

# Equal Employment Opportunity Policy

City of New York  
2021



# City of New York EEO Policy

**Bill de Blasio**  
**Mayor**

**Dawn M. Pinnock**  
**Acting Commissioner**  
**Department of Citywide Administrative Services**

**Silvia Montalban, Esq.**  
**Chief Citywide Equity and Inclusion Officer**  
**Department of Citywide Administrative Services**

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# I. Introduction

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

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

In addition, the Charter requires agency heads to establish measures, programs, and an annual Equal Employment Opportunity (EEO) Plan to safeguard against discrimination and to communicate the agency's efforts to provide equal employment opportunities within City government.<sup>2</sup>

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

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<sup>1</sup> New York City Charter § 815(h).

<sup>2</sup> New York City Charter § 815(a)(19).

<sup>3</sup> New York City Charter § 814.1(c)(2).

<sup>4</sup> This Policy was drafted in consultation with the Equal Employment Practices Commission, the New York City Law Department, the Department of Citywide Administrative Services Citywide Equity and Inclusion, and EEO officers from various City agencies.

This Equal Employment Opportunity Policy (2021), hereafter referred to as the “Policy,” supersedes the previous Equal Employment Opportunity Policy (2014) and subsequent 2019 addenda. Detailed uniform complaint and reasonable accommodation procedures are published separately. This Policy, any addenda, and the EEO Policy Handbook, *What to Know About Equity, Inclusion, and EEO*, are to be distributed to each agency head, EEO officer,<sup>5</sup> general counsel, agency personnel officer (APO), manager and supervisor, and must be made readily available to all individuals covered under this Policy. This Policy and how to obtain a copy must be referenced in all employee handbooks and orientation materials. A link to an online version of this Policy and/or an electronic copy of the Policy should be provided as part of each agency’s annual commitment statement.<sup>6</sup>

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<sup>5</sup> Each agency head must appoint 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 the “EEO Office” or “EEO personnel.”

<sup>6</sup> This Policy and the *What to Know About Equity, Inclusion and EEO* Policy Handbook are available at <https://www1.nyc.gov/site/dcas/agencies/equity-and-inclusion.page>.

## II. Applicability

This Policy protects every individual who works for the City of New York and within its workplaces, as well as all applicants for employment, from discrimination, harassment, and retaliation. This protection covers, but is not limited to, all employees (supervisory, non-supervisory, managers, executives, senior-level staff, interns, whether paid or unpaid, volunteers, temporary, seasonal, part time or short term, applicants for employment, “non-employees” (contractors, subcontractors, vendors, consultants, and those they employ) and other persons conducting business or providing services in a City workplace, regardless of immigration status.<sup>7</sup> All are, hereinafter, referred to as “covered persons.”

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

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<sup>7</sup> The City complies with federal law requiring the verification of employees’ work status and prohibiting discrimination in that process. 8 U.S.C. § 1324b.



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

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

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

# III. Accountability Standards and EEO Reporting Structure

## A. Department of Citywide Administrative Services

DCAS is required to: (1) establish uniform procedures and standards for use by City agencies in establishing measures, programs, and plans to ensure equal employment opportunity, including a schedule for the development, review, and adoption of EEO plans; (2) establish a uniform format for City agencies for the presentation of statistical information on the workforce of City agencies; and (3) develop resources regarding information on employment and educational programs.<sup>8</sup> 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.<sup>9</sup>

### 1. Citywide Equity and Inclusion

Within DCAS, CEI is responsible for aiding the Commissioner in developing and enforcing the Policy, standards, and procedures.

CEI's mission is to foster the City of New York's global leadership in equitable, diverse, and inclusive employment practices. CEI is responsible for developing and enforcing this Policy and other EEO-related policies and best practice guidance impacting the workforce across more than 80 City agencies (mayoral and non-mayoral).

CEI develops and collaborates on strategies that fulfill the City's EEO mandates and equity and inclusion initiatives that drive the development, engagement, advancement, and retention of a diverse and inclusive workforce. CEI also guides City agencies as they establish their own diversity equity and inclusion strategies through the Charter-mandated annual Diversity & EEO plans that set forth objectives and best practices to implement EEO policies, promote equitable workforce practices, and foster respectful workplace environments. CEI provides the City's direction for implementation of EEO policy and best practices impacting the workforce through the work of three units:

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<sup>8</sup> New York City Charter § 814.1(b)(2).

<sup>9</sup> New York City Charter § 814.1(c)(9).

### III. Accountability Standards and EEO Reporting Structure

- **Investigations and Compliance (ICU):** Guides agency EEO officers on the application of EEO policy; designs and conducts agency case and practice reviews; conducts EEO investigations when agency conflicts of interest arise at the EEO officer or agency head level; assists the Human Capital Learning and Development Department to develop periodic training for agency-level EEO professionals and the City workforce on EEO compliance and diversity and inclusion; and works with the Human Capital Strategic Planning Office to verify agencies' affirmations of their complaint data for periodic compliance reporting.
- **Policy, Program Development (PPD):** Designs and implements Citywide diversity and inclusion programs and initiatives that align with and operationalize legal mandates; reviews and approves agencies' Charter-required annual diversity EEO plans, quarterly updates, risk assessments, and climate review action plans in compliance with local law mandates; reviews trends in workforce data in order to operationalize or inform initiatives and to inform agencies on how to monitor underutilization rates to inform recruitment efforts; and plans and coordinates EEO best practice meetings CEI hosts for EEO officers.
- **The Office of Citywide Recruitment (OCR):** Promotes the vision that the City of New York is an employer of choice with a growing, talented, and diverse workforce. OCR's mission is to create a workforce pipeline for the City of New York by educating the public about the civil service process, exams for competitive positions, and the numerous career opportunities available in city government, including via the New York State 55-a Program for qualified applicants with disabilities. OCR conducts extensive outreach to groups that are underserved and underrepresented in city government and throughout the City. OCR participates in career fairs, resource fairs, information sessions, employment panels, and other related recruitment events. OCR also interfaces with the Policy, Program Development unit by advising agencies on creative recruitment strategies, some of which is informed by agency-specific underutilization data in job groups.

## B. Agency Heads

In addition to establishing certain requirements for agency heads, the Charter provides that the DCAS Commissioner, acting through CEI, shall have the authority to “[e]stablish and enforce uniform procedures and standards to be utilized by city agencies in establishing measures, programs and plans to ensure a fair and effective affirmative employment plan for equal employment opportunities for minority group members and women who are employed by, or who seek employment with, city agencies.”<sup>10</sup>

The agency head shall ensure that city agencies do not discriminate against covered persons as prohibited by federal, state, and local laws.<sup>11</sup> Agency heads are accountable to their respective deputy mayors for their agencies’ EEO practices.

Each agency head must ensure that: (1) their responsibilities under this Policy are carried out; (2) the agency fulfills its training obligations in accordance with EEO laws and procedures; and (3) this Policy is made available as described below in Section VII. (Agency Diversity and EEO Plans).

The agency head must also ensure that EEO personnel, Human Resources, the Office of General Counsel, managers, and supervisors: (1) receive a copy of this Policy (including any subsequent addenda); and (2) are trained in EEO laws and procedures and know how to carry out their responsibilities under this Policy.

The agency head shall be responsible for ensuring that the agency provides DCAS with data or information necessary to meet the agency’s and the city’s obligations under the Charter and other federal, state, and local laws.<sup>12</sup>

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<sup>10</sup> New York City Charter § 814.1(c)(2).

<sup>11</sup> New York City Charter § 815(h).

<sup>12</sup> New York City Charter § 815(a)(19).

### III. Accountability Standards and EEO Reporting Structure

Each agency head must appoint only one qualified individual as the agency EEO officer, who is responsible to implement this Policy within the agency in order to meet the City's obligations under the Charter and other laws, and to achieve the goals of the Agency's Diversity and EEO Plan.<sup>13</sup> Agencies are also encouraged to have a chief diversity officer<sup>14</sup> and other EEO personnel.

The agency head, in furtherance of fulfilling their Charter obligations, must ensure that the responsibilities of the EEO officer are discharged competently. The EEO officer must report directly to the agency head, which serves to reinforce the independence of judgment and authority of an EEO officer in carrying out their responsibilities objectively and free from any agency allegiances under this Policy.

The agency head should allocate a minimum of two employees to the EEO Office, in addition to the EEO officer, to serve as EEO personnel to receive complaints and to assist in conducting investigations. Other EEO personnel, such as a deputy EEO officer, shall report to the EEO officer.

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

Each agency head should designate a career counselor with appropriate training and knowledge, who is familiar with civil service jobs and can provide career counseling, to employees who request such guidance.

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<sup>13</sup> The proposed appointment must first be vetted by the Chief Citywide Equity and Inclusion Officer at DCAS if the EEO officer will be appointed to a civil service title of Assistant Commissioner or higher.

<sup>14</sup> This is distinct from the chief diversity officer position that each agency is required to have pursuant to Executive Order 59 (July 28, 2020).

### III. Accountability Standards and EEO Reporting Structure

The agency head shall approve and sign off on all Agency Diversity and EEO Plans and should conduct a quarterly review of EEO complaints and requests for reasonable accommodations.<sup>15</sup>

The agency head is the final decision maker regarding the investigative findings of EEO complaints. The agency head shall meet with the EEO officer to review EEO complaint investigative findings and then approve and sign off on all final determinations within 30 days of receipt from the agency's EEO officer. Such approval may be in written or electronic form.<sup>16</sup>

Each agency head must ensure that all employees are provided information that complies with the standards established by DCAS regarding employee rights and obligations contained within this Policy, and with information about the complaint, investigation, and reasonable accommodation procedures.<sup>17</sup> The agency heads should ensure that this information is available in accessible and alternative formats to employees and job applicants with disabilities. The agency head must also ensure that the Policy, standards, and procedures are posted at each site where the agency conducts business. Such posting may also include postings on electronic bulletin boards and intranet sites. Agency heads will ensure that each of the agency's employees are accountable for their compliance with EEO-related policies and receives training in EEO laws.

Each agency head shall adopt and implement annually 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.<sup>18</sup> Draft Diversity and EEO Plans are to be developed and submitted each fiscal year according to the timetable and format

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<sup>15</sup> New York City Charter § 814(c)(3).

<sup>16</sup> See Section V.E. (Concluding the Investigation).

<sup>17</sup> Each agency is required to conspicuously post on its website and to share periodically the City's EEO Policy, along with supplementary resources such as *What to Know About Equity, Inclusion, and EEO Handbook* and *Reasonable Accommodations at a Glance*.

<sup>18</sup> See Section VII. (Agency Diversity and EEO Plans).

### III. Accountability Standards and EEO Reporting Structure

established by DCAS, and must be reviewed and approved by DCAS prior to the agency's final submission with the agency head's signature. Agencies shall file copies of finalized Agency Diversity and EEO Plans with the mayor, the city council, the Equal Employment Practices Commission (EEOC), and the City Civil Service Commission, and make Diversity and EEO Plans available for reasonable public inspection.<sup>19</sup>

Each agency head shall then submit quarterly reports to DCAS, as well as to the mayor, city council, and EEOC, on the agency's efforts during the previous quarter to implement the Agency Diversity and EEO Plan.<sup>20</sup> Such quarterly reports will also include a review and documentation of EEO complaints and requests for reasonable accommodations for that quarter. Pursuant to the Charter, Quarterly Diversity and EEO reports must be timely submitted to DCAS and the other entities mentioned above, no later than 30 days following the reporting period using the reporting format provided by DCAS.

#### C. EEO Officers

The agency head must appoint only one qualified individual to the role of agency EEO officer.

The agency's EEO officer has primary responsibility for assisting the agency head in implementing the 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, resolve, and remediate 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 independence of judgment and objectivity necessary to assess EEO complaints also require that the EEO officer be free of any conflicts of

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<sup>19</sup> New York City Charter § 815(a)(19).

<sup>20</sup> New York City Charter § 815(i).

### III. Accountability Standards and EEO Reporting Structure

interest. Therefore, as stated above in Section III.B., the EEO officer must report directly to the agency head. Although the EEO office may have to consult at times with agency general counsel or Human Resources, the EEO officer shall not report to the general counsel or the agency personnel officer/Human Resources. Given the potential complications an alternative structure could have, agencies must not depart from this reporting structure without the explicit written consent of DCAS and the Law Department.

As a best practice, to ensure independence of judgment and objectivity, and to avoid conflicts of interest, EEO officers should not serve simultaneously as agency personnel officers or be a member of the Office of General Counsel. In addition, as a best practice, EEO officers should not hold any position or serve any dual role that requires reporting to someone other than the agency head. In circumstances in which an EEO officer also functions as the agency's chief diversity officer (CDO), then such EEO officer should report directly to the agency head in connection with their role as EEO officer.

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 provide guidance and assistance to agency managers, supervisors, and human resource professionals in addressing issues relating to equal employment opportunity and work cooperatively with the agency's general counsel and DCAS Citywide Equity and Inclusion in receiving general guidance on the EEO Policy and procedures.

The EEO officer is also responsible for: (1) setting training objectives that ensure that all agency employees receive diversity and inclusion and EEO training; (2) supervising the EEO-related activities of EEO counselors and/or investigators; (3) ensuring that the Policy, standards, and procedures are posted at each site where the agency conducts business; (4) ensuring that the Policy, standards, and procedures are available in alternative formats (i.e., large print, audio tape, and/or Braille); and (5) documenting all inquiries, complaints, requests, mediation efforts, investigations, requests for accommodations, and their outcomes.



### III. Accountability Standards and EEO Reporting Structure

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 Counsel**

Agency general counsel should: (1) assist the agency head in identifying and determining appropriate responses to EEO issues; (2) work cooperatively 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.

To preserve the independence of judgment and objectivity of EEO officers, and to avoid conflicts of interest, a member of an agency's Office of General Counsel must not simultaneously serve as the EEO officer without the express written consent of DCAS and the Law Department.

While general counsel may provide occasional consultation on the interpretation of the EEO Policy, general counsel should refrain from giving non-legal or policy advice concerning an open investigation and should refrain from interfering with the independent judgment and objectivity of the EEO officer.

#### **E. Managers and Supervisors**

Managers and supervisors are responsible for maintaining a work environment that fosters sensitivity and respect of all individuals. Specifically, each agency manager or supervisor shall abide by all provisions and requirements of this Policy, including and without limitation, their obligations to:

- Effectively implement all EEO-related policies.
- Carry out their responsibilities in a non-discriminatory manner consistent with this Policy and its objectives.

### III. Accountability Standards and EEO Reporting Structure

- Cooperate with the EEO Office in the implementation of this Policy and its standards, and procedures, including, but not limited to, training, interim measures, complaint resolutions, reasonable accommodations, adhering to EEO-related recruitment and selection standards, modifying agency procedures to ensure equal employment opportunity for applicants and employees.
- Report any known or suspected violation of this Policy to the EEO Office promptly and completely, and to follow up any report in writing.
- Encourage employees to report any violation of this Policy to the EEO Office.
- Allow employees to meet with EEO personnel at the earliest practical time consistent with the operational needs of their unit.
- Protect the confidentiality of all EEO-related matters by only sharing information on a need-to-know basis.
- Refrain from any retaliatory behavior or encouraging or inciting any retaliatory behavior.
- Complete EEO training as required.

Managers and supervisors are discouraged from engaging in any romantic or sexual relationship with a subordinate they supervise, even when consensual. However, if an employee in a supervisory or managerial role anticipates starting a romantic or sexual relationship, or such a relationship has already begun, both parties are obligated to contact the agency personnel officer to ascertain whether such a relationship necessitates any personnel changes.<sup>21</sup>

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

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<sup>21</sup> Some City agencies have specific anti-fraternization policies.

#### F. Agency Personnel Officers

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

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

The responsibilities and obligations of agency personnel officers in relation to the Policy include, but are not limited to, the following:

- Ensure that all new employees are advised of this Policy and its standards and procedures, their rights and responsibilities under this Policy, and the discrimination complaint process.
- Ensure that managers and supervisors are reminded of their accountability and obligations to report violations of this Policy.
- Ensure that all employees have access to information regarding job responsibilities, performance evaluation standards, examinations, and training opportunities, and that all opportunities are posted as required.
- Ensure employees are aware of the identity and contact information of the agency's career counselor.
- Report the agency's 55-a program participants to the EEO officer quarterly, as well as the agency's efforts to employ, promote, and/or accommodate qualified individuals with disabilities.
- Review EEO-related decisions, actions, and practices with the EEO officer.

### III. Accountability Standards and EEO Reporting Structure

- Promptly report any known or suspected violation of this Policy to the agency's EEO officer.
- Encourage employees to report any potential violations of this Policy to the EEO officer.
- Collaborate with the EEO officer on matters related to the processing of disability-related leaves or reasonable accommodations.
- Assist in resolution of employee misconduct or conflict that does not qualify as prohibited conduct under this Policy.

# IV. Protections & Obligations

The City of New York is committed to ensuring equity in the workplace. To that end, this Policy is intended to educate our workforce about discrimination, harassment, and retaliation. This Policy is designed to stop, correct, remediate, and prevent workplace discrimination and harassment by prohibiting discrimination that occurs intentionally or through disparate impact, as well as harassment that is based on one or more of the protected categories listed below.<sup>22</sup>

## A. Protected Categories

All covered persons are protected from the prohibited conduct described in this Policy based on the following categories.<sup>23</sup> The City's Human Rights Law, as indicated, not only protects covered persons against discrimination because of their actual characteristics, but also in many categories protects covered persons based on perceptions that they have a certain characteristic. In addition, it prohibits discrimination against a covered person because of the actual or perceived race, creed, color, national origin, disability, age, sexual orientation, uniformed service or immigration or citizenship status of another person with whom such person has a known relationship or association.

### 1. Age

Except when there are specific age requirements established by law or regulation, agencies may not discriminate against covered persons based on their actual or perceived age.<sup>24</sup>

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<sup>22</sup> Note that conduct prohibited by this Policy may also be unlawful under local, state, or federal law. Information about the various external reporting agencies is listed in Appendix B.

<sup>23</sup> The descriptions of the protected categories are informed by local, state, and federal laws.

<sup>24</sup> New York City Administrative Code § 8-107(1). See New York City Commission on Human Rights, Legal Enforcement Guidance on Employment Discrimination on the Basis of Age, (July 2020), available at [NYC Commission on Human Rights Legal Enforcement Guidance on Employment Discrimination on the Basis of Age](#) ("Since 1977, the New York City Human Rights Law (NYCHRL) has included protections against age discrimination for all workers, regardless of one's age."); see also New York State Executive Law § 296(3-a) (prohibiting employment discrimination of employees aged 18 or older.).

### **2. Arrest, Conviction Record, or Pending Case**

Broadly, a combination of state and city laws establishes two categories of employment protections based on a person's history of criminal system involvement. Together, these laws prohibit most employers from ever asking about, or taking action against, a worker for certain types of low-level or sealed cases and cases with favorable outcomes for the defendant. Second, the New York City Human Rights Law provides "fair chance" protections to workers with criminal convictions and pending cases, limiting when and to what extent most employers may consider workers' criminal history and ensuring that workers are not arbitrarily disciplined or excluded from employment opportunities when they do not pose an unreasonable risk of harm and there is no direct relationship between their criminal history and the job.<sup>25</sup>

New York City's Fair Chance Act generally prohibits agencies from making inquiries about an applicant's criminal history or any pending case until after making a conditional offer of employment. Agencies may only request and review criminal history information after favorably evaluating the candidate's non-criminal information.<sup>26</sup> Agencies may not deny employment to an applicant because of a prior criminal conviction unless hiring the applicant would pose an unreasonable risk to property or to public or individual safety, or the conviction has a direct bearing on the applicant's fitness or ability to perform one or more duties or responsibilities of the job.<sup>27</sup> Additionally, agencies must

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<sup>25</sup> There are a number of positions and circumstances that are exempt from the City's Fair Chance Act. See New York City Administrative Code § 8-107(10), (11), and (11-a); see also New York State Executive Law § 296(16)(listing exemptions pursuant to New York State law) and New York State Correction Law Article 23-A.

<sup>26</sup> Agencies utilizing background checks should have the consumer reporting agency bifurcate reports so that reports containing criminal history information are only obtained and evaluated after all non-criminal information has been evaluated.

<sup>27</sup> Any agency that considers an applicant's prior conviction must look at the factors enumerated under Article 23-A.

analyze pending cases against an applicant or employee under the New York City Fair Chance factors.<sup>28</sup>

In general, agencies may not deny employment or act adversely against an employee because of a prior arrest or criminal accusation which was followed by a result favorable to the applicant or employee or resolved by a youthful offender adjudication, including a conviction that has been sealed.<sup>29</sup> (Note: This prohibition does not apply to law enforcement agencies with respect to arrests or accusations that were followed by a youthful offender adjudication or a conviction for a violation that has been sealed pursuant to certain provisions of the Criminal Procedure Law.)

### **3. Cannabis Use**

Except as otherwise required by law, agencies may not discriminate against an individual based on their legal use of consumable products or legal recreational activities, including use of cannabis in accordance with state law, prior to the beginning or after the conclusion of the employee's work hours, and off the employer's premises and without use of the employer's equipment or other property.<sup>30</sup>

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<sup>28</sup> See the definition of "Relevant fair chance factors" in New York City Administrative Code § 8-102; see also New York City Commission on Human Rights, *Legal Enforcement Guidance on the Fair Chance Act and Employment Discrimination on the Basis of Criminal History*, (July 2021), available at [NYC Commission on Human Rights Legal Enforcement Guidance on the Fair Chance Act and Employment Discrimination on the Basis of Criminal History](#). If an applicant has both a conviction history and a pending case, the agency must separately analyze each according to the relevant set of factors required under the law. The Fair Chance Act also protects current employees from arbitrary and unfair discipline, including termination, based on a conviction history or pending case. The protections are similar to those for job applicants.

<sup>29</sup> New York City Administrative Code § 8-107(11); New York State Executive Law § 296(16).

<sup>30</sup> New York State Cannabis Law § 127; New York State Labor Law § 201-d(2)(b), (c).

## IV. Protections & Obligations

### **4. Caregiver Status**

Agencies may not discriminate against covered persons based on their actual or perceived caregiver status. A “caregiver” is a person who provides direct and ongoing care for (a) a minor child or (b) a “care recipient” who (i) is a “covered relative,” or a person who resides in the caregiver’s household, and (ii) relies on the caregiver for medical care or to meet the needs of daily living. “Covered relatives” include a caregiver’s child, spouse, domestic partner, parent, sibling, grandchild or grandparent, or the child or parent of the caregiver’s spouse or domestic partner, or any other individual in a familial relationship with the caregiver as designated by the rules of the City Commission on Human Rights.<sup>31</sup>

### **5. Color**

Agencies may not discriminate against covered persons based on their actual or perceived color. Discrimination against a covered person based on color includes discrimination based on an individual’s complexion or skin color and may occur because of a preference for, or an aversion to, a particular complexion or pigmentation.<sup>32</sup>

### **6. Consumer Credit History**

Agencies generally may not discriminate against covered persons based on their actual consumer credit history. Discrimination based on consumer credit history includes treating a covered person adversely because of credit worthiness, credit standing, and credit capacity, as well as payment history, credit card debt, child support, student loans,

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<sup>31</sup> See the definition of “Caregiver” in New York City Administrative Code § 8-102; New York City Administrative Code § 8-107(1).

<sup>32</sup> New York City Administrative Code § 8-107(1); see U.S. Equal Employment Opportunity Commission, Facts About Race/Color Discrimination, available at Facts About Race/Color Discrimination (stating that the commonly understood meaning of color discrimination is discrimination based on “pigmentation, complexion, or skin shade or tone.”); see *also* New York State Executive Law § 296(1).



a foreclosure, missed or late payments, bankruptcies, judgments, and liens. Some positions, such as police and peace officers, and certain high-level positions are exempt from the law concerning employment discrimination based on consumer credit history and are not covered by the prohibition in this Policy.<sup>33</sup>

### **7. Disability**

Agencies may not discriminate against covered persons based on their actual or perceived disability.

A disability includes any physical, medical, mental, or psychological disability or impairment, or a history or record of a disability or impairment.<sup>34</sup> Pregnancy, as well as any related condition or complication, and certain sexual or other reproductive health conditions may also be considered a disability.

Absent an undue hardship, an agency has a duty to provide a reasonable accommodation for applicants and employees with disabilities and must engage in a cooperative dialogue with an applicant or employee when they have requested a reasonable accommodation, or when the agency has notice that the person may require an accommodation.<sup>35</sup>

### **8. Familial Status**

Agencies may not discriminate against covered persons based on their familial status. Discrimination based on familial status includes discrimination against (a) a covered person who is pregnant or has a

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<sup>33</sup> See the definition of “Consumer credit history” in New York City Administrative Code § 8-102; New York City Administrative Code § 8-107(24).

<sup>34</sup> See the definition of “Disability” in New York City Administrative Code § 8-102; New York City Administrative Code § 8-107(15); see also New York State Executive Law § 292(21); New York State Executive Law § 296(1).

<sup>35</sup> New York City Administrative Code § 8-107(15) and (28); New York State Executive Law §§ 292(21)(e), 296(1).

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child or is in the process of securing legal custody of any individual who has not attained the age of 18 years, or (b) one or more individuals (who have not attained the age of 18 years) being domiciled with: (1) a parent or another person having legal custody of such individual or individuals; or (2) the designee of such parent.<sup>36</sup>

### **9. Gender/Sex (Including Pregnancy, Childbirth, or Related Medical Conditions<sup>37</sup>)**

Agencies may not discriminate against covered persons based on their actual or perceived gender or sex. This category encompasses an individual's actual or perceived sex, as well as biological or socially determined characteristics used to classify individuals as male and female.<sup>38</sup>

Absent an undue hardship, an agency has a duty to provide a reasonable accommodation for applicants and employees if needed in relation to pregnancy, childbirth, or related medical conditions and must engage in a cooperative dialogue with an applicant or employee when they have requested a reasonable accommodation or when the agency has notice that the person may require an accommodation.<sup>39</sup>

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<sup>36</sup> New York State Executive Law § 292(26).

<sup>37</sup> “Pregnancy discrimination under the NYCHRL is discrimination based on gender.” New York City Commission on Human Rights, *Legal Enforcement Guidance on Discrimination on the Basis of Pregnancy, Childbirth, Related Medical Conditions, Lactation Accommodations, and Sexual or Reproductive Health Decisions, Legislative Intent* (July 2021), available at [NYC Commission on Human Rights Legal Enforcement Guidance on Discrimination on the Basis of Pregnancy, Childbirth, Related Medical Conditions, Lactation Accommodations, and Sexual or Reproductive Health Decisions](#). Pregnancy discrimination is discrimination on the basis of sex and familial status. New York State Executive Law §§ 292.26(a), 296.1(a).

<sup>38</sup> See the definition of “Gender” in New York City Administrative Code § 8-102; see also New York State Executive Law § 296(1).

<sup>39</sup> New York City Administrative Code §§ 8-107(22) and (28); New York State Executive Law §§ 292(21)(e), 296(3).

### **10. Gender Identity or Expression**

Agencies may not discriminate against covered persons based on their actual or perceived gender identity or expression. This category includes an individual's actual or perceived gender identity and gender expression and consists of an individual's actual or perceived gender-related self-image, appearance, behavior, expression, or other gender-related characteristic, regardless of the sex assigned to that person at birth.<sup>40</sup> It also includes representation of gender through one's name, choice of pronoun, clothing, haircut, behavior, voice, or body characteristics. Gender identity or expression may not be distinctively male or female and may be different from an individual's sex assigned at birth, including non-conforming and transgender.<sup>41</sup>

### **11. Immigration or Citizenship Status**

Agencies may not discriminate against employees and applicants for employment on the basis of actual or perceived immigration or citizenship status.<sup>42</sup> Agencies may give preference to a citizen or national of the United States over a non-citizen when a law or regulation clearly requires or expressly permits the employer to do so, and when the law or regulation does not provide that state or local law may be more protective of a person who is not a citizen or national of the United States. In addition, agencies must comply with citizenship requirements for certain positions in the city government.

Agencies may not rely on citizenship status to reject lawful documentation that verifies employment eligibility or demand additional documentation beyond what is legally required.<sup>43</sup>

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<sup>40</sup> New York City Local Law No. 38 (2018); New York City Administrative Code § 8-102; see also New York State Executive Law § 292(35), New York State Executive Law § 296(1)(a).

<sup>41</sup> See New York City Commission on Human Rights, *Gender Identity/Gender Expression: Legal Enforcement Guidance*, Definitions, available at [NYC Commission on Human Rights Legal Enforcement Guidance on Discrimination on the Basis of Gender Identity or Expression](#).

<sup>42</sup> New York City Administrative Code § 8-107(1).

<sup>43</sup> New York City Administrative Code § 8-107(14).

### **12. Marital or Partnership Status**

Agencies may not discriminate against covered persons based on actual or perceived marital or partnership status. This category includes married, divorced, single, separated, or widowed persons, as well as all individuals in a domestic partnership.<sup>44</sup>

### **13. National Origin or Ethnicity**

Agencies may not discriminate against covered persons based on their actual or perceived national origin or ethnicity. National origin discrimination involves treating covered persons unfavorably because they or their ancestors are from a particular country or part of the world, whereas discrimination based on ethnicity involves treating covered persons unfavorably because of their cultural characteristics, including accent, or other physical, linguistic, or ethnic characteristics or because they appear to be of a certain ethnic background.<sup>45</sup>

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<sup>44</sup> New York City Administrative Code § 3-240(a); New York State Executive Law § 296(1)(a).

<sup>45</sup> New York City Administrative Code § 8-107(1)(stating that the NYCHRL prohibits unlawful discriminatory employment practices on the basis of national origin or ethnicity); New York State Executive Law § 292(8)(stating that national origin includes ancestry). See generally New York Commission on Human Rights, *Legal Enforcement Guidance on Discrimination on the Basis of Immigration Status and National Origin*, at 5 (Sept. 2019), available at [NYC Commission on Human Rights Legal Enforcement Guidance on Discrimination on the Basis of Immigration Status and National Origin](#) (“Discrimination based on immigration status often overlaps with discrimination based on national origin and/or religion. The ‘line between discrimination based on ancestry or ethnic characteristics, and discrimination based on place or nation of . . . origin, is not a bright one,’ and it is often difficult to disentangle the motivation behind discriminatory animus based on immigration status, national origin, and other protected categories. Individuals who feel they have experienced discrimination may file a complaint under any or all of these categories that relate to their claim.”); *National Origin Discrimination*, available at [National Origin Discrimination](#) (national origin discrimination means “treating you differently, or less favorably, because you or a friend, parent, or someone else you associate with come from a particular place, has a particular accent, or appears to have a particular ethnic background, perhaps because of physical characteristics or name.”).

### **14. Predisposing Genetic Characteristics**

Agencies may not discriminate against covered persons on the basis of predisposing genetic characteristics. This category includes any covered person who may be discriminated against based on a predisposing genetic characteristic, which includes any inherited gene or chromosome, or alteration thereof, and determined by a genetic test or inferred from information derived from an individual or family member that is scientifically or medically believed to predispose an individual or the offspring of that individual to a disease or disability or to be associated with a statistically significant increased risk of development of a physical or mental disease or disability.<sup>46</sup>

In addition, federal law protects covered persons from discrimination on the basis “genetic information,” which is defined to include information about (i) an individual’s genetic tests, (ii) the genetic tests of family members of such individual, and (iii) the manifestation of a disease or disorder in family members of such individual.<sup>47</sup>

### **15. Pre-employment Marijuana Testing**

Agencies generally may not test job candidates for marijuana or tetrahydrocannabinols (THC) as a condition of employment. (Note: There are several exceptions in which testing job applicants for marijuana or THC for specific kinds of jobs is permitted.)<sup>48</sup>

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<sup>46</sup> New York State Executive Law § 296(1)(a); see also New York State Executive Law § 292(21-a) (defining “pre-disposing genetic characteristics”). Discrimination on the basis of a genetic characteristic is unlawful pursuant to New York State Executive Law §§ 296.1, 296.19, 296-c (for interns) and 296-d (for non-employees working in the workplace).

<sup>47</sup> Genetic Information Nondiscrimination Act, 42 U.S.C. § 2000ff-1.

<sup>48</sup> New York City Administrative Code § 8-107(31). Under New York State Labor Law § 201-D(4-a), an employer cannot require an employee or applicant to undergo a test for cannabis except in very limited circumstances.

### 16. Race

Agencies may not discriminate against covered persons on the basis of actual or perceived race. Discrimination based on race involves treating a covered person unfavorably because of race or because of personal characteristics associated with race (such as hair texture, “protective hairstyles,”<sup>49</sup> skin color, or certain physical characteristics).<sup>50</sup>

### 17. Religion or Creed

Agencies may not discriminate against covered persons based on actual or perceived religion or creed. This category includes covered persons who belong to organized religions, as well as covered persons who have sincerely held religious beliefs.<sup>51</sup>

Absent an undue hardship, an agency has a duty to provide a reasonable accommodation for applicants’ and employees’ religious needs, and must engage in a cooperative dialogue with an applicant or employee when they have requested a reasonable accommodation or when the agency has notice that the person may require an accommodation.<sup>52</sup>

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<sup>49</sup> The term “protective hairstyles” includes such hairstyles as braids, locks, and twists. See New York State Executive Law § 292(38).

<sup>50</sup> New York City Administrative Code § 8-107(1); New York State Executive Law § 296(1)(a); see also U.S. Equal Employment Opportunity Commission, *Race/Color Discrimination*, available at [Race/Color Discrimination](#).

<sup>51</sup> New York City Administrative Code § 8-107(1); New York State Executive Law § 296(1)(a); see also U.S. Equal Employment Opportunity Commission, *Religious Discrimination*, available at [Religious Discrimination](#) (stating religious discrimination “involves treating a person (an applicant or employee) unfavorably because of his or her religious beliefs. The law protects not only people who belong to traditional, organized religious, such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but also others who have sincerely held religious, ethical or moral beliefs.”).

<sup>52</sup> New York City Administrative Code §§ 8-107(3) and (28); New York State Executive Law § 296(10).

### **18. Salary or Pay History**

Agencies may not ask about a job applicant’s salary history during the hiring process, including on applications or in interviews. Salary history includes a covered person’s current or prior wages, benefits, or other compensation in certain circumstances, but does not include any objective measure of productivity such as revenue, sales, or other production reports.<sup>53</sup>

### **19. Sexual Orientation**

Agencies may not discriminate against covered persons based on actual or perceived sexual orientation.<sup>54</sup>

### **20. Sexual and Reproductive Health Decisions**

Agencies may not discriminate against covered persons based on their actual or perceived sexual and reproductive health decisions. This category includes any decision by a covered person to receive services relating to sexual and reproductive health, including the reproductive system and its functions, including but not limited to, fertility-related medical procedures, sexually transmitted disease prevention, testing, and treatment, and family planning services and counseling, such as birth control drugs and supplies, emergency contraception, sterilization procedures, pregnancy testing, and abortion.<sup>55</sup> Agencies must also reasonably accommodate the needs of an employee stemming

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<sup>53</sup> The prohibition on salary history inquiries in New York City’s Human Rights Law, New York City Administrative Code § 8-107(25), does not apply to certain applicants or employees, including applicants for internal transfer or promotion and public employee positions for which salary, benefits or other compensation are determined pursuant to procedures established by collective bargaining. See *also* New York City Executive Order 21 (Nov. 4, 2016) (“prohibiting City agencies from inquiring about the salary history of job applicants.”).

<sup>54</sup> See the definition of “Sexual orientation” in New York City Administrative Code § 8-102; see *also* New York State Executive Law § 296(1)(a).

<sup>55</sup> See the definition of “Sexual and reproduction health decisions” in New York City Administrative Code § 8-102; see *also* New York State Labor Law § 203-e.

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from certain medical conditions or disabilities related to sexual and reproductive health decisions.<sup>56</sup>

New York State Labor Law Section 203-e prohibits an employer from accessing an employee’s personal information regarding reproductive health decision-making of an employee or an employee’s dependent without informed written consent.<sup>57</sup> This law also prohibits employers from retaliating against employees for exercising the rights secured by this law.

### **21. Status as a Veteran or Active-Duty Military Service Member**

Agencies may not discriminate against covered persons based on their actual or perceived uniform service.<sup>58</sup> This includes current or prior service in the armed forces and the reserves. Agencies are not prohibited from affording preferences on the basis of uniform service.<sup>59</sup>

Federal and state law also protect current and former members of the armed forces from discrimination. In addition, the Uniform Service Employment and Reemployments Rights Act (USERRA) protects persons who intend to enlist.<sup>60</sup>

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<sup>56</sup> New York City Administrative Code § 8-107(22).

<sup>57</sup> This applies to any information relating to a decision by an individual to receive any particular drug, device, or services that are arranged for or offered or provided to individuals relating to sexual and reproductive health, including the reproductive system and its function (e.g., fertility-related medical procedures, sexually transmitted disease prevention, testing, treatment, and family planning services and counseling, such as birth control drugs and supplies, emergency contraception, sterilization procedures, pregnancy testing, and abortion).

<sup>58</sup> New York City Administrative Code § 8-107(1).

<sup>59</sup> New York City Administrative Code § 8-107(26).

<sup>60</sup> See the definition of “Uniformed service” in New York City Administrative Code § 8-102; see also U.S. Department of Labor, *Your Rights Under USERRA the Uniformed Service Employment and Reemployments Rights Act, Basic Provisions/ Requirements*, available at [Your Rights Under USERRA the Uniformed Services Employment and Reemployment Rights Act](#) (“USERRA prohibits employment discrimination against a person on the basis of past military service, current military obligations, or intent to serve.”).



## **22. Unemployment Status**

Agencies generally may not discriminate against covered persons based on their unemployment status. An employer may not base an employment decision about hiring, compensation, or the terms, conditions, or privileges of employment on an applicant's unemployment, unless there is a substantial job-related reason for doing so. Certain actions taken by the mayor or DCAS, and actions of officers or employees of other public agencies with similar functions, are not subject to this prohibition. This prohibition does not apply to agency appointments to competitive positions from eligible lists or to the exercise of rights pursuant to a collective bargaining agreement.<sup>61</sup>

## **23. Victims of Domestic Violence, Sex Offenses, and Stalking**

Agencies generally may not discriminate against covered persons based on their status as victims of domestic violence, sex offenses and stalking. This category protects any covered person who is subjected to certain acts or threats of violence, not including acts of self-defense, committed by a current or former spouse, by a person with whom the covered person shares a child, by a person who is cohabiting or has cohabited with the covered person, by a person who is or has been in a continuing social relationship of a romantic or intimate nature with the covered person or by a person who has continually or at regular intervals lived in the same household as the covered person.<sup>62</sup> This Policy also prohibits agencies from discriminating against a covered person who is the victim of sexual or stalking offenses.

Absent an undue hardship, an agency has a duty to provide a reasonable accommodation for applicants and employees for their needs as victims of domestic violence and/or sexual or stalking offenses, and must engage in a cooperative dialogue with an applicant or employee when they have requested a reasonable accommodation or when the agency has notice that the person may require an accommodation.<sup>63</sup>

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<sup>61</sup> New York City Administrative Code § 8-107(21).

<sup>62</sup> New York City Administrative Code § 8-107(27); New York State Executive Law § 296(1)(a)(New York State Executive Law references only victims of domestic violence).

<sup>63</sup> New York City Administrative Code §§ 8-107(27) and (28); New York State Executive Law §§ 296(1), (22)(c).

### B. Prohibited Conduct

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

#### **1. Discrimination**

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

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

#### **2. Harassment and/or Hostile Work Environment**

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

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

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

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

### **3. Sexual Harassment**

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

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

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

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

#### **a. Hostile Work Environment Sexual Harassment**

Hostile work environment sexual harassment is conduct that is directed at an individual because of their sex, sexual orientation, gender identity, gender expression, or status of being transgender and has the purpose or effect of unreasonably interfering with an

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individual's work performance or creating an intimidating, hostile, or offensive work environment. Hostile work environment sexual harassment includes:

- Unwanted verbal or physical advances, sexually explicit derogatory statements, or sexually discriminatory remarks made by someone that are offensive or objectionable to the recipient and that cause the recipient discomfort or humiliation, and/or interfere with the recipient's job performance.
- Visual material such as pictures, posters, calendars, graffiti, objects, promotional material, reading materials, or other materials that are sexually demeaning or pornographic.
- Sexual displays on workplace computers or cell phones and/or sharing such displays while in the workplace.
- Sexually oriented words, gestures, noises, remarks, jokes, pranks, or comments.
- Physical acts of a sexual nature, such as touching, pinching, patting, grabbing, kissing, hugging, brushing against, or poking another. Physical acts also include serious offenses such as rape, sexual battery, molestation, or attempts to commit these assaults.
- Interfering with, destroying, or damaging a person's workstation, tools, or equipment, or otherwise interfering with the individual's ability to perform the job; sabotaging an individual's work; or bullying, yelling, and name-calling.

### **b. Quid Pro Quo Sexual Harassment**

“Quid pro quo” translates to “this for that.” Quid pro quo sexual harassment occurs when a person of authority trades, or tries to trade, something work-related in exchange for sexual favors. This can include hiring, promotion, continued employment, or any other terms, conditions, or privileges of employment and occurs between an employee and someone with authority, like a supervisor. Quid pro quo sexual harassment includes:

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

### **4. Retaliation for Protected Activity**

It is a violation of this Policy for any person to engage in retaliation by coercing, intimidating, threatening, interfering with, or attempting to coerce, intimidate, threaten or interfere with, any person who exercises rights under this Policy or who aids or encourages any other person to exercise rights protected by this Policy.<sup>64</sup> Retaliation includes any action taken directly or indirectly against a covered person that would have the effect of dissuading or discouraging any individual from coming forward to make or support a claim of discrimination or harassment.

Adverse employment actions can include disciplinary action such as reprimand, suspension, demotion, and discharge; loss of assignments and responsibilities; denial of promotion; loss of salary increase or job benefit; denial of training opportunities; transfer; negative evaluation; refusal to hire; and negative references to prospective employers. Adverse employment actions are prohibited when they are based on retaliatory or discriminatory reasons.

Adverse action need not be job-related or occur in the workplace to constitute prohibited retaliation. Threats of physical violence outside of work hours are an example of adverse action. Retaliation can also occur after an individual is no longer employed. It is also a violation of this Policy to retaliate against someone because of their association with an individual who opposed discrimination.

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<sup>64</sup> New York City Administrative Code § 8-107(19).

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

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

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

### **5. Making a False Claim or Providing Misleading Information**

It is a violation of this Policy to knowingly make a false statement or otherwise deliberately provide false or misleading information during an investigation undertaken pursuant to this Policy. Such conduct may be grounds for discipline and other appropriate action in accordance with applicable laws, contracts, and policies.

A complaint made in good faith, even if found to be unsubstantiated, will not be considered a false claim.

## **C. Duty to Cooperate**

All employees are expected to cooperate with the EEO Office and EEO investigations. Cooperation includes participating in an interview during the investigative process. *Failure to cooperate may result in a referral for disciplinary action.* Non-employees covered by this Policy may be expected to cooperate depending on the terms of their relationship to the agency.

## A. Reporting Violations

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

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

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

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

If the allegation of misconduct in violation of this Policy concerns the specific actions of the EEO Office or agency head, the matter should be reported to DCAS Citywide Equity and Inclusion for investigation.

Reports may be made orally or in writing. Persons reporting concerns are encouraged to use the complaint form included with the Policy, but it is not required. Where the complaint is taken orally, the manager, supervisor, or EEO personnel shall document the complaint. The EEO Office will assess whether the conduct reported is appropriate for the EEO complaint

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process, and will make appropriate referrals when the allegation is not based on prohibited conduct or protected activity covered by this Policy. Where an individual chooses to file a complaint with the EEO Office, that complaint must be filed within one year of the event which is the subject of the complaint. In the event of an alleged continuing harm or violation of this Policy, at least one act must fall within the one-year period. It is always best to contact an EEO Office promptly whenever discrimination is suspected.<sup>65</sup>

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 take such action as may be appropriate and possible, given the constraints of anonymity.

All complaints or information about suspected violations of this Policy will be investigated, whether that information was reported orally or in writing. Investigations shall be conducted in a timely manner and will be kept confidential to the extent possible. See Section V.H. (Confidentiality Explained). All persons involved, including complainants, witnesses, and respondents will be afforded rights as described in this Policy and in accordance with applicable contracts or laws.

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

Persons covered by this Policy who believe they have been a target of discrimination may also seek assistance in other available forums. See Appendix B.

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<sup>65</sup> In some circumstances, alleged incidents that occurred more than one year before the complaint may be reviewed by the EEO Office or referred to the appropriate unit in the agency if the allegations constitute continued misconduct, are criminal in nature, or should otherwise be addressed by the agency's Code of Conduct.



### **B. Contact with the EEO Office**

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

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

All persons interviewed during an EEO investigation have a right to be accompanied by a representative of their choice. Interview subjects must be notified of this right in writing. A representative cannot answer questions on behalf of the witness and cannot impede the interview in any way. 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 also have an opportunity to supplement their interview in writing. Investigations should be conducted in accordance with this Policy and the City's *EEO Complaint Procedural Guidelines*.

### **C. Interim Relief**

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

### D. Withdrawing a Complaint

A complaint may be withdrawn at any time by the person who filed the complaint. Withdrawal of a complaint must be made or confirmed in writing. In some instances, the EEO officer will find it appropriate to end the investigation when the complaint is withdrawn. It may also be necessary for the EEO officer to continue the investigation or recommend action to remedy inappropriate behavior. The EEO officer must ascertain that the complaint is being withdrawn voluntarily.

### E. Concluding the Investigation

Absent extraordinary circumstances, the EEO officer shall conclude its investigation within 90 days from the date on which the complaint was accepted for investigation. If additional time is needed, the EEO Office shall inform the parties. Upon conclusion of the investigation, the EEO officer will submit a written Report of Investigation to the agency head. The report shall document the allegation, the investigative and other actions taken by the EEO Office, as well as detail the findings and recommended determination that the allegations are substantiated or unsubstantiated. To ensure fairness to the parties, within 30 days of receipt, the agency head will review and either adopt the determination or return it to the EEO Office for additional action so that the EEO Office can advise the parties in writing of the determination.

If the agency head has adopted any substantiated factual findings, the agency head may request for the EEO Office to refer the matter to the proper entity (e.g., agency representatives in pending discipline matters) for appropriate action.

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

### F. Mediation

Mediation is a voluntary, informal, and confidential alternative dispute resolution process whereby parties attempt to resolve the issues raised by a complaint by mutual agreement. The mediation process is generally faster and simpler and focuses on how a problem may be resolved. It is an alternative that may quickly resolve complaints without a full investigation.

Mediation may be requested by any party involved and may be declined by any party. All requests for mediation should be made to the EEO Office. The EEO Office will determine whether the complaint is appropriate for mediation, including ensuring that no party has been coerced into agreeing to mediation. If the complaint is appropriate for mediation, the EEO Office will refer the parties to the Center for Creative Conflict Resolution (CCCR) at the Office of Administrative Trials and Hearing (OATH).

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

### G. Other Places Where Complaints May Be Filed

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

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

## V. Procedures

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

## H. Confidentiality Explained

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

Complete confidentiality cannot be guaranteed since an effective investigation may require revealing relevant information to a variety of individuals. Disclosure may also be necessary to implement accommodations. Also, information may be disclosed during any resulting disciplinary proceeding, litigation, or as otherwise required by law.

Information regarding the complaint will be shared only with those who have a need to know, and all records relating to complaints will be maintained in a secure location separate from other personnel records. To the extent that relevant information is needed for disciplinary action, it may be shared with agency representatives in pending discipline matters.

# VI. Reasonable Accommodations and the Family and Medical Leave Act

## A. Reasonable Accommodations

This Policy requires all agencies to make reasonable accommodations in circumstances described in this section for all employees (full-time and part-time), applicants, interviewees, and independent contractors (“covered persons”) to permit each to perform the essential functions of their position and equally enjoy the benefits and privileges of employment. This Policy also requires agencies to ensure equal opportunity in the application process.<sup>66</sup> Agencies must provide such accommodations unless the accommodation creates an undue hardship to the conduct of the agency’s business.

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

This Policy requires all agencies to engage in a cooperative dialogue<sup>67</sup> with covered persons to determine an effective accommodation under which the employee can perform the essential functions of the job. The obligation to engage in a cooperative dialogue can arise when agencies know, or should have known, that the covered person may need an accommodation. Any accommodation is considered reasonable unless

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<sup>66</sup> Employers may inform applicants what the hiring process involves – for example, an interview, a timed written test, or a presentation – and may ask applicants whether they will need a reasonable accommodation for any part of the process.

<sup>67</sup> As of October 15, 2018, the NYCHRL mandates that covered entities engage in a “cooperative dialogue” with those persons who may be entitled to a reasonable accommodation. New York City Administrative Code § 8-107(28)(a). This Policy has always recognized a responsibility for agencies to engage in an “interactive process” with employees who request accommodations. The Policy is now revised to require compliance with the “cooperative dialogue” process as set forth herein.

## VI. Reasonable Accommodations and the Family and Medical Leave Act

it causes undue hardship for the agency. Agencies are responsible for the cost of providing any accommodation and their duty to provide an accommodation is ongoing. Where more than one accommodation would be a reasonable means of accommodating the need, the employer may select which accommodation to provide.

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

Please see the City's *Reasonable Accommodation Procedural Guidelines* (2021) for more detailed information concerning requesting, reviewing, and processing reasonable accommodations.<sup>68</sup>

### B. Family and Medical Leave Act

While Human Resources, and not the EEO Offices, processes leave requests under the Family and Medical Leave Act (FMLA), it is important to recognize when leave under the FMLA may overlap with a reasonable accommodation for the employee's disability.

It is also important to recognize that alleged retaliation for exercising an FMLA right may also involve alleged retaliation based on an employee asserting their rights for a reasonable accommodation. This Policy prohibits agencies from retaliating against employees for taking FMLA leave.<sup>69</sup> Prohibited retaliation includes:

- Interfering with, restraining, or denying the exercise of, or the attempt to exercise, any FMLA right.
- Discriminating or retaliating against an employee or prospective employee for having exercised or attempted to exercise any FMLA right.

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<sup>68</sup> The City's Reasonable Accommodation Procedural Guidelines is available at: <https://www1.nyc.gov/site/dcas/agencies/equity-and-inclusion.page>.

<sup>69</sup> See also 29 C.F.R. § 825.220.

## VI. Reasonable Accommodations and the Family and Medical Leave Act

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

# VII. Agency Diversity and EEO Plans

Agency heads are required by the Charter to annually prepare, adopt, and implement a plan to provide equal employment opportunity for minorities and women (Annual Plan). The Annual Plan must be prepared based on uniform procedures and standards established by DCAS through Citywide Equity and Inclusion. DCAS will work with agency heads and agency EEO officers to help them develop realistic objectives for their agency Annual Plan.

Agency heads or, at their direction, the agency EEO officer and agency personnel officer, shall review agency statistical information (including total employment, new hires, and promotions, by race/ethnicity, and gender, as well as areas of underutilization of minorities and women), EEO complaints made during the previous fiscal year and the agency's employment practices, policies, and programs. The agency head shall also work with the EEO officer, general counsel, and agency personnel officer to identify: (1) whether there are any barriers to equal opportunity within the agency; (2) the agency's obligations as a result of government grants and/or contracts; and (3) what, if any, corrective actions are required under court decrees and/or governmental audits. Agencies may wish to seek the advice of the Law Department or consult with DCAS Citywide Equity and Inclusion regarding the development of an Annual Plan.

The Annual Plan should communicate the agency's intention to promote equal employment opportunity, equity, 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 a template specifying areas and functions that should be addressed in the plan, and recommendations for Annual Plan development that are consistent with employment practices recommended by human resources management organizations and enforcement entities.



## VII. Agency Diversity and EEO Plans

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

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

## VII. Agency Diversity and EEO Plans

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 that 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 that 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 that 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, and the discrimination complaint and investigation procedures, and the reasonable accommodation procedures.
- A commitment to establish a diversity, inclusion, and EEO training plan to ensure that all individuals who work within the agency, including managers and supervisors, are trained concerning equity, diversity, inclusion, and EEO-related rights and responsibilities in a manner consistent with the minimum standards for equity, diversity, inclusion, and EEO training established by DCAS. The training plan must include a commitment to comply with the annual training on sexual harassment for all employees as required under the New York State Labor Law (Section 201-g), New York City Charter (Chapter 35,

Section 815.1), and the Stop Sexual Harassment in NYC Act (2018) (New York City Administrative Code § 8-107(30)).

- A commitment to review, on a regular basis, and retain information about personnel actions, discretionary hiring, applicants, promotions, demotions, transfers, rates of pay, terms of compensation, and selection for training or apprenticeship as required by federal, state, and local laws, and/or the City's official records retention schedule.
- A commitment to implement and fulfill all obligations mandated by local laws, Mayoral Executive Orders, and other relevant regulations and guidelines regarding training, collection of data and information, reporting, etc.
- A plan to meet obligations or remedies required or recommended as a result of government grants or contracts, court orders, consent decrees, or any audit/review conducted by a governmental agency.

Other recommended measures that agencies are encouraged to use to ensure fair employment practices may include the following:

- Ensure that human resources personnel, managers, supervisors, and other personnel involved in the recruitment and hiring process are trained in interviewing, selection, hiring skills and EEO, and are aware of the requirements of this Policy.
- Encourage developing and perfecting inclusive skills and behavior standards for managers to ensure that they are able to maximize their professionalism, performance, and communication skills, and managing a diverse and inclusive workforce.
- Conduct or encourage the use of training and development programs to improve skills, performance, and career opportunities of all employees.
- Actively search for and create talent pools of agency employees to promote cross-training, mentoring, coaching, stretch assignments, cross divisional assignments, and rotation programs for career enhancement and development experiences, and to identify potential talents.

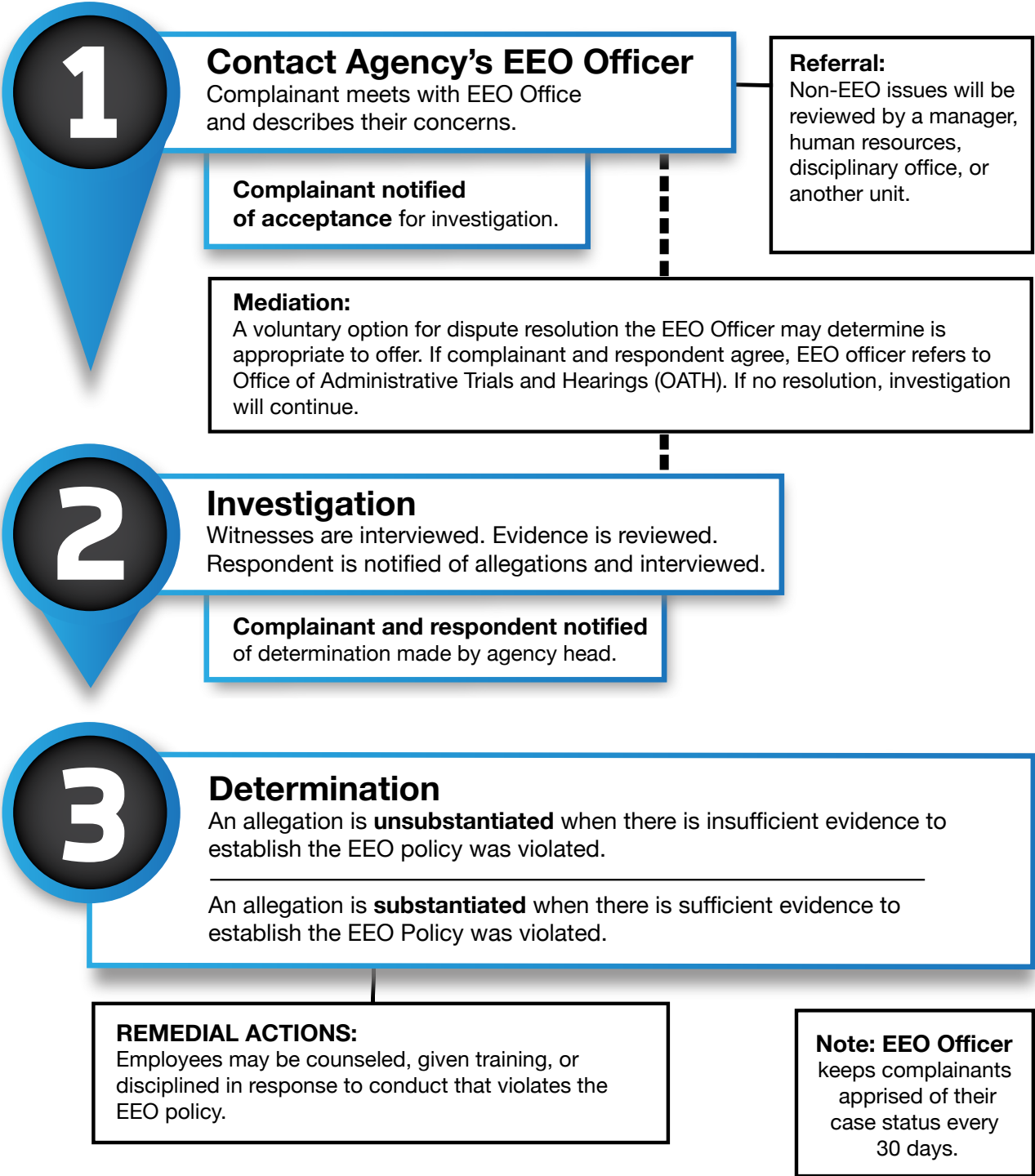
## VII. Agency Diversity and EEO Plans

- Plan and administer employee incentive, quality of work life and recognition programs, engagement surveys, performance evaluations, employee resource groups and diversity councils.
- Foster employee awareness of opportunities for promotion and transfer within the agency, and advocate that the agency develops succession plans for top managerial positions.

The City of New York, through DCAS, will also: (1) provide the uniform procedures, formats, and reports required by the Charter to facilitate the planning and review of the City's efforts to provide equal employment opportunity for employees and applicants for City government employment; (2) assess qualifications required for most civil service positions and ensure that civil service examinations are job-related and consistent with business necessity; (3) provide assistance to agencies to ensure that recruitment efforts fit particular human resource needs; (4) conduct on-site EEO monitoring visits to agencies; (5) continue efforts to better ensure the accuracy of ethnicity and gender data as required by law and policy; and (6) encourage agency job postings internally through NYCAPS Employee Self Service and externally through the City's website: <http://www1.nyc.gov/jobs/>.

## EEO Complaint Process at a Glance

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



## External Enforcement Agencies

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

### **New York City Commission on Human Rights**

22 Reade Street, First Floor

New York, NY 10007

(718) 722-3131

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

### **New York State Division on Human Rights**

One Fordham Plaza, Fourth Floor

Bronx, NY 10458

(888) 392-3644

<https://dhr.ny.gov>

### **U.S Equal Employment Opportunity Commission**

33 Whitehall Street, Fifth Floor

New York, NY 10004

(800) 669-4000

<https://www.eeoc.gov/field/newyork/>

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