

Workplace & Sexual Harassment Policy

It is the policy of The City of Mandan to maintain a professional work environment that is free of intimidation, coercion, or any form of harassment, including sexual harassment.

All employees should conduct themselves in a respectful manner to others. Behavior in the form of intimidation, coercion, harassment, or that is sexual in nature is inappropriate and prohibited. This policy applies to all business or related interactions, as well as all practices involved with all means of communication including electronic communication. Electronic communication includes e-mail, voice mail, fax, telephone, or any other form of electronic transmissions.

As a guide for employees, supervisors, department heads, commissioners and all individuals involved, sexual harassment is defined as:

Unwelcome sexual advances, requests for sexual favors, other verbal or physical conduct of a sexual nature constitute sexual harassment when:

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

In the event of a question, complaint, violation or allegation regarding this policy, employees should speak with their supervisor or human resources. An allegation of harassment, sexual or other, is a serious matter, and will be treated in a discreet and confidential manner.

Federal Law

Title VII of the Civil Rights Act prohibits harassment of an employee based on race, color, sex, religion, or national origin. The Age Discrimination in Employment Act prohibits harassment of employees who are 40 or older based on age, the Americans with Disabilities Act prohibits harassment based on disability, and the Genetic Information Nondiscrimination Act of 2008 prohibits harassment of an employee based on genetic information. Anti-discrimination statutes enforced by the U.S. Equal Employment Opportunity Commission prohibit retaliation for complaining of harassment or participating in complaint proceedings.

The City of Mandan as employer will not tolerate harassment based on race, sex, religion, national origin, age, disability, or genetic information, or harassment based on opposition to discrimination or participation in complaint proceedings. The City of Mandan as employer will not tolerate retaliation against anyone who complains of harassment or who participates in an investigation of complaint(s).

When does harassment violate federal law?

Harassment violates federal law if it involves discriminatory treatment based on race, color, sex (with or without sexual conduct), religion, national origin, age, disability, genetic information, or because the employee opposed job discrimination or participated in an investigation or complaint proceeding under the EEO statutes. The conduct must be sufficiently frequent or severe to create a hostile work environment or result in a "tangible employment action", such as hiring, firing, promotion, or demotion.

When is an employer legally responsible for harassment by a supervisor?

An employer is always responsible for harassment by a supervisor that culminates in a tangible employment action. If the harassment did not lead to a tangible employment action, the employer is liable unless it proves that: 1) it exercised reasonable care to prevent and promptly correct any harassment, *and* 2) the employee unreasonably failed to complain to management or to avoid harm otherwise.

Supervisor

Is a person who has authority to recommend tangible employment decisions affecting an employee, *or* has authority to direct the employees daily work activities. Can be in the chain of command.

Tangible Employment Action

Is a significant change in employment status such as hiring, firing, promotion, demotion, and undesirable reassignment, significant change in benefits, compensation and work assignment.

Non-tangible Employment Actions

Harassment of an employee by a supervisor that does not result in a tangible employment action is deemed to create a "hostile environment". Defense to liability or damages in such cases must prove: that employer exercised reasonable care to promptly prevent and correct such actions, and that employees failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm in other ways.

Complaint Process

Employees are encouraged to report harassment to management before it becomes severe or pervasive. To the extent possible, confidentiality will be protected. If the complaint involves an employees immediate supervisor, make the complaint directly Human Resources or the Personnel Director.

Complaint Information

Complaints must provide a clear explanation of prohibited conduct, including who, what, when, where, and how. Information about employee's reaction and subsequent actions must be included, as well as how the harassment affected them, including employment issues. Other persons who have relevant information must be named, including those present when actions occurred or other people the complainant confided in. Information concerning harassment of others witnessed by complainant may be included, if applicable. Any documents or physical evidence of the harassment must be reported in the complaint, along with other information that may be relevant to the

investigation. The complainant employee should also include information as to desired resolution.

Investigation Procedure

The City of Mandan will conduct a prompt, thorough, and impartial investigation of all harassment claims deemed to have violated federal law. The alleged harasser will not have any direct or indirect control over the investigation. Interviews will be conducted with the employee complainant, the alleged harasser, and others who could reasonably be expected to have relevant information. Before completion of the investigation, the City of Mandan will take steps to make sure that alleged harassment does not continue. If the parties have to be separated during an investigation period, the separation must not unduly burden the complainant, but could involve transfer to another department, scheduling changes, or possible non-disciplinary leave of absence with pay for complainant or alleged harasser.

Management Questions

What is the alleged harassers response to the allegations?

What is the complainant's motivation?

Are there any persons who may have relevant information?

Are there physical notes, documentation or other physical evidence regarding the alleged incident(s)?

Third Parties Questions

What did you see or hear?

When did this occur? Please describe the alleged harassers' behavior toward the complainant and toward others in the workplace.

What did the complainant tell you, and when?

Do you know of any other relevant information?

Are there other persons who you believe might have relevant information?

Credibility Determinations

Inherent Plausibility: Is the testimony believable on its face? Does it make sense?

Demeanor: Did the person seem to be telling the truth or lying?

Corroboration: Is there witness testimony or physical evidence that corroborates the party's testimony?

Past Record: Did the alleged harasser have a history of similar behavior in the past?

Determination

If it is determined that harassment has occurred, the City of Mandan will take immediate measures to stop the harassment and ensure that it does not recur. Disciplinary measures will be proportional to the seriousness of the offense, and as far as possible, corrective measures will be taken, such as restoring leave taken because of the harassment and expunging negative evaluation in an employee's file that arose from the harassment, as examples.

Other Measures to Prevent and Correct Harassment

The City of Mandan is responsible to correct harassment that is clearly unwelcome regardless of whether a complaint is filed. As an example, graffiti found in the workplace(s) that contains racial or sexual epithets should be erased as soon as discovered. The City of Mandan will ensure that its supervisors and managers understand their responsibilities under this policy, and will screen applicants for supervisory jobs to see if they have a history of engaging in harassment. The City of Mandan will keep records of harassment complaints and check those records when a subsequent complaint is made to reveal any patterns that may be present.

Employee Responsibly

Employees must take reasonable steps to avoid harm from the harassment by using the harassment complaint procedure. In addition, if you witness harassment report it.

Federal EEOC Involvement

If an employee complainant feels that management does not act promptly to investigate their complaint, it may be appropriate to file a charge with the federal EEOC. The deadline for filing an EEOC charge in the State of North Dakota is 300 days after the last date of alleged harassment. This deadline is not extended because of an employer's internal investigation of the complaint.

This policy updates existing policy.

Effective date of this policy: 6-22-2011



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City Of Mandan