



RESPECTFUL WORKPLACE

PM-30-01

Section: 30-00, EQUAL EMPLOYMENT COMPLIANCE

I. Equal Employment Opportunity Policy and Procedures

A. Purpose and Scope

The City of Memphis Government is an equal opportunity employer. It is the policy of the City of Memphis Government that there shall be no discrimination in city employment of personnel because of religion, race, sex, creed, political affiliation, national origin, ethnicity, age, disability, sexual orientation, gender identity or other non-merit factors, nor shall there be any discrimination in the promotion or demotion of city employees because of religion, race, sex, creed, political affiliation, national origin, ethnicity, age, disability, sexual orientation, gender identity or other non-merit factors. Gender identity means the actual or perceived gender-related identity, appearance, or mannerisms, or other gender-related characteristics of an individual, with or without regard to the individual's designated sex at birth. The City of Memphis Government will conform to the spirit as well as the letter of all applicable laws and regulations.

The policy of equal employment opportunity and anti-discrimination applies to all aspects of the relationship between the City of Memphis and its employees, including but not limited to:

1. Recruitment
2. Employment
3. Promotion
4. Transfer
5. Training
6. Working conditions
7. Wages and salary administration
8. Employee benefits and application of policies

The policies and principles of equal employment opportunity also apply to the selection and treatment of independent contractors, personnel working on our premises who are employed by temporary agencies and any other persons or firms doing business for or with the City of Memphis Government.



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B. Covered Parties

A charge must allege that a covered entity, such as the City of Memphis Government, took a discriminatory action against a covered individual. The following sections discuss who is protected by the EEO statutes.

1. Who is an “Employee”?

In most circumstances, an individual is only protected if s/he was an “employee” at the time of the alleged discrimination, rather than independent contractor or other non-employee. For purposes of this policy, an “employee” is defined as individual employed by an employer. However, there are a number of factors to indicate whether a worker is in an employment relationship with the City for purposes of EEO coverage.

2. Coverage of Former Employees

Former employees are protected by the EEO statutes when they are subjected to discrimination arising from the former employment relationship.

3. Coverage of Training Program Applicants and Participants

An applicant to, or a participant in, a training or apprenticeship program is protected against discrimination with respect to admission to, or participation in, the training or apprenticeship program, regardless of whether the individual is an “employee.”

4. Coverage of Elected Officials and their Personal Staff, Appointees and Immediate Advisers.

Elected Officials: Elected officials are specifically excluded from coverage under Title VII, the ADEA, and the EPA. However, the ADA does not exclude elected officials from coverage.

Personal Staff, Appointees and Advisers: Members of an elected official’s personal staff, appointees on the policy making level, and immediate advisers on the exercise of constitutional or legal powers of the elected officials office are covered by Title VII, the ADEA, and the ADA; however, charges filed by those



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individuals are subject to modified enforcement procedures pursuant to section 321 of the Civil Rights Act of 1991.

C. Dissemination and Implementation of Policy

The Division Directors or designees will be responsible for the dissemination of this policy. Directors, managers, supervisors and other members of management are responsible for implementing equal employment practices within each division/service center. The Human Resources Division is responsible for the City of Memphis Government's overall compliance, and shall maintain personnel records in compliance with applicable laws and regulations.

This policy shall be covered with all new employees during New Hire Orientation. As a result, all new hire employees will be required to sign an acknowledgment form indicating that s/he was advised of the content of this entire policy and will thereby comply with its terms and conditions. The policy will be covered with all current employees, who likewise will be required to sign acknowledgment forms.

City of Memphis Government practices that support this policy include the following:

1. The City of Memphis Government displays posters regarding equal employment opportunity in areas highly visible to employees.
2. All advertising for job applicants includes the statement "An Equal Opportunity Employer -----M/F/D/V."
3. The City of Memphis Government will post all required job openings in accordance with the rules and regulations promulgated by City Charter and/or Ordinance.
4. The City of Memphis Government forbids retaliation against any individual who files a charge of discrimination, reports harassment, or who assists, testifies or participates in an equal employment proceeding.
5. Employees are required to report to a member of management, or the EEO/Labor Relations office of any apparent discrimination or harassment. The report should be made within forty-eight (48) hours of the incident.
6. The Human Resources representative should promptly notify the EEO/Labor Relations office of any and all incidents or reports of discrimination and/or harassment.



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D. Discipline

Employees who violate this policy are subject to appropriate discipline. If an investigation results in a finding that this policy has been violated, the mandatory minimum discipline is a written reprimand. The discipline for very serious or repeat violations is severe discipline up to and including termination of employment. Persons who violate this policy also are subject to civil damages and/or criminal penalties.

The procedures available under this policy do not preempt or supersede any legal procedures or remedies otherwise available to a victim of discrimination under state or federal law

E. Confidentiality

All inquiries, complaints, and investigations are treated confidentially. Information is revealed strictly on a need to know basis. Information contained in a formal complaint is kept confidential to the extent allowed pursuant to the Open Records Act. However, the identity of the complainant usually is revealed to the respondent and witnesses. The EEO/Labor Relations office takes adequate steps to ensure that the complainant is protected from retaliation during the period of the investigation.

All information pertaining to complaint of discrimination or the investigation of such is maintained by the EEO/Labor Relations office in secure files.

F. Harassment

Harassment is prohibited by federal and state laws. This policy prohibits harassment of any kind, and the City will take swift appropriate action to address any violations of this policy.

For purposes of this policy, harassment is defined as: verbal or physical conduct designed to threaten, intimidate or coerce. Also, verbal taunting (including racial and ethnic slurs) which, in the employee's opinion, impairs his or her ability to perform his or her job.

Examples of harassment are as follows:

- (1) Verbal: Comments which are not flattering regarding a person's religion, race, sex, creed, political affiliation, national origin,



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ethnicity, age, disability, sexual orientation, gender identity or any other non-merit factor which includes but not limited to epithets, slurs, negative stereotyping.

(2) Non-verbal: Distribution, display or discussion of any written or graphic material that ridicules, denigrates, insults, belittles, or shows hostility or aversion toward an individual, or group because of their religion, race, sex, creed, political affiliation, national origin, ethnicity, age, disability, sexual orientation, gender, gender identity, genetics, pregnancy, appearance disability, political affiliation, marital or or any other non-merit factors.

G. Discrimination

It is a violation of this policy to discriminate in the provision of employment opportunities 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 religion, race, sex, creed, political affiliation, national origin, ethnicity, age, disability, sexual orientation, gender identity or other non-merit factors. Gender identity means the actual or perceived gender-related identity, appearance, or mannerisms, or other gender-related characteristics of an individual, with or without regard to the individual's designated sex at birth. Discrimination of this kind may also be strictly prohibited by a variety of federal, state and local laws, including but not limited to Title VII of the Civil Rights Act 1964; Equal Pay Act, the Age Discrimination in Employment Act of 1975; the Genetic Information Non-Discrimination Act of 2008, Americans with Disabilities Act of 1990 and City of Memphis Ordinance Section 3-8-4 and Section 3-8-6. 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 severe sanctions up to and including termination.

1. Responsibility of Employees

If an employee believes that she/he has been subjected to discrimination, she/he should report the alleged act of discrimination to his/her immediate supervisor/manager and/or the EEO/Labor Relations office, Division of Human Resources



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All incidents of discrimination must be reported as soon as possible in order to avoid spoliation of information and/or records. Publicizing information about alleged discrimination without following the proper reporting procedures or filing a complaint might be considered evidence of a vexatious intent on part of the accuser.

2. Responsibility of Management

Management must deal expeditiously and fairly with all allegations of discrimination within their respective departments whether or not there has been a written or formal complaint filed. Additionally, management must:

- a. Stop any acts that they see that may be viewed as an act of discrimination and take appropriate steps to intervene;
- b. Express strong disapproval of all forms of discrimination;
- c. Act promptly to investigate allegations of discrimination;
- d. Ensure that allegations of discrimination are reported to the Division Director and EEO/Labor Relations office;
- e. Take corrective action to prevent prohibited conduct from reoccurring;
- f. Take immediate action to prevent retaliation towards the complaining party or any participant in an investigation;
- g. Take immediate action to eliminate any hostile work environment where there has been a complaint of discrimination.

Members of management who knowingly allow or tolerate discrimination are in violation of this policy and will be subject to discipline up to and including termination.

3. Responsibility of the EEO/Labor Relations Office, Human Resources

The EEO/Labor Relations Office is responsible for:

- a. Ensuring that the individual filing the complaint (hereafter referred to as the complainant) as well as management are aware of the seriousness of the complaint;



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- b. Explaining the City of Memphis Government's non-discrimination policy and its investigation procedures to the complainant and management;
- c. Exploring informal means of resolving discrimination complaints;
- d. Notifying police and legal if criminal activities are alleged; and
- e. Arranging for an investigation of the alleged discrimination and the preparation of a written report.

4. Informal Resolution Procedures

Any employee who feels that she/he is being subjected to discrimination should report all incidents to his/her manager and the EEO/Labor Relations/Human Resources. Some complaints can be resolved through informal mediation between the employee and the member of management who is allegedly responsible for the discriminatory act. The EEO/Labor Relations office/Human Resources, arranges for or facilitates mediation between the parties and coordinates other informal problem resolution measures.

If mediation is successful, a written settlement agreement must be prepared. Generally, the mediation agreement includes:

- a. A pledge by management not to engage in any behavior that could be construed as in violation of this policy
- b. A promise by management not to retaliate against the complainant;
- c. The restoration of any employment terms, conditions, or opportunities the complainant lost or was denied because of the discriminatory act and for any other relief necessary to remedy the situation; and
- d. Procedures for monitoring compliance with the agreement.

The settlement agreement must be in writing, signed by both parties, notarized and approved by the EEO/Labor Relations office.

If the complaint cannot be resolved informally, the complainant should follow the formal resolution procedures set forth below.



5. Formal Resolution Procedures

All incidents of discriminatory conduct should be reported. Employees who consider themselves victims of discrimination should make a complaint to the alleged discriminator or to the next higher level of supervision or management as soon as possible. Complaints should also be made to the City of Memphis Equal Employment Opportunity Office; or if an employee chooses, charges may be filed with the Federal Equal Employment Opportunity Commission or with the Tennessee Human Rights Commission.

Individuals who wish to file charges with either the City's Equal Employment Opportunity Office or the Federal Equal Employment Opportunity Commission must do so within 300 days from the date of the alleged violation or from the date s/he became aware of the alleged violation. Individuals who wish to file charges with the Tennessee Human Rights Commission must do so within 180 days from the date of the alleged violation or from the date s/he became aware of the alleged violation.

Complaints should be filed as soon as possible after an incident of alleged discrimination. To ensure a prompt and thorough investigation possible discriminatory conduct, the complainant should provide as much of the following information as is possible:

1. The name, department, and position of the person or persons allegedly responsible for the discriminatory conduct;
2. A description of the incident(s), including the date(s), location(s), and the presence of any witnesses;
3. The alleged affect of the incident(s) on the complainant's position, salary, benefits, promotional opportunities, or other terms or conditions of employment;
4. The names of similarly-situated employees who were treated differently from the complainant;
5. The names of other employees who might have been subjected to the same or similar discriminatory behavior/actions.
6. Any other information the complainant believes to be relevant to the complaint.



H. Sexual Harassment

Sexual harassment is unwanted sexual attention of a persistent or offensive nature made by a person who knows, or reasonably should know, that such attention is unwanted. Sexual harassment includes sexually oriented conduct that is sufficiently pervasive or severe to unreasonably interfere with an employee's job performance or create an intimidating, hostile, or offensive working environment. Additionally, sexual harassment is unwelcome sexual advances, sexual favors or verbal, written, or physical conduct of a sexual nature by a manager, supervisor, co-worker or non-employee (customers, vendors, contractors or volunteers). Sexual harassment in any form is prohibited under this policy. Sexual harassment is a form of discrimination and is unlawful under Title VII of the Civil Rights Act of 1964 as amended.

While sexual harassment encompasses a wide range of conduct, some examples of specifically prohibited conduct include but are not limited to the following:

1. Promising, directly or indirectly, an employee a reward, if the employee complies with a sexually oriented request;
2. Threatening, directly or indirectly, to retaliate against an employee, if the employee refuses to comply with a sexually oriented request;
3. Denying, directly or indirectly, an employee an employment-related opportunity, if the employee refuses to comply with a sexually oriented request;
4. Engaging in sexually suggestive physical contact or touching another employee in a way that is unwelcome;
5. Displaying, storing, or transmitting pornographic or sexually oriented materials using EMPLOYER equipment or facilities;
6. Engaging in indecent exposure; or
7. Making sexual or romantic advances toward an employee and persisting despite the employee's rejection of the advances.

Sexual harassment can be physical and/or psychological in nature. An aggregation of a series of incidents can constitute sexual harassment even if one of the incidents considered on its own would not be harassing.

Employees are prohibited from harassing other employees whether or not the incidents of harassment occur on the City's premises and whether or not the incidents occur during working hours.



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Sexual harassment can involve males or females being harassed by members of either sex. Although sexual harassment typically involves a person in a greater position of authority as the harasser, individuals in positions of lesser or equal authority also can be found responsible for engaging in prohibited harassment. Consensual sexual or romantic relationships between employees are deemed unwise and are strongly discouraged if one employee has supervisory authority over the other employee.

a. Responsibility of Employees

If an employee believes that he or she has been subjected to sexual harassment or any unwanted sexual attention, the employee should:

1. Make his or her unease and/or disapproval directly and immediately known to the harasser;
2. Make a written record of the date, time, and nature of the incident(s) and the names of any witnesses; and
3. Report the incident to the employee's immediate supervisor/manager, EEO/Labor Relations office, Division of Human Resources or the alleged harasser's supervisor within forty-eight (48) hours. **Under no circumstances shall the individual alleging harassment be required to file a complaint with the alleged harasser.**

All incidents of sexual harassment or inappropriate sexual conduct must be reported. Publicizing information about alleged harassment without following the reporting procedures or filing a formal complaint might be considered evidence of a vexatious intent on part of the accuser.

b. Responsibility of Supervisors

Supervisors must deal expeditiously and fairly with allegations of sexual harassment within their departments whether or not there has been a written or formal complaint. Supervisors must:

1. Stop any acts that they see that may be considered workplace harassment and take appropriate steps to intervene;



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2. Express strong disapproval of all forms of workplace harassment;
3. Act promptly to investigate sexual harassment or inappropriate sexually oriented conduct;
4. Ensure that harassment or inappropriate sexually oriented conduct is reported to the Division Director and EEO/Labor Relations/Human Resources;
5. Take corrective action to prevent prohibited conduct from reoccurring.
6. Take immediate action to prevent retaliation towards the complaining party or any participant in an investigation;
7. Take immediate action to eliminate any hostile work environment where there has been a complaint of workplace harassment.

Supervisors who knowingly allow or tolerate sexual harassment are in violation of this policy and will be subject to discipline up to and including termination.

c. Responsibility of the EEO/Labor Relations Office, Human Resources

The EEO/Labor Relations Office is responsible for:

1. Ensuring that both the individual filing the complaint (hereafter referred to as the complainant) and the accused individual (hereafter referred to as the respondent) are aware of the seriousness of a sexual harassment complaint;
2. Explaining the City of Memphis Government's sexual harassment policy and investigation procedures to the complainant and the respondent;
3. Exploring informal means of resolving sexual harassment complaints;
4. Notifying the police and legal if criminal activities are alleged; and
5. Arranging for an investigation of the alleged harassment and the preparation of a written report.

d. Informal Resolution Procedures



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An employee can often stop or prevent sexual harassment by immediately and directly expressing his or her disapproval of an individual's sexually oriented attention or conduct. In any case, employees should report all incidents of sexual harassment or inappropriate sexually oriented conduct to EEO/Labor Relations or their supervisor within forty-eight (48) hours. In many cases, a supervisor's informal warning to an alleged harasser combined with appropriate follow-up supervision and monitoring of the employee's behavior might be sufficient to prevent or stop sexual harassment. Some complaints can be resolved through informal mediation between the two parties. The EEO/Labor Relations office/Human Resources, arranges for or facilitates mediation between the parties and coordinates other informal problem resolution measures.

If mediation is successful, a written settlement agreement must be prepared. Generally, the mediation agreement includes:

1. A pledge by the respondent not to engage in any behavior that could be construed as in violation of this policy
2. A promise by the respondent not to retaliate against the complainant;
3. The restoration of any employment terms, conditions, or opportunities the complainant lost or was denied because of the harassment and for any other relief necessary to remedy the situation; and
4. Procedures for monitoring compliance with the agreement.
5. The settlement agreement must be in writing, signed by both parties, and approved by the EEO/Labor Relations office/ Human Resources.

If the complaint cannot be resolved informally, the complainant should follow the formal resolution procedures set forth below.

e. Formal Resolution Procedures

All incidents of sexual harassment or inappropriate sexually oriented conduct should be reported. Employees who consider themselves victims of sexual harassment should make a complaint to their immediate supervisor at once. If the immediate supervisor is viewed as the source of the sexual harassment, the matter should be reported to the next higher level of supervision or management. Complaints may also be made to the City of Memphis Equal Employment Opportunity Office, Division of Human



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Resources, City Hall, or if an employee chooses, charges may be filed with the Federal Equal Employment Opportunity Commission or with the Tennessee Human Rights Commission.

Individuals who wish to file charges with either the City's Equal Employment Opportunity Office or the Federal Equal Employment Opportunity Commission must do so with 300 days of the date of the alleged harassment or the date they became aware of the alleged harassment. Individuals who wish to file charges with the Tennessee Human Rights Commission must do so within 180 days from the date of the alleged harassment or the date they became aware of the alleged harassment.

Complaints should be filed as soon as possible after an incident of alleged sexual harassment. To ensure a prompt and thorough investigation of a sexual harassment complaint, the complainant should provide as much of the following information as is possible:

1. The name, department, and position of the person or persons allegedly causing the harassment;
2. A description of the incident(s), including the date(s), location(s), and the presence of any witnesses;
3. The alleged affect of the incident(s) on the complainant's position, salary, benefits, promotional opportunities, or other terms or conditions of employment;
4. The names of other employees who might have been subject to the same or similar harassment;
5. The steps the complainant has taken to try to stop the harassment; and
6. Any other information the complainant believes to be relevant to the harassment complaint.

f. Discipline

Employees who violate this policy are subject to appropriate discipline. If an investigation results in a finding that this policy has been violated, the mandatory minimum discipline is a written reprimand unless otherwise indicated per Memorandum of Understanding or other applicable rules and regulations. The discipline for very serious or repeat violations is severe discipline up to and including termination of employment. Persons who



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violate this policy also are subject to civil damages and/or criminal penalties.

The procedures available under this policy do not preempt or supersede any legal procedures or remedies otherwise available to a victim of sexual harassment under state or federal law

g. Confidentiality

All inquiries, complaints, and investigations are treated confidentially. Information is revealed strictly on a need to know basis. Information contained in a formal complaint is kept confidential to the extent allowed pursuant to the Open Records Act. However, the identity of the complainant usually is revealed to the respondent and witnesses. The EEO/Labor Relations office/Human Resources takes adequate steps to ensure that the complainant is protected from retaliation during the period of the investigation.

All information pertaining to a sexual harassment complaint or investigation is maintained by the EEO/Labor Relations office/Human Resources in secure files.

I. EMPLOYMENT AND ACCOMODATIONS FOR INDIVIDUALS WITH DISABILITIES

The City of Memphis is an equal employment opportunity employer and shall not unlawfully discriminate against applicants or employees because of disability. This policy prohibiting discrimination applies to employment or hiring decisions, compensation, discipline, promotions, training, and all other terms and conditions of employment. The City shall not limit, segregate, or classify employees or applicants for employment in any way which will deprive or tend to deprive any individual of employment opportunities or otherwise affect an individual's status as an employee because of his or her disability. It is further the policy of City of Memphis to provide reasonable accommodations to qualified individuals with disabilities in all aspects of the employment process.

The City of Memphis is prepared to modify or adjust the job application process or the job or work environment to make reasonable accommodations to the known physical or mental limitations of the applicant or employee to enable the applicant or employee to be



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considered for the position he or she desires, to perform the essential functions of the position in question, or to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without disabilities, unless the accommodation would impose an undue hardship or pose a direct threat of substantial harm to the health or safety of the applicant, employee or others.

All employees are required to comply with safety standards. Applicants who pose a direct threat to the health or safety of themselves or other individuals in the workplace or community, which threat cannot be eliminated by reasonable accommodation, will not be hired. Current employees who pose a direct threat to the health or safety of themselves or other individuals in the workplace or community will be placed on appropriate leave until an organizational decision has been made in regard to the employee's immediate employment situation.

The Human Resources Division is responsible for implementing this policy, including resolution of reasonable accommodation, safety, and undue hardship issues.

All City of Memphis employment, within the civil service merit system, is based on the qualifications of the applicant as those qualifications meet the requirements of the position for which the applicant is applying. It is the policy of the City of Memphis Government that it shall NOT (what?):

1. Discriminate against any otherwise qualified individual with a disability with respect to hire, compensation, hours worked, or other terms and conditions of employment solely on the basis of that individual's disability.
2. Limit, segregate, or classify individuals with disabilities in any way which deprives or tends to deprive them of employment opportunities or otherwise affects employee status; unless such limitation, segregation, or classification is because of exceptions as provided by law.
3. Discharge any individual with disability because of their disability. However, this policy does not prohibit the discharge of a individual with a disability.

l) Definitions:

- a) The term **disability** means, with respect to an individual:



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- i) A physical or mental impairment that substantially limits one or more major life activities of such individual;
- ii) A record of such an impairment; or
- iii) Being regarded as having such an impairment
- b) The term **major life activities** include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.
- c) **MAJOR BODILY FUNCTIONS.—** a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.
- d) **REGARDED AS HAVING SUCH AN IMPAIRMENT.—**An individual meets the requirement of 'being regarded as having such an impairment' if the individual establishes that he or she has been subjected to an action prohibited under this Act because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.
 - i) **Regarded as having such an impairment shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.**
- e) The term **qualified individual with a disability** means an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.
- f) The term reasonable accommodation means a modification or adjustment to a job, the work environment, the job application process, or the way things are usually done that enables a qualified individual with a disability to perform the essential functions of the job and to enjoy an equal employment opportunity. Reasonable accommodation includes, but is not limited to, making facilities accessible, adjusting work schedules, restructuring jobs, providing assisting devices or equipment, providing readers or



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interpreters, and modifying examinations, training materials or policies.

a. Requesting Accommodations:

1. Applicants for Employment

- a. All City of Memphis position announcements will contain the statement, "It is the policy of the City of Memphis to provide reasonable accommodations to qualified individuals with a disability who are applicants for employment or employees."
- b. Each applicant invited for an interview shall again be informed of the City of Memphis policy requiring reasonable accommodations to be provided in the hiring process.
- c. Each applicant should make requests for accommodations through the contact person as identified in the vacancy announcement. When requested by an applicant with a disability, the Administration is prepared to modify or adjust the job application process to make reasonable accommodation to the known physical or mental limitations of the applicant to enable the applicant to be considered for the position he/she desires.
- d. Each applicant is responsible for making timely and complete disclosures and specific requests regarding accommodations to meet his or her particular needs in order to enable the City to provide an appropriate response. It is strongly recommended that requests for accommodations be made as soon as possible to avoid delays in providing reasonable accommodations.
- e. An interviewer may not ask an applicant whether or not he/she has a disability. This includes both physical and psychological disabilities. If the applicant volunteers information about a disability, the interviewer shall not ask any questions relating to the nature or extent of the disability or whether treatment will be necessary.
- f. With respect to the ability to perform required job duties, an interviewer may ask each applicant whether or not he/she is able to perform the essential functions of the job applied for with or without reasonable accommodation.

1. If an applicant indicates in response to such an inquiry that he/she can perform the essential functions



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of the job but does not volunteer comment on the need for accommodation, then no inquiry shall be made about the need for an accommodation.

2. If, however, the applicant indicates in response to such an inquiry that he/she can perform the essential functions of the job and does volunteer the need for an accommodation, the interviewer may ask the applicant how he/she will perform the essential functions of the position and what accommodation will be necessary.

b. Current Employees or Applicants Offer Employment:

1. To request a reasonable accommodation, an employee or applicant offered a job is required to submit a written statement to the City of Memphis ADA Coordinator. The written statement must identify the nature of the claimed physical or mental disability, identify the functional limitations with respect to the disability, and identify the requested accommodation(s).
2. An individual who identifies him/herself as having a disability and requests a reasonable accommodation may be required to provide documentation, including medical records, sufficient to establish the existence of the claimed physical or mental impairment and the need for accommodation. The information should be appropriately current and have been prepared by a qualified professional. The employee or applicant offered a job must bear the cost of this initial verification of a disability.
3. The City of Memphis may require an employee or applicant offered a job who is requesting a reasonable accommodation to undergo further testing or evaluation by qualified professionals to verify or further establish the claimed disability, the need for an accommodation, and to provide a basis upon which a reasonable accommodation can be developed or implemented. The cost of such evaluation will be paid by the City of Memphis.
4. If an employee is having difficulty performing his/her job, the supervisor, in consultation with the ADA Coordinator, should inform the employee of the existence of the City of Memphis' policy to provide reasonable accommodations. If the employee requests a reasonable accommodation, the procedures in this policy shall apply. However, if the employee does not request an accommodation, an accommodation will not be offered nor provided.



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c. Providing Accommodations

1. Decision Making Procedures

- a. Each request for an accommodation shall be reviewed on a case-by-case basis. The employee or applicant will be involved in the process of determining potential reasonable accommodations.
- b. The City of Memphis ADA Coordinator will make the decision to approve or deny an accommodation request. If the hiring authority, supervisor or the ADA Coordinator is concerned about providing an accommodation, the hiring authority, supervisor and ADA Coordinator shall consult with the appropriate Division Director.
- c. The decision to approve or disapprove an accommodation request must be made by the ADA Coordinator in writing and provided to the applicant or employee within 20 working days after the filing of a request. If an accommodation request is denied, the written decision must inform the employee or applicant of the complaint procedures available to that individual as listed in Section IV of this policy and procedures.
- d. Where there is more than one effective accommodation, the final decision as to which accommodation will be provided shall be made by the City of Memphis after consideration of the wishes of the individual, the documentation provided, and advice from other appropriate personnel.
- e. A qualified individual with a disability is not required to accept an accommodation, aid, service, opportunity or benefit which such qualified individual chooses not to accept. However, if such individual rejects a reasonable accommodation, aid, service, opportunity or benefit that is necessary to enable the individual to perform the essential functions of the position held or desired, and cannot as a result of that rejection, perform the essential functions of the position, the individual will not be considered a qualified individual with a disability.



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- f. The City of Memphis does not provide individuals with disabilities with personal devices or assistance for personal use, including but not limited to wheelchairs, eye glasses, hearing aids, personal assistance for eating or dressing, or readers for personal use.
- g. When no reasonable accommodation is available to allow an employee with a disability to remain in his/her current position, The City of Memphis will attempt to reassign that employee to a vacant position, which is equivalent in terms of pay and status, within the City of Memphis. The employee must be qualified for the vacant position and the position must be vacant or will be vacant within a reasonable period of time. Assignment to another vacant position is only available to employees that meet the definition of disabled, as described by the ADAA.
- h. All material and information collected from an applicant or employee regarding the individual's accommodation request shall be considered confidential information and be kept in a separate file. Upon completion of the decision making process regarding the accommodation request, all material collected will be kept in a separate, locked file by the ADA Coordinator. This information will be confidential with the following exceptions:
 - 1. Supervisors and managers may be informed regarding necessary accommodations or necessary restrictions on the work or duties of the employee;
 - 2. First aid and safety personnel may be informed, when appropriate, if the disability might require alternative actions in emergency situations;
 - 3. Government officials investigating compliance with non-discrimination laws shall be provided relevant information on request.
- i. The ADA Coordinator will periodically monitor the effectiveness of accommodations provided to applicants or employees.



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2. Assessing Accommodation Requests

Several factors will be considered before asking an individual to further verify the existence of a disability and when reviewing an accommodation request for reasonableness.

a. Requesting Additional Verification

1. Is the employee known to have a disability?
2. Does the applicant or employee have an observable disability?
3. Does the request expand on an existing accommodation or previously provided accommodation for which verification was required?

b. Determining Reasonableness of Accommodation Request

1. Are the job functions for which the accommodation is required essential?
2. Is the applicant or employee otherwise qualified to perform the essential job functions?
3. Does the accommodation accomplish the desired result allowing the individual to overcome limitations of the disability to effectively perform the essential functions of the job or to enjoy the benefits and privileges of similarly situated employees? Is the accommodation necessary and effective?
4. Will the accommodation adversely affect the productivity or work environment of other employees in the work unit?
5. Is the cost of the accommodation feasible within the budget of the City Division?
6. Are there other more cost-effective options which will allow the individual to perform the essential functions of the job?

3. Complaint Process

- a. The City of Memphis has an internal complaint procedure to resolve complaints alleging violations of Section 504 of the Rehabilitation Act of 1973 and the Americans with



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Disabilities Amendment Act. If an applicant, an applicant offered a job, or an employee disagrees with a decision regarding his or her request for an accommodation, a complaint may be filed with the EEO/Labor Relations Office, City Hall Room 414 pursuant to this internal complaint procedure.

- b. Complaints filed pursuant to this internal procedure must be filed within fifteen (15) working days after the complainant is informed of the accommodation decision. Individuals wishing to file such a complaint should immediately contact the EEO/Labor Relations Office for information on the appropriate process.
- c. Use of this internal complaint procedure is **not** a prerequisite to the pursuit of other remedies.

At any time, an individual may pursue other remedies available to him/her under applicable state law or federal law. An employee may contact EEO/Labor Relations Office, Division of Human Resources, to obtain information on existing complaint/grievance resolution processes. An employee may also file a complaint by contacting the city's Ethics Hotline at www.cityofmemphis.alertline.com.

G. PERSONAL RELATIONSHIPS

The City of Memphis Government strongly discourages romantic or sexual relationships between a member of management/ supervisory employees and their (an employee who reports directly or indirectly to that person), and or vendors, contractors or volunteers because such relationships tend to create compromising conflicts of interest or the appearance of such conflicts. For a list of vendors or contractors, you may contact Purchasing in the Finance division. 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 themselves as having been given as the result of coercion or intimidation. The atmosphere created by such appearances of bias, favoritism, intimidation, or coercion or exploitation undermines the spirit of trust and mutual respect which 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 to alleviate this situation.



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As in all cases, the burden of proving sexual harassment rests with the accuser. But, when charges of harassment are brought by the subordinate employee during or subsequent to such a relationship and the supervisor claims that the relationship was consented to by the employee, the burden will be on the supervisor to prove that the relationship was consensual and voluntary. Such activities may lead to discipline, including termination.

- 1. Notification of Personal Relationship:** If a City of Memphis employee enters into a consensual relationship which 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), or with a vendor, contractor or volunteer, the parties must notify their immediate supervisor/manager. Because of potential issues regarding "quid pro quo" harassment, the City has made this a mandatory requirement.
- 2. Procedure after Notification:** Once the relationship is made known to management, management will review the situation with the Human Resources Director in light of all the facts (reporting relationship between the parties, affect 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 the Human Resources Director, who will then 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.

H. LACTATION/BREASTFEEDING POLICY

The City of Memphis Government is committed to promoting equal opportunity in employment. Thus, the City recognizes the important role of women in all of its operations and provides a policy and services that support their continuing employment. The Patient Protection and Affordable Care Act ("PPACA") which amended Section 7 of the Fair



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Labor Standards Act (FLSA) and the Tennessee Code Annotated 50-1-305 requires employers to provide reasonable unpaid break time each day to an employee who needs to express breast milk. Additionally, employers are required under both laws to provide a place other than a bathroom, in which the employee can express milk for up to one (1) year after the birth of the child.

This policy acknowledges the importance of breast-feeding for both mother and baby and supports those employees who continue to breast-feed upon their return from Maternity leave for up to one (1) year after the birth of the child. This policy covers both non-exempt and exempt employees at all locations within the City of Memphis Government.

Lactation accommodation goals are to:

1. Ease the transition of mothers who return to work following the birth of a child.
 2. Enable mothers to breastfeed beyond the time allotted under the Federal Medical Leave Act and the Tennessee Maternity Leave Act time periods.
 3. Assist mothers to attend work rather than having to take time away from work to express milk.
 4. Help control healthcare costs by providing the opportunity to develop a healthier infant.
 5. Ensure that women who are pregnant or considering pregnancy know that breastfeeding will be accommodated by their employer.
 6. Provide a motivating, employee-supportive work environment for all employees.
 7. Assist employees to experience work-life balance.
- a. *Management Responsibilities*
- 1) Ensure that employees who are preparing for maternity leave are aware of this policy.
 - 2) Work with employees returning from maternity leave to adjust schedules to enable adequate time to express breast milk.
 - 3) Ensure this policy is adhered to by doing the following:
 - a) Providing a half hour break every four (4) hours to express milk. This should run concurrently with other paid breaks and/or lunch breaks.



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- b) Extending the work day or shortening the lunch break to enable the employee appropriate breaks to express milk provided the normal break times are insufficient.
- c) Providing a private/sanitary location in close proximity to the employee's work area that contains a lock, comfortable seating, electrical outlets, a sink with hot water and soap. **Under NO circumstances shall the bathroom serve as the lactation area.**
- d) Consult with Human Resources/EEO office for assistance in implementation of this policy.

b. *Employee Responsibilities*

- 1) Employees who wish to express milk during the work day shall keep supervisors informed of their needs via written request so that appropriate accommodations can be made to satisfy the needs of both the employee and the City of Memphis Government.
- 2) Employees shall be responsible for keeping the general lactation room clean for the next user.
- 3) Employees are responsible for providing storage for their expressed milk. All expressed milk must be properly labeled if storing in a general office storage unit (refrigerator).

c. *Non-discriminating/reporting requirements*

Breastfeeding should not constitute as a source of discrimination in employment or in access to employment. It is prohibited under this policy to harass a breastfeeding employee; such conduct unreasonably interferes with an employee's work performance and creates an intimidating, hostile or offensive working environment.

Any incident of harassment of a breastfeeding employee will be addressed in accordance with the City of Memphis Government policies and procedures as well as in accordance with applicable federal, state and local laws for discrimination and harassment. The employee should notify the Division of Human Resources/EEO office if she feels as though she has been subjected to a harassing and or hostile work environment for services rendered under this policy.



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Failure to comply with the terms and conditions outlined in this policy will subject management to discipline, up to and including termination.

I. EMPLOYEE CONDUCT

City employees, as integral members of the City of Memphis Government, shall adhere to acceptable business principles in matters of personal conduct and behavior and must exhibit a high degree of personal integrity. This not only involves respect for the rights and feelings of other City employees, but demands that City employees refrain from any conduct or behavior that is criminal or illegal, or that might be personally harmful to co-workers, members of management, customers, vendors or visitors of the City of Memphis Government or that could be viewed unfavorably by the public at large. Therefore, City employees are expected to behave in a professional manner by conducting themselves in a way that best represents City Government and to exercise appropriate conduct and judgment at all times.

Employees are required to keep their work environment clean and orderly and to carefully maintain equipment that is used in the performance of their work tasks. Willful, deliberate, or careless misuse of City equipment and/or City property shall not be tolerated. Such abuse will lead to disciplinary action up to and including termination and/or assignment of financial responsibility for loss or damage caused.

City of Memphis Government employees are required to accept assigned job responsibilities, adhere to the rules of conduct at all times, and shall not commit criminal or illegal acts against the City of Memphis, other City employees, or the public at large. Violation of this policy shall subject City employees to disciplinary action up to and including termination and/or possible criminal prosecution for either a criminal or illegal act.

If it becomes apparent that an investigation is needed to determine whether or not an employee's conduct or behavior is viewed as criminal or illegal, the employee's Division Director shall immediately notify the Director of Human Resources and the City Attorney. The City Attorney will review the matter, notify the Chief Administrative Officer of City of Memphis Government, and a decision shall be made as to whether or not police involvement is warranted and/or referred to the appropriate legal authority. If the criminal activity involves the City, the decision to prosecute shall be made by the City Attorney and the Chief Administrative



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Officer of the City of Memphis Government. The employee's Division Director should proceed with appropriate disciplinary action against the employee under the direction of the City Attorney and the Human Resources Director.

Additionally, the City of Memphis has an Alertline which is hosted by Global Compliance. The purpose of Alertline is to provide City of Memphis employees, vendors, business partners, and citizens with a system to report and obtain feedback regarding potential acts of fraud, unethical behavior and policy violations. All reporting will be held to the highest level of confidentiality and the reporter may remain anonymous. Reporting may be made online at www.cityofmemphis.alertline.com.

J. VIOLENCE IN THE WORKPLACE

It is the intent of the City of Memphis Government to provide a workplace for its employees, vendors, visitors and customers that is free from violence by establishing preventative measures, holding perpetrators of violence accountable and by providing assistance and support to victims. Committing violent acts, whether on-duty or off-duty, has the potential to impact an employee's ability to perform their job. In implementing this policy, the City is guided by the Federal Occupational Safety and Health Act of 1970 that requires employers to provide their employees with a safe and healthy work environment. It is intended that all useful management tools be employed to accomplish the dual purpose of reducing the effects of violence on victims and providing consequences to those who perpetrate violence. It is also intended that management utilize available resources such as an Employee Assistance Program (EAP), law enforcement, and applicable personnel policies and procedures.

1. Definitions:

a. Workplace Violence includes, but is not limited to, intimidations, bullying, stalking, threats, physical attack, domestic violence or property damage and includes acts of violence committed by City employees, clients, customers, relatives, acquaintances or strangers against a fellow employee, member of management, customer, vendor or visitor to the City's premise.

b. Intimidation is engaging in actions that includes but is not limited to behavior intended to frighten, coerce or induce duress.



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- c. Bullying is unwanted offensive and malicious behavior which undermines an individual or group through persistently negative attacks.
- d. Stalking involves harassing or pestering an individual, in person, in writing, by telephone or electronic format.
- e. Threat is the expression of intent to cause physical or mental harm.
- f. Physical Attack is unwanted or hostile physical contact such as hitting, fighting, pushing, shoving or throwing objects.
- g. Domestic Violence is the use of abusive or violent behavior, including threats and intimidation, between people who have an ongoing or prior intimate relationship.
- h. Property Damage is intentional damage to property and includes property owned by the City, employees, visitors, vendors or contractors.

2. Coverage:

- a. This policy applies to all regular, part-time, appointed and grant-funded employees (including those in their probationary period), as well as elected officials, volunteers and interns of the City of Memphis Government.
- b. This policy applies to the conduct of an employee while functioning in the course and scope of employment as well as off-duty violent conduct that has a potential adverse impact on a City employee's ability to perform the assigned duties and responsibilities.

3. Prohibited Actions and Sanctions: *It is a violation of this policy to:*

- a. Engage in workplace violence as defined herein;
- b. Use, possess or threaten to use an unauthorized weapon during a time covered by this policy, and



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- c. Misuse authority vested to an employee of the City of Memphis Government in such a way that it violates this policy.

A violation of this policy shall be considered unacceptable employee conduct as stated herein. Acts of violence, as defined herein, may be grounds for disciplinary action, up to and including termination.

An act of off-duty violent conduct may also be grounds for disciplinary action, up to and including termination. In these situations, the division must demonstrate that the disciplinary action, suspension or termination is supported by the existence of a rational nexus between the type of violent conduct committed and the potential adverse impact on a City employee's ability to perform the assigned duties and responsibilities.

Advisory Note: When a threat has been reported or management determines that a potential for violence exist, management may require an employee to undergo an assessment to determine risk of danger. EAP can assist by facilitating a referral to an appropriate resource for this assessment.

4. Authorized Exceptions to Policy: An employee may possess a weapon if possession is:

- a. In compliance with Tennessee/Federal law; and
- b. Authorized by the agency/Division Director or his/her designee.
- c. Used by an employee who is a certified law enforcement officer.
- d. Required as a part of the employee's job duties with the City of Memphis Government, or
- e. Connected with training received by the employee in order to perform the responsibilities of their job with the City of Memphis Government.

5. *Support and Protections:* The City shall make efforts to protect victims of workplace violence by offering all available security measures. The City shall work closely with victims to ensure that both the needs of the victims and the City are addressed.



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6. *Retaliation:* This policy prohibits retaliation against any employee who, in good faith, reports a violation of this policy. Every effort will be made to protect the safety and anonymity of anyone who comes forward with concerns about a threat or act of violence.

7. *Reporting Responsibilities:* All employees are encouraged to be alert of the possibility of violence on the part of employees, former employees, customers and strangers. Employees shall place safety as their highest concern and shall report all acts of violence and threats of violence. All reports of violence will be handled in a confidential manner, with information, released only on a need-to know basis. Management shall be sensitive and responsive to the reporting employee's fear of reprisal.

8. *Reporting Procedures:*

- a. Any employee who receives or witnesses such acts of violence, conduct, behavior, or communication must immediately contact his/her supervisor or Division Director or designee.
- b. Any supervisor who receives a complaint of violence, threat, or harassment or who has reason to suspect that such acts are occurring must notify his/her Division Director or designee and the Director of Human Resources or designee.
- c. Upon being informed of an allegation of violence, threat, or harassment, the Director of Human Resources or designee will direct that an appropriate investigation be immediately conducted and, when necessary, notify the appropriate authorities (police, legal, etc.)
- d. Upon the conclusion of the investigation, the affected Division Director or designee will notify the employee of the outcome of the investigation and advise the employee of any corrective or preventative action taken. The Division Director will take appropriate disciplinary action in accordance with this policy. Disciplinary actions taken as a result of violation of this policy are administrative actions and do not preclude criminal or civil action from also being taken against an employee who violates this policy, if the facts support such actions.

9. *Responsibilities:*



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It is the responsibility of each Division Director of City of Memphis Government to make their employees aware of the City's VIOLENCE-IN-THE-WORKPLACE policy and to post this policy on all employee bulletin boards located within his/her Division.

It is the responsibility of each supervisor to ensure that all employees are allowed to work in an environment that is free from the threat of workplace violence.

It is the responsibility of each employee to ensure that his or her conduct is professional and to adhere to the guidelines in this policy.

This Respectful Workplace Policy is administered through the Human Resources Division. The Division of Human Resources reserves the right to revise or eliminate this policy.

REFERENCES:

TITLE VII

ADA

ADEA

GINA

EPA

PPACA

FLSA

CITY OF MEMPHIS ORDINANCE SECTION 3-8-4 AND SECTION 3-8-6