

**CITY OF MURFREESBORO
EMPLOYEE HANDBOOK**

Section No: 2002

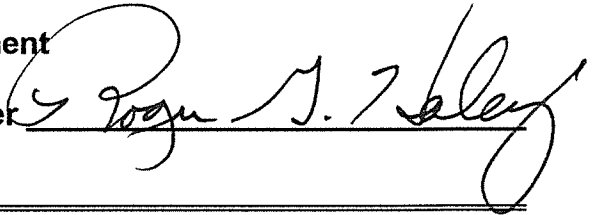
Date: 8-26-04

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**Dated: 3-2-95, 2-8-95,
3-2-95, 3-2-95**

Subject: Discrimination and Harassment

Approved: Roger G. Haley, City Manager



(a) GENERAL STATEMENT OF POLICY

(1) The City prohibits discrimination or harassment based on race, color, sex (whether or not of a sexual nature), religion, national origin, protected activity, age, or disability. Any employee who violates this City policy is subject to discipline up to and including dismissal. This policy includes, but is not limited to, acts made unlawful by federal or state laws prohibiting discrimination.

(2) (A) It is the responsibility of all employees to know, understand, and follow the City's policy against discrimination and harassment.

(B) It is the responsibility of all employees to report prohibited discriminatory or harassing conduct by an employee towards another employee or towards a member of the public.

(C) It is the responsibility of all employees to whom a report of discrimination or harassment is made to take steps to have such report or complaint directed to one of the officials named in this policy.

(D) It is the responsibility of all employees to cooperate fully and truthfully in any investigation of a report or complaint of harassment or discrimination.

(E) It is the responsibility of all employees to refrain from retaliating or discriminating against any employee or member of the public who has participated in the making of a report or complaint of a violation of this policy, or who has participated in an investigation of a report or complaint made in accordance with this policy, or who has filed an administrative proceeding or litigation based on discrimination or harassment.

(3) It is the responsibility of all supervisors to prevent and correct all discriminatory and harassing conduct, even if the employee or member of the public being discriminated against or harassed does not make a complaint of such discrimination or harassment.

(4) (A) It is the responsibility of all department heads receiving a report or complaint of discrimination or harassment to immediately discuss the report or complaint with the City Manager, City Attorney or Personnel Director so that the matter may be handled in accordance with City policies as described in this Section.

(B) It is the responsibility of all department heads to ensure that all employees receive adequate and periodic training and reminders of the City's policies on discrimination and harassment.

(C) It is the responsibility of all department heads, after consultation with the Personnel Director and City Attorney, to provide reasonable accommodations for religious beliefs and for disabilities when required by law.

(b) DEFINITIONS AND EXAMPLES OF PROHIBITED CONDUCT

(1) City Standards as compared to laws.

Although the definitions and examples given below are based on the provisions of federal law, and this policy prohibits any and all such violations of federal and state discrimination laws, it also prohibits conduct which would not be unlawful under those laws. For example, one time usage of a racial slur or epithet – without any other proof of racial discrimination – would not constitute unlawful discrimination on account of race. However, one time usage of a racial epithet is prohibited as a matter of City policy and may be the basis for discipline.

(2) Discrimination or Harassment Based on Sex.

(A) Discrimination or harassment based on sex includes a prohibition on: discrimination or harassment based on gender; discrimination or harassment based on status as a married woman; discrimination or harassment based on pregnancy; and, discrimination or harassment based on sexual matters.

(B) The City is an equal opportunity employer and has no jobs which are restricted to the male or female sex. No employee shall state or suggest to another employee or job applicant that a particular sex is preferred for any City job. No employee or job applicant shall be discriminated against because of pregnancy, child birth or a related medical condition in hiring, promotion, discharge, pay, fringe benefits or any other aspect of employment.

(C) Sexual harassment is any unwelcome sexual advance or request for sexual favors. Sexual harassment is also any verbal or physical conduct of a sexual nature or of a sexual focus which could interfere with an individual's work performance or which could create an intimidating, offensive or hostile work environment.

Sexual harassment may take the form of unwelcome physical contact such as pinching, groping, or patting. Sexual harassment may also take the form of unwelcome verbal conduct in the form of making inappropriate sexually oriented comments on appearance (including dress or physical features), telling sexually oriented stories or jokes, or making implicit or explicit job threats or promises in return for sexual favors. Sexual harassment may take the form of displaying sexually explicit written or visual materials.

Sexual harassment may include conduct directed towards persons of the same or a different gender. A man shall not direct sexually harassing conduct towards a woman or a man; a woman shall not direct sexually harassing conduct towards a man or a woman. Sexually harassing conduct shall not be directed towards a subordinate, a peer, a supervisor, or a member of the public.

(3) Discrimination based on national origin.

(A) National origin discrimination means treating someone less or more favorably because that individual is from a certain place or belongs to a particular national origin group or is associated with an individual of a particular national origin. National origin discrimination includes discrimination because a person, or that person's ancestors, comes from a particular place or country. It also includes discrimination against a person because they are part of a particular "national origin group" or "ethnic group". A national origin or ethnic group is a group of people sharing a common language, culture, ancestry or other similar social characteristic, e.g. Hispanics, Kurds, American Indians. Discrimination may be because someone is or is not of a particular ethnicity. It also includes discrimination based on physical, linguistic, or cultural characteristics associated with a national origin group. It also includes discrimination against someone perceived to be of a particular national origin group, even if they are not a member of such group.

(B) National origin discrimination may violate the City's Title VI Policy prohibiting discrimination on the basis of race, color or national origin in federally assisted programs adopted May 21, 2002. A Title VI Complaint may be made using the complaint procedures in that Policy.

(4) Protected activity.

An employee or job applicant may not be the subject of discrimination because they have engaged in "protected" activity. Protected activity consists of opposing a practice made unlawful by an employment discrimination law or by participating in any manner in a charge or proceeding under an employment discrimination law. An individual who has filed a charge, or who has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under an anti-discrimination law has engaged in protected activity.

(c) SCOPE OF NON-HARASSMENT AND NON-DISCRIMINATION POLICY

(1) The non-harassment and non-discrimination policy in this Section applies to all employees of the City of Murfreesboro. For the purpose of this policy, the term "employees" includes but is not limited to: full-time employees, part-time employees, seasonal employees, temporary employees and employees working under contract. It applies whether the employee is a probationary or non-probationary employee. For purposes of this policy, "employee" means all officials of the City of Murfreesboro during the course and scope of their duties as City officials. This includes but is not limited to the Mayor and Council, City Manager, City Judge, City Recorder, City Treasurer, and the City Attorney and to all members of City Boards, Commissions, and Committees without regard for whether such service is compensated or uncompensated.

(2) City employees are prohibited from harassing any person while on duty, while on City property, while in a City vehicle, or while in a City uniform.

(3) City employees are prohibited from harassing another City employee at all times and locations. Whether either employee is on or off duty, or on or off City property, may affect the severity of the offense but not its existence.

(d) DUTY TO REPORT

(1) All employees have the right to a work environment which is free from harassment and discrimination. All employees have a responsibility to assist the City with its duty to provide a work environment for every employee which is free from harassment and discrimination. All employees are obligated to report instances of discrimination or harassment of a City employee and instances of discrimination or harassment by a City employee. Reports may be made by employees who witness harassment or discrimination, or by employees who are the object of harassment or discrimination, before the conduct becomes severe or pervasive. Prompt, thorough, and accurate reports assist the City in preventing, stopping, and correcting discrimination or harassment. Preventing, stopping, and correcting harassment and

discrimination reduce the likelihood that federal and state non-discrimination laws will be broken and this reduces the City's exposure to legal and financial liability. It is part of every employee's job to reduce such liability.

(2) (A) Any employee with knowledge of a violation of the City's policy prohibiting harassment and discrimination, including but not limited to any employee who is being subjected to harassment or discrimination, shall make an oral or written report or complaint of such harassment or discrimination to any one of the following: the Personnel Director; the Equal Employment Opportunity Officer(s); their Department Head; the City Attorney or Assistant City Attorney; or, the City Manager or Assistant City Manager. No report of harassment or discrimination shall be deemed to be a complaint of discrimination unless it is made to one of the persons named above. **Employees are not required to follow the chain of command in making a report or complaint of harassment or discrimination.** In this regard reports or complaints of discrimination or harassment are treated differently from complaints about any other workplace problem. Employees may use on duty time to make such a report. While an employee may discuss with that employee's supervisor any employment related concerns, no such discussion shall be deemed a report or complaint of harassment or discrimination under this policy; for this purpose, an employee must make a report or claim of harassment or discrimination to one of the officials identified above. Should an employee raise an issue involving harassment or discrimination to a City official or employee other than as specified above, that individual should remind the employee of this policy and advise the employee to make a report or complaint to one of the officials named above. Notwithstanding the forgoing, any supervisor who has occasion to remind an employee about their right and duty to make a report or complaint of harassment or discrimination shall promptly notify the Personnel Director of such referral.

(B) The fact that an employee has a duty to report harassment does not limit the employee's own ability and right to try and stop offensive conduct. For example, an employee should tell an employee whose sexual advances are unwelcome that they are unwelcome; advances which are not unwelcome are not harassment. Since City policy allows employees to date, see Section 3022, an employee may be unaware that an advance is offensive and unwelcome unless told to stop.

(e) INVESTIGATION OF REPORTS AND COMPLAINTS

(1) The City intends to appropriately respond to all reports and complaints of harassment or discrimination in violation of this policy. If an investigation is necessary, the City intends that such investigation shall be prompt, thorough and impartial. The scope of an investigation will depend upon the facts of the particular report or complaint. The scope of the investigation may impact its length and duration.

(2) An investigation may be conducted by any of the persons to whom a report or complaint may be made. The City Manager, after consultation with the Personnel Director, and/or the City Attorney, and/or the EEO Officer, and/or outside counsel, as necessary, shall determine who shall investigate a report or complaint of harassment or discrimination. If the complaint is against the City Manager, the Mayor, after consultation with the Personnel Director and City Attorney, shall determine who shall conduct the investigation.

More than one investigator may be appointed. Occasionally, a City employee or official who is not a person to whom reports may be made may be appointed as an investigator. An investigation may also be conducted by an outside investigator retained by the City. Regardless of the job title of the person or persons appointed as investigators, the investigation shall be appropriately documented.

(3) (A) If a fact finding investigation is necessary, the investigator should, at a minimum, interview the employee making the report or complaint, the alleged harasser, and third parties who could reasonably be expected to have relevant information. The investigator shall have the cooperation of all employees in conducting the investigation. All employees shall be truthful and thorough in making verbal or written statements to the investigator; falsification or omission shall be grounds for discipline. Supervisors shall make employees available for interviews by the investigator as needed and shall research and duplicate records as requested by the investigator. The investigator shall make a written report to the City Manager when the investigation is complete or, if requested to do so, shall make an interim report on the progress of the investigation. The City Manager shall determine whether harassment or discrimination in violation of City policy has occurred. If it has, the City Manager shall initiate appropriate disciplinary action against the employee consistent with the City Manager's authority under the City Charter, City Code, and the Employee Handbook. The employee shall be entitled to the rights afforded an employee subjected to discipline under said City Charter, City Code, and the Employee Handbook before said discipline is final. The City Manager shall also, if appropriate, take corrective measures for the benefit of the employee who has been the object of discrimination or harassment. An employee making a report or complaint shall be informed of its outcome even if neither disciplinary or corrective measures result.

(B) During the investigation, an employee may be directed not to discuss the investigation nor any questions asked of the employee with others. In such event, the employee is prohibited from any such discussion; violating the confidentiality of the investigation shall be grounds for discipline. Provided, however, this provision shall not be interpreted to prevent any employee from exercising the employee's right to consult with legal counsel, or to file a charge of discrimination with the Tennessee Human Rights Commission or the Equal Opportunity Commission, or to exercise the employee's applicable constitutional rights.

(C) The City may take temporary measures before the investigation is complete, and before there has been a determination of whether harassment has occurred, in order to minimize the interaction between the alleged harasser and the person alleged to be the object of harassment. These measures may include making scheduling changes, transferring employees, or placing employees on administrative leave with pay. An employee making a report or complaint of harassment or discrimination may request such employment changes; the City may but is not required to make a requested change. The City may make a change on its own initiative.

(4) Because the City is a Tennessee local government, it is subject to the State's Open Records Laws. Under State law, the City is legally obligated to provide for the inspection and copying of documents made in the course of City business unless an exception to State law renders them confidential. For example, certain employee identifying information and employee medical records are deemed confidential and these may be "blacked out" before public disclosure is provided. While complying with Open Records laws, the City shall endeavor to handle reports and complaints of harassment and discrimination, and investigations and discipline resulting from such reports and complaints, with discretion. Employees involved shall not unnecessarily discuss these matters; information about the specifics of a particular matter shall be shared on a "need to know" basis.

(f) RETALIATION

No City official or employee shall retaliate against an employee for having filed a report or complaint of harassment or discrimination, or for participating in an investigation of such a report or complaint, or for participating in any litigation involving a claim of harassment or discrimination. This prohibition against retaliation is permanent and is not limited to the duration of the investigation or disciplinary proceedings. Supervisors making an employment decision which would reasonably be regarded as an adverse or negative employment decision about an employee who has participated in a harassment or discrimination matter, should be certain that their decision, and any recommendations they receive regarding it, are not made for retaliatory reasons and that the decision has a separate and sufficient non-discriminatory justification.

[3-2-95, 8-26-04]