51
		3.93	9.80	1.96	7.84	0.00	1.96	3.92	49.02	15.69	5.88	0.00	0.00	0.00	100.00	

TITLE		MALE						FEMALE						OTHER	TOTAL EMP
CODE	TITLE DESCRIPTION	WHITE	BLACK	HISPAN	ASIAN PACIS	AM IND ALASK	UN- KNOWN	WHITE	BLACK	HISPAN	ASIAN PACIS	AM IND ALASK	UN- KNOWN		
70810	SPECIAL OFFICER	1	1	0	0	0	1	0	1	2	0	0	0	0	6
EEO JOB GROUP TOTAL.....:		16.66	16.67	0.00	0.00	0.00	16.67	0.00	16.67	33.33	0.00	0.00	0.00	0.00	100.00

EEO JOB GROUP : 025 CRAFT			MALE					FEMALE					OTHER	TOTAL EMP		
TITLE CODE	TITLE DESCRIPTION		WHITE	BLACK	HISPAN	ASIAN PACIS	AM IND ALASK	UN-KNOWN	WHITE	BLACK	HISPAN	ASIAN PACIS			AM IND ALASK	UN-KNOWN
90698	MAINTENANCE WORKER		0	0	0	0	0	0	0	1	0	0	0	0	0	1
EEO JOB GROUP TOTAL.....:			0	0	0	0	0	0	0	1	0	0	0	0	0	1
			0.00	0.00	0.00	0.00	0.00	0.00	0.00	100.00	0.00	0.00	0.00	0.00	0.00	100.00

[illegible]

RUN DATE: 01/03/20
RUN TIME: 13:44:06.8

NEW YORK CITY DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES
CITYWIDE EQUAL EMPLOYMENT DATABASE SYSTEM (CEEDS)
WORK FORCE COMPOSITION SUMMARY

PAGE: 206
REPORT: EBEP210

QUARTER 2 YEAR 2020 AGENCY 820 OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS (OATH)

AGENCY CODE : 820 OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS (OATH)
EEO JOB GROUP : 031 PARA PROFESSIONAL OCCUPATIONS

TITLE CODE	TITLE DESCRIPTION	MALE						FEMALE						OTHER	TOTAL EMP
		WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN	WHITE	BLACK	HISPN	ASIAN PACIS	AM IND ALASK	UN- KNOWN		
10209	COLLEGE AIDE	0	3	0	1	0	0	0	3	1	0	0	0	0	8
52406	COMMUNITY SERVICE AIDE	1	6	2	0	0	0	2	17	8	1	0	3	0	40
56056	COMMUNITY ASSISTANT	1	6	1	1	0	0	2	8	8	2	0	0	0	29
56057	COMMUNITY ASSOCIATE	2	7	5	3	0	0	3	18	4	2	1	2	0	47
56058	COMMUNITY COORDINATOR	8	4	6	4	0	0	5	8	8	1	0	3	0	47
EEO JOB GROUP TOTAL.....:		12	26	14	9	0	0	12	54	29	6	1	8	0	171
		7.02	15.20	8.19	5.26	0.00	0.00	7.02	31.58	16.96	3.51	0.58	4.68	0.00	100.00

AGENCY TOTAL.....:		148	58	34	26	0	7	185	148	58	25	1	17	1	708
		20.92	8.19	4.80	3.67	0.00	0.99	26.13	20.90	8.19	3.53	0.14	2.40	0.14	100.00

Appendix – 2

Office of Administrative Trials and Hearings

*Equal Employment Opportunity Policy, Standards and Procedures to
Be Utilized by City Agencies, City of New York (EEO Policy)*

2014



EQUAL EMPLOYMENT OPPORTUNITY POLICY

STANDARDS AND PROCEDURES
TO BE UTILIZED BY CITY AGENCIES

CITY OF NEW YORK

2014

EQUAL EMPLOYMENT OPPORTUNITY POLICY

STANDARDS AND PROCEDURES
TO BE UTILIZED BY CITY AGENCIES

CITY OF NEW YORK

BILL DE BLASIO
Mayor

LISETTE CAMILO
Commissioner
Department of Citywide Administrative Services

2014

**NEW YORK CITY
EQUAL EMPLOYMENT OPPORTUNITY POLICY**

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NEW YORK CITY EQUAL EMPLOYMENT OPPORTUNITY POLICY **(2014)**

Introduction

The New York City Charter provides that each agency head must ensure that his or her agency does not discriminate against employees or applicants for employment in any manner prohibited by federal, state, and local law.¹ In addition, the Charter requires agency heads to establish measures, programs, and annual EEO Plans that communicate each agency's efforts to provide equal employment opportunity ("EEO") to City employees and applicants for employment within City government.² The Department of Citywide Administrative Services ("DCAS") is required to establish uniform procedures and standards to assist City agencies in establishing annual EEO Plans, and other measures and programs to ensure equal employment opportunity.³ DCAS developed this Policy,⁴ and the standards and procedures contained herein, to implement DCAS' and the City's obligations under the City Charter; federal, state, and local laws; and the City's diversity and inclusion strategy.

The *Equal Employment Opportunity Policy (2014)*, hereafter known as "Policy," supersedes the previous *Equal Employment Opportunity Policy (2005)* of the City of New York. Detailed uniform complaint and reasonable accommodation procedures are published separately. This Policy, any addenda to this Policy, and the EEO Policy Handbook are to be distributed to each agency head, EEO Officer,⁵ General Counsel, Agency Personnel Officer (APO), manager, and supervisor.

In addition to the Policy, DCAS updated the EEO Policy Handbook, "*About EEO: What You May Not Know*."⁶ The EEO Policy Handbook was created to provide City government employees with a user-friendly summary of the relevant laws and the Policy.

¹ See Charter Section 815(h).

² See Charter Section 815(a)(19).

³ See Charter Section 814(a)(12).

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

⁵ Each agency head appoints an EEO Officer to assist with the implementation of the Policy, standards, and procedures. The agency EEO Officer and other personnel, including EEO counselors, investigators, liaisons, etc., are referred to in this Policy as 'EEO office or EEO representatives.'

⁶ The Policy may be downloaded at <http://www.nyc.gov/html/dcas/html/about/ecopol>. The EEO Policy Handbook, "*About EEO: What You May Not Know*," may be downloaded at http://www.nyc.gov/html/dcas/html/about/eo_booklet.shtml.

I. Equal Employment Opportunity Policy

The City of New York is an equal opportunity employer and prohibits discriminatory employment actions against, and treatment of, City employees and applicants for employment based on actual or perceived race, color, national origin, alienage or citizenship status, religion or creed, gender (including “gender identity” -- which refers to a person’s actual or perceived sex, and includes self-image, appearance, behavior or expression, whether or not different from that traditionally associated with the legal sex assigned to the person at birth), disability, age (18 and over), military status, prior record of arrest or conviction,⁷ marital status, partnership status,⁸ genetic information or predisposing genetic characteristic,⁹ sexual orientation, status as a victim or witness of domestic violence, sex offenses or stalking,¹⁰ and unemployment status.¹¹

A. Types of Prohibited Conduct¹²

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

⁷ Some employment actions motivated by the reasons listed are permitted by law, such as where an employer may deny employment on the basis of an applicant’s prior record of conviction, if there is a direct relationship between one or more of the applicant’s criminal offenses and the specific employment sought, or where employing the applicant poses an unreasonable risk to property or to the safety or welfare of specific individuals or the general public. (*See* Correction Law, Art. 23-A, Section 752.)

⁸ “Partnership status” was added as a protected class under New York City’s Human Rights Law on October 3, 2005.

⁹ The term “predisposing genetic characteristic” was adopted on August 30, 2005 to streamline the terms “genetic predisposition” and “carrier status” in the previous version of the New York State Human Rights Law.

¹⁰ “Status as victim of sex offenses or stalking” was added as a protected class under the City Human Rights Law on December 22, 2003.

¹¹ “Unemployment status” was added as a protected class under New York City’s Human Rights Law on June 11, 2013.

¹² See also, EEO Policy Handbook: *“About EEO: What you May Not Know,”* for more examples of prohibited conduct.

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

The Policy prohibits conduct which unreasonably interferes with an employee's job performance or creates an intimidating, hostile, or offensive working environment, or creates an abusive working environment based on any protected characteristic.

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

The Policy also prohibits the denial of reasonable accommodations for disabilities; pregnancy, childbirth, and related medical conditions; religious beliefs, observances, and practices; or for victims of domestic violence, sex offenses, or stalking that do not create an undue hardship.

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

The Policy also prohibits any City employee from aiding, abetting, inciting, compelling, or coercing any person present in a City facility, whether or not that person is an employee of the City, from engaging in any conduct prohibited by this Policy, including, but not limited to, conduct that creates a hostile work environment based on any protected characteristic.

B. Applicability

Everyone who works within New York City government or its workplaces, or who seeks employment within City government, is covered by federal, state, and local employment laws, and this Policy. This includes all current employees, managers (including executives and senior level staff members), supervisors, co-workers, paid and unpaid interns,¹³ and job applicants.

¹³ The prohibition of discrimination against interns was added in the New York City's Human Rights Law on April 15, 2014.

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

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

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

In addition, Work Experience Program ("WEP") participants have a right to a workplace that is free of discrimination, including harassment based on race, color, national origin, religion, gender, disability, or age, and any basis that could otherwise be determined to be prohibited behavior pursuant to the Policy as applied to employees or applicants for employment.

All City employees, interns, and WEP participants are expected to be respectful of everyone in the City's workplaces and members of the public, and to be sensitive to the effects of their behavior on those around them. All employees, interns, and WEP participants must be trained in the requirements of this Policy and must receive a copy of the EEO Policy Handbook, *"About EEO: What You May Not Know."*

II. Specific Protections

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

A. Sexual Harassment

Sexual harassment is a form of employment discrimination which is prohibited by law. The federal government created guidelines which define sexual harassment as “unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature . . . when: 1) submission to the conduct is made either explicitly or implicitly a term or condition of an individual's employment; 2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or 3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.”¹⁴

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

B. Disabilities

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

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

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

¹⁴ Code of Federal Regulations, Title 29, Section 1604.11.

the Civil Service Law, Personnel Rules and Regulations, other applicable laws, or regulations and/or collective bargaining agreements.

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

The City of New York encourages employment of and promotional opportunities for qualified persons with disabilities. For example, pursuant to Section 55-a of the New York State Civil Service Law, where agency needs and availability permit, the City encourages agencies to utilize the 55-a Program, which will allow City agencies to employ qualified persons who have been certified as disabled in competitive positions on a non-competitive basis. Individuals who wish to apply for the 55-a Program are encouraged to seek assistance from the Agency Personnel Officer or 55-a Coordinator.

C. Religion

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

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

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

D. Retaliation

It is a violation of the Policy to retaliate against or harass any person who asserts his or her rights regarding employment discrimination by: 1) opposing discriminatory practices in the workplace; 2) complaining about prohibited conduct;

or 3) participating in any way in the complaint, investigation, or reasonable accommodation processes. It is also a violation of this Policy to retaliate against or harass someone because of his or her association with such an individual.

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

Examples of behavior that are protected against retaliation under this Policy include, but are not limited to: expressing an intent to file a charge or complaint alleging prohibited conduct; participating as a witness in an EEO investigation, administrative proceeding, hearing, or trial; and/or seeking a reasonable accommodation.

E. Domestic Violence, Sex Offenses, or Stalking

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

III. Procedures

A. Reporting Violations

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

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

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

If any employee knowingly makes a false accusation of discrimination or knowingly provides false information in the course of an investigation of a complaint, such conduct may be grounds for discipline. A complaint made in good faith, even if found to be unsubstantiated, will not be considered a false accusation.

B. Contact with the EEO Office

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

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

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

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

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

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

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

C. Withdrawing Complaints

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

D. Mediation

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

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

The EEO Officer will determine whether the complaint is appropriate for mediation. The EEO Officer may choose to conduct the mediation internally within the agency, or externally through entities that provide mediation services.

Mediation may be terminated by any party to the mediation. If this occurs, the EEO Officer will inform the other party or parties in writing that the mediation has been terminated. In the event that mediation does not result in a resolution, the EEO Officer will provide the parties with a written statement informing the parties of the complainant's right to an investigation of the allegation. Where efforts to mediate complaints are unsuccessful, complaints will be investigated by the EEO office.

E. Concluding the Complaint Investigation

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

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

F. Other Places Where Complaints May Be Filed

The following federal, state, and local agencies enforce laws against discrimination:

- New York City Commission on Human Rights:
<http://www.nyc.gov/html/cchr/html/home/home.shtml>
- New York State Division of Human Rights: <http://www.dhr.ny.gov/>

- United States Equal Employment Opportunity Commission (the “EEOC”): <http://www.eeoc.gov>
- United States Department of Justice: <http://www.justice.gov/>

Information about how to contact these agencies can be found in the EEO Policy Handbook, “*About EEO: What You May Not Know*,” at http://www.nyc.gov/html/dcas/html/about/eeo_booklet.shtml, the DCAS website at <http://www.nyc.gov/html/dcas/html/about/eeo.shtml>, or the Office of Citywide Diversity and EEO at 1 Centre Street, 17th Floor North, New York, NY 10007, (212) 386-0257. Please note that there are statutory deadlines for filing complaints with each of these agencies.¹⁵

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

G. Requests for Reasonable Accommodations

City agencies may be required to provide reasonable accommodations when requests are made in connection with disabilities; pregnancy, childbirth, and related medical conditions; religious beliefs, observances, and practices; or for victims of domestic violence, sex offenses, or stalking. The reasonable accommodation process should be flexible and interactive, involving agency representatives who are necessary to the reasonable accommodation process and the individual who is requesting a reasonable accommodation. In all instances, the agency EEO office should be notified of the request in order to facilitate discussions, research appropriate accommodations, and assist in the resolution of the matter.

¹⁵ The deadline in some instances is as short as 180 days. Therefore, to preserve their rights, individuals who believe that they have been discriminated against and wish to file a complaint with an external agency should promptly contact the City Commission on Human Rights, the State Division of Human Rights, the EEOC, the Department of Justice, or a private attorney for further guidance.

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

1) Disabilities: An employee or job applicant with a disability who requests reasonable accommodations to enable him or her to satisfy the essential functions of the job or enjoy the rights in question may make such requests to his or her manager or supervisor, agency personnel supervising the application process, or directly to the agency EEO Officer or Disabilities Rights Coordinator.¹⁶ A request for a reasonable accommodation may be made orally or in writing. Where the request is made orally, it shall be documented by that person who receives the request.

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

By law, all documentation and information concerning the medical condition or history of an individual requesting a reasonable accommodation for a disability must be collected and maintained on separate forms, and in separate medical files, apart from other personnel data. Such information must be treated as confidential medical records, except that managers and supervisors may be informed of necessary restrictions on work and accommodations required. Furthermore, medical information may be provided: 1) to first-aid and safety personnel, if the disability might require emergency treatment; 2) to government officials investigating the agency's compliance with applicable laws; 3) to workers' compensation offices in accordance with Workers' Compensation Law; and 4) for insurance purposes.

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

¹⁶ A Disability Rights Coordinator is responsible for ensuring compliance with federal, state, and local laws and the Policy regarding people with disabilities.

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

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

4) Pregnancy:¹⁷ An employee or job applicant requesting reasonable accommodations due to pregnancy and those who suffer medical conditions related to pregnancy, childbirth, or a related medical condition may make such requests to her manager or supervisor, agency personnel supervising the application process, or directly to the agency EEO Officer or Disability Rights Coordinator. Such a reasonable accommodation may include bathroom breaks; leave for a period of disability arising from pregnancy, childbirth, or related medical conditions; breaks to facilitate increased water intake; periodic rest for those who stand for long periods of time; and assistance with manual labor, among other things.

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

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

¹⁷ The City's Human Rights Law was amended to include reasonable accommodations related to pregnancy, childbirth or related medical conditions effective January 30, 2014.

1. obtain the request for reasonable accommodation made by the employee or applicant and review all related documentation, standards, procedures, and potential accommodations;
2. meet and/or consult with the employee or applicant, the EEO Officer, and any agency representative that the agency head deems necessary to the reasonable accommodation request;
3. evaluate the reasonableness of employee's or applicant's and agency representative's preferences regarding the accommodation request, giving primary consideration to the employee's or applicant's preferences; and
4. consult with the DCAS Office of Citywide Diversity and EEO or the Law Department.

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

G. Confidentiality

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

H. Documentation

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

J. Additional Sources of Procedural Information

The Guidelines for the Implementation of the City's Discrimination Complaint Procedures may be found online:

http://www.nyc.gov/html/dcas/downloads/pdf/misc/eo_discriminationcomplaint_procedures.pdf

The City's Reasonable Accommodation Policy and Procedure may be found online:

http://www.nyc.gov/html/dcas/downloads/pdf/misc/eo_reasonableaccommodation.pdf

IV. Agency-Specific Diversity and EEO Plans

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

Each agency head or, at his or her direction, the agency EEO Officer and/or APO, should review agency statistical information (including total employment and new hires and promotions, by race/ethnicity, and gender), EEO complaints made during the previous fiscal year and the agency's employment practices, policies, and programs. The agency head should then work with the EEO Officer, 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. Agencies may wish to seek the advice of the Law Department or consult with the DCAS Office of Citywide Diversity and EEO regarding the development of agency Diversity and EEO Plans.

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

Although each agency's Diversity and EEO Plan will be tailored to the specific issues of that agency, there are some general measures that all agencies are required to implement. Each agency's Diversity and EEO Plan must, at a 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. The commitment will hold EEO Officers and representatives, 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 strategic plan, mission, vision, and performance metrics. It should also include the agency's strategy to ensure equal employment opportunity and to implement the best diversity and inclusion practices at the agency. The commitment should also be communicated to all employees through a Commitment Statement to affirm the principles of equal employment opportunity and diversity and inclusion.
- 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.
- A commitment to assess the manner in which candidates are selected for employment, to determine whether there is any adverse impact upon any particular racial, ethnic, disability, or gender group. To the extent that adverse impact is discovered, the agency head will determine whether the criteria being utilized are job-related. If the criteria are not job-related, the agency will discontinue using that method. Methods which diminish adverse impact will be preferred over those with greater impact, provided that the agency's job-related aims are not compromised by using the method with a diminished impact. Examples of selection methods which may diminish adverse impact include race/ethnicity-neutral and gender-neutral questions in interview materials and assembling interview panels that reflect gender, race and ethnic diversity. The agency will also ensure that, to the extent practicable, agency

personnel involved in both the discretionary and the civil service hiring pool process receive structured interviewing training and use structured interviewing in the selection process.

- A commitment to assess criteria for selecting persons for mid-level to high-level discretionary positions.
- A commitment to make career counseling about civil service jobs available for employees. Employees should be reminded of the identity of the agency's Career Counselor and the type of guidance which is available from the Career Counselor, at least once each fiscal year. Each agency should promptly notify agency employees and DCAS of any change in the identity of the agency Career Counselor.
- A commitment to ensure that all new employees are advised of this 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 diversity, inclusion, and EEO-related rights and responsibilities in a manner consistent with the minimum standards for diversity, inclusion and EEO training established by DCAS.
- 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 law, and/or the City's official records retention schedule.
- A plan to meet obligations or remedies required or recommended as a result of government grants or contracts, court orders, consent decrees, or any audit/review conducted by a governmental agency.

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

- Advertising job vacancy notices in periodicals and websites with a diverse and inclusive readership.
- Sending job vacancy notices to professional and community organizations serving diverse and inclusive populations.

- Participating in career and job fairs.
- Whenever possible, promoting public service as a career choice at schools, colleges and universities.
- Using internships, work/study, co-op, and scholarship programs to attract interested persons and to develop and hire interested and qualified candidates.
- Sponsoring open houses (i.e., networking events, facilities tours).
- Working with appropriate DCAS personnel to review the competencies, skills and abilities required (as presented in job vacancy notices and notices of examination) for available positions to ensure that these standards are updated, job-related, and required by business necessity.
- Reviewing application forms and agency materials and products in order to ensure that they do not contain discriminatory language or images.
- Ensuring that human resources personnel, managers, supervisors, and other personnel involved in the recruitment and hiring process are trained in interviewing, selection, hiring skills, and EEO, to enable such individuals to correctly identify the most capable candidates.
- Implementing and encouraging inclusive skills and behavior standards for managers to ensure that they are able to maximize their professionalism, performance and communication skills.
- Conducting or encouraging the use of training and development programs to improve skills, performance, and career opportunities of all employees.
- Creating talent pools through employee surveys and databases, to promote cross-training, mentoring, coaching, stretch assignments, cross divisional assignments, job transfers, and rotation programs for career enhancement and development experiences.
- Planning and administering employee incentives, quality of work life and recognition programs, engagement surveys, performance evaluations, employee resource groups, and diversity councils.
- Promoting employees' awareness of opportunities for promotion and transfer within the agency, publicizing promotions and changes in the managerial ranks, and ensuring that the agency engage in succession planning for top managerial

positions. The agency considers its own employees for such opportunities by having programs that identify ready now and high potential talents.

The City of New York, through DCAS, will also:

- Provide the uniform procedures, formats, and reports required by the New York City Charter to facilitate the planning and review of the City's efforts to provide equal employment opportunity for employees and applicants for City government employment.
- Assess qualifications required for most civil service positions and ensure that civil service examinations are job-related and consistent with business necessity.
- Provide assistance to agencies to ensure that recruitment efforts fit particular human resource needs.
- Encourage agency job postings internally through City Jobs and externally through the City's website: <http://www1.nyc.gov/jobs/>
- Continue to conduct on-site EEO monitoring visits to agencies.
- Continue efforts to better ensure the accuracy of ethnicity and gender data.

V. Enforcement and Accountability Standards

A. Department of Citywide Administrative Services

DCAS is required to: 1) establish and enforce uniform procedures and standards for use by City agencies in establishing measures, programs, and plans to ensure equal employment opportunity, including a time schedule for the development, review and adoption of EEO plans; 2) establish a uniform format for use by City agencies for the presentation of statistical information on the workforce of City agencies; and 3) develop resources regarding information on employment and educational programs.¹⁸ DCAS is also required to publish and submit annual reports on the activities of DCAS and the other City agencies with respect to equal employment opportunity.¹⁹

¹⁸ See Charter Sections 814(a)(12)-(15).

¹⁹ See Charter Section 814(b)(8).

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

B. Agency Heads

Each agency head will ensure that his or her agency does not discriminate against employees or applicants for employment as prohibited by federal, state and local laws.²⁰ Agency heads are accountable to their respective Deputy Mayors for their agencies' EEO practices. Agency heads will also ensure that legal, human resources, and EEO personnel, managers, and supervisors: 1) receive a copy of this Policy (including any addenda); 2) are trained in EEO laws and procedures; and 3) know how to carry out their responsibilities under this Policy. Agency heads must distribute a copy of the EEO Policy Handbook, "*About EEO: What You May Not Know*" to all employees and ensure that a copy is available on the agency's website.

As discussed in Section IV, each agency head must annually adopt and implement a Diversity and EEO Plan that communicates measures and programs that the agency will undertake to ensure fair and effective efforts to provide equal employment opportunity. Draft Diversity and EEO Plans are to be developed and submitted each fiscal year according to the timetable and format established by DCAS, and must be reviewed and approved by DCAS. Agencies are required to file copies of finalized agency Diversity and EEO Plans with the Mayor, the City Council, the Equal Employment Practices Commission ("EEPC"), and the City Civil Service Commission, and to also make Diversity and EEO Plans available for reasonable public inspection.²¹

Each agency head will then submit quarterly reports to DCAS, as well as to the Mayor, City Council, and EEPC, on the agency's efforts during the previous quarter to implement the agency Diversity and EEO Plan. Such quarterly reports will also include a review and documentation of EEO complaints and requests for reasonable accommodations for said quarter. Quarterly Diversity and EEO reports must, pursuant to the City Charter, be timely submitted to DCAS and the other entities mentioned above, no later than thirty (30) days following the reporting period using the reporting format provided by DCAS.

²⁰ See Charter Section 815(h).

²¹ See Charter Section 815(a)(19).

In order to meet the City's obligations under the City Charter and other federal, state and local laws, and to achieve the goals of the agency Diversity and EEO Plan, each agency head must appoint a trained EEO Officer whose responsibility it will be to implement the Policy within that agency. Because EEO Officers will need independence of judgment as well as the authority of the agency head in order to carry out their responsibilities, the EEO Officer must report directly to the agency head, or if approved by DCAS, to a direct report to the agency head. In order to avoid potential conflicts of interest, under no circumstances should the EEO Officer report to the General Counsel. Where the agency's organizational structure necessitates multiple EEO representatives, such individuals should be selected from different office locations and, where possible, from a variety of levels within the organizational structure. The agency head must ensure that the responsibilities of the EEO Officer are competently discharged.

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

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

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

C. EEO Officers

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

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

D. Agency General Counsels

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

E. Managers and Supervisors

Managers and supervisors will make every effort to maintain a work environment that fosters sensitivity and respect for the diversity of all individuals. Specifically, each agency manager or supervisor shall: 1) be accountable to the agency head for effectively implementing EEO-related policies; 2) perform managerial or

supervisory responsibilities in a non-discriminatory manner; 3) receive training in EEO laws; 4) cooperate with the EEO Officer in the implementation of the Policy, standards, and procedures (including training, complaint resolutions, processing, recording, and reporting reasonable accommodation requests, EEO-related recruitment, and selection standards; and modifying agency procedures to ensure equal employment opportunity for applicants and employees); 5) promptly consult with the agency's EEO Officer if he or she observes, learns about, or suspects that a violation of this Policy has occurred; 6) where appropriate, encourage subordinates to consult with an EEO office; 7) allow employees to meet with EEO representatives at the earliest practical time consistent with the operational needs of his or her unit; and 8) maintain confidentiality with respect to EEO-related matters.

F. Personnel Officers

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

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

Appendix – 3

Office of Administrative Trials and Hearings

EEO Complaint Procedural Guidelines, City of New York (Complaint
Procedures)

2018

EEO Complaint Procedural Guidelines

**City of New York
2018**



Department of Citywide Administrative Services

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THE CITY OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY

COMPLAINT PROCEDURAL GUIDELINES

Overview

These Equal Employment Opportunity Complaint Procedural Guidelines (the “Guidelines”) are designed to assist Equal Employment Opportunity (“EEO”) Officers, Investigators and Counselors in handling EEO complaints and inquiries in a fair, consistent, and timely manner. A person who wishes to make an EEO complaint, or who inquires about a possible EEO complaint, should be referred to the City’s EEO Policy (the “Policy”) and the “About EEO: What You May Not Know” Handbook (the “Handbook”).¹

As provided in the Policy, the City prohibits discriminatory employment actions against, and treatment of, City employees and applicants for employment based on actual or perceived race, color, national origin, alienage or citizenship status, religion or creed, gender (including “gender identity” --which refers to a person’s actual or perceived sex, and includes self-image, appearance, behavior or expression, whether or not different from that traditionally associated with the legal sex assigned to the person at birth), disability, age (18 and over), military status, prior record of arrest or conviction, marital status, partnership status, caregiver status, genetic information or predisposing genetic characteristic, sexual orientation, status as a victim or witness of domestic violence, sex offenses or stalking, unemployment status consumer credit history, and familial status. Harassment and/or retaliation against a person who opposes or complains about prohibited conduct or participates in any way in the complaint, investigation, or reasonable accommodation processes are also prohibited. The Policy also prohibits the denial of reasonable accommodations for disabilities; pregnancy, childbirth, and related medical conditions; religious beliefs, observances, and practices; or for victims of domestic violence, sex offenses, or stalking, so long as they do not cause an undue hardship. Persons who claim discrimination in violation of the Policy may file a complaint within one year of the alleged discriminatory incident with the EEO Office at the City agency where the incident occurred (“internal complaint”) or with a Civil Rights enforcement agency, subject to its filing requirements (“external complaint”).

¹The EEO Policy is available at <http://www.nyc.gov/html/dcas/html/about/eeopol.shtml>. The EEO handbook is available at http://www.nyc.gov/html/dcas/html/about/eeo_booklet.shtml.

Protected Categories Under the City's EEO Policy

New York City employees are protected from discrimination based on any of the following categories, whether perceived or actual, and including retaliation for filing a complaint or assisting in the investigation of an EEO complaint.

Age: persons age 18 or older.

Alienage or Citizenship Status: the citizenship of any person or immigration status of any person who is not a citizen or national of the United States. Employers are required by law, however, to verify the identity and work eligibility of employees. Moreover, citizenship is a lawful requirement for certain jobs (such as Police Officer).

Caregiver Status: you cannot be treated differently at your job because you have children, or because you care for a relative who is sick or has disabilities.

Color: frequently viewed synonymously with race, discrimination based on color may occur because of a preference for, or aversion to, a particular skin color and may occur within the same racial group based on body pigmentation.

Credit History: includes credit worthiness, credit capacity, and payment history. Credit history cannot be used to decide whether to hire, fire, or promote an individual.

Disability: any physical, medical, mental, or psychological impairment, or a history or record of such impairment, whether perceived or actual. Pregnancy may also be considered a temporary disability if there are medical conditions arising from the pregnancy or childbirth.

Familial Status: any 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 eighteen years, **or** one or more individuals (who have not attained the age of eighteen 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.

Gender (or Sex): gender includes actual or perceived sex and includes a person's gender identity, self-image, appearance, behavior or expression, whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to that person at birth. Pregnancy or childbirth is a gender-related condition; therefore, discrimination due to pregnancy or childbirth is considered to be gender discrimination.

Marital Status: whether a person is married, divorced, single, separated, or widowed. "Marital Status" should be distinguished from discrimination based on whom an individual is married to.

Military Status: military service includes past, present, and applicants for membership in the uniformed service, whether voluntary or involuntary.

National Origin: place of origin, as well as ancestry, and physical, cultural, linguistic or ethnic characteristics of, or names associated with, a particular country or region. Discrimination based on alienage (immigration status) or citizenship status can be found, in some cases, to be discrimination based on national origin.

Partnership Status: all individuals in a domestic partnership.

Predisposing Genetic Characteristics/Genetic Information: any inherited gene or chromosome, or alteration thereof, 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.

Prior Record of Arrest or Conviction: generally, agencies may not deny or deprive someone of a job because of a criminal conviction, unless there is a direct relationship between the conviction and the duties of the job or an unreasonable risk to property or safety, based on a variety of factors. Agencies also may not ask about arrests that did not lead to conviction unless it is a pending arrest. These restrictions do not apply to law enforcement agencies.

Race\Ethnicity: includes such categories as American Indian or Alaskan native, Asian or Pacific Islander, Black, Hispanic, White, and two or more races, as well as personal characteristics associated with race\ethnicity (such as hair texture, skin color, or certain facial features).

Religion or Creed: includes all aspects of religious observance, practice and belief, including moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views.

Sexual Harassment: *“unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature”* when:

- a) submission to the conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- b) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- c) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

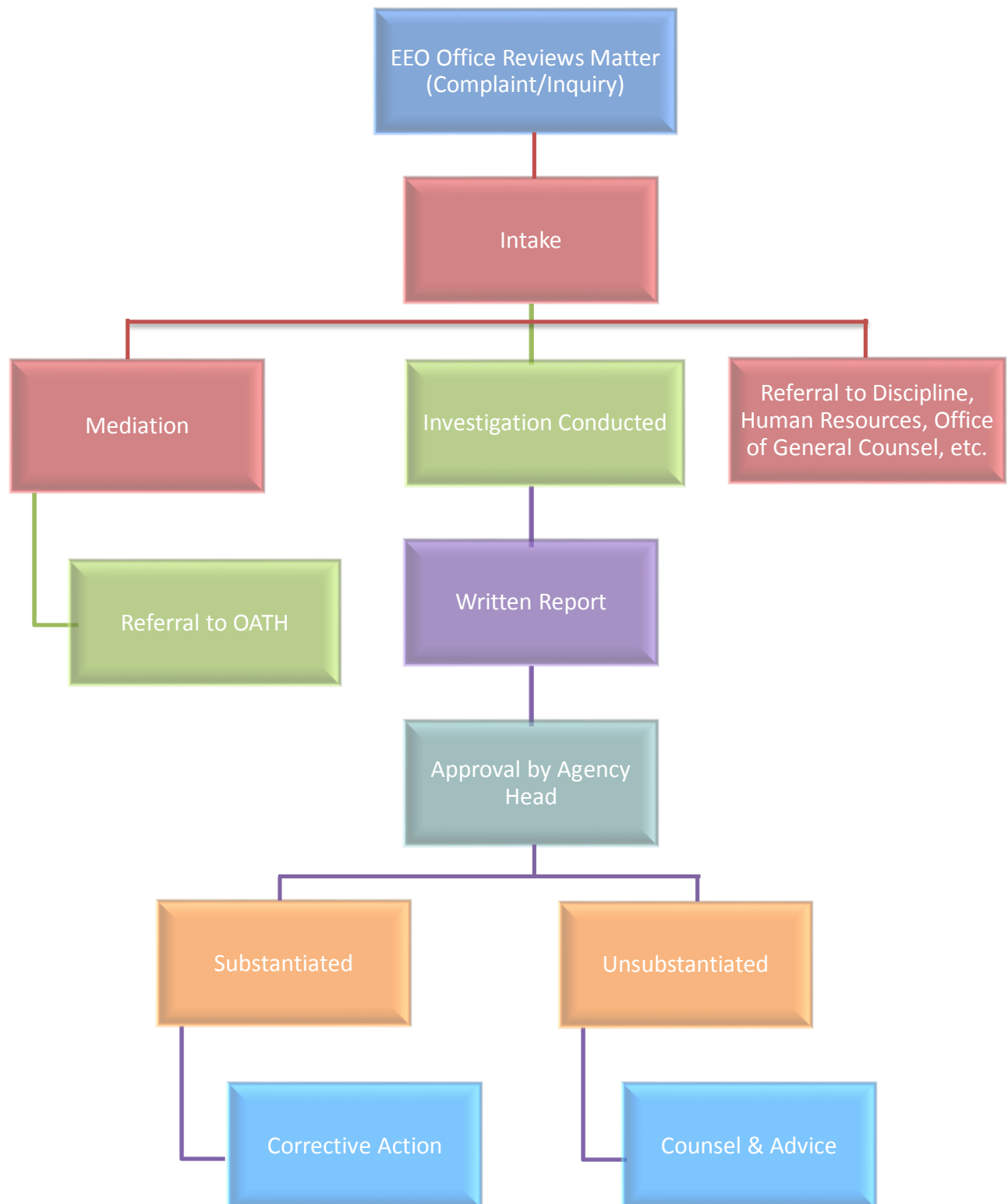
Sexual Orientation: heterosexuality, homosexuality, bisexuality or asexuality, whether actual or perceived.

Unemployment Status: refers to those who do not have a job, are available for work, and are seeking employment.

Victim of Domestic Violence: a person who has been subjected to acts or threats of violence, not including acts of self-defense, committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim, by a person who is or has been in a continuing social relationship of a romantic or intimate nature with the victim, or a person who is or has continually or at regular intervals lived in the same household as the victim.

Victim of Sex Offenses or Stalking: a victim of acts which are defined as crimes that are considered to be “sex offenses” or “stalking.”

The EEO Complaint Process at a Glance



THE INTAKE PHASE

The EEO complaint or inquiry process begins when a person (the “Complainant”) contacts the EEO Office regarding an alleged discriminatory incident.

The person making the complaint may do so anonymously, if he or she so chooses. Anonymous complaints must be treated the same as identified complaints, to the extent possible.

A complaint may be filed by an employee, a former employee, independent contractor, a consultant, a volunteer, an intern, a job training program participant, or an applicant for City employment.

A complaint may be filed on the Complainant’s own behalf or on behalf of someone else.

Supervisors and managers are required under the Policy to timely notify their EEO Office of any alleged discriminatory conduct they observe or become aware of.

Upon receiving an EEO complaint or inquiry, the EEO Office must memorialize the complaint or inquiry and enter it into the complaint tracking system,² as well as schedule, by email or letter, an intake session with Complainant, if known, for purposes of assessing or confirming the following:

- ☒ Is the complaint timely?
 - Determine when the alleged discriminatory conduct occurred. A complaint must be filed within one year of the date the alleged discriminatory conduct occurred.
 - While a Complainant may not be able to file a complaint, and obtain specific relief sought if the complaint is untimely, the EEO Office may conduct an investigation and may make recommendations to address inappropriate conduct.
- ☒ Has Complainant previously filed a lawsuit or complaint with an enforcement agency regarding the same claims of discrimination? If so, the matter must be transferred to the agency’s Office of General Counsel.
 - If an external complaint or lawsuit is filed subsequent to the filing of the internal complaint, the matter must also be transferred to the agency’s Office of General Counsel. The EEO Office must notify Complainant (and Respondent³, if any) in writing of the transfer.
 - If the Complainant alleges retaliation after filing the external complaint, the retaliation complaint must also be transferred to the Office of General Counsel.

² The complaint tracking system is available at <https://mspwwa-dcslnx01.csc.nycnet/Login.aspx>.

³ The Respondent is the person or entity alleged to have engaged in the discriminatory conduct.

- If a subsequent complaint involves allegations unrelated to the initial external complaint, the EEO Office may retain and investigate the subsequent complaint as a separate complaint. The EEO Office must consult with the Office of General Counsel in determining whether the subsequent complaint involves separate allegations.
- ☑ Has Complainant previously raised the same issues with others at the agency?
 - Did Complainant discuss the alleged discriminatory conduct with a supervisor/manager, Human Resources, or co-workers?
 - Has Complainant filed a grievance with his or her union regarding the same conduct, practice or policy?
- ☑ Does the complaint or inquiry involve one or more of the protected categories under the City's Policy, including when discrimination is based on perception or association?
 - If the complaint or inquiry does not involve an EEO basis, the EEO Office should make a referral, as appropriate.
- ☑ If the complaint or inquiry cites an EEO basis, what specific conduct, practice or policy is the alleged violation of the Policy? The issues raised could involve one or more of the following issues:
 - Harassment, including, but not limited to "the use of vulgar language, abusive acts or language, hostility, physical aggression, intimidation or unequal treatment" based on any of the protected categories (see the City's EEO Policy, page 3).
 - Adverse employment actions, such as negative performance evaluation or denial of promotion or benefits, allegedly based on one or more protected categories as demonstrated by, e.g., discriminatory comments or different treatment of other employees who are similarly situated.
 - Failure to reasonably accommodate disability, pregnancy, childbirth and/or related medical condition, religion/religious observance, or victims of domestic violence, sex offenses or stalking.
 - Retaliation due to opposition to, or complaining about discrimination, or participating in the complaint, investigation or reasonable accommodation process. Retaliatory conduct includes conduct reasonably likely to dissuade a person from engaging in protected activity.
 - Policy alleged to have a discriminatory impact on a protected category that is not job-related or justified by business necessity.
- ☑ What is Complainant's status with the agency?
 - Does Complainant work at the agency?
 - What is Complainant's civil service status?

- Is Complainant an employee of the agency or a different agency or an independent contractor?
 - The EEO Office must contact the EEO Office of the employing agency and coordinate the investigation.

☒ Which person(s), if any, is alleged to have engaged in the discriminatory conduct (the “Respondent”)?

- Complaints against the EEO Officer and agency heads should be referred to the City’s Law Department or Department of Citywide Administrative Services (“DCAS”).
- Complaints by employees or others against a member of the public visiting the agency should be referred to the agency’s EEO Officer.
- Complaints by the public against persons working at the agency should be handled by the agency’s EEO Officer.
- In the case of complaints against employees of other agencies, the EEO Office of each agency should conduct a joint inquiry or investigation of the complaint.

☒ Is there a specific document or rule that applies to the conduct or practice complained about? For example:

- Personnel Services Bulletins
(<http://www.nyc.gov/html/dcas/html/employees/psbtoc.shtml>)
- Personnel Rules and Regulations of the City of New York
(http://www.nyc.gov/html/dcas/html/employees/personnelrules_regis.shtml)
- Collective bargaining agreements (<http://www1.nyc.gov/site/olr/labor/labor-recent-agreements.page>)
- Title Specifications and Notices of Examinations (<http://mispwva-dcstso01.dcas.nycnet/TitleSpecs/home.aspx>)
- Agency Code of Conduct

☒ Is it necessary that action be taken prior to the investigation of the complaint?

- After consultation and approval from appropriate agency personnel, it may be necessary to provide interim relief to alleged victims of harassment.
- Interim relief may include, among other actions, temporary transfers and assignment or shift changes.

☒ Inform Complainant regarding confidentiality and anonymity, and the Policy regarding retaliation.

☒ Prior to meeting Complainant, inform Complainant of the right to be accompanied by a representative.

- ☑ Begin investigation immediately after determining that the allegations raised, if true, are sufficient to establish a case of discrimination under the Policy, that the complaint is timely, and that the EEO Office is responsible for investigating the complaint. Complete an investigation within 90 calendar days of the filing of the complaint.
 - Ensure a Complaint Form is completed, preferably by Complainant although it can be done by the EEO Office, but should be signed by Complainant.

REFERRALS

- ☑ Do the allegations involve conduct which must be reported to or investigated by a different office or agency? For instance:
 - Discipline (Advocate): violations of code of conduct.
 - The EEO Office may rely on fact-findings of Discipline or may conduct separate or additional investigation.
 - Inspector General: fraud, corruption and unethical conduct.
 - Police/Law Enforcement: criminal conduct.
 - The EEO Office may have to place an investigation or inquiry on hold if the matter is referred to law enforcement.

MEDIATION

Mediation is a voluntary approach to dispute resolution in which the parties try to resolve the dispute themselves on mutually agreeable terms, with the help of a trained third-party mediator. The EEO Officer may recommend mediation, or either party to the complaint may request mediation.

The EEO Office may recommend mediation at the inquiry/intake stage and/or the parties may subsequently request mediation during the investigation, subject to the approval of the EEO Officer. Requests for mediation must be made in writing.

Mediation may be conducted by a trained third-party mediator. The Center for Creative Conflict Resolution, which is part of the Office of Administrative Trials and Hearings (“OATH”), conducts

mediation free of cost to City agencies and employees. More information about OATH is available at <http://www.nyc.gov/html/oath/html/about/the-center.shtml>.

Mediation is most appropriate for complaints involving interpersonal conflict, and should not be considered in certain cases, such as when the complaint includes allegations of sexual harassment or criminal conduct.

Mediation efforts must not exceed 45 days from the start of mediation. The EEO Office may extend the mediation for good cause.

While mediation continues, the 90-day period for completion of the investigation is suspended.

If the parties agree to a resolution during mediation, a resolution agreement will be drafted and provided to the parties and the referring EEO Officer. The resolution agreement will resolve the pending EEO complaint. Any resolution agreement requiring agency action or approval will only become effective subject to agency approval. If a resolution is not reached, the matter is returned to the EEO Officer and the 90-day investigative period resumes. The EEO Officer may also determine if an agreement has been violated and if so, whether to refer it for further mediation or declare the agreement void.

A party may withdraw from mediation at any time. The EEO Office may also terminate the mediation process if it deems that the effort has been unproductive. The EEO Office must inform all parties to the complaint, in writing, of the termination of mediation. The notice must also inform the parties that the EEO Office will resume its investigation of the complaint.

INVESTIGATION

- The purpose of the investigation is to determine whether there are facts supporting the allegations of discrimination.
- The complaint investigation should begin immediately after a determination that the allegations raised, if true, are sufficient to establish discrimination under the Policy, that the complaint is timely, and that the EEO Office is responsible for investigating the complaint.
- The complaint investigation should be completed and the Complainant should be notified of the outcome within **90 calendar days** of the filing of a complaint.
 - The EEO Office should ensure that a Complaint Form is completed, preferably by Complainant, although this can be done by the EEO Office. The form should be signed by Complainant, and logged into the complaint tracking system.

- Complainants should be provided the following upon filing a complaint:
 - a copy of the written complaint
 - acknowledgement of receipt of the complaint
 - a copy of or links to the City' EEO Policy and Handbook
- Meet with Complainant to supplement or clarify information provided during the intake phase.
 - Confirm if there any persons who witnessed the alleged discriminatory conduct.
 - Does the Complainant have or know of any documents, such as emails or photos, containing information about the alleged conduct?
- Conduct a thorough investigation that provides answers as to:
 - who was involved in the alleged discriminatory conduct;
 - what occurred during the alleged conduct;
 - when and where the alleged conduct took place;
 - the identity of all witnesses to the alleged conduct, anyone with whom the alleged conduct has been discussed, or anyone who may have identified as having been subject to similar conduct as that alleged or who has information concerning any aspect of the alleged conduct;
 - whether this was an isolated incident or part of a pattern of conduct;
 - what impact, if any, the alleged conduct has had on the Complainant and/or the work environment;
- Determine whether the action alleged to be discriminatory was based on a legitimate, nondiscriminatory reason.
- Obtain and review any available and relevant notes, recordings, photographs, physical evidence, or other documentation.

Conducting Interviews

- Explain objective of the interview.
- Explain the City's EEO Policy on retaliation.
- Ask open-ended interview questions in a non-judgmental manner.
- Determine what witnesses know based on personal knowledge versus what they have heard.
- During each interview, take thorough notes, as close to verbatim as possible. Notes should reflect the content of the interview, both the questions and answers, as completely as possible.

Notice to Respondent of the Complaint

- The EEO Office must serve Respondent with a notice of complaint along with a redacted copy of the complaint, or a summary of the complaint and allegations, after interviewing the Complainant. The following information must be redacted: the Complainant's home address and telephone number, and the name(s), title(s), and division(s) of witnesses.
- Schedule a meeting with Respondent, ensuring that Respondent is informed of the right to be accompanied by a representative.
- Remind Respondent of the City's EEO Policy against unlawful discrimination and retaliation.
- Inform Respondent of the right to respond in writing to the complaint, and that the response should be submitted as soon as possible.
- Give Respondent an opportunity to offer his/her version of events and any other relevant information, including any witnesses who are likely to have relevant information. The EEO Office should interview witnesses identified by Respondent.

Amending the Complaint

The complaint may be amended in writing, for any reason, prior to conclusion of the investigation and notice of outcome to the parties. For purposes of the one-year filing period, amendments to the original complaint will be deemed timely if the original complaint was itself timely. However:

- If a Complainant, after filing an initial complaint, seeks to file a subsequent complaint based on different facts than those alleged in the initial complaint, the subsequent complaint should be treated as a separate complaint.
- If a Complainant, after filing an initial complaint, seeks to file a subsequent complaint alleging retaliation for making the initial complaint, the later complaint should be treated as a separate complaint.
- All initial, amended, and new complaints should be cross-referenced in the EEO Office's complaint file and the complaint tracking system.

Right to be Accompanied by a Representative

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

that the person who is being interviewed will be bringing a representative. The representative may not respond on behalf of the party being interviewed or interfere with the interview.

Confidentiality and Record Keeping

Complaints and complaint investigations should be accorded the strictest confidentiality possible. The EEO Office should make every effort to protect from disclosure the complaint allegations, the identity of parties to the complaint and any witnesses. Exceptions include disclosing to persons with a legitimate need to know certain information in order to respond to the complaint allegations or implement interim or corrective action. All persons with whom the EEO Office interacts concerning the complaint and its investigation should be asked to refrain from discussing the complaint beyond their interaction with the EEO Office.

All complaints and related documents, including any investigative notes, records, or copies, are strictly confidential and must be maintained by the EEO Office. The EEO Office may consult the agency's Office of General Counsel concerning a request to view or have copied, in whole or part, the EEO Office's files.

Meeting with EEO Office and Obligation to Cooperate

Anyone has the right to meet privately with the EEO Office during its office hours. An employee seeking to meet with the EEO Office at a reasonable time during that office's hours must secure prior permission for same from his/her appropriate supervisor. Such requests must be granted as a matter of right, but the supervisor may determine a reasonable time for the employee to visit the EEO Office. The employee is not required to disclose to the supervisor or anyone the reason for the employee's visit to the EEO Office. If appropriate or preferred by the employee, the meeting between the employee and the EEO Office may be scheduled before or after that office's hours, or during the employee's lunch break or personal time.

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

False Allegations

If an employee knowingly makes a false complaint or knowingly provides false information to the EEO Office in the course of a complaint or complaint investigation, such conduct may be grounds for disciplinary action. A complaint made in good faith, even if found to be unsubstantiated, will not be considered a false accusation.

Agency as Respondent

Whenever an agency and/or subdivision of an agency are named as a Respondent in a complaint, the Agency Head should designate an appropriate person to respond to the allegations in the complaint on behalf of the agency or subdivision.

PREPARING THE FINAL REPORT

The final investigative report **must be completed and the parties must be notified of the outcome within 90 calendar days** from the date the complaint was filed with the EEO Office, unless the time period is extended by the EEO Office for good cause, with written notice to the parties and noted in the investigative file and/or the complaint tracking system. The EEO Office must document the reason for the delay, and project a time frame for the completion of the report.

The EEO Officer should routinely consult the agency's Office of General Counsel on questions that arise while preparing the written report or at any phase of the investigation.

- After all the relevant facts have been gathered, the EEO Officer must prepare a confidential written report on the complaint investigation and must submit the report to the Agency Head for review.
- In preparing the written report, the EEO Officer should determine the credibility of the parties and witnesses, including their motives and biases. The EEO Officer should routinely consult the agency's Office of General Counsel on questions that arise while preparing the written report or at any phase of the investigation.
- If, based on the facts, the EEO Officer determines that it is more likely than not that the Respondent engaged in unlawful discriminatory conduct in violation of the City's EEO Policy, the EEO Officer must determine the most appropriate action to be taken in light of the facts and circumstances and make a written recommendation to the Agency Head.
- Corrective action may include measures necessary to address the impact that the violation of the City's EEO Policy had on the Complainant or within the agency. Disciplinary action must be taken in accordance with provisions of law, rules and regulations and any relevant collective bargaining agreement. Determining the appropriate disciplinary action is often a difficult and sensitive matter with potential legal consequences. Therefore, the agency's Office of General Counsel, Agency Advocate and/or Labor Relations Office must concur in any recommendation to pursue discipline before it can be adopted as part of a written report.

- The written report should include a summary of the allegations and responses, a summary of the procedural history of the investigation, a statement of the relevant facts gathered during the investigation, a conclusion/determination and recommendation. Conclusions must be supported by facts uncovered during the investigation.
- The Agency Head must sign each written report and indicate that it has been reviewed and whether the determination and recommendation, if any, is adopted, rejected or modified. After review of the report by the Agency Head, the EEO Office should inform all parties in writing of the outcome of the investigation.

Informing Parties of Outcome

The decision after investigation should be communicated to the parties, in writing, in a discreet and confidential manner, indicating the conclusion reached, whether the misconduct alleged has been substantiated, and the agency's opposition to that kind of activity.

Final Complaint Decisions

1. Internal Complaints

- a) Substantiated: upon analysis of the evidence (interview statements and documents), it is more likely than not that there has been a violation of the EEO Policy.
- b) Unsubstantiated: upon analysis, there is no or insufficient evidence to establish that it is more likely than not that a violation of the EEO Policy occurred.
- c) Withdrawn: the complainant affirmatively states that he or she no longer wishes to pursue the action that was initiated with the EEO Office. It requires a written acknowledgement that the decision (to withdraw) was done freely, without coercion, intimidation, promises or inducements.
- d) Mediated: this is a voluntary approach to dispute resolution in which the parties try to resolve the dispute themselves on mutually agreeable terms, with the help of a trained third-party mediator.
- e) Administrative Closing: The case is closed due to the following:
 - Lack of Subject Matter Jurisdiction - Complainant interviewed, documents and records reviewed. No case of employment discrimination/retaliation articulated. Full investigation not required. The matter may be referred to immediate manager/supervisor or another agency (e.g., DOI) for investigation or corrective action concerning other misconduct that is not a violation of EEO Policy.
 - Uncooperative Complainant

- Filed Externally: Complainant files with EEOC, SDHR or CCHR on same fact pattern. Internal investigation is closed. Files transferred to Agency Counsel.

f) Third Party Referral: Due to a conflict of interest, matter referred to Law Department or DCAS for investigation\ action.

2. External Complaints (the decisions of cases are determined by the fair employment agencies; the definitions below are for OCEI database purposes only)

a) The fair employment agency investigating the complaint must be selected from the below options:

CCHR: City Commission on Human Rights

CORT: State/Federal Court

EEOC: Equal Employment Opportunity Commission

JOCR: Department of Justice Office of Civil Rights

OFFC: U.S. Department of Labor Office of Federal Contract Compliance Program

SDHR: NY State Division of Human Rights

b) The decision of the case must be selected based on the information provided from the fair employment agency:

1. Probable Cause⁴: Evidence shows that it is more likely than not that there has been a violation of the federal, state or local fair employment law.
2. No Probable Cause⁵: There is no evidence and\or testimony to establish that a violation of the federal, state or local fair employment law occurred.
3. Withdrawn by Complainant.
4. Mediated: a voluntary approach to dispute resolution in which the parties attempt to resolve the dispute on mutually agreeable terms with the assistance of a trained, neutral mediator.
5. Administrative Closing: The case is closed due to the following:
 - At the request of the complainant, the investigation is terminated to allow the complainant to pursue remedies in court.
 - The complainant does not cooperate with the investigation.
 - The agency does not investigate the complaint because of limited resources.
6. Please note, if the complainant deems that the investigation is taking too long, he\she can request a right to sue letter from the EEOC after it has had 180 days to investigate. The EEOC is obligated to provide the letter even if the investigation is not complete, at which time

⁴ EEOC reasonable cause is equivalent to probable cause.

⁵ EEOC no reasonable cause is equivalent to no probable cause

EEOC will close the investigation. A complainant has 90 days from the time of receipt to file the lawsuit. (A complainant may file a lawsuit under the Age Discrimination in Employment Act 60 days after filing the complaint with the EEOC without receiving a right to sue letter.)

EEO Complaint Tracking and Reporting

All EEO complaints are to be entered in the complaint tracking system.

- ☒ It is **recommended** that this be done immediately following the initial intake interview with the Complainant(s).
- ☒ It is **required** that this be done before the end of the quarter.

All entries and updates made in the EEO Complaint Database must be entered as complaints are filed and the investigation progresses. All quarterly updates should be inputted no later than March 31, June 30, September 30 and December 31.

Agencies are required to submit an electronic affirmation (prompted by a DCAS email), regarding their review and entry of all required information into the EEO Complaint Database.

DCAS will send quarterly complaint summaries to agencies within five business days after the close of the quarter.

Each Agency will have five business days to review its summary and make any necessary edits in the system. DCAS will have five business days to issue new summaries to agencies that have made edits.

DCAS will publish citywide EEO complaint data on a quarterly basis on the DCAS website.

APPENDICES: Forms and Templates

The following pages contain templates in the form of sample documents and letters that were developed to promote consistency in the complaint and investigative processes. Although agencies are not mandated to use these specific templates, the information captured in these templates should be considered the **minimum** requirement.

Regarding the sample final investigative report included here, this format is strongly encouraged in the interest of consistency and clarity of reporting.

SAMPLE A – Intake Form

[Insert agency name and logo]

Complaint #: _____

Date received: _____

Origin (circle one): Letter Telephone Office Visit Email

Received by (circle one): EEO STAFF NAME EEO STAFF NAME EEO STAFF NAME

1. Contact Information

Name _____

Title _____ Employee ID# _____

Work Unit _____ Location _____

Work Telephone # _____ Shift _____

Home Address _____

City _____ State _____ Zip _____

Home Phone # _____

Cell Phone # _____ Email Address _____

2. Subject/Respondent Information

Name _____

Title _____ Employee ID# _____

Work Unit _____ Location _____

Work Telephone # _____ Shift _____

Home Address _____

City _____ State _____ Zip _____ Home Phone # _____

Cell Phone # _____ Email Address _____

Complaint #: _____

Describe the nature of the complaint

Attach additional sheets as necessary

- ☐ Supervisor Behavior ☐ Employee Behavior ☐ Employment Practice

Action(s) taken by EEO Office

What resolution are you seeking?

- ☐ Counsel and Advice
- ☐ Mediation
- ☐ Not an EEO matter, referred to appropriate department for handling:

Date: _____

Department / Contact: _____

- ☐ Inquiry/Investigation Commenced

Complaint #: _____

SAMPLE B – Complaint Form

[Insert agency name and logo]

Complaint of Discrimination

(Please print the following information)

Name *ERN* Division/Office/Agency

Civil Service Title Office Title Supervisor

What is the alleged basis of discrimination?

(Please check all that apply)

- ☐ Age
- ☐ Alienage/Citizenship
- ☐ Arrest/ Conviction record
- ☐ Caregiver Status
- ☐ Color
- ☐ Credit History
- ☐ Disability/Familial Status
- ☐ Gender/including gender identity/Pregnancy
- ☐ Predisposing Genetic Characteristic
- ☐ Marital Status
- ☐ Military Status
- ☐ National Origin
- ☐ Partnership Status
- ☐ Race
- ☐ Religion/Creed
- ☐ Sexual Harassment
- ☐ Sexual Orientation
- ☐ Unemployment Status
- ☐ Victim of Domestic Violence, Sex Offense or Stalking
- ☐ Retaliation for filing a complaint or assisting in the investigation of an EEO complaint

Please give the name, title and division of the person(s) you believe discriminated against you.

When did the alleged discrimination occur? Date: ____/____/____

Where did the alleged incident occur?

Were there witnesses to the discrimination? Yes ____ No ____

Did you report this incident to anyone? Yes ____ No ____

(Please provide the name(s) of witnesses on the Witness Information Form)

Have you filed a complaint about the alleged discrimination with any of the following agencies?

- ☐ New York City Commission on Human Rights
- ☐ New York State Division of Human Rights
- ☐ United States Equal Employment Opportunity Commission
- ☐ United States Department of Labor
- ☐ United States Department of Justice

(If so, please state the date and the complaint number)

Complaint# _____

Date Filed: ____/____/____

Please describe what happened to you on the following pages, what you believe is unlawful discrimination, and/or how other persons were treated differently. This statement may be amended to correct omissions. Please use extra pages if necessary.

What corrective action do you want taken?

Description of Alleged Unlawful Discrimination

**Please describe what happened to you that you believe is unlawful discrimination, and how other persons were treated differently. This statement may be amended to correct mistakes or omissions.
(Please use extra pages if necessary)**

I certify that I have read the above charge, including any attachments, and that it is true to the best of my knowledge, information and belief. I have read the attached notices concerning my rights to file a complaint with federal, state and local civil rights enforcement agencies.

Date: ____/____/____

Complainant's Signature _____

NOTICE

YOUR RIGHTS TO FILE A COMPLAINT WITH CIVIL RIGHTS ENFORCEMENT AGENCIES

Any employee or applicant for employment who believes that they have experienced unlawful discrimination has a right to file a formal complaint with the federal, state or local agencies listed below. A person does not give up this right when they file a complaint with the DCAS EEO Officer, or any of the DCAS EEO Representatives. The following federal, state and local agencies enforce laws against discrimination:

NEW YORK CITY COMMISSION ON HUMAN RIGHTS

[22 Reade Street - First Floor](#)

New York, NY 10007

(212) 306-7450

Web site: <http://www1.nyc.gov/site/cchr/index.page>

Brooklyn

25 Chapel Street, Suite 1001

Brooklyn, NY 11201

(718) 722-3130

Bronx

1932 Arthur Avenue, Room 203A

Bronx, NY 10457

(718) 579-6900

Queens

153-01 Jamaica Avenue, Room 203

Jamaica, NY 11432

(718) 657-2465

Staten Island

60 Bay Street, 7th Floor

Staten Island, NY 10301

(718) 390-8506

NEW YORK STATE DIVISION OF HUMAN RIGHTS

Central Headquarters

One Fordham Plaza, 4th Floor

Bronx, NY 10458

Toll-free number: 1-888-392-3644

For general inquiries: info@dhr.ny.gov.

TDD/TTY: 718-741-8300.

Email a complaint: complaints@dhr.ny.gov

Fax a complaint: 718-741-8322.

Brooklyn

55 Hanson Place, Room 1084
Brooklyn, New York 11217
Telephone No. (718) 722-2385
eFax: (718) 722-2078
InfoBrooklyn@dhr.ny.gov

Manhattan

Adam Clayton Powell State Office Building
163 West 125th Street, 4th Floor
New York, New York 10027
Telephone No. (212) 961-8650
eFax: (212) 961-4312
InfoUpperManhattan@dhr.ny.gov

Bronx

One Fordham Plaza, 4th Floor
Bronx, New York 10458
Telephone No. (718) 741-8400
eFax: (718) 741-8318
InfoBronx@dhr.ny.gov

Office of Sexual Harassment \Queens

55 Hanson Place, Room 900
Brooklyn, New York 11217
Telephone No. (718) 722-2060
eFax: (718) 722-2039
InfoOSHIQns@dhr.ny.gov

UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**New York District Office**

33 Whitehall Street, 5th Floor

New York, NY 10004

(800) 669-4000; (800) 669-6820 (TTY)

Fax: (212) 336-3790

To submit inquiry and schedule appointment: <https://publicportal.eeoc.gov/portal/>

Web site: www.eeoc.gov

In addition to filing with the aforementioned agencies, a person with a complaint alleging discrimination based on disability may file with:

UNITED STATES DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION

Disability Rights Section 1425 NYAV

950 Pennsylvania Avenue, NW

Washington, D.C. 20530

Telephone Number: 202-307-0663 (voice and TTY)

Fax: (202) 307-1197

You may also file a complaint online at www.ada.gov/complaint/.

If you have questions about filing an ADA complaint, please call: ADA Information Line: 800-514-0301 (voice) or 800-514-0383 (TTY).

A person with a complaint alleging discrimination based on citizenship or immigration status may file with:

UNITED STATES DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION

Immigrant and Employee Rights Section

950 Pennsylvania Avenue, N.W. (NYA)

Washington, D.C. 20530

Direct Office Line: 1-202-616-5594 [Voice] or 1-202-616-5525 [TTY]

Worker Hotline: 1-800-255-7688 [Voice] or 1-800-237-2515 [TTY]

Employer Hotline: 1-800-255-8155 [Voice] or 1-800-237-2515 [TTY]

Fax: (202) 616-5509

Email: ier@usdoj.gov

A person who has been discriminated against by a recipient of financial assistance from the U.S. Department of Labor may file a complaint, either with the recipient or with the Civil Rights Center (CRC). Those who wish to file complaints with CRC should mail their complaints to:

UNITED STATES DEPARTMENT OF LABOR

Director, Civil Rights Center

Frances Perkins Building, Room N-4123

200 Constitution Avenue N.W.

Washington, D.C. 20210

(202) 693-6500 (voice) Federal Relay Service: TTY/TDD: (800) 877-8339

Video Relay: (877) 709-5797

Fax: (202) 693-6505

Main Email - CivilRightsCenter@dol.gov External - crcexternalcomplaints@dol.gov

Web site: <https://www.dol.gov/oasam/programs/crc/index.htm>

Please Note: There are statutory deadlines for filing complaints with each of these agencies. The deadline in some instances is as short as 180 days. If you wish to file a complaint with an external administrative agency, you should promptly contact any of these agencies directly or a private attorney for information about how to file a complaint, time limits, and how to preserve your rights.

Discrimination complaints filed with the DCAS EEO Office must be made within One Year of the incident that you are complaining about.

SAMPLE C – Witness Information Form

[Insert agency name and logo]

**WITNESS INFORMATION FORM
CONFIDENTIAL**

Complaint # _____

Complainant's Name: _____

Please provide the name, address/location and telephone number of any witness to the alleged unlawful discrimination. If DCAS employs the person please provide their division and title, if known. If the person (s) is employed by another city agency please provide the name of the agency, if known.

Please complete a separate form for each witness

(Please Print)

Name: _____

Agency: _____

Division: _____

Civil Service or Office Title: _____

Address/Location: _____

Telephone: () _____

SAMPLE D – EEO Complaint Activity Sheet

[Insert agency name and logo]

EEO Investigator: _____ Complaint #: _____

DATE	NAME	NATURE OF CONTACT

SAMPLE E – CHECKLIST: TYPICAL QUESTIONS TO ASK A COMPLAINANT

- What is the basis of your complaint?

- What is the specific behavior that you experienced?

- Who was engaged in the behavior?

- When did the incident(s) take place?

- Was the behavior repeated or has it happened before?

- How long has this been going on?

- Where did the incident take place?

- How, if at all, did you react?

- Was your ability to work affected in any way?

- How were you affected otherwise?

- Do you know of anyone who witnessed this or similar incidents?

- Do you know of other employees who have been subjected to the same treatment or have the same concern?

- Do you have any evidence regarding this matter? (Photos, notes, letters, personal emails, texts, social media messages, voice mail messages, any objects of any kind, etc.)

 - If Complainant (or witnesses) reference evidence that resides on Department computers, the Department's office of Information Technology should be contacted for collection of this evidence.
- What resolution are you seeking? In other words, what is the outcome that you expect to result from filing this complaint?

SAMPLE F – Acknowledgment of Receipt of Policy

[Insert agency name and logo]

I, _____, employee ID number _____, acknowledge that I received the City of New York's Equal Opportunity Policy.

I have reviewed the policy and understand its content. I also acknowledge that it was reviewed and explained to me during my counseling session.

Signature of Employee

Date

EEO Representative

Date

SAMPLE G – Inquiry Letter to Complainant

[Insert agency name and logo]

Date

Ms./Mr. FIRST NAME LAST NAME

STREET ADDRESS

BOROUGH, New York #####

Re: EEO Complaint #

Dear Ms. _____:

Thank you for contacting the EEO Office with your concerns. We will be conducting an inquiry into your complaint. The matter has been assigned to NAME and TITLE of EEO Investigator, who will be contacting you shortly.

In the interim, please feel free to contact Ms. _____ (EEO Investigator) directly at (###) ###-#### if there is any additional information you think may assist her. Thank you for your cooperation in advance.

Sincerely,

EEO OFFICER

SAMPLE H – Notice of Discrimination Complaint

Complainant

v.

Respondent

On _____,

Date

Complainant's Name(s)

filed a complaint of discrimination against you on the basis of _____.

You may respond in writing to the allegations contained in this complaint after receiving this notice and a summary of the complaint allegations. Any response you wish to make must be received by the (agency's) _____ EEO Office on or before _____ (14 calendar days from date of notice).

We have scheduled a meeting on _____ at the EEO Office [Insert address]. Please call (phone number) immediately if you need to reschedule the meeting. You have the right to be accompanied by a representative of your choice. Please notify the EEO Office in advance of the meeting if you plan to be accompanied by a representative.

Responsibility for investigating this complaint rests with the agency's EEO Office. The complaint process is usually completed within 90 calendar days of the date on which the complaint was filed.

At the conclusion of the investigation, a confidential written report of the investigation will be submitted to the agency head. If, based upon the investigation, it is determined that the City's EEO Policy has been violated, a recommendation will be made to the agency head that appropriate corrective action be taken, which may include disciplinary action. All parties will be notified in writing of the outcome of the investigation.

A copy of The City's EEO Policy is attached for your reference. Please review this policy.

Please note that it is a violation of the City's EEO Policy to retaliate against or harass any person for filing a complaint of harassment or discrimination or cooperating with an investigation of a complaint. Such retaliation or harassment will be cause for disciplinary action regardless of the findings of the initial investigation.

EEO Officer or designee

Date

SAMPLE I – Request for Withdrawal of Complaint

[Insert agency name and logo]

RE: COMPLAINT # _____

I, _____, Employee ID number _____ hereby request withdrawal of my complaint of employment discrimination filed with the EEO Office on _____. My decision to request withdrawal of this complaint is not the result of either coercion or intimidation by any other individual. I understand that this withdrawal may NOT conclude the investigation of my complaint by the EEO Office of _____ Agency.

I wish to withdraw this complaint because

Complainant's Signature

Date

FOR OFFICE USE ONLY

ACCEPTED: ☐ YES ☐ NO

COMMENTS:

EEO Office Representative Signature

Date

SAMPLE J – Administrative Closure Letter

[Insert agency name and logo]

Date

Ms. / Mr. FIRST NAME LAST NAME

STREET ADDRESS

BOROUGH, New York #####

Re: EEO Complaint #

Dear Ms. _____:

Thank you for contacting the EEO Office with your concerns. Recently we requested that you provide us with information and list of witnesses to assist us in our inquiry/investigation. However, to date, you have failed to provide us with that statement.

Please forward the statement to us immediately. If we do not receive the information within the next 10 days, we will administratively close your case. If and/or when you submit the statement, your case will be re-opened. Thank you for your cooperation.

Please feel free to contact me with any questions or concerns that you may have at ###-###-####.

Sincerely,

EEO Officer

**SAMPLE K – Investigation Completed; Substantiated
Letter to Complainant**

[Insert agency name and logo]

Date

Ms./Mr. FIRST NAME LAST NAME
STREET ADDRESS
BOROUGH, New York #####

Re: EEO Complaint #

Dear Ms. _____:

Please be advised that the EEO Office has concluded its investigation of the above referenced complaint which you filed alleging discrimination on the basis of _____.

Upon a review of all the pertinent facts presented in the complaint, this office finds that the allegations were substantiated.

This case has been referred to our [State agency department/office] which will implement disciplinary action as the Commissioner deems appropriate.

If you should have any questions, I can be reached at ###-###-####.

*[Disciplinary Officer, Dept., Advocate, Labor Relations Department or Inspector General]

Sincerely,

EEO OFFICER

c: Commissioner

**SAMPLE L – Investigation Completed: Substantiated
Letter to Respondent**

[Insert agency name and logo]

Date

Ms. / Mr. FIRST NAME LAST NAME

STREET ADDRESS

BOROUGH, New York #####

Re: EEO Complaint #

Dear Ms. _____:

Please be advised that the EEO Office has concluded its investigation of the above referenced complaint which [Name of Complainant] filed alleging discrimination on the basis of _____, in which you were named respondent.

Upon a review of all the pertinent facts presented in the complaint, this office finds that the allegations were substantiated.

The following corrective measures will be taken: [Please enter steps that will be taken here, either in a sentence or as a bulleted list.]

Please note that it is a violation of the City's EEO Policy to retaliate against or harass any person for filing a complaint of harassment or discrimination or cooperating with the investigation of a complaint.

If you should have any questions, I can be reached at ### ###-####.

Sincerely,

EEO OFFICER

c: Commissioner

**SAMPLE M – Investigation Completed; Unsubstantiated
Letter to Complainant**

[Insert agency name and logo]

Date

Ms./Mr. FIRST NAME LAST NAME

STREET ADDRESS

BOROUGH, New York #####Re: EEO Complaint # _____

Dear Ms. _____:

I am writing to inform you that the EEO Office has concluded its review of the complaint you filed on _____. We conducted a comprehensive investigation of the charges made in your complaint, including _____. We have kept the investigation impartial and objective.

Based on our investigation, your charges of a violation of New York City's EEO Policy could not be substantiated. [State reason, if appropriate].

Thank you for bringing your concerns to our attention and for being patient while we addressed them. Please continue to report any conduct that you deem inconsistent with The City's policies. I want to assure you that [Agency Name] is committed to protecting you from any retaliation as a result of your complaint and our investigation. Please call me if you feel you are being subjected to retaliation in any form.

To protect the privacy of everyone involved in this investigation we have taken steps to handle this matter in confidence. We expect you to treat the information contained in this letter in the same manner.

Sincerely,

EEO OFFICER

c: Commissioner

**SAMPLE N – Investigation Completed – Unsubstantiated
Letter to Respondent**

[Insert agency name and logo]

Date

Ms./Mr. FIRST NAME LAST NAME

STREET ADDRESS

BOROUGH, New York #####

Re: EEO Complaint # _____

Dear Ms. _____:

Please be advised that the EEO Office has concluded its investigation of the above referenced complaint which [Name of complainant] filed alleging discrimination on the basis of _____, in which you were named respondent.

Upon a review of all the pertinent facts presented in the complaint, this office finds that the allegations were unsubstantiated.

To protect the privacy of everyone involved in this investigation we have taken steps to handle this matter in confidence. We expect you to treat the information contained in this letter in the same manner.

Please note that it is a violation of the City's EEO Policy to retaliate against or harass any person for filing a complaint of harassment or discrimination or cooperating with the investigation of a complaint.

If you should have any questions, I can be reached at ### ##-####.

Sincerely,

EEO OFFICER

c: Commissioner

SAMPLE O – EEO Complaint Final Investigative Report
CONFIDENTIAL

[Insert agency name and logo]

Date: _____

To: _____ **[Agency Head]**

From: _____ **[EEO Officer or Investigator]**

Re: _____ **[EEO Complaint Number]**

Complainant: _____

Respondent: _____

The undersigned was designated to conduct an investigation of alleged misconduct involving the above referenced matter.

Statement of Basis of Complaint:

This complaint alleges discrimination in the form of _____

The initial information that served as a basis for this investigation was provided by _____ [Identify person or persons who supplied information of possible misconduct] and consisted of [an oral statement *and/or* a written statement attached hereto as Appendix A].

The investigation was initiated on _____, and concluded on _____.

Summary of History of Complaint:

- _____

- _____

All potential witnesses have been interviewed and are listed as follows:

- Name: _____ Title (If NYC Employee) _____
- Name: _____ Title (If NYC Employee) _____
- Name: _____ Title (If NYC Employee) _____
- Name: _____ Title (If NYC Employee) _____

- Employee: _____ was contacted on _____, but declined to be interviewed.

The documents that were reviewed are listed as follows:

- _____
- _____
- _____

The following evidence has also been secured (any objects, images, printout of text messages, social media content, etc.):

- _____
- _____
- _____

Findings of Fact

[This section should contain statements made by the complainant and witnesses. Please cite attachments, if any.]

- _____

- _____

- _____

[This section should contain statements made by the complainant and witnesses that are disputed or unsubstantiated by the investigator(s).]

- _____

- _____

Statement of Response:

The Respondent responded to the allegations by stating

Opinions:

[This section should contain the opinions and observations of the EEO Investigator.]

Determination:

[This section should contain the EEO Investigator's determination as to whether or not the allegations were substantiated.]

Conclusion and Recommendations:

Based upon the conclusion of this investigation it is recommended that:

Date: _____

[Signature] EEO Officer

I have reviewed this report and the recommendation(s) made above.

The recommendations meet with my approval and will be adopted _____

The recommendations made above do NOT meet with my approval _____

Comments:

Date: _____

[Signature] Agency Head

BY EMAIL

July 31, 2020

Charise L. Terry
Executive Director
Equal Employment Practices Commission
253 Broadway
Suite 602
New York, NY 10007

RE: Response to Preliminary Determination: Evaluation of Sexual Harassment Prevention and Response Practices for Audit Period January 1, 2018 to December 31, 2019.

Dear Ms. Terry,

Please see OATH's responses to the Preliminary Determination letter dated July 17, 2020.

- OATH did not demonstrate that all individuals who work within the agency, including managers and supervisors completed sexual harassment prevention training as outlined in its 2019 *Diversity and Equal Employment Opportunity Plan*. Corrective Action Required

Corrective Action #1: Establish and implement a training plan for new and existing employees to ensure that all individuals who work within the agency, including managers and supervisors, receive training on the prevention of sexual harassment as well as discrimination complaint and investigation procedures.

OATH's Response: According to the latest CEEDS Report, Q4 FY 2020, OATH has a total of 699 employees. Of those, 330 employees are Per-Diem Hearing Officers. On July 14, 2020, DCAS confirmed that 82% of employees had completed the Sexual Harassment Prevention CBT training during the 2nd cycle. There were 118 employees who had not completed the training, Of those, 4 are ECB Board Members, who are not actual employees of OATH;, 99 are Per-Diem Hearing Officers, of whom the vast majority have not worked at OATH for several years; 1 employee who resigned; 1 manager; and 13 line employees. As of July 24, 2020, 6 of these employees have completed the training.

The breakdown above demonstrates that OATH, except for a handful of employees, has trained all individuals including managers and supervisors who work within the Agency. Because of the make-up of the Agency, Per-Diem Hearing Officers who have not worked for several years, but are still included in our NYCAPS roster, account for the Agency not reaching 100% compliance. OATH is committed to ensuring that our employees receive Sexual Harassment Prevention training and we will continue in our efforts to train all employees.

- Complaint file 2018 – 3 did not contain a notice to the respondent that included the respondent's right to respond to the allegations and right to be accompanied by a representative of their choice. Corrective Action Required.

Corrective Action #2: Serve the respondent with a notice of the complaint that includes the respondent's right to respond to the allegations and right to be accompanied by a representative of his/her choice. Maintain in the complaint file documentation regarding the service of notice on the respondent.

OATH's Response: OATH will ensure that all complaint files include documentation regarding the service of notice on the respondent.

- The conclusive report in complaint file 2018 – 3 indicated that internal mediation was terminated by agreement of the parties however, the complaint file does not include documentation that all parties to the complaint were informed, in writing, that the mediation was terminated and that the EEO Office would resume its investigation of the complaint, as required in OATH's EEO Policy. Corrective Action Required.

Corrective Action #3: Issue/maintain written confirmation when an internal complaint/mediation is terminated, withdrawn or resolved by agreement of the parties or EEO Office.

After accounting for the pause in the complaint investigation due to mediation efforts, the conclusive report in complaint file 2018 – 3 was issued 236 days after the date the complaint was filed. Corrective Action Required

Corrective Action #4: Issue a conclusive report within 90 days of the date the complaint was filed. Commence an investigation immediately if allegations raised sufficiently warrant an investigation.

- Complaint file 2018 – 3 did not contain documentation that specified a projected time frame for completion of the conclusive report or contain documentation that the complaint and respondent were notified of the delay. Corrective Action Required.

Corrective Action #5: In rare circumstances where a complaint investigation cannot commence immediately, or where a conclusive report cannot be issued within 90 days, specify in the complaint file the reason for the delay and project a time frame for completion of the report. Notify the complainant and respondent of the delay.

OATH's Response: In respect to Corrective Actions 3-5, the Agency disagrees that corrective action is required. Complaint 2018-3, stemmed from an incident report filed in April 2018. The incident report was streamlined to the General Counsel's Office who handled the investigation. While the EEO Officer was cc'd on the incident report, it was not deemed an EEO matter and no further action was taken by the EEO Office.

In October 2018; 6 months after the incident report was made, the complainant reached out to the EEO Officer for the first time to follow up on the incident because she had not received any other communication. She was advised that the EEO Office had not handled the matter.

Soon after being contacted by the complainant, the EEO Officer made then-Commissioner Fidel Del Valle aware of the complainant's concerns. Commissioner Del Valle advised that the EEO Officer obtain a formal statement from the complainant.

On November 7, 2020, the EEO Officer interviewed the complainant and on December 7, 2020 all parties were notified of the complaint closing. Only 30 days elapsed from the time the EEO Officer obtained a formal statement from the complainant and when the case was closed.

See attached documentation.

Complaint file 2018 – 3 did not contain documentation of the Agency Head's review of the complaint investigation's conclusive confidential report. Corrective Action Required.

Corrective Action #6: Generate at the end of each complaint investigation, a conclusive confidential report which includes a summary of the allegations and responses, a summary of the procedural history of the investigation, a statement of the relevant facts gathered, a determination, a recommendation and documentation of the Agency Head's Review.

Complaint file 2018 – 3 did not contain documentation that demonstrated that the agency head (or an approved direct report other than the General Counsel) reviewed the principal investigator's conclusive report; issued a written/electronic determination adopting, rejecting, or modifying the recommended action; and signed the determination, via writing or electronically, to indicate it has been reviewed and adopted. Corrective Action Required.

Corrective Action #7: Establish and implement a policy whereby the agency head (or an approved direct report other than the General Counsel) reviews the principal investigator's conclusive report; issues a written/electronic determination adopting, rejecting, or modifying the recommended action; and signs each determination, via writing or electronically, to indicate it has been reviewed and adopted.

OATH's Response: In respect to Corrective Actions 6 and 7, the EEO Officer will ensure that all complaint files include documentation of the Agency Head's review of the complaint investigation. As indicative of complaint file 2019-1, OATH already has a policy in place whereby the Agency Head issues a written/electronic determination adopting, rejecting, or modifying the recommended action; and signs each determination.

- OATH did not demonstrate that it utilized a complaint tracking and monitoring system that permitted the agency to identify the aggrieved individuals. Corrective Action Required.

Corrective Action #8: Establish and utilize a complaint tracking and monitoring system that permits the agency to identify the location, status, and length of time elapsed in the complaint investigation process, the issues and the bases of the complaints, the aggrieved individuals, and other information necessary to analyze complaint activity to identify trends.

OATH's Response: OATH will utilize DCAS's complaint tracking system as well as its own internal log to analyze complaint activity and identify trends.

➤ OATH did not demonstrate that, during the period in review, the principal EEO Professional, HR Professional, and General Counsel reviewed the agency's employment practices, policies and programs on an annual basis to identify whether there are barriers to employment opportunities that may be related to sexual harassment and determine what, if any, actions are required to correct deficiencies. Corrective Action Required.

Corrective Action #9: Ensure that the principal EEO Professional, HR Professional, and General Counsel, review the number of sexual harassment complaints, and the agency's employment practices, policies and programs on an annual basis to identify whether there are barriers to employment opportunities that may be related to sexual harassment and determine what, if any, actions are required to correct deficiencies.

OATH's Response: Although there were no sexual harassment complaints made during the audit period, OATH will ensure that it reviews any complaints it receives as well as the agency's employment practices, policies, and program on an annual basis.

➤ OATH did not demonstrate that all of its EEO Liaisons were trained in EEO laws and procedures. In addition, OATH did not indicate the EEO Liaisons' job responsibilities therefore, the EEOC was unable to determine whether they were trained in their responsibilities. OATH also did not indicate whether the title change from EEO Liaisons to EEO Counselors included job responsibilities as well. Corrective Action Required.

Corrective Action #10: Where the agency's organizational structure necessitates multiple EEO professionals, select such individuals from different office locations and, where possible, from a variety of levels within the organizational structure. Appoint EEO professionals who are trained in EEO laws and procedures, and their responsibilities under the EEO Policy.

OATH's Response: The Agency's EEO Liaisons are responsible for maintaining bulletin boards up to date with relevant EEO information at their locations and reporting to the EEO Officer any EEO issues that they may become aware of. The EEO Liaisons do not investigate EEO complaints or handle Reasonable Accommodations. The EEO Liaisons serve as a point of contact at their locations and can answer general EEO questions. Except for the EEO Liaison located in the Bronx office, who completed the 5- day DCAS training in 2017, all the other EEO Liaisons have held their roles for over 10 years or more and were unable to retrieve all their training certificates. OATH does not have EEO Counselors. The terms were likely used interchangeably on some documents.

➤ OATH did not demonstrate that, during the period in review, the principal EEO Professional was responsible for supervising the activities of the entity's EEO professionals, and that managers, supervisors, and human resources received guidance on issues pertaining to sexual harassment. Corrective Action Required.

Corrective Action #11: Assign the principal EEO Professional (or EEO-related designee) the responsibility to supervise the activities of EEO professionals, and ensure that: the policies against sexual harassment and complaint procedures are distributed/posted at all agency locations; employees/managers receive sexual harassment prevention training; EEO-related

policies are made available in alternative formats (i.e., large print, audio recording and/or Braille) upon request; managers, supervisors and human resource professionals receive guidance on issues pertaining to sexual harassment; and allegations of sexual harassment are promptly investigated.

OATH's Response: The EEO Officer provides updated EEO materials to the EEO Liaisons so they are posted at their locations. Only the EEO Officer is responsible for ensuring that employees/managers receive all mandated trainings including sexual harassment prevention training. The EEO Officer is also the only person responsible for providing guidance to managers, supervisors, and human resource professionals on issues pertaining to sexual harassment and ensuring that any allegations of sexual harassment are promptly investigated.

➤ OATH did not demonstrate that, during the period in review, the principal EEO Professional reported directly to the agency head (or a direct report other than the General Counsel in order to exercise the necessary authority and independent judgement to fulfill EEO responsibilities. Corrective Action Required.

Corrective Action #12: Ensure that the principal EEO Professional reports directly to the agency head (or a direct report other than the General Counsel) in order to exercise the necessary authority and independent judgment to fulfill EEO responsibilities.

OATH's Response: OATH disagrees with this recommended corrective action, as the Agency already conforms to this recommendation. OATH submitted its organizational chart during the audit period which demonstrates that the principal EEO Officer reports directly to the Commissioner.

The Agency will re-submit the organizational chart previously submitted as well as the current organizational chart that demonstrates the direct report structure.

See attached documentation.

➤ OATH did not demonstrate implementation of the expectation that managers and supervisors are held accountable for enforcing the agency's sexual harassment prevention policies and complaint procedures. Corrective Action Required.

Corrective Action #13: Ensure that managers and supervisors are held accountable for enforcing the agency's sexual harassment prevention policies and complaint procedures. Document this expectation and its implementation.

OATH's Response: OATH will remind all managers and supervisors of their responsibility to enforce the Agency's sexual harassment prevention policies and complaint procedures via an agency wide bulletin.

➤ OATH reported that its managerial performance evaluation form did not contain a rating for EEO (which covers responsibilities and processes for assuring their ability to make employment decisions

based on merit and equal consideration or treat others in an equitable and impartial manner).
Corrective Action Required.

Corrective Action #14: Ensure the managerial performance evaluation form contains a rating for EEO (which covers responsibilities and processes for assuring their ability to make employment decisions based on merit and equal consideration or treat others in an equitable and impartial manner).

OATH's Response: The EEO Officer incorrectly stated that our managerial performance evaluation form did not include an EEO rating.

See attached documentation.

➤ OATH did not provide its *Diversity and Equal Employment Opportunity Plan* for fiscal year 2020 and its *Agency Quarterly Diversity and EEO Reports* for the first and second quarter of fiscal year 2019. In addition, the *Agency Quarterly Diversity and EEO Reports* for the third and fourth quarter of fiscal year 2019, and the first and second quarter of fiscal year 2020 did not contain a breakout of sexual harassment complaint activity. Corrective Action Required.

Corrective Action #15: Submit to the EEPD an Annual Plan of measures and programs to provide equal employment opportunity, and quarterly reports on efforts to implement the Plan within 30 days following each quarter. Include a breakout of sexual harassment complaint activity in each quarterly report.

OATH's Response: At the time the Agency submitted its responses to the audit, DCAS had not yet approved our 2020 Diversity and Equal Opportunity Plan. On May 27, 2020 DCAS approved OATH's Diversity and Equal Opportunity Plan.

On February 1, 2019, OATH submitted its Quarterly Diversity and EEO Reports for FY 2019 Quarters 1 and 2 to the Office of Citywide Equity and Inclusion (OCEI). OATH acknowledges its oversight in not submitting these two reports to the EEPD and City Council as it does every other quarter.

Since the Agency did not report any sexual harassment complaints during the audit period, or for the 1st and 2nd Quarters of 2020, the Quarterly Diversity and EEO reports do not reflect a breakout of sexual harassment complaint activity. OATH will provide a breakout of sexual harassment complaints in all subsequent reports.

See attached documentation.

Sincerely,

Joni Kletter
Commissioner and Chief Administrative Law Judge



Sasha Neha Ahuja
Chair

Angela Cabrera
Elaine S. Reiss, Esq.
Arva R. Rice
Commissioners

Charise L. Terry
Executive Director

Jennifer Shaw, Esq.
Executive Agency Counsel/
Director of Compliance

253 Broadway
Suite 602
New York, NY 10007

212. 615. 8939 tel.
212. 676.2724 fax

BY EMAIL

August 11, 2020

Joni Kletter
Commissioner and Chief Administrative Law Judge
Office of Administrative Trials and Hearings
100 Church Street, 12th Floor
New York, NY 10007

Audit Status:

Evaluation of Sexual Harassment Prevention and Response Practices for Audit
Period January 1, 2018 to December 31, 2019.

Determination: FINAL

Resolution #: 2020AP/241-820-(2020)

Dear Commissioner Kletter:

On behalf of the members of the Equal Employment Practices Commission (EEPC), thank you for the continued cooperation extended to our staff. This document serves as a follow-up evaluation and Final Determination to the following:

Preliminary Determination Issued on: July 17, 2020

Response Received: July 31, 2020

Purpose

Chapter 35, Sections 815(a)(15) and (19) of the New York City Charter (Charter) calls for agency heads to ensure and promote equal opportunity for all persons in appointment, payment of wages, development, and advancement, and to establish measures and programs to ensure a fair and effective affirmative employment plan to provide equal employment opportunity (EEO) for minority group members and women.

Charter Chapter 36, Sections 830(a) and 831(d)(2) and (5) authorize the EEPC to audit, review, evaluate, and monitor the employment practices, procedures, and programs of city agencies and other municipal entities, hereinafter "entities," and their efforts to ensure fair and effective EEO for women and minority employees and applicants. Charter Sections 831(d)(2) and 832(c) authorize the EEPC to make a determination that any plan, program, procedure, approach, measure, or standard does not provide

equal employment opportunity, require appropriate corrective action, and monitor the implementation of the corrective action prescribed. The attachment contains the EEPCC's final determination regarding the audit, review, and evaluation of the Office of Administrative Trials and Hearings' Sexual Harassment Prevention and Response Practices.

As the Office of Administrative Trials and Hearings falls within the EEPCC's purview under Charter Chapter 36, Section 831(a), the EEPCC is authorized to review, evaluate, and monitor the coordination and implementation of its affirmative employment programs of EEO and related practices. As indicated in our Preliminary Determination, the EEPCC has adopted uniform standards¹ to this end. The purpose of this Final Determination, as authorized by Charter Chapter 36, Section 832(c), is to determine the sufficiency of the Office of Administrative Trials and Hearings' actions taken or planned thus far to correct areas of non-compliance identified in the EEPCC's Preliminary Determination. Further, Chapter 36, Section 832(c) requires that: (1) the EEPCC assign a compliance-monitoring period of up to six (6) months to monitor efforts taken to eliminate areas of non-compliance, if any; and (2) the agency respond in thirty (30) days and submit a report each month during this period on the progress of efforts taken to correct outstanding areas of non-compliance.

Next Steps

The assigned compliance-monitoring period is: **September 1, 2020 to February 28, 2021.** Correcting all outstanding areas of non-compliance without delay is highly encouraged and will serve to shorten this period.

If corrective actions remain: Corrective actions will be listed under the *Monitoring Required* section of the attached Final Determination. The EEPCC requires that the agency head submit a signed response to this Final Determination. The signed response should indicate what steps the Office of Administrative Trials and Hearings has taken, or will take, to correct outstanding areas of non-compliance during the designated compliance-monitoring period. The Office of Administrative Trials and Hearings will be monitored monthly until all outstanding areas of non-compliance have been sufficiently corrected. The Office of Administrative Trials and Hearings is required to submit documentation that supports the implementation of each corrective action via TeamCentral, the EEPCC's Automated Compliance-Monitoring System. Instruction on how to access and navigate TeamCentral is attached.

Final Memorandum: Upon the Office of Administrative Trials and Hearings' implementation of the final corrective action, if any, the EEPCC requires that the Office of Administrative Trials and Hearings submit a final memorandum, signed by the agency head, that recognizes the EEPCC's audit and reiterates commitment to equal employment practices. **Upon receipt of this final memorandum, the EEPCC will issue a *Determination of Compliance*.**

If no corrective actions remain: In lieu of a response to this Final Determination, the Office of Administrative Trials and Hearings must submit a final memorandum (See Next Steps, Final Memorandum). Upon the EEPCC's receipt of the final memorandum, the Office of Administrative Trials and Hearings will be exempt from the abovementioned compliance-monitoring period.

¹ The EEPCC's uniform standards for auditing municipal entities and minimum standards for auditing community boards (collectively "Standards") are founded upon, and consistent with, federal, state, and local laws and regulations, and policies and procedures, including, but not limited to, the City of New York's *Equal Employment Opportunity Policy, Standards and Procedures to be Utilized by City Agencies 2014*; New York City Human Rights Law (NYC Administrative Code 8); New York State Human Rights Law (New York Executive Law, Article 15); New York State Civil Service Law §55-a; and the equal employment opportunity requirements of the New York City Charter.

Conclusion

This is the EEPC's Final Determination. Questions regarding next steps may be addressed to Jennifer Shaw, Esq., Executive Agency Counsel/Director of Compliance at jshaw@eeepc.nyc.gov or 212-615-8942.

Thank you and your staff for your continued cooperation.

Sincerely,



Charise L. Terry
Executive Director

c: Sharina DeRoberts, principal EEO Professional, Labor Relations Officer, OATH

Enclosed: TeamCentral Agency Manual

FINAL DETERMINATION

A response indicating progress of Office of Administrative Trials and Hearings' efforts to correct outstanding areas of non-compliance, with supporting documentation, is due within 30 days.

The Equal Employment Practices Commission's findings and corrective actions required to remedy areas of non-compliance are based on the audit methodology, which included collection and analysis of the documents, records, and data provided; the EEPC's *Preliminary Interview Questionnaires* (PIQs) for EEO professionals and others involved in EEO program administration; and, if applicable, the *EEPC Employee Survey*, the *EEPC Supervisor/Manager Survey*, the *Annual EEO Plans* and *Quarterly EEO Reports* of the audited entity; and workforce data from the *Citywide Equal Employment Database System*. Additional research and follow-up discussions or interviews were conducted as appropriate.

After reviewing the optional response² (if applicable) to the EEPC's Preliminary Determination, our Final Determination is as follows:

Agree

Regarding your responses to the following EEPC required corrective actions, we Agree based on documentation that is attached to your response.

Corrective Action #1:

Establish and implement a training plan for new and existing employees to ensure that all individuals who work within the agency, including managers and supervisors, receive training on the prevention of sexual harassment as well as discrimination complaint and investigation procedures.

Agency Response:

"According to the latest CEEDS Report, Q4 FY 2020, OATH has a total of 699 employees. Of those, 330 employees are Per-Diem Hearing Officers. On July 14, 2020, DCAS confirmed that 82% of employees had completed the Sexual Harassment Prevention CBT training during the 2nd cycle. There were 118 employees who had not completed the training. Of those [sic], 4 are ECB Board Members, who are not actual employees of OATH; [sic] 99 are Per-Diem Hearing Officers, of whom the vast majority have not worked at OATH for several years; 1 employee who resigned; 1 manager; and 13 line employees. As of July 24, 2020, 6 of these employees have completed the training. The breakdown above demonstrates that OATH, except for a handful of employees, has trained all individuals including managers and supervisors who work within the Agency. Because of the make-up of the Agency, Per-Diem Hearing Officers who have not worked for several years, but are still included in our NYCAPS roster, account for the Agency not reaching 100% compliance. OATH is committed to ensuring that our employees receive Sexual Harassment Prevention training and we will continue in our efforts to train all employees."

EEPC Response:

The EEPC accepts the agency's response that Corrective Action #1 has been implemented. OATH established and is implementing a training plan for new and existing employees to ensure that all individuals who work within the agency, including managers and supervisors, receive training on the prevention of sexual harassment as well as discrimination complaint and investigation procedures.

² Excerpts are italicized.

Corrective Action #3:

Issue/maintain written confirmation when an internal complaint/mediation is terminated, withdrawn or resolved by agreement of the parties or EEO Office.

Agency Response:

"Complaint 2018-3, stemmed from an incident report filed in April 2018. The incident report was streamlined to the General Counsel's Office who handled the investigation. While the [principal EEO Professional] was cc'd on the incident report, it was not deemed an EEO matter and no further action was taken by the EEO Office. In October 2018; 6 months after the incident report was made, the complainant reached out to the [principal EEO Professional] for the first time to follow up on the incident because she had not received any other communication. She was advised that the EEO Office had not handled the matter. Soon after being contacted by the complainant, the [principal EEO Professional] made then- Commissioner [name] aware of the complainant's concerns. Commissioner [name] advised that the [principal EEO Professional] obtain a formal statement from the complainant. On November 7, 2020 [sic], the [principal EEO Professional] interviewed the complainant and on December 7, 2020 [sic] all parties were notified of the complaint closing. Only 30 days elapsed from the time the [principal EEO Professional] obtained a formal statement from the complainant and when the case was closed. See attached documentation." In addition, OATH submitted a March 12, 2018 letter from the entity's Center for Creative Conflict Resolution which stated that the mediation between the complainant and respondent of Complaint File 2018 – 3 was being terminated by the Center for Creative Conflict Resolution due to lack of resolution between the parties.

EEPC Response:

The EEPC accepts the agency's response and documentation provided as confirmation that Corrective Action #3 has been implemented. OATH's March 12, 2018 letter from its Center for Creative Conflict Resolution demonstrated that it maintained written confirmation when the mediation involving the parties of complaint 2018 – 3 was terminated by agreement of the aforementioned center for conflict resolution.

Corrective Action #4:

Issue a conclusive report within 90 days of the date the complaint was filed. Commence an investigation immediately if allegations raised sufficiently warrant an investigation.

Agency Response:

"Complaint 2018-3, stemmed from an incident report filed in April 2018. The incident report was streamlined to the General Counsel's Office who handled the investigation. While the [principal EEO Professional] was cc'd on the incident report, it was not deemed an EEO matter and no further action was taken by the EEO Office. In October 2018; 6 months after the incident report was made, the complainant reached out to the [principal EEO Professional] for the first time to follow up on the incident because she had not received any other communication. She was advised that the EEO Office had not handled the matter. Soon after being contacted by the complainant, the [principal EEO Professional] made then- Commissioner [name] aware of the complainant's concerns. Commissioner [name] advised that the [principal EEO Professional] obtain a formal statement from the complainant. On November 7, 2020 [sic], the [principal EEO Professional] interviewed the complainant and on December 7, 2020 [sic] all parties were notified of the complaint closing. Only 30 days elapsed from the time the [principal EEO Professional] obtained a formal statement from the complainant and when the case was closed. See attached documentation." In addition, OATH provided emails from October and November 2018 that demonstrated that the complainant from Complaint 2018-3 contacted the principal EEO Professional regarding a previous complaint, and that the principal EEO Professional advised the complainant that there was no EEO related investigation involving the aforementioned complaint.

EEPC Response:

The EEPC accepts the agency's response and documentation provided as confirmation that Corrective Action #4 has been implemented. OATH commenced its EEO investigation for complaint 2018 – 3 in October 2018 and issued a conclusive report within 90 days of the date the complaint was filed.

Corrective Action #5:

In rare circumstances where a complaint investigation cannot commence immediately, or where a conclusive report cannot be issued within 90 days, specify in the complaint file the reason for the delay and project a time frame for completion of the report. Notify the complainant and respondent of the delay.

Agency Response:

"Complaint 2018-3, stemmed from an incident report filed in April 2018. The incident report was streamlined to the General Counsel's Office who handled the investigation. While the [principal EEO Professional] was cc'd on the incident report, it was not deemed an EEO matter and no further action was taken by the EEO Office. In October 2018; 6 months after the incident report was made, the complainant reached out to the [principal EEO Professional] for the first time to follow up on the incident because she had not received any other communication. She was advised that the EEO Office had not handled the matter. Soon after being contacted by the complainant, the [principal EEO Professional] made then- Commissioner [name] aware of the complainant's concerns. Commissioner [name] advised that the [principal EEO Professional] obtain a formal statement from the complainant. On November 7, 2020 [sic], the [principal EEO Professional] interviewed the complainant and on December 7, 2020 [sic] all parties were notified of the complaint closing. Only 30 days elapsed from the time the [principal EEO Professional] obtained a formal statement from the complainant and when the case was closed. See attached documentation." In addition, OATH provided emails from October and November 2018 that demonstrated that the complainant from Complaint 2018-3 contacted the principal EEO Professional regarding a previous complaint, and that the principal EEO Professional advised the complainant that there was no EEO related investigation involving the aforementioned complaint.

EEPC Response:

The EEPC accepts the agency's response and documentation provided as confirmation that Corrective Action #5 has been implemented. OATH demonstrated that its EEO investigation of complaint 2018 – 3 commenced immediately upon the EEO Office's learning of the incident from the complainant and that a conclusive report was issued within 90 days.

Corrective Action #12:

Ensure that the principal EEO Professional reports directly to the agency head (or a direct report other than the General Counsel) in order to exercise the necessary authority and independent judgment to fulfill EEO responsibilities.

Agency Response:

"OATH submitted its organizational chart during the audit period which demonstrates that the principal EEO [Professional] reports directly to the Commissioner. The Agency will re-submit the organizational chart previously submitted as well as the current organizational chart that demonstrates the direct report structure. See attached documentation." OATH submitted two organizational charts, that were undated and untitled, that illustrated a direct reporting relationship between the principal EEO Professional and agency head.

EEPC Response:

The EEPC accepts the agency's response as confirmation that Corrective Action #12 has been implemented. OATH's organizational charts demonstrated that the principal EEO Professional and Commissioner have a direct reporting relationship. The EEPC recommends that OATH date and title its organizational charts for consistency and continuity.

Monitoring Required

The agency's implementation of the following required corrective actions will be monitored during the assigned compliance-monitoring period.

Corrective Action #2:

Serve the respondent with a notice of the complaint that includes the respondent's right to respond to the allegations and right to be accompanied by a representative of his/her choice. Maintain in the complaint file documentation regarding the service of notice on the respondent.

Agency Response:

"OATH will ensure that all complaint files include documentation regarding the service of notice on the respondent."

EEPC Response:

The EEPC recognizes OATH's commitment to implement Corrective Action #2. To demonstrate compliance, provide documentation from a complaint filed subsequent to the period in review that demonstrates that the respondent was served with a notice of the complaint that includes the respondent's right to respond to the allegations and right to be accompanied by a representative of their choice.

Corrective Action #6:

Generate at the end of each complaint investigation, a conclusive confidential report which includes a summary of the allegations and responses, a summary of the procedural history of the investigation, a statement of the relevant facts gathered, a determination, a recommendation and documentation of the Agency Head's Review.

Agency Response:

"In respect to Corrective Actions 6 and 7, the [principal EEO Professional] will ensure that all complaint files include documentation of the Agency Head's review of the complaint investigation. As indicative of complaint file 2019-1, OATH already has a policy in place whereby the Agency Head issues a written/electronic determination adopting, rejecting, or modifying the recommended action; and signs each determination."

EEPC Response:

The EEPC recognizes OATH's commitment to implement Corrective Action #6. To demonstrate compliance, provide documentation from a complaint filed subsequent to the period in review that demonstrates that a conclusive confidential report was generated at the end of the complaint investigation, which included a summary of the allegations and responses, a summary of the procedural history of the investigation, a statement of the relevant facts gathered, a determination, a recommendation, and documentation of the Commissioner's review.

Corrective Action #7:

Establish and implement a policy whereby the agency head (or an approved direct report other than the General Counsel) reviews the principal investigator's conclusive report; issues a written/electronic

determination adopting, rejecting, or modifying the recommended action; and signs each determination, via writing or electronically, to indicate it has been reviewed and adopted.

Agency Response:

"In respect to Corrective Actions 6 and 7, the [principal EEO Professional] will ensure that all complaint files include documentation of the Agency Head's review of the complaint investigation. As indicative of complaint file 2019-1, OATH already has a policy in place whereby the Agency Head issues a written/electronic determination adopting, rejecting, or modifying the recommended action; and signs each determination."

EEPC Response:

The EEPC recognizes OATH's commitment to implement Corrective Action #7. To demonstrate compliance, provide documentation from a complaint filed subsequent to the period in review that demonstrates that the entity's Commissioner (or an approved direct report other than the General Counsel) reviewed the principal investigator's conclusive report; issued a written/electronic determination adopting, rejecting, or modifying the recommended action; and signed the determination, via writing or electronically, to indicate it had been reviewed and adopted.

Corrective Action #8:

Establish and utilize a complaint tracking and monitoring system that permits the agency to identify the location, status, and length of time elapsed in the complaint investigation process, the issues and the bases of the complaints, the aggrieved individuals, and other information necessary to analyze complaint activity to identify trends.

Agency Response:

"OATH will utilize DCAS's [sic] complaint tracking system as well as its own internal log to analyze complaint activity and identify trends."

EEPC Response:

The EEPC recognizes OATH's commitment to implement Corrective Action #8. To demonstrate compliance, provide documentation of the entity's current use of DCAS' Complaint Tracking System (or an alternative complaint tracking system), and that the aforementioned system permits the entity to identify the location, status, and length of time elapsed in the complaint investigation process, the issues and the bases of the complaints, the aggrieved individuals, and other information necessary to analyze complaint activity to identify trends.

Corrective Action #9:

Ensure that the principal EEO Professional, HR Professional, and General Counsel, review the number of sexual harassment complaints, and the agency's employment practices, policies and programs on an annual basis to identify whether there are barriers to employment opportunities that may be related to sexual harassment and determine what, if any, actions are required to correct deficiencies.

Agency Response:

"Although there were no sexual harassment complaints made during the audit period, OATH will ensure that it reviews any complaints it receives as well as the agency's employment practices, policies, and program on an annual basis."

EEPC Response:

The EEPC recognizes OATH's commitment to implement Corrective Action #9. To demonstrate compliance, provide documentation of the completion of the most recent aforementioned review by the principal EEO

Professional, HR Professional, and General Counsel, and the outcome of said review of sexual harassment complaint activity and the agency's employment practices, policies and programs.

Corrective Action #10:

Where the agency's organizational structure necessitates multiple EEO professionals, select such individuals from different office locations and, where possible, from a variety of levels within the organizational structure. Appoint EEO professionals who are trained in EEO laws and procedures, and their responsibilities under the EEO Policy.

Agency Response:

"The Agency's EEO Liaisons are responsible for maintaining bulletin boards up to date with relevant EEO information at their locations and reporting to the [principal EEO Professional] any EEO issues that they may become aware of. The EEO Liaisons do not investigate EEO complaints or handle Reasonable Accommodations. The EEO Liaisons serve as a point of contact at their locations and can answer general EEO questions. Except for the EEO Liaison located in the Bronx, office, who completed the 5-day DCAS training in 2017, all the other EEO Liaisons have held their roles for over 10 years or more and were unable to retrieve all their training certificates. OATH does not have EEO Counselors. The terms were likely used interchangeably on some documents."

EEPC Response:

The EEPC recognizes OATH's commitment to implement Corrective Action #10. OATH has indicated that its EEO Liaisons serve as a point of contact between the principal EEO Professional and the entity's employees to answer general EEO questions. To demonstrate compliance, provide documentation that demonstrates that all of OATH's EEO Liaisons are trained in current EEO laws and procedures.

Corrective Action #11:

Assign the principal EEO Professional (or EEO-related designee) the responsibility to supervise the activities of EEO professionals, and ensure that: the policies against sexual harassment and complaint procedures are distributed/posted at all agency locations; employees/managers receive sexual harassment prevention training; EEO-related policies are made available in alternative formats (i.e., large print, audio recording and/or Braille) upon request; managers, supervisors and human resource professionals receive guidance on issues pertaining to sexual harassment; and allegations of sexual harassment are promptly investigated.

Agency Response:

"The [principal EEO Professional] provides updated EEO materials to the EEO Liaisons so they are posted at their locations. Only the [principal EEO Professional] is responsible for ensuring that employees/managers receive all mandated trainings including sexual harassment prevention training. The [principal EEO Professional] is also the only person responsible for providing guidance to managers, supervisors, and human resource professionals on issues pertaining to sexual harassment and ensuring that any allegations of sexual harassment are promptly investigated."

EEPC Response:

The EEPC recognizes OATH's commitment to implement Corrective Action #11. To demonstrate compliance, provide documentation that demonstrates that the principal EEO Professional provided updated EEO materials to the EEO Liaisons to distribute at each location; and that managers, supervisors and human resource professionals received guidance on issues pertaining to sexual harassment.

Corrective Action #13:

Ensure that managers and supervisors are held accountable for enforcing the agency's sexual harassment prevention policies and complaint procedures. Document this expectation and its implementation.

Agency Response:

"OATH will remind all managers and supervisors of their responsibility to enforce the Agency's sexual harassment prevention policies and complaint procedures via an agency wide bulletin."

EEPC Response:

The EEPC recognizes OATH's commitment to implement Corrective Action #13. To demonstrate compliance, provide documentation of the manner in which OATH holds managers and supervisors accountable for enforcing the agency's sexual harassment prevention policies and complaint procedures.

Corrective Action #14:

Ensure the managerial performance evaluation form contains a rating for EEO (which covers responsibilities and processes for assuring their ability to make employment decisions based on merit and equal consideration, or treat others in an equitable and impartial manner).

Agency Response:

"The [principal EEO Professional] incorrectly stated that our managerial performance evaluation form did not include an EEO rating. See attached documentation." No documentation regarding OATH's managerial performance evaluation form was provided.

EEPC Response:

The EEPC recognizes OATH's commitment to implement Corrective Action #14. To demonstrate compliance, provide documentation that demonstrates that the entity's managerial performance evaluation form contains a rating for EEO which covers the responsibilities and processes for assuring their ability to make employment decisions based on merit and equal consideration, or to treat others in an equitable and impartial manner. Also provide a timeline for implementation, which outlines the individuals responsible for implementing the evaluation process during which the managerial performance evaluation form will be used.

Corrective Action #15:

Submit to the EEPC an Annual Plan of measures and programs to provide equal employment opportunity, and quarterly reports on efforts to implement the Plan within 30 days following each quarter. Include a breakout of sexual harassment complaint activity in each quarterly report.

Agency Response:

"At the time the Agency submitted its responses to the audit, DCAS had not yet approved our 2020 Diversity and Equal Opportunity Plan. On May 27, 2020 DCAS approved OATH's Diversity and Equal Opportunity Plan. On February 1, 2019, OATH submitted its Quarterly Diversity and EEO Reports for FY 2019 Quarters 1 and 2 to the Office of Citywide Equity and Inclusion (OCEI). OATH acknowledges its oversight in not submitting these two reports to the EEPC and City Council as it does every other quarter. Since the Agency did not report any sexual harassment complaints during the audit period, or for the 1st and 2nd Quarters of 2020, the Quarterly Diversity and EEO reports do not reflect a breakout of sexual harassment complaint activity. OATH will provide a breakout of sexual harassment complaints in all subsequent reports. See attached documentation." OATH submitted its Diversity and Equal Employment Opportunity Plan for fiscal year 2020 and its Agency Quarterly Diversity and EEO Report for the first and second quarters of fiscal year 2019.



EEPC Response:

The EEPC recognizes OATH's commitment to implement Corrective Action #15. To demonstrate compliance, the entity should provide an affirmation of no complaint activity for the first and second quarters of fiscal year 2020. Going forward, OATH should ensure submission of its *Diversity and Equal Employment Opportunity Plan* and *Agency Quarterly Diversity and EEO Reports* to the EEPC; and include a breakout of sexual harassment complaint activity or an affirmation of no complaint activity with each *Agency Quarterly Diversity and EEO Report*.

Final Action:

Upon the EEPC's determination that the entity does not require further review or monitoring: Distribute a memorandum signed by the agency head that re-emphasizes the commitment of agency administrators to the EEO program, including the prevention of sexual harassment, and informs employees of any changes to the agency's employment practices as a result of the EEPC's audit/monitoring. This final action is required to conclude the audit and monitoring process.

The EEPC thanks you and your staff for your continued cooperation.

RESOLUTION NO.
2020AP/241-820-(2020)
Office of Administrative Trials and Hearings
Commissioner and Chief Administrative Law Judge Joni Kletter
Sexual Harassment Prevention and Response Practices
DETERMINATION: FINAL

S Y N O P S I S

Corrective Action(s):	Total: 15		
Period Audit Covered:	January 1, 2018 to December 31, 2019		
Preliminary Determination Issued:	July 17, 2020	Response Received	July 31, 2020
Final Determination Issued:	August 11, 2020	Response Due	September 10, 2020
Compliance-Monitoring:	Required	September 1, 2020 to February 28, 2021	

Whereas, pursuant to Chapter 36, Sections 830(a) and 831(d)(2) and (5) of the New York City Charter (Charter), the Equal Employment Practices Commission (EEPC) is authorized to audit, review, evaluate, and monitor the employment procedures, practices and programs of city agencies and other municipal entities (hereinafter “entities”) and their efforts to ensure fair and effective equal employment opportunity (EEO) for minority group members and women who are employed or seek employment, and to recommend practices, procedures, approaches, measures, standards, and programs to be utilized by such entities in these efforts; and

Whereas, pursuant to Charter Chapter 36, Sections 830(a) and 831(d)(2) and (5), the EEPC has adopted uniform standards for auditing agencies and municipal entities, and minimum standards for auditing community boards, to review, evaluate, and monitor entities’ practices, procedures, approaches, measures, standards, and programs for compliance with federal, state, and local laws and regulations, and policies and procedures to increase equal opportunity for women, minorities, and other employees and job applicants identified for protection from discrimination; and

Whereas, in accordance with Charter Chapter 36, Section 832(c), the EEPC may make a determination pursuant to Charter Section 831(d) whether any plan, program, procedure, approach, measure, or standard adopted or utilized by any municipal entity does not provide equal employment opportunity, and the EEPC’s determinations of compliance or non-compliance and prescribed corrective action are required by, or consistent with federal, state, and local laws and regulations, and policies and procedures to increase equality of opportunity for women, minorities, and other employees and job applicants identified for protection from discrimination; and

Whereas, the EEPC conducted an audit, review, and evaluation of the Office of Administrative Trials and Hearings’ Sexual Harassment Prevention and Response Practices; and

Whereas, pursuant to the audit, review, and evaluation of the Office of Administrative Trials and Hearings’ Sexual Harassment Prevention and Response Practices, the EEPC issued a Preliminary Determination, dated July 17, 2020, setting forth findings and the following corrective actions required to remedy areas of non-compliance:

1. Establish and implement a training plan for new and existing employees to ensure that all individuals who work within the agency, including managers and supervisors, receive training on the prevention of sexual harassment as well as discrimination complaint and investigation procedures.
2. Serve the respondent with a notice of the complaint that includes the respondent's right to respond to the allegations and right to be accompanied by a representative of his/her choice. Maintain in the complaint file documentation regarding the service of notice on the respondent.
3. Issue/maintain written confirmation when an internal complaint/mediation is terminated, withdrawn or resolved by agreement of the parties or EEO Office.
4. Issue a conclusive report within 90 days of the date the complaint was filed. Commence an investigation immediately if allegations raised sufficiently warrant an investigation.
5. In rare circumstances where a complaint investigation cannot commence immediately, or where a conclusive report cannot be issued within 90 days, specify in the complaint file the reason for the delay and project a time frame for completion of the report. Notify the complainant and respondent of the delay.
6. Generate at the end of each complaint investigation, a conclusive confidential report which includes a summary of the allegations and responses, a summary of the procedural history of the investigation, a statement of the relevant facts gathered, a determination, a recommendation and documentation of the Agency Head's Review.
7. Establish and implement a policy whereby the agency head (or an approved direct report other than the General Counsel) reviews the principal investigator's conclusive report; issues a written/electronic determination adopting, rejecting, or modifying the recommended action; and signs each determination, via writing or electronically, to indicate it has been reviewed and adopted.
8. Establish and utilize a complaint tracking and monitoring system that permits the agency to identify the location, status, and length of time elapsed in the complaint investigation process, the issues and the bases of the complaints, the aggrieved individuals, and other information necessary to analyze complaint activity to identify trends.
9. Ensure that the principal EEO Professional, HR Professional, and General Counsel, review the number of sexual harassment complaints, and the agency's employment practices, policies and programs on an annual basis to identify whether there are barriers to employment opportunities that may be related to sexual harassment and determine what, if any, actions are required to correct deficiencies.
10. Where the agency's organizational structure necessitates multiple EEO professionals, select such individuals from different office locations and, where possible, from a variety of levels within the organizational structure. Appoint EEO professionals who are trained in EEO laws and procedures, and their responsibilities under the EEO Policy.

11. Assign the principal EEO Professional (or EEO-related designee) the responsibility to supervise the activities of EEO professionals, and ensure that: the policies against sexual harassment and complaint procedures are distributed/posted at all agency locations; employees/managers receive sexual harassment prevention training; EEO-related policies are made available in alternative formats (i.e., large print, audio recording and/or Braille) upon request; managers, supervisors and human resource professionals receive guidance on issues pertaining to sexual harassment; and allegations of sexual harassment are promptly investigated.
12. Ensure that the principal EEO Professional reports directly to the agency head (or a direct report other than the General Counsel) in order to exercise the necessary authority and independent judgment to fulfill EEO responsibilities.
13. Ensure that managers and supervisors are held accountable for enforcing the agency's sexual harassment prevention policies and complaint procedures. Document this expectation and its implementation.
14. Ensure the managerial performance evaluation form contains a rating for EEO (which covers responsibilities and processes for assuring their ability to make employment decisions based on merit and equal consideration, or treat others in an equitable and impartial manner).
15. Submit to the EEPD an Annual Plan of measures and programs to provide equal employment opportunity, and quarterly reports on efforts to implement the Plan within 30 days following each quarter. Include a breakout of sexual harassment complaint activity in each quarterly report.

Whereas, within a two-week deadline following the EEPD's Preliminary Determination, the entity submitted a preliminary response; and

Whereas, in accordance with Charter Chapter 36, Section 832(c), after consideration, the EEPD issued a Final Determination on August 11, 2020, which indicated that the following areas required corrective action: no(s). 2, 6, 7, 8, 9, 10, 11, 13, 14, and 15; and

Whereas, in accordance with Charter Chapter 36, Section 832(c), in the Final Determination, the EEPD assigned a monitoring period from September 1, 2020 to February 28, 2021, to determine whether the entity eliminated areas of non-compliance, if any; and

Whereas, in accordance with Charter Chapter 36, Section 832(c) the entity was required to respond in 30 days, and make monthly reports thereafter for a period not to exceed six months, on the progress of its efforts to correct outstanding areas of non-compliance; and

Whereas, in accordance with Charter Chapter 36, Section 832(c), on August 11, 2020, the entity was required to issue a response to the EEPD's Final Determination; Now Therefore,

Be It Resolved, that pursuant to Charter Chapter 35, Sections 815(a)(15) and (19), which requires agency heads to ensure and promote equal opportunity for all persons in appointment, payment of wages, development, and advancement, and to establish measures and programs to ensure a fair and effective affirmative employment plan to provide equal employment opportunity for minority group members and women, the EEPC approves the issuance of this Final Determination to Commissioner and Chief Administrative Law Judge Joni Kletter to assign compliance-monitoring.

Approved unanimously on August 27, 2020.

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/s/Sasha Neha Ahuja	/s/Angela Cabrera
Sasha Neha Ahuja	Angela Cabrera
Chair	Commissioner
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/s/Arva R. Rice	/s/Elaine S. Reiss
Arva R. Rice	Elaine S. Reiss, Esq.
Commissioner	Commissioner

On behalf all Commissioners in attendance,



Charise L Terry
Executive Director

BY EMAIL

September 11, 2020

Charise L. Terry
Executive Director
Equal Employment Practices Commission 253 Broadway
Suite 602
New York, NY 10007

RE: Response to Final Determination: Evaluation of Sexual Harassment Prevention and Response Practices for Audit Period January 1, 2018 to December 31, 2019.

Dear Ms. Terry,

Please see OATH's responses to the Final Determination letter dated August 11, 2020.

Monitoring Required

Corrective Action #2: Serve the respondent with a notice of the complaint that includes the respondent's right to respond to the allegations and right to be accompanied by a representative of his/her choice. Maintain in the complaint file documentation regarding the service of notice on the respondent.

OATH's Response: OATH will ensure that all complaint files include documentation regarding the service of notice on the respondent.

EEPC Response:

The EEPC recognizes OATH's commitment to implement Corrective Action #2. To demonstrate compliance, provide documentation from a complaint filed subsequent to the period in review that demonstrates that the respondent was served with a notice of the complaint that includes the respondent's right to respond to the allegations and right to be accompanied by a representative of their choice.

OATH's Final Response: There have been no complaints filed subsequent to the period in review. If a complaint is filed, OATH will provide documentation via Team Central to demonstrate compliance with the recommended corrective action.

Corrective Action #6: Generate at the end of each complaint investigation, a conclusive confidential report which includes a summary of the allegations and responses, a summary of the procedural history of the investigation, a statement of the relevant facts gathered, a determination, a recommendation and documentation of the Agency Head's Review.

OATH's Response: In respect to Corrective Actions 6 and 7, the EEO Officer will ensure that all complaint files include documentation of the Agency Head's review of the complaint investigation. As indicative of complaint file 2019-1, OATH already has a policy in place whereby the Agency Head issues a written/electronic determination adopting, rejecting, or modifying the recommended action; and signs each determination.

EEPC Response:

The EEPC recognizes OATH's commitment to implement Corrective Action #6. To demonstrate compliance, provide documentation from a complaint filed subsequent to the period in review that demonstrates that a conclusive confidential report was generated at the end of the complaint investigation, which included a summary of the allegations and responses, a summary of the procedural history of the investigation, a statement of the relevant facts gathered, a determination, a recommendation, and documentation of the Commissioner's review

OATH's Final Response: There have been no complaints filed subsequent to the period in review. If a complaint is filed, OATH will provide documentation via Team Central to demonstrate compliance with the recommended corrective action.

Corrective Action #7: Establish and implement a policy whereby the agency head (or an approved direct report other than the General Counsel) reviews the principal investigator's conclusive report; issues a written/electronic determination adopting, rejecting, or modifying the recommended action; and signs each determination, via writing or electronically, to indicate it has been reviewed and adopted.

EEPC Response:

The EEPC recognizes OATH's commitment to implement Corrective Action #7. To demonstrate compliance, provide documentation from a complaint filed subsequent to the period in review that demonstrates that the entity's Commissioner (or an approved direct report other than the General Counsel) reviewed the principal investigator's conclusive report; issued a written/electronic determination adopting, rejecting, or modifying the recommended action; and signed the determination, via writing or electronically, to indicate it had been reviewed and adopted

OATH's Final Response: There have been no complaints filed subsequent to the period in review. If a complaint is filed, OATH will provide documentation via Team Central to demonstrate compliance with the recommended corrective action.

Corrective Action #8: Establish and utilize a complaint tracking and monitoring system that permits the agency to identify the location, status, and length of time elapsed in the complaint investigation process, the issues and the bases of the complaints, the aggrieved individuals, and other information necessary to analyze complaint activity to identify trends.

OATH's Response: OATH will utilize DCAS's complaint tracking system as well as its own internal log to analyze complaint activity and identify trends.

EEPC Response:

The EEPC recognizes OATH's commitment to implement Corrective Action #8. To demonstrate compliance, provide documentation of the entity's current use of DCAS' Complaint Tracking System (or an alternative complaint tracking system), and that the aforementioned system permits the entity to identify the location, status, and length of time elapsed in the complaint investigation process, the issues and the bases of the complaints, the aggrieved individuals, and other information necessary to analyze complaint activity to identify trends.

OATH's Final Response: Please see attached documentation confirming OATH's current use of the DCAS's complaint tracking system.

Corrective Action #9: Ensure that the principal EEO Professional, HR Professional, and General Counsel, review the number of sexual harassment complaints, and the agency's employment practices, policies and programs on an annual basis to identify whether there are barriers to employment opportunities that may be related to sexual harassment and determine what, if any, actions are required to correct deficiencies.

OATH's Response: Although there were no sexual harassment complaints made during the audit period, OATH will ensure that it reviews any complaints it receives as well as the agency's employment practices, policies, and program on an annual basis.

EEPC Response:

The EEPC recognizes OATH's commitment to implement Corrective Action #9. To demonstrate compliance, provide documentation of the completion of the most recent aforementioned review by the principal EEO Professional, HR Professional, and General Counsel, and the outcome of said review of sexual harassment complaint activity and the agency's employment practices, policies and programs.

OATH's Final Response: OATH will submit documentation of the aforementioned review during the monitoring period via Team Central.

Corrective Action #10: Where the agency's organizational structure necessitates multiple EEO professionals, select such individuals from different office locations and, where possible, from a variety of levels within the organizational structure. Appoint EEO professionals who are trained in EEO laws and procedures, and their responsibilities under the EEO Policy.

OATH's Response: The Agency's EEO Liaisons are responsible for maintaining bulletin boards up to date with relevant EEO information at their locations and reporting to the EEO Officer any EEO issues that they may become aware of. The EEO Liaisons do not investigate EEO complaints or handle Reasonable Accommodations. The EEO Liaisons serve as a point of contact at their locations and can answer general EEO questions. Except for the EEO Liaison located in the Bronx office, who completed the 5- day DCAS training in 2017, all the other EEO Liaisons have held their roles for over 10 years or more and were unable to retrieve all their training certificates. OATH does not have EEO Counselors. The terms were likely used interchangeably on some documents.

EEPC Response:

The EEPC recognizes OATH's commitment to implement Corrective Action #10. OATH has indicated that its EEO Liaisons serve as a point of contact between the principal EEO Professional and the entity's employees to answer general EEO questions. To demonstrate compliance, provide documentation that demonstrates that all of OATH's EEO Liaisons are trained in current EEO laws and procedures.

OATH's Final Response: As stated in our previous response, all EEO Liaisons have held their positions for many years and some were unable to retrieve their training certificates. Nonetheless, when relevant trainings are offered by DCAS, the EEO Liaisons will be mandated to participate in these trainings and all certificates will be submitted via Team Central.

Corrective Action #11: Assign the principal EEO Professional (or EEO-related designee) the responsibility to supervise the activities of EEO professionals, and ensure that: the policies against sexual harassment and complaint procedures are distributed/posted at all agency locations; employees/managers receive sexual harassment prevention training; EEO-related policies are made available in alternative formats (i.e., large print, audio recording and/or Braille) upon request; managers, supervisors and human resource professionals receive guidance on issues pertaining to sexual harassment; and allegations of sexual harassment are promptly investigated.

OATH's Response: The EEO Officer provides updated EEO materials to the EEO Liaisons so they are posted at their locations. Only the EEO Officer is responsible for ensuring that

employees/managers receive all mandated trainings including sexual harassment prevention training. The EEO Officer is also the only person responsible for providing guidance to managers, supervisors, and human resource professionals on issues pertaining to sexual harassment and ensuring that any allegations of sexual harassment are promptly investigated.

EEPC Response:

The EEPC recognizes OATH's commitment to implement Corrective Action #11. To demonstrate compliance, provide documentation that demonstrates that the principal EEO Professional provided updated EEO materials to the EEO Liaisons to distribute at each location; and that managers, supervisors and human resource professionals received guidance on issues pertaining to sexual harassment.

OATH's Final Response: Please see attached documentation which demonstrates the Principal EEO Officer provided EEO materials to the EEO Liaisons to be posted on bulletin boards.

Corrective Action #13: Ensure that managers and supervisors are held accountable for enforcing the agency's sexual harassment prevention policies and complaint procedures. Document this expectation and its implementation.

OATH's Response: OATH will remind all managers and supervisors of their responsibility to enforce the Agency's sexual harassment prevention policies and complaint procedures via an agency wide bulletin.

EEPC Response:

The EEPC recognizes OATH's commitment to implement Corrective Action #13. To demonstrate compliance, provide documentation of the manner in which OATH holds managers and supervisors accountable for enforcing the agency's sexual harassment prevention policies and complaint procedures.

OATH's Final Response: On September 8, 2020, the Agency sent out an Agency wide bulletin reminding employees of the Sexual Harassment Policy. The Agency emphasized the responsibilities Managers and Supervisors had in enforcing this Policy and being held accountable.

Corrective Action #14: Ensure the managerial performance evaluation form contains a rating for EEO (which covers responsibilities and processes for assuring their ability to make employment decisions based on merit and equal consideration or treat others in an equitable and impartial manner).

OATH's Response: The EEO Officer incorrectly stated that our managerial performance evaluation form did not include an EEO rating.

See attached documentation.

EEPC Response:

The EEPC recognizes OATH's commitment to implement Corrective Action #14. To demonstrate compliance, provide documentation that demonstrates that the entity's managerial performance evaluation form contains a rating for EEO which covers the responsibilities and processes for assuring their ability to make employment decisions based on merit and equal consideration, or to treat others in an equitable and impartial manner. Also provide a timeline for implementation, which outlines the individuals responsible for implementing the evaluation process during which the managerial performance evaluation form will be used.

OATH's Final Response: Please see attached managerial performance evaluation which includes an EEO Rating under item #10.

Corrective Action #15: Submit to the EEPC an Annual Plan of measures and programs to provide equal employment opportunity, and quarterly reports on efforts to implement the Plan within 30 days following each quarter. Include a breakout of sexual harassment complaint activity in each quarterly report.

OATH's Response: At the time the Agency submitted its responses to the audit, DCAS had not yet approved our 2020 Diversity and Equal Opportunity Plan. On May 27, 2020 DCAS approved OATH's Diversity and Equal Opportunity Plan.

On February 1, 2019, OATH submitted its Quarterly Diversity and EEO Reports for FY 2019 Quarters 1 and 2 to the Office of Citywide Equity and Inclusion (OCEI). OATH acknowledges its oversight in not submitting these two reports to the EEPC and City Council as it does every other quarter.

Since the Agency did not report any sexual harassment complaints during the audit period, or for the 1st and 2nd Quarters of 2020, the Quarterly Diversity and EEO reports do not reflect a breakout of sexual harassment complaint activity. OATH will provide a breakout of sexual harassment complaints in all subsequent reports.

See attached documentation.

EEPC Response:

The EEPC recognizes OATH's commitment to implement Corrective Action #15. To demonstrate compliance, the entity should provide an affirmation of no complaint activity for the first and second quarters of fiscal year 2020. Going forward, OATH should ensure submission of its *Diversity and Equal Employment Opportunity Plan* and *Agency Quarterly Diversity and EEO Reports* to the EEPC; and include a breakout of sexual harassment complaint activity or an affirmation of no complaint activity with each *Agency Quarterly Diversity and EEO Report*.



Hon. Joni Kletter
Commissioner and Chief Administrative Law Judge

OATH's Final Response: See attached affirmation of no complaint activity for Q1-Q4 FY 2020 received from DCAS on 8/27/2020.

Sincerely,

Joni Kletter
Commissioner and Chief Administrative Law Judge

Memorandum

TO: All Employees

FROM: Equal Employment Practices Commission

DATE: 1/27/2021

RE: Audit: Review, Evaluation, and Monitoring of Sexual Harassment Prevention and Response Practices
Office of Administrative Trials and Hearings

The New York City Charter requires the Equal Employment Practices Commission (EEPC) to conduct an audit once every four years to ensure each City agency or municipal entity (collectively “agency”) complies with federal, state, and local laws and regulations, and policies and procedures that increase equal opportunity for employees and applicants.

The EEPC recently concluded an audit and evaluation of the Office of Administrative Trials and Hearings’ practices and procedures for compliance with city, state, and federal equal employment opportunity laws and regulations, and identified enhancement by means of the following:

1. Establish and implement a training plan for new and existing employees to ensure that all individuals who work within the agency, including managers and supervisors, receive training on the prevention of sexual harassment as well as discrimination complaint and investigation procedures.
2. Serve the respondent with a notice of the complaint that includes the respondent’s right to respond to the allegations and right to be accompanied by a representative of his/her choice. Maintain in the complaint file documentation regarding the service of notice on the respondent.
3. Issue/maintain written confirmation when an internal complaint/mediation is terminated, withdrawn or resolved by agreement of the parties or EEO Office.
4. Issue a conclusive report within 90 days of the date the complaint was filed. Commence an investigation immediately if allegations raised sufficiently warrant an investigation.
5. In rare circumstances where a complaint investigation cannot commence immediately, or where a conclusive report cannot be issued within 90 days, specify in the complaint file the reason for the delay and project a time frame for completion of the report. Notify the complainant and respondent of the delay.

6. Generate at the end of each complaint investigation, a conclusive confidential report which includes a summary of the allegations and responses, a summary of the procedural history of the investigation, a statement of the relevant facts gathered, a determination, a recommendation and documentation of the Agency Head's Review.
7. Establish and implement a policy whereby the agency head (or an approved direct report other than the General Counsel) reviews the principal investigator's conclusive report; issues a written/electronic determination adopting, rejecting, or modifying the recommended action; and signs each determination, via writing or electronically, to indicate it has been reviewed and adopted.
8. Establish and utilize a complaint tracking and monitoring system that permits the agency to identify the location, status, and length of time elapsed in the complaint investigation process, the issues and the bases of the complaints, the aggrieved individuals, and other information necessary to analyze complaint activity to identify trends.
9. Ensure that the principal EEO Professional, HR Professional, and General Counsel, review the number of sexual harassment complaints, and the agency's employment practices, policies and programs on an annual basis to identify whether there are barriers to employment opportunities that may be related to sexual harassment and determine what, if any, actions are required to correct deficiencies.
10. Where the agency's organizational structure necessitates multiple EEO professionals, select such individuals from different office locations and, where possible, from a variety of levels within the organizational structure. Appoint EEO professionals who are trained in EEO laws and procedures, and their responsibilities under the EEO Policy.
11. Assign the principal EEO Professional (or EEO-related designee) the responsibility to supervise the activities of EEO professionals, and ensure that: the policies against sexual harassment and complaint procedures are distributed/posted at all agency locations; employees/managers receive sexual harassment prevention training; EEO-related policies are made available in alternative formats (i.e., large print, audio recording and/or Braille) upon request; managers, supervisors and human resource professionals receive guidance on issues pertaining to sexual harassment; and allegations of sexual harassment are promptly investigated.
12. Ensure that the principal EEO Professional reports directly to the agency head (or a direct report other than the General Counsel) in order to exercise the necessary authority and independent judgment to fulfill EEO responsibilities.
13. Ensure that managers and supervisors are held accountable for enforcing the agency's sexual harassment prevention policies and complaint procedures. Document this expectation and its implementation.

14. Ensure the managerial performance evaluation form contains a rating for EEO (which covers responsibilities and processes for assuring their ability to make employment decisions based on merit and equal consideration, or treat others in an equitable and impartial manner).
15. Submit to the EEPD an Annual Plan of measures and programs to provide equal employment opportunity, and quarterly reports on efforts to implement the Plan within 30 days following each quarter. Include a breakout of sexual harassment complaint activity in each quarterly report.

Through successful completion of the EEPD's audit, evaluation, and monitoring processes and the aforementioned enhancements Commissioner and Chief Administrative Law Judge Kletter reaffirms the commitment to ensuring that the Office of Administrative Trials and Hearings' employment practices encourage and maintain a workplace free from unlawful discrimination and sexual harassment, and that all employees are aware of their rights and obligations under the agency's equal employment opportunity policies.



Vacant
Chair

Angela Cabrera
Elaine S. Reiss, Esq.
Arva R. Rice
Commissioners

Charise L. Terry
Executive Director

Jennifer Shaw, Esq.
Executive Agency Counsel/
Director of Compliance

253 Broadway
Suite 602
New York, NY 10007

212. 615. 8939 tel.
212. 676. 2724 fax

BY EMAIL

February 25, 2021

Joni Kletter
Commissioner and Chief Administrative Law Judge
Office of Administrative Trials and Hearings
100 Church Street, 12th Floor
New York, New York 10007

Re: Resolution #2020AP/247-820-(2021)C5
DETERMINATION: Compliance

Dear Commissioner Kletter:

On behalf of the members of the Equal Employment Practices Commission (EEPC), I write to inform you that pursuant to New York City Charter Chapter 35, Sections 815(a)(15) and (19), which requires agency heads to ensure and promote equal opportunity for all persons in appointment, payment of wages, development, and advancement, and to establish measures and programs to ensure a fair and effective affirmative employment plan to provide equal employment opportunity (EEO) for minority group members and women, the EEPC's Board of Commissioners has approved the attached Determination.

Thank you and principal EEO Professional Sharina DeRoberts for the cooperation extended to the EEPC during the course of our review, evaluation, and monitoring of your agency's employment and EEO-related practices.

Sincerely,
A handwritten signature in black ink, appearing to read "Elaine S. Reiss". The signature is fluid and cursive.

Elaine S. Reiss, Esq.
Commissioner

c: Sharina DeRoberts, principal EEO Professional, Labor
Relations Officer, Office of Administrative Trials and
Hearings



Monitoring of Sexual Harassment Prevention and Response Practices
RESOLUTION NO.
2020AP/247-820-(2021)C5
Office of Administrative Trials and Hearings
Commissioner and Chief Administrative Law Judge Joni Kletter
DETERMINATION: COMPLIANCE

S Y N O P S I S

Corrective Action(s):	Total: 15		
Period Audit Covered:	January 1, 2018 to December 31, 2019		
Preliminary Determination Issued:	July 17, 2020	Response Received	July 31, 2020
Final Determination Issued:	August 11, 2020	Response Received	September 11, 2020
Compliance-Monitoring:	Required	September 1, 2020 to February 28, 2021 without extension	

Whereas, pursuant to Chapter 36, Sections 830(a) and 831(d)(2) and (5) of the New York City Charter (Charter), the Equal Employment Practices Commission (EEPC) is authorized to audit, review, evaluate, and monitor the employment procedures, practices and programs of city agencies and other municipal entities (hereinafter “entities”) and their efforts to ensure fair and effective equal employment opportunity (EEO) for minority group members and women who are employed or seek employment, and to recommend practices, procedures, approaches, measures, standards, and programs to be utilized by such entities in these efforts; and

Whereas, pursuant to Charter Chapter 36, Sections 830(a) and 831(d)(2) and (5), the EEPC has adopted uniform standards for auditing agencies and municipal entities, and minimum standards for auditing community boards, to review, evaluate, and monitor entities’ practices, procedures, approaches, measures, standards, and programs for compliance with federal, state, and local laws and regulations, and policies and procedures to increase equal opportunity for women, minorities, and other employees and job applicants identified for protection from discrimination; and

Whereas, in accordance with Charter Chapter 36, Section 832(c), the EEPC may make a determination pursuant to Charter Section 831(d) whether any plan, program, procedure, approach, measure, or standard adopted or utilized by any municipal entity does not provide equal employment opportunity, and the EEPC’s determinations of compliance or non-compliance and prescribed corrective action are required by, or consistent with federal, state, and local laws and regulations, and policies and procedures to increase equality of opportunity for women, minorities, and other employees and job applicants identified for protection from discrimination; and

Whereas, the EEPC conducted an audit, review, and evaluation of the Office of Administrative Trials and Hearings’ Sexual Harassment Prevention and Response Practices; and

Whereas, pursuant to the audit, review, and evaluation of the Office of Administrative Trials and Hearings’ Sexual Harassment Prevention and Response Practices, the EEPC issued a Preliminary Determination, dated July 17, 2020, setting forth findings and the following corrective actions required to remedy areas of non-compliance:

1. Establish and implement a training plan for new and existing employees to ensure that all individuals who work within the agency, including managers and supervisors, receive training on the prevention of sexual harassment as well as discrimination complaint and investigation procedures.
2. Serve the respondent with a notice of the complaint that includes the respondent's right to respond to the allegations and right to be accompanied by a representative of his/her choice. Maintain in the complaint file documentation regarding the service of notice on the respondent.
3. Issue/maintain written confirmation when an internal complaint/mediation is terminated, withdrawn or resolved by agreement of the parties or EEO Office.
4. Issue a conclusive report within 90 days of the date the complaint was filed. Commence an investigation immediately if allegations raised sufficiently warrant an investigation.
5. In rare circumstances where a complaint investigation cannot commence immediately, or where a conclusive report cannot be issued within 90 days, specify in the complaint file the reason for the delay and project a time frame for completion of the report. Notify the complainant and respondent of the delay.
6. Generate at the end of each complaint investigation, a conclusive confidential report which includes a summary of the allegations and responses, a summary of the procedural history of the investigation, a statement of the relevant facts gathered, a determination, a recommendation and documentation of the Agency Head's Review.
7. Establish and implement a policy whereby the agency head (or an approved direct report other than the General Counsel) reviews the principal investigator's conclusive report; issues a written/electronic determination adopting, rejecting, or modifying the recommended action; and signs each determination, via writing or electronically, to indicate it has been reviewed and adopted.
8. Establish and utilize a complaint tracking and monitoring system that permits the agency to identify the location, status, and length of time elapsed in the complaint investigation process, the issues and the bases of the complaints, the aggrieved individuals, and other information necessary to analyze complaint activity to identify trends.
9. Ensure that the principal EEO Professional, HR Professional, and General Counsel, review the number of sexual harassment complaints, and the agency's employment practices, policies and programs on an annual basis to identify whether there are barriers to employment opportunities that may be related to sexual harassment and determine what, if any, actions are required to correct deficiencies.
10. Where the agency's organizational structure necessitates multiple EEO professionals, select such individuals from different office locations and, where possible, from a variety of levels within the organizational structure. Appoint EEO professionals who are trained in EEO laws and procedures, and their responsibilities under the EEO Policy.

11. Assign the principal EEO Professional (or EEO-related designee) the responsibility to supervise the activities of EEO professionals, and ensure that: the policies against sexual harassment and complaint procedures are distributed/posted at all agency locations; employees/managers receive sexual harassment prevention training; EEO-related policies are made available in alternative formats (i.e., large print, audio recording and/or Braille) upon request; managers, supervisors and human resource professionals receive guidance on issues pertaining to sexual harassment; and allegations of sexual harassment are promptly investigated.
12. Ensure that the principal EEO Professional reports directly to the agency head (or a direct report other than the General Counsel) in order to exercise the necessary authority and independent judgment to fulfill EEO responsibilities.
13. Ensure that managers and supervisors are held accountable for enforcing the agency's sexual harassment prevention policies and complaint procedures. Document this expectation and its implementation.
14. Ensure the managerial performance evaluation form contains a rating for EEO (which covers responsibilities and processes for assuring their ability to make employment decisions based on merit and equal consideration, or treat others in an equitable and impartial manner).
15. Submit to the EEPC an Annual Plan of measures and programs to provide equal employment opportunity, and quarterly reports on efforts to implement the Plan within 30 days following each quarter. Include a breakout of sexual harassment complaint activity in each quarterly report.

Whereas, within a two-week deadline following the EEPC's Preliminary Determination, the entity submitted a preliminary response; and

Whereas, in accordance with Charter Chapter 36, Section 832(c), after consideration, the EEPC issued a Final Determination on August 11, 2020, which indicated that the following areas required corrective action: no(s). 2, 6, 7, 8, 9, 10, 11, 13, 14, and 15; and

Whereas, in accordance with Charter Chapter 36, Section 832(c), in the Final Determination, the EEPC assigned a monitoring period from September 1, 2020 to February 28, 2021, to determine whether the entity eliminated areas of non-compliance, if any; and

Whereas, in accordance with Charter Chapter 36, Section 832(c) the entity was required to respond in 30 days, and make monthly reports thereafter for a period not to exceed six months, on the progress of its efforts to correct outstanding areas of non-compliance; and

Whereas, in accordance with Charter Chapter 36, Section 832(c), on September 11, 2020, the entity issued a response to the EEPC's Final Determination; and

Whereas, in accordance with Charter Chapter 36, Section 832(c), the Office of Administrative Trials and Hearings was monitored until January 27, 2021; and

Whereas, pursuant to Charter Chapter 35, Sections 815(a)(15) and (19), which requires agency heads to ensure and promote equal opportunity for all persons in appointment, payment of wages, development, and advancement, and to establish measures and programs to ensure a fair and

effective affirmative employment plan to provide equal employment opportunity for minority group members and women, the Commissioner and Chief Administrative Law Judge submitted a copy of a memorandum to staff dated January 27, 2021, which recognized the EEPC's audit and reiterated commitment to the Office of Administrative Trials and Hearings' equal employment practices; Now Therefore,

Be It Resolved, that the Office of Administrative Trials and Hearings has satisfied the equal employment standards set by the EEPC pursuant to its authority under New York City Charter Chapters 35 and 36; and

Be It Resolved, that the EEPC's Board of Commissioners approves the issuance of this Determination of Compliance to Commissioner and Chief Administrative Law Judge Joni Kletter of the Office of Administrative Trials and Hearings.

Approved unanimously on February 25, 2021.

/s/Angela Cabrera
Angela Cabrera
Commissioner/Mayoral Appointee

/s/Elaine S. Reiss
Elaine S. Reiss, Esq.
Commissioner/Mayoral Appointee

/s/Arva R. Rice
Arva R. Rice
Commissioner/City Council Appointee

Vacant
Commissioner/City Council Appointee

Vacant
Chair/Commissioner/Joint Appointee

On behalf of all Commissioners in attendance,


Charise L Terry
Executive Director

This

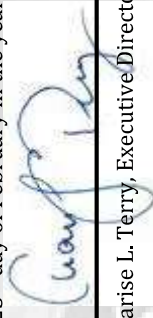
Determination of Compliance

is hereby issued to

Office of Administrative Trials and Hearings

*For successful implementation of **15** of **15** required corrective action(s),
thereby achieving compliance with the Equal Employment Practices Commission's
Sexual Harassment Prevention and Response Practices
from January 1, 2018 to this date.*

On this 25th day of February in the year 2021,

A handwritten signature in blue ink, appearing to read "Charise L. Terry", is written over a white rectangular background.

Charise L. Terry, Executive Director

*In care of Commissioner Joni Kletter
and principal EEO Professional Sharina DeRoberts*