

SEXUAL HARASSMENT POLICY

City of Winona

DECEMBER 11, 2000

Introduction and Statement of Purpose

The City of Winona is committed to maintaining a work environment free of discrimination. Accordingly, the City will not tolerate sexual harassment against its employees by anyone, including supervisors, managers, co-employees, vendors, members of the community or any other persons. Likewise, the City expects every employee to treat all others with courtesy, dignity and respect. All supervisors and other employees are responsible to maintain a work environment free of sexual harassment.

The City's sexual harassment policy is intentionally more restrictive than sexual harassment laws. Therefore, conduct that might not violate federal or state sexual harassment law may still violate the City's sexual harassment policy. Employees violate this policy (1) by engaging in prohibited conduct, (2) by failing to report violations of the policy, (3) by failing to cooperate in a sexual harassment investigation, or (4) by retaliating against an employee or other person for making a charge of or reporting a violation of sexual harassment under the law or under this policy.

Prohibited Conduct

An employee violates the City's sexual harassment policy when he or she does any of the following while on duty for or assignment by the City:

- Making any romantic or sexual advance toward any employee or any other person when the employee making the advance knows or reasonably should know that the advance would be unwelcome or offensive to the subject, or offensive to any person observing the advance;
- Making, posting or circulating in any manner a single sexually explicit joke or remark;
- Making, displaying or circulating in any manner a joke or remark that a reasonable person may find condescending toward his or her gender;
- Displaying or circulating in any manner any pornographic or sexually suggestive image;
- Using City equipment intentionally to acquire or view any pornographic or sexually suggestive image;
- Making the submission or tolerance of any conduct prohibited by this policy either explicitly or implicitly a term or condition of employment;

SEXUAL HARASSMENT POLICY
DECEMBER 11, 2000
PAGE 2

- Basing any employment decision affecting an individual on that individual's submission to or tolerance of any conduct prohibited by this policy;
- Engaging in any unwelcome verbal or physical conduct of a sexual nature; or
- Engaging in any other conduct that is likely to have substantially the same effect as, or that is substantially related to, the conduct specifically prohibited by this policy.

Employees might in some instances have a legitimate purpose to display or circulate statements and images that might otherwise violate this policy. For example, the employee may forward to a supervisor a complaint of harassment and its specific subject matter. This policy does not prohibit these and other communications meant to further the City's legitimate policies or purposes.

Retaliation

No employee is permitted to retaliate against any person who makes a charge or report of the violation of sexual harassment under the law or under this policy. An employee violates this policy if the employee commits any act of retaliation against any person known or perceived by the employee to have charged or reported sexual harassment against any person.

Definitions

Unless otherwise indicated, the terms of this policy have their common meaning as reasonably interpreted at the City Manager's discretion. Otherwise, the terms will be defined as follows:

"Circulating" will be broadly construed to include not only physical circulation, but also distribution or transmission by electronic or other means, such as electronic mail, facsimile or telephone.

"Pornographic image" includes any image depicting a human sex act or nudity.

"Retaliation" will be broadly construed. It includes any act tending to punish, embarrass or harm an individual based in whole or in part on that individual's charge or report of sexual harassment. Retaliatory prohibited acts include, but are not limited to, decisions concerning the individual's employment, pay, performance evaluations, and duty assignments. They also include retaliatory enforcement of policies, laws or procedures.

SEXUAL HARASSMENT POLICY
DECEMBER 11, 2000
PAGE 3

“Romantic or sexual advance” will be broadly construed and includes any conduct or statement that a reasonable person would perceive as (1) requesting a date, (2) suggesting or encouraging a romantic, or a sexual relationship, or a sexual favor, or (3) expressing romantic or sexual interest in the person.

“Sexual harassment”: Unless otherwise stated, the term “sexual harassment” in this policy refers to the concept as defined under this policy, rather than as defined under any federal or state law or by any other source.

“Sexually suggestive image” is more inclusive than “pornographic image” and includes any human image reasonably construed as sexual objectification either of the image’s subject or members of the subject’s gender.

“Verbal or physical conduct of a sexual nature” will be broadly construed and includes sexual innuendos, sexually suggestive comments, sexually descriptive words or comments, graphic comments about an individual’s body, sounds, leering, whistling, sexual gestures, displaying sexually suggestive objects, and unwanted touching, pinching, or any form of coercion for sexual contact.

“While on assignment for the City” includes both on-duty and off-duty periods while the employee is out of town at City-sponsored or City-authorized training, seminars or other events.

Reporting Requirements

Every employee has the duty to report any observed violation of this sexual harassment policy.

Subject Employee Reporting Encouragement

Any non-supervisor employee who is the subject of sexual harassment or retaliation should report the offense to his or her supervisor promptly. Any supervisor who is the subject of sexual harassment or retaliation *must* report the offense to his or her supervisor promptly. If the employee’s supervisor is involved in the harassment, the employee may report the offense to the department head or the City Manager’s chief administrative assistant. Immediate reports ensure that the City has the knowledge to employ prompt remedial measures to end sexual harassment or retaliation.

Non-Supervisor, Non-Subject Employee Reporting Requirement

Any non-supervisory employee who observes a violation of this policy and who is not the specific subject of the harassment or retaliation, *must* report the violation promptly to one of the following individuals: (1) The reporting employee’s immediate supervisor, (2)

SEXUAL HARASSMENT POLICY
DECEMBER 11, 2000
PAGE 4

the reporting employee's department head, or (3) the City Manager's chief administrative assistant.

Supervisor Reporting Requirement

Every report of a violation of this policy should reach the City Manager promptly, without regard to any perceived merit or lack of merit of the report.

When any supervisor observes an act or statement that the supervisor believes may violate this policy, or when the supervisor receives a report of a violation, the supervisor will promptly complete a Sexual Harassment Preliminary Report Form and provide it to the department head. If the supervisor believes the department head may be involved in the alleged violation, the supervisor shall submit this Report Form directly to the City Manager.

When a department head receives a report of harassment directly from the charging employee, the department head will complete the Report Form and submit it to the City Manager promptly.

A department head who receives a Report Form reporting a policy violation will promptly notify the City Manager of the report and provide the City Manager the Report Form.

Confidentiality

The City will employ every effort to maintain the confidentiality of the sexual harassment complaint. All employees, including supervisors, should treat all information in a sexual harassment complaint with strict confidence. However, no supervisor should suggest to any employee that a sexual harassment complaint can be made anonymously.

Ultimately, the accused employee will necessarily learn the identity of the charging employee. This is necessary to ensure fairness to the charged employee in the investigation. This should not discourage reports of sexual harassment. Reporting employees will be informed of the findings and conclusions of the investigation.

Investigation and Discipline

The City Manager has discretion to determine the depth, scope and process of each investigation on a case by case basis, considering the nature and circumstance of each reported violation. The City Manager may consider, among other things, the recommended findings of any investigation, and the City Manager has the final judgment as to whether an employee has violated the policy.

The City will discipline every employee found to have violated the policy. The City Manager will determine the type and degree of discipline. **Any employee found by the City Manager to have violated this policy, even for a first offense, may be discharged.**

SEXUAL HARASSMENT POLICY
DECEMBER 11, 2000
PAGE 5

In those cases in which the employee is not discharged, the City Manger will issue discipline at least as follows:

- For the first violation, the non-supervisor employee shall be suspended for two days without pay.
- For the a second violation, the non-supervisor employee *shall be* suspended for one week without pay.
- For the third violation, the non-supervisor employee *shall be* suspended for two weeks without pay.
- For a fourth violation, the non-supervisor employee *shall be* terminated.
- For a supervisor's first violation, the supervisor *shall be* suspended for one week without pay.
- For a supervisor's second violation, the supervisor *shall be* suspended for two weeks without pay.
- For a supervisor's third violation, the supervisor *shall be* terminated.

As soon as possible after returning from discipline, the employee will be assigned to undergo additional sexual harassment training determined by the City.