

Policy: Anti-Discrimination/Harassment and Complaint Process

Policy: Consensual/Dating Relationship

Policy Number	Effective Date	Employee Group	Revision Date	Review Date	Authorized by
	March 2018	All			Dennis Tyler

Authorized Signature: _____

Date: _____

Objective

The City of Muncie strives to create and maintain a work environment in which people are treated with dignity, decency and respect. The environment of the work place should be characterized by mutual trust and the absence of intimidation, oppression and exploitation. Employees should be able to work and learn in a safe, yet stimulating atmosphere. The accomplishment of this goal is essential to the mission of the City of Muncie. For that reason, the City of Muncie will not tolerate unlawful discrimination or harassment of any kind. Through enforcement of this policy and by education of employees, the City of Muncie will seek to prevent, correct and discipline behavior that violates this policy.

All employees, regardless of their positions, are covered by and are expected to comply with this policy and to take appropriate measures to ensure that prohibited conduct does not occur. Appropriate disciplinary action will be taken against any employee who violates this policy. Based on the seriousness of the offense, disciplinary action may include verbal or written reprimand, suspension or termination of employment.

This policy is in conjunction with the policies set forth in the City of Muncie Collective Bargaining Agreements and Employee Handbook.

Prohibited Conduct Under This Policy

The City of Muncie, in compliance with all applicable federal, state and local anti-discrimination and harassment laws and regulations, enforces this policy in accordance with the following definitions and guidelines:

Discrimination

It is a violation of the City of Muncie's policy to discriminate in the provision of employment opportunities, benefits or privileges; to create discriminatory work conditions; or to use discriminatory evaluative standards in employment if the basis of that discriminatory treatment is, in whole or in part, the person's race, color, national origin, age, religion, disability status, gender, sexual orientation, gender identity, genetic information or marital status.

Discrimination of this kind may also be strictly prohibited by a variety of federal, state and local laws, including Title VII of the Civil Rights Act 1964, the Age Discrimination Act of 1975, and the Americans with Disabilities Act of 1990. This policy is intended to comply with the prohibitions stated in these anti-discrimination laws.

Discrimination in violation of this policy will be subject to disciplinary measures up to and including termination.

Harassment

The City of Muncie prohibits harassment of any kind, including sexual harassment, and will take appropriate and immediate action in response to complaints or knowledge of violations of this policy. For purposes of this policy, harassment is any verbal or physical conduct designed to threaten, intimidate or coerce an employee, co-worker or any person working for or on behalf of the City of Muncie. Verbal taunting (including racial and ethnic slurs) that, in the employee's opinion, impairs his or her ability to perform his or her job is included in the definition of harassment.

The following examples of harassment are intended to be guidelines and are not exclusive when determining whether there has been a violation of this policy:

- Verbal harassment includes comments that are offensive or unwelcome regarding a person’s nationality, origin, race, color, religion, gender, sexual orientation, age, body, disability or appearance, including epithets, slurs and negative stereotyping.
- Nonverbal harassment includes distribution, display or discussion of any written or graphic material that ridicules, denigrates, insults, belittles or shows hostility, aversion or disrespect toward an individual or group because of national origin, race, color, religion, age, gender, sexual orientation, pregnancy, appearance, disability, sexual identity, marital or other protected status.

Sexual harassment

Sexual harassment is a form of unlawful employment discrimination under Title VII of the Civil Rights Act of 1964 and is prohibited under the City of Muncie’s anti-harassment policy.

According to the Equal Employment Opportunity Commission (EEOC), sexual harassment is defined as “unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature . . . when . . . submission to or rejection of such conduct is used as the basis for employment decisions . . . or such conduct has the purpose or effect of . . . creating an intimidating, hostile or offensive working environment.”

There are two types of sexual harassment:

- “Quid pro quo” harassment, where submission to harassment is used as the basis for employment decisions. Employee benefits such as raises, promotions and better working hours are directly linked to compliance with sexual advances. Therefore, only someone in a supervisory capacity (with the authority to grant such benefits) can engage in quid pro quo harassment. Examples: A supervisor promising an employee a raise if she goes on a date with him; a manager telling an employee she will fire him if he does not have sex with her.
- “Hostile work environment,” where the harassment creates an offensive and unpleasant working environment. A hostile work environment can be created by anyone in the work environment, whether it be supervisors, other employees or customers. Hostile environment harassment consists of verbiage of a sexual nature, unwelcome sexual materials or even unwelcome physical contact as a regular part of the work environment. Texts, e-mails, cartoons or posters of a sexual nature; vulgar or lewd comments or jokes; or unwanted touching or fondling all fall into this category.

Sexual harassment occurs when unsolicited and unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature:

- Is made explicitly or implicitly a term or condition of employment.
- Is used as a basis for an employment decision.
- Unreasonably interferes with an employee’s work performance or creates an intimidating, hostile or otherwise offensive environment.

Sexual harassment may take different forms. The following examples of sexual harassment are intended to be guidelines and are not exclusive when determining whether there has been a violation of this policy:

- Verbal sexual harassment includes innuendoes, suggestive comments, jokes of a sexual nature, sexual propositions, lewd remarks and threats; requests for any type of sexual favor (this includes repeated, unwelcome requests for dates); and verbal abuse or “kidding” that is oriented toward a prohibitive form of harassment, including that which is sexual in nature and unwelcome.
- Nonverbal sexual harassment includes the distribution, display or discussion of any written or graphic material, including calendars, posters and cartoons that are sexually suggestive or show hostility toward an individual or group because of sex; suggestive or insulting sounds; leering; staring; whistling; obscene gestures; content in letters and notes, facsimiles, e-mail, photos, text messages, tweets and Internet postings; or other form of communication that is sexual in nature and offensive.
- Physical sexual harassment includes unwelcome, unwanted physical contact, including touching, tickling, pinching, patting, brushing up against, hugging, cornering, kissing and fondling and forced sexual intercourse or assault.

Courteous, mutually respectful, pleasant, non-coercive interactions between employees, including men and women, that are appropriate in the workplace and acceptable to and welcomed by both parties are not considered to be harassment, including sexual harassment.

Retaliation

No hardship, loss, benefit or penalty may be imposed on an employee in response to:

- Filing or responding to a bona fide complaint of discrimination or harassment.
- Appearing as a witness in the investigation of a complaint.

- Serving as an investigator of a complaint.

Retaliation or attempted retaliation in response to lodging a complaint or invoking the complaint process is a violation of this policy. Any person who is found to have violated this aspect of the policy will be subject to sanctions up to and including termination of employment.

Consensual Romantic or Sexual Relationships

The City of Muncie strongly discourages romantic or sexual relationships between a manager or other supervisory employee and his or her staff (an employee who reports directly or indirectly to that person) because such relationships tend to create compromising conflicts of interest or the appearance of such conflicts. In addition, such a relationship may give rise to the perception by others that there is favoritism or bias in employment decisions affecting the staff employee. Moreover, given the uneven balance of power within such relationships, consent by the staff member is suspect and may be viewed by others or, at a later date, by the staff member as having been given as the result of coercion or intimidation. The atmosphere created by such appearances of bias, favoritism, intimidation, coercion or exploitation undermines the spirit of trust and mutual respect that is essential to a healthy work environment. If there is such a relationship, the parties need to be aware that one or both may be moved to a different department, or other actions may be taken.

If any employee of the City of Muncie enters into a consensual relationship that is romantic or sexual in nature with a member of his or her staff (an employee who reports directly or indirectly to him or her), or if one of the parties is in a supervisory capacity in the same department in which the other party works, the parties must notify the human resource director or other appropriate corporate officer. Because of potential issues regarding quid pro quo harassment, the City of Muncie has made reporting mandatory. This requirement does not apply to employees who do not work in the same department or to parties who do not supervise or otherwise manage responsibilities over the other.

Once the relationship is made known to the City of Muncie, the City of Muncie will review the situation with human resources in light of all the facts (reporting relationship between the parties, effect on co-workers, job titles of the parties, etc.) and will determine whether one or both parties need to be moved to another job or department. If it is determined that one party must be moved, and there are jobs in other departments available for both, the parties may decide who will be the one to apply for a new position. If the parties cannot amicably come to a decision, or the party is not chosen for the position to which he or she applied, the parties will contact human resources, which will decide which party should be moved. That decision will be based on which move will

be least disruptive to the organization as a whole. If it is determined that one or both parties must be moved, but no other jobs are available for either party, the parties will be given the option of terminating their relationship or resigning.

Complaint Process

The City of Muncie will courteously treat any person who invokes this complaint procedure, and the City of Muncie will handle all complaints swiftly and confidentially to the extent possible in light of the need to take appropriate corrective action. Lodging a complaint will in no way be used against the employee or have an adverse impact on the individual's employment status. Because of the damaging nature of harassment to the victims and to the entire workforce, aggrieved employees are strongly urged to use this procedure. However, filing groundless or malicious complaints is an abuse of this policy and will be treated as a violation.

Confidentiality

The employee assistance program (EAP) provides confidential counseling services to the City of Muncie employees. Individuals wishing to discuss an incident confidentially or seeking information and advice of a personal nature are encouraged to contact the EAP. The role of the EAP in such cases will be limited to personal counseling and treatment for the person who is then an EAP client. Contacting the EAP will not qualify as notification to the City of Muncie of a potential harassment or discrimination issue (see below complaint procedure for more on how to notify the City of Muncie of an issue or complaint).

During the complaint process, the confidentiality of the information received, the privacy of the individuals involved and the wishes of the complaining person will be protected to as great a degree as is possible. The expressed wishes of the complaining person for confidentiality will be considered in the context of the City of Muncie's legal obligation to act on the charge and the right of the charged party to obtain information. In most cases, however, confidentiality will be strictly maintained by the City of Muncie and those involved in the investigation. In addition, any notes or documents written by or received by the person(s) conducting the investigation will be kept confidential to the extent possible and according to any existing state or federal law.

Complaint procedure

The City of Muncie has established the following procedure for lodging a complaint of harassment, discrimination or retaliation. The City of Muncie will treat all aspects of the procedure confidentially to the extent reasonably possible.

1. An individual who feels harassed, discriminated or retaliated against may initiate the complaint process by filing a complaint in writing with the City of Muncie's human resource (HR) director. No formal action will be taken against any person under this policy unless HR has received a written and signed complaint containing sufficient details to determine if the policy may have been violated. The complainant (the employee making the complaint) may obtain the complaint form from the HR department. If a supervisor or manager becomes aware that harassment or discrimination is occurring, either from personal observation or as a result of an employee's coming forward, the supervisor or manager should immediately report it to the HR director.
2. Upon receiving a complaint or being advised by a supervisor or manager that violation of this policy may be occurring, the HR director will notify the City of Muncie and review the complaint with the City of Muncie's legal counsel.
3. Within five working days of receiving the complaint, the HR director will notify the person(s) charged [hereafter referred to as "respondent(s)"] of a complaint and initiate the investigation to determine whether there is a reasonable basis for believing that the alleged violation of this policy occurred.
4. During the investigation, the HR director, together with legal counsel or other management employees, will interview the complainant, the respondent and any witnesses to determine whether the alleged conduct occurred.
5. Within 15 business days of the complaint being filed (or the matter being referred to the HR director), the HR director or other person conducting the investigation will conclude the investigation and submit a written report of his or her findings to the City of Muncie.
6. If it is determined that harassment or discrimination in violation of this policy has occurred, the HR director will recommend appropriate disciplinary action. The appropriate action will depend on the following factors: a) the severity, frequency and pervasiveness of the conduct; b) prior complaints made by the complainant; c) prior complaints made against the respondent; and d) the quality of the evidence (e.g., first-hand knowledge, credible corroboration).
7. If the investigation is inconclusive or if it is determined that there has been no violation of policy but potentially problematic conduct may have occurred, the HR director may recommend appropriate preventive action.

8. Within five days after the investigation is concluded, the HR director will meet with the complainant and the respondent separately, notify them of the findings of the investigation, and inform them of the action being recommended.
9. The complainant and the respondent may submit statements to the HR director challenging the factual basis of the findings. Any such statement must be submitted no later than five working days after the meeting with the HR director in which the findings of the investigation are discussed.
10. Within 10 days from the date the HR director meets with the complainant and respondent, the City of Muncie will review the investigative report and any statements submitted by the complainant or respondent, discuss results of the investigation with the HR director and other management staff as may be appropriate, and decide what action, if any, will be taken. The HR director will report the City of Muncie's decision to the complainant, the respondent and the appropriate management assigned to the department(s) in which the complainant and the respondent work. The City of Muncie's decision will be in writing and will include findings of fact and a statement for or against disciplinary action. If disciplinary action is to be taken, the respondent will be informed of the nature of the discipline and how it will be executed.

Alternative legal remedies

Nothing in this policy may prevent the complainant or the respondent from pursuing formal legal remedies or resolution through local, state or federal agencies or the courts.