GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Consumer and Regulatory Affairs

Administrative Issuance System

DCRA Bulletin No. 5-08A-08

SUBJECT: Equal Employment Opportunity Policies; Roles of EEO Officer, EEO Counselor; and Procedures for Bringing and Processing Unlawful Discrimination and Sexual Harassment Complaints

EFFECTIVE DATE: July 9, 2008

EXPIRATION OR REPLACEMENT: Upon revision

PURPOSE AND AUTHORITY:

This DCRA Administrative Issuance shall establish a policy prohibiting discrimination and sexual harassment in the District of Columbia Department of Consumer and Regulatory Affairs (DCRA), and establish procedures whereby allegations of unlawful discrimination and sexual harassment may be filed, investigated, and adjudicated within DCRA.

SCOPE:

- All current Inspections and Enforcement employees involved in the Illegal Construction activities of the agency, including full-time, part-time, temporary and term employees are required to follow these provisions.
- Contract workers who are employees of a vendor under contract with DCRA to provide regular, ongoing DCRA operational services are required to follow these provisions.
- Consultants and contractors working on specific projects and not involved with the regular DCRA service delivery are required to follow these provisions.

PROVISIONS:

I. Equal Employment Opportunity Policy

A. DCRA is an equal opportunity employer with a firm commitment to upholding local and federal laws prohibiting employment discrimination, and it is its policy to foster each employee's right to work in an environment that is free from discrimination and conducive to each employee's professional growth. Unlawful discrimination in the workplace is prohibited and retaliation for filing complaints regarding the same is prohibited. Where unlawful discrimination has been determined, DCRA shall take the appropriate adverse and /or corrective action against the offending employee, irrespective of the employee's status. This policy applies to each employee, volunteer, contractor, agent, qualified applicant, or individual working on behalf of DCRA.

B. Specifically, it is the policy of DCRA that all recruitment, hiring, compensation, training, work assignments, working conditions,

promotions, rotations, transfers, retention decisions, awards, discipline, and any adverse action as defined by applicable law, be administered without regard to race, color, religion, national origin, sex, sexual orientation, gender identity or expression, age, genetic information, disability, marital status, personal appearance, family responsibility, matriculation, or political affiliation, source of income, status as a victim of an intra-family offense, place of residence or business, or based on a person's opposition to discriminatory conduct or participation in any manner in a complaint of discrimination, and any factor that are more fully developed and defined in Section 102 of the District of Columbia Human Rights Act, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.02)

C. DCRA will take the appropriate steps to ensure that no employee retaliates against, harasses, or coerces any employee because that employee has filed a complaint of unlawful discrimination, furnished information in connection with such complaint, assisted anyone in filing or asserting a claim of unlawful discrimination, opposed alleged unlawful discriminatory conduct, or participated in any manner in an investigation, compliance review, or any other activity related to the enforcement of this policy. Any employee, irrespective of status, found to have engaged in unlawful discrimination or harassment in violation of this policy, and any employee in a position of authority who fosters an environment that allows such unlawful discrimination or harassment to exist, will be subject to appropriate disciplinary action, up to and including termination.

II. Sexual Harassment Policy

A. Consistent with Mayor's Order 2004-171 (October 20, 2004), it is DCRA's policy to provide a work environment that is free from sexual harassment. Sexual harassment of any employee irrespective of status, in any form, violates the law, and has a debilitating impact on an employee's morale and productivity, and as such, will not be tolerated by DCRA. Employees who report sexual harassment, or participate in a sexual harassment complaint, will not be subjected to retaliation in any way. Where sexual harassment has been determined, DCRA shall take appropriate adverse and /or corrective action. This policy applies to each employee, volunteer, contractor, agent, qualified applicant, or individual working on behalf of DCRA.

B. All DCRA employees are responsible for ensuring that the workplace is free from sexual harassment by complying with this policy and cooperating fully in any investigation of a sexual harassment complaint. Employees or qualified applicants who know of allegations of sexual harassment in the workplace, or who are victims of or witnesses to sexual harassment in the workplace, should report such conduct to the EEO Counselor.

C. DCRA will take steps to ensure that no employee retaliates against, harasses, or coerces any employee because that employee has filed a complaint of sexual harassment, furnished information in connection with such complaint, assisted anyone in filing or asserting a claim of sexual harassment, opposed alleged sexual harassment conduct, or participated in any manner in an investigation, compliance review, or other activity related to enforcement of this policy. Any employee,

irrespective of status, found to have engaged in sexual harassment or retaliation in violation of this policy, and any employee in a position of authority who fosters an environment that allows such conduct to exist, will be subject to appropriate disciplinary action, up to and including termination.

III. Definitions

For the purpose of this policy, the following definitions apply:

1. **Complainant:** An employee who alleges that he/she is the victim of sexual harassment and files a sexual harassment complaint.

2. **Emergency Complaint:** A sexual harassment complaint in which the accused is the Administrator, or higher level agency official; a sexual harassment complaint in which the complainant reasonably believes his/her safety would be in jeopardy for filing a complaint through the regular intra-agency complainnt processing procedures.

3. **Persons who can Receive and Process Complaint:** Persons who are specially trained to conduct inquiries and determine the facts associated with sexual harassment complaints; the EEO Officer and EEO Counselor.

4. **Respondent :** The employee who is accused of sexual harassment.

5. **Retaliation:** The act of subjecting a complainant who files a sexual harassment complaint to explicit or implicit vengence for filing a complaint, e.g., creating a hostile or intimidating environment; threatening physical harm or causing physical harm; engaging in harassing phone calls; adversely affecting an employee's performance rating, work assignment, details or promotions. Engaging in any other reprisals against an employee who is on-duty or off-duty as vengence for filing a sexual harassment complaint.

6. **Sexual Harassment:** Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when any one of the following criteria is present:

   a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

   b. Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual; or

   c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

   The following are examples of conduct, which may create an intimidating, hostile, or offensive work environment:

• Sexually oriented or sexually degrading language describing an individual or his/her body, clothing, hair, accessories, or sexual experiences;

• Sexually offensive comments, or off-color language, jokes, or innuendoes which a reasonable person would consider to be of a sexual nature or belittling or demeaning to an individual's or a group's sexuality or gender;

• The display or dissemination of sexually suggestive objects, books, magazines, photographs, music, cartoons, computer internet sites or references, or pictures;

• Unnecessary and inappropriate touching or physical contact such as brushing against a colleague's body, massaging, tussling or touching of hair, patting, pinching, or hugging, that a reasonable person would consider to be of a sexual nature;

• Leering, suggestive facial expressions, gestures, or sounds, such as whistling or kissing noises;

• Workplace sexual comments, conduct, displays, or suggestions between two willing parties that would cause a reasonable third party to be offended; and/or

• Sexual assault.

Sexual harassment includes behavior that creates a hostile work environment for witnesses to the inappropriate behavior. Sexual harassment can be committed by persons of both genders, against persons of the same or different gender.

6. **Unlawful Discrimination:** Unlawful discrimination in employment includes, is not limited to, discrimination in hiring, transfers, promotions, training, compensation, benefits recognition (awards), discipline, and layoffs and other discharges. It also includes limiting terms, conditions, or privileges of employment, such as limiting, segregating, or classifying an employee in a manner that deprives or tends to deprive the individual of employment opportunities or otherwise adversely affects his/her protected status as an employee.

IV. Roles and Responsibilities of the DCRA EEO Officer and Counselors

A. EEO Counselor and Officer: The DCRA EEO Counselor is responsible for receiving, recording, timely investigating and reviewing, counseling the complainant or his or her representative, and making recommendations concerning EEO complaints to the EEO Officer. The EEO Officer shall be responsible for timely investigating, recording, and making recommendations to the Director of DCRA concerning specific formal actions, including disciplinary measures necessary to resolve all discrimination and sexual harassment issues.

B. Confidentiality: It is the responsibility of the the EEO Officer and Counselors to keep confidential all complaints filed. This confidentiality provision does not preclude DCRA from reporting suspected illegal acts, i.e., assaults or threats to an appropriate

enforcement agency and cooperating in any investigation of the allegations, and to disclose the same to authorized individuals in the following limited circumstances:

1. The complainant has filed an EEO complaint with the D.C. Office of Human Rights (OHR) or with the federal Equal Employment Opportunity Committee (EEOC) and the DCOHR or the EEOC has requested a copy of the DCRA EEO Officer's file, or

2. DCRA is responding to interrogatories propounded by either the OHR or the EEOC, or

3. The complainant has requested in writing that DCRA file be released after the conclusion of the investigation, or

4. A court of competent jurisdiction has issued an order for the release of DCRA EEO Officer's file, or

5. The Complainant has filed a civil or administrative complaint seeking damages or other relief and the file is requested by the Office of the Attorney General for the District of Columbia in connection with the litigation.

V. Roles and Responsibilities of Employees and DCRA Managers, Supervisors

A. Employees: All Agency employees are responsible for ensuring that the workplace is free from sexual harassment by complying with this policy and cooperating fully in the investigation of sexual harassment complaints. Employees who know of allegations of sexual harassment in the workplace or who are victims of or witnesses to sexual harassment are urged to report such conduct to the Agency EEO Counselor, the Office of Service Integrity, or an Agency manager or supervisor.

B. Managers and Supervisors: In addition to their responsibilities as Agency employees, as described above, managers and supervisors have an affirmative duty to take all action necessary to ensure that the Agency's work environment is free from sexual harassment and that the employees under their supervision who file complaints under this policy are not subjected to retaliation, penalty, or disparate treatment.

VI. Procedures for Filing Complaints of Unlawful Discrimination

A. Time for Filing: An employee or qualified applicant who believes he or she may have been the subject of unlawful discrimination shall consult an EEO Counselor within 180 calendar days after the alleged unlawful employment practice occurred or within 180 calendar days of the discovery of the occurrence giving him or her cause to believe that he or she has been discriminated against, whichever is earlier. An employee alleging discrimination in connection with acts

which occurred on or after October 1, 2002, may file a complaint directly with a court of competent jurisdiction within one year of the alleged incident and forego the administrative process for alleged violations of the District of Columbia Human Rights Act.

B. Persons Who May Receive an EEO Complaint: In addition to the EEO Counselor, a complaint of discrimination may also be received by the EEO Officer, the Office of Service Integrity, or a supervisor or manager. Any employee who becomes aware of a complaint of discrimination, either orally or in writing, shall forward such complaint to the EEO Counselor or for appropriate action. In the event that supervisors receive an oral or written complaint from an employee, such complaint should be forwarded to the EEO Counselor immediately. Complaints received by the EEO Counselor shall be reviewed and processed promptly for counseling. The EEO Counselor shall maintain records to reflect the date of each review and the action taken.

A complaint of discrimination is deemed to be received when a complainant contacts any person who may receive a complaint of discrimination either by telephone, in writing, or in-person.

C. Impartiality: To insure the integrity of the EEO process, the EEO Counselor shall not participate in the Investigation, mediation, and/or recommendation on the resolution of any complaint of discrimination from any person who:

a. is a supervisor or manager; or
b. the counselor has a personal relationship with, or
c. is under the supervision of the accused, or
d. is assigned to the same Division as the complainant or the accused, or
e. is a member of the same bargaining unit.

Any supervisor or manager seeking to file a discrimination complaint through the process herein must file directly with the Equal Employment Opportunity Officer.

D. In the event that a conflict exists with respect to the the EEO Officer, the complainant may consult an EEO Officer in another District of Columbia Agency, or may consult the Office of Human Rights directly concerning his or her complaint.

E. If an employee raises the issue of systemic discrimination, or if during the making of an inquiry into an employee's individual complaint of discrimination the EEO Counselor has reason to believe that discriminatory employment practices are agency-wide, division-wide or section-wide, the counselor or officer shall immediately notify the agency's EEO Officer. The EEO Officer shall thereafter conduct or initiate a complete investigation.

F.. Assuming there is no conflict, the EEO Counselor shall meet with the complainant as soon as possible. In making inquiry into the allegations in the complaint of unlawful discrimination, the EEO Counselor shall conduct a fair and impartial inquiry into the allegations, and counsel the complainant or his or her

representative concerning the issues of the matter. The EEO Counselor shall, insofar as is practicable, conduct the final interview with the complainant within twenty-one (21) calendar days of the complaint..The EEO Counselor shall advise the complainant in writing in the final interview of the complainant's right to file a formal complaint with the EEO Officer within fifteen (15) calendar days of the final interview if the matter has not been resolved to complainant's satisfaction. In attempting to resolve a complaint, every effort shall be made to resolve the complaint to the satisfaction of the complainant. If the complaint of discrimination is not resolved, the EEO Counselor shall refer the complaint to the EEO Officer for an in-depth investigation and recommendation to the Director.

H. The EEO Officer shall conduct a thorough review of the circumstances under which the alleged discrimination occurred, including separate interviews with the complainant and and the alleged discriminator; b) an investigation into the treatment of members of the complainant's group, if any, identified by the complaint as compared with the treatment of other employees in the organization unit which the alleged discrimination occurred; c) an examination of any pertinent records; and d) review of any policies and practices related to the work situation that may constitute or appear to constitute discrimination even though they may not have been expressly cited by the complainant.

I. If the investigation confirms the allegations of discrimination, the EEO Officer will notify in writing the supervisor of the employee found to have been engaged in discrimination of the results of the investigation. In response to such notification, appropriate remedial action will be taken by the Director of DCRA or her designeee of the employee found to have engaged in discrimination. Such conduct shall result in either disciplinary action (including a letter of admonition, a letter of reprimand, suspension, reduction in rank, grade or pay, or dismissal) or counseling or reassignment. The procedures set forth in Chapter 16 and Chapter 38 of the District Personnel Manual (DPM) will govern any action to be taken against any employee found to have engaged in discrimination.

J. The EEO Officer shall establish and maintain a complaint file containing all documents and records pertinent to each EEO complaint. Reports addressing the EEO program will be submitted to the Director, EEO. Files related to EEO investigations shall be maintained in the strictest of confidence, in a secured location, for the length of time determinable by law. In the event, a formal complaint is filed in a state or federal forum, the EEO Officer must preserve such records as well as supervisors until all proceedings, including appeals, have been concluded.

VII. Procedures for Filing Complaints of Sexual Harassment

A. Allegations of sexual harassment are received and processed as part of the DCRA EEO policy. Accordingly, an employee alleging sexual harassment or a person acting on the alleged victim's behalf with or without the victim's consent may report a sexual harassment incident to an EEO Counselor, to any supervisor or manger within DCRA, or to an EEO Counselor at any other District of Columbia agency within 180 days from the time of the alleged incident.

B. Alternatively, an employee alleging sexual harassment may file a complaint directly with the Office of Human Rights within one year of the alleged conduct; or, if the alleged conducted occurred on or after October 1, 2002, directly with a court of competent jurisdiction. However, although the Human Rights Act allows a complainant one year to file a sexual harassment complaint with the OHR, or with a court of competent jurisdiction, employees should be advised that their failure to timely follow the Agency's policies and procedures to complain about alleged harassment within 180 days may be unreasonable on the part of the employee, given the totality of the circumstances, and may be taken into account in assessing the credibility and merit of the complaint.

C. In the event of an emergency complaint, the complaint may be submitted in writing and under confidential cover directly to the Director. The Director, or her designee, shall ensure the complaints of sexual harassment are promptly investigated and shall ensure that resolutions are attempted. The Director shall also act promptly, that is, wthin forty-eight hours of receipt of an emergency complaint, to take action as deemd appropriate to address the safety of the complainant. If so requested, the Director or her designeee shall meet with the Complainant. The designated complaint investigators shall submit the written report with all findings, determinations, and recommendations to the Director under confidential cover. The Director and/or her designeee will determine the approriate response to the investigative findings. If the complaint cannot be resolved, the complaint shall be handled in accordance with the EEO procedures set out in this directive.

VIII. Appeal of EEO Officer's Findings, Final Decision

A resolution of each EEO complaint shall be attempted in accordance with procedures established herein. If the complaint is not resolved to the complainant's satisfaction, he or she may comsult the Office of Human Rights directly concerning his or her complaint. The EEO Officer shall refer unresolved complaints to the Director, EEO within sixty (60) calendar days of the date of the EEO Officer's report to the Director, EEO.

IX. Penalties

DCRA shall impose stringent disciplinary action against persons found in violation of the sexual harassment policy. Department penalties for conduct in violation of this directive are established in the DPM, Chapter 16. Managers and supervisors who fail to report sexual harassment or fail to take appropriate action to resolve sexual harassment complaints shall be subject to disciplinary action pursuant to Chapter 38 of the DPM. Employees found to have intentionally filed false charges of sexual harassment shall be disciplined in accordance with Chapters 16 and 38 of the DPM.

For more information or clarification, contact either Timothy Handy, Equal Employment Officer, at (202) 478-9270 or Don Tatum, EEO Director, at (202) 442-8928.

Linda K. Argo
Director

Date July 10, 2008

NOTE: *DAIS Bulletins are strictly procedural in nature and have direct applicability only to DCRA employees under the authority of the Director*

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