GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General

ATTORNEY GENERAL
BRIAN L. SCHWALB

Office Order No. 2023-09

SUBJECT: Policy on Discrimination, Harassment, and Retaliation and Equal Employment Opportunities

Pursuant to the authority vested in me by the Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010 (codified, as amended, at D.C. Code §1-301.81 *et seq.*), including the authority vested in me by D.C. Code §1-301.88a, the following Office Order shall become effective immediately and shall supersede Office Order No. 2018-04.

I. Policy Overview

The Office of the Attorney General (OAG) is committed to maintaining a work environment that is free from discrimination and harassment. As part of that commitment, OAG is committed to ensuring that all individuals who seek services from OAG are treated fairly, and that all employees and applicants for employment have full and fair access to opportunities for employment and career advancement.

The following policy lays out OAG's prohibitions on discrimination, harassment, and retaliation. The policy additionally explains OAG's processes for investigating allegations of discrimination, harassment, and retaliation. The policy then briefly explains how OAG's processes interact with other processes that victims of alleged discrimination, harassment, or retaliation may wish to pursue to seek redress for those alleged harms, and it identifies resources that may be helpful for victims to consult if they wish to pursue those other processes.

II. Prohibited Discrimination, Harassment, and Retaliation

A. Prohibited Discrimination and Harassment

All OAG employees, contractors, interns, and volunteers, and all individuals seeking services from OAG, are entitled to be treated with respect and dignity. OAG will not tolerate discrimination or harassment by or against employees, contractors, interns, volunteers, or individuals seeking services from OAG.

Individuals who work for OAG or who are seeking employment from OAG shall be entitled to employment opportunities without regard to their actual or perceived: race; color; religion, national origin; sex; age; marital status; personal appearance (subject to reasonable, uniformly applied rules); sexual orientation; gender identity or expression; family responsibilities; genetic information; disability (mental or physical); matriculation (including part-time student status if such status does not interfere with OAG employment); political affiliation (including past or present political affiliation or lack of affiliation); status as a victim or family member of a victim of domestic violence, a sexual offense, or stalking; credit information; or homeless status. Accordingly, OAG shall make employment decisions—including decisions with espect

to recruitment, hiring, salaries, benefits, training, work assignments, promotions, rotations, transfers, retention, awards, discipline, working conditions, and other terms and conditions of employment—without regard to the aforementioned traits.

Individuals seeking services from OAG shall generally be afforded such services without regard to their actual or perceived: race; color; religion; national origin; sex; age; marital status; personal appearance; sexual orientation; gender identity or expression; familial status; family responsibilities; genetic information; disability; matriculation; political affiliation; source of income; place of residence or business; status as a victim or family member of a victim of domestic violence, a sexual offense, or stalking; or homeless status.

These protections against discrimination and harassment extend beyond OAG worksites, including to OAG-related or sponsored activities, such as training programs, social functions, community-engagement events, internship programs, and travel to or from such activities, as well as to non-OAG-related or sponsored activities. These protections also apply to all conduct using OAG-owned or provided technology, including conduct while teleworking or during participation in a remote meeting, hearing, or proceeding.

Harassment is a form of prohibited discrimination. Harassment includes unwelcome conduct based on a protected trait that creates an intimidating, hostile, or offensive work environment. Conduct creates an intimidating, hostile, or offensive work environment if a reasonable person would subjectively and objectively determine that the totality of the circumstances changes the terms, conditions, or privileges of the person's employment or participation in an OAG program. A single or isolated incident, if sufficiently severe, can create a hostile work environment.

B. Sexual Harassment

Prohibited harassment includes sexual harassment. In the context of employment, sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and/or other verbal or physical conduct of a sexual nature, based upon an individual's sex, gender, gender identity, gender expression, non-conformance with gender stereotypes, or sexual orientation, when any one of the following criteria is present:

1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or a term or condition of participation in any OAG program, activity, or benefit (quid pro quo harassment);

2. submission to or rejection of such conduct by an individual is used as a basis for employment decisions, including but not limited to assignments, status, salary, promotion, bonuses, receipt of recognition, or letters of recommendation; or

3. 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 non-exhaustive examples of conduct that may create an intimidating, hostile, or offensive work environment:

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

- insults, sexually offensive comments or off-color language, jokes, or innuendo that a reasonable person would consider to be of a sexual nature, or belittling or demeaning to an individual or a group's sexuality, gender, gender identity, gender expression, non-conformance with gender stereotypes, or sexual orientation;

- the display or dissemination of sexually suggestive objects, books, magazines, photographs, music, cartoons, or computer internet sites or references, either through electronic means or in-person;

- unnecessary and inappropriate touching or physical contact, *e.g.*, brushing against a colleague's body, touching or brushing a colleague's hair or clothing, massages, groping, patting, pinching, and hugging that a reasonable person would consider to be of a sexual nature;

- leering or sexually suggestive gestures or sounds, *e.g.*, whistling or kissing noises;

- workplace sexual comments, conduct, displays, and suggestions between two willing parties that would cause a reasonable third party to be offended;

- unsolicited, unwelcomed flirtations, advances, and/or propositions of a sexual nature;

- any unwanted repeated contact, including but not limited to in-person, email, text message, or telephonic contact, of a romantic or sexual nature;

- "sexting" (sending and sharing sexual photos or sexually explicit messages online or via electronic messaging), seeking or sending pictures of intimate body parts, taking or displaying pictures of body parts meant to be covered up (such as "up skirting" pictures), including sending messages of a suggestive nature on self-destructive messaging apps where documentation of the written word or images is difficult to document;

- making inquiries about someone's private sex life or describing one's own sex life;

- sexual assault.

Sexual harassment can be committed by persons of any gender identity against persons of the same or different gender identity. Sexual harassment is not limited to an inappropriate exercise of authority or control by a person in power over a subordinate. For example, a subordinate may sexually harass a supervisor, a supervisor may sexually harass a subordinate, co-workers may sexually harass each other, and a volunteer or customer may sexually harass an employee. A third party may also be sexually harassed by listening to or observing offensive conduct of other individuals.

A Note on Consensual Relationships

OAG discourages romantic, sexual, or intimate relationships between employees and their supervisors. If such a relationship develops between a supervisor and their employee, both the supervisor and the employee have a duty to report the relationship to the Chief of Staff, who may reassign the employee, the supervisor, or both. If such a relationship develops between the Chief of Staff and any other employee, intern, volunteer, or contractor, the Chief of Staff shall report it to the Attorney General, the Chief Deputy Attorney General, and the Chief Human Resources Officer, who shall determine any appropriate action to be taken.

Employees are reminded that non-consensual conduct in the context of a romantic, sexual, or intimate relationship can constitute sexual harassment and are reminded that:

- Consent to one act does not constitute consent to another act;
- Consent on a prior occasion does not constitute consent on a subsequent occasion;
- Consent to an act with one person does not constitute consent to an act with any other person;
- The existence of a prior or current relationship does not, in itself, constitute consent—even in the context of a relationship, there must be mutual consent for each sexual act;
- Consent can be withdrawn or modified at any time, and sexual contact must cease immediately once consent is withdrawn;
- Consent cannot be inferred from silence, passivity, or lack of resistance, and relying on nonverbal communication alone may result in a violation of this policy; and
- Consent cannot be given by an individual under the legal age of consent.

C. Prohibited Retaliation

No one may retaliate against another person for seeking to enforce this Policy or for exercising or attempting to exercise their rights under District or federal anti-discrimination laws. Accordingly, no one shall retaliate against another person because the person: opposed alleged discriminatory or harassing conduct; filed a complaint of discrimination, harassment, or retaliation; assisted another person in filing or asserting a claim of discrimination, harassment, or retaliation; or participated in any investigation or review of discrimination, harassment, or retaliation.

III. Duty to Report and Participate in Investigations of Alleged Discrimination, Harassment, and Retaliation

In order to ensure that OAG can appropriately investigate and address instances of discrimination, harassment, and retaliation, employees, contractors, interns, and volunteers are obligated to report alleged instances of discrimination, harassment, and retaliation to the Chief of Staff or the Chief Human Resources Officer, who serves as OAG's Equal Employment Opportunity (EEO) Director/Officer and as OAG's Sexual Harassment Officer (SHO). Reports should be made within 24 hours of an alleged incident to allow OAG to promptly address any misconduct. OAG will, however, investigate and take action on a complaint regardless of the amount of time that has elapsed since the alleged incident. Reports may be made orally or in writing, including by sending an email to oageeo@dc.gov. The obligation to report applies to individuals who are the targets of discrimination, harassment, or retaliation and individuals who know of discrimination, harassment, or retaliation.

Individuals seeking services from OAG are encouraged to promptly report alleged instances of discrimination, harassment, or retaliation to the Chief of Staff, the Chief Human Resources Officer, or an OAG supervisor or manager. Reports may be made orally or in writing, including by sending an email to oageeo@dc.gov.

Supervisors and managers who receive a complaint or a concern about discrimination or who become aware of discrimination must immediately refer the matter to the Chief of Staff or the Chief Human Resources Officer. Supervisors and managers shall work with the Chief Human Resources Officer to address the alleged discrimination or harassment.

Employees, contractors, interns, and volunteers are expected to cooperate fully with OAG investigations into allegations of discrimination, harassment, and retaliation.

Employees, contractors, interns, and volunteers may be subject to disciplinary or other action if they refuse to cooperate in an investigation. Alleged victims of discrimination, harassment, and retaliation may be subject to discipline for refusing to participate in an investigation, but such discipline shall only be applied in exceptionally rare circumstances and only after the Attorney General has consulted with the Chief of Staff, the Chief Operating Officer, the Chief Human Resources Officer, and the Chief Counsel of the Personnel, Labor, and Employment Division.

Individuals are required to provide OAG with truthful and accurate information when filing a complaint under this Policy or participating in an investigation conducted pursuant to this Policy. Individuals who knowingly and intentionally make materially false or misleading statements or representations shall be subject to disciplinary or other actions.

IV. OAG's Processes for Addressing Discrimination, Harassment, and Retaliation

OAG will promptly, fully, and fairly investigate all allegations of discrimination, harassment, and retaliation and will take appropriate disciplinary or other action against any person found to have violated this Policy. This section provides an overview of: the role of OAG's Chief

Human Resources Officer in administering this Policy; OAG's process for investigating alleged violations of this Policy; and the potential disciplinary and other actions OAG may take to address violations of this Policy.

A. The Role of the Chief Human Resources Officer in Administering this Policy

OAG's Chief Human Resources Officer serves as OAG's Equal Employment Opportunity (EEO) Director/Officer and as OAG's Sexual Harassment Officer (SHO). In these capacities, the Chief Human Resources Officer is responsible for receiving, recording, and timely investigating allegations of discrimination, harassment, and retaliation related to employees', contractors', interns', and volunteers' access to equal employment opportunities. In these capacities, the Chief Human Resources Officer is also responsible for reporting the findings of investigations, and making recommendations about disciplinary actions, to the Attorney General. In carrying out these responsibilities, the Chief Human Resources Officer will consult with the Chief Counsel for the Personnel, Labor, and Employment Division to assure compliance with labor-management relations agreements.

The Chief Human Resources Officer is also tasked with receiving, recording, and timely investigating allegations that individuals have been denied access to services based on protected traits, and for reporting the findings of investigations and making recommendations about disciplinary or other actions to the Attorney General.

The Chief Human Resources Officer shall maintain records to reflect the date that complaints of discrimination, harassment, and retaliation are received; the findings of investigations into such complaints; and the actions taken in any cases where violations of this Policy are found.

B. OAG Investigations

1. In General

When the Chief Human Resources Officer is notified of an allegation of discrimination, harassment, or retaliation, the Chief Human Resources Officer will promptly commence an investigation. If the Chief Human Resources Officer is notified of an allegation of widespread or systemic discrimination, harassment, or retaliation—such as an allegation of division- or section-wide discrimination, harassment, or retaliation—the Chief Human Resources Officer shall promptly notify the Attorney General and promptly commence an investigation. In conducting investigations pursuant to this Policy, OAG may hire an outside entity to conduct the investigation.

At the conclusion of an investigation, the Chief Human Resources Officer shall report the findings of the investigation to the Attorney General. Where the Chief Human Resources Officer finds that discrimination, harassment, or retaliation occurred, the Chief Human Resources Officer shall make recommendations to the Attorney General about any disciplinary or other actions that should be taken. The Attorney General shall decide the disciplinary or other actions to be taken.

Once the matter concludes, the Chief Human Resources Officer will provide the complainant with a close out letter. The close out letter will indicate whether the allegations have been substantiated and will provide a brief summary of the investigation's findings.

In any investigation, the person accused of discrimination, harassment, or retaliation has the right to respond to the allegations without a predetermination that inappropriate conduct has occurred.

2. Investigations of Complaints Against Certain Individuals in the Immediate Office or the Chief Human Resources Officer

If the Chief Human Resources Officer receives an allegation of discrimination, harassment, or retaliation against the Attorney General, the Chief of Staff, the Chief Deputy Attorney General, the First Assistant Attorney General, or the Chief Operating Officer, the Chief Human Resources Officer shall refer the allegations to the Inspector General for investigation. In such cases, OAG may choose to conduct a concurrent investigation. If either the Inspector General's or OAG's investigation finds a violation of this Policy, the Attorney General shall take appropriate disciplinary or other action to address the violation. Moreover, in accordance with D.C. Code §1-301.115a, if the Inspector General determines that misconduct or unethical behavior occurred, the Inspector General must forward the final report to appropriate authorities, which may include, among other authorities, the Board of Ethics and Government Accountability and criminal law enforcement agencies. *See* D.C. Code §1-301.115a(a)(3)(F).

If an individual alleges that the Chief Human Resources Officer has engaged in discrimination, harassment, or retaliation, the individual may report the allegations to the Chief of Staff and/or the Chief Operating Officer. If the Chief Human Resources Officer receives a complaint or concern that he/she/they have engaged in discrimination, harassment, or retaliation, the Chief Human Resources Officer shall promptly refer the allegations to the Chief of Staff and the Chief Operating Officer. The Chief Operating Officer shall then either refer the allegations to the Inspector General for an investigation or shall hire an independent consultant to conduct an investigation. If the investigation finds that the Chief Human Resources Officer violated this Policy, the Attorney General shall take disciplinary or other actions that may be warranted.

3. Interim Remedial Actions During an Investigation

Pending the resolution of an OAG or Inspector General investigation of an alleged violation of this Policy, and to protect the rights of the alleged victim and alleged offender, OAG may take temporary personnel actions that are not adverse employment actions. These interim actions are administrative rather than disciplinary and may include transfers, reassignments of duties or reporting requirements, mandatory administrative leave with pay, or other appropriate measures that do not result in reduction of pay or loss of employee benefits. If OAG takes an interim remedial action, it shall in no way interfere with OAG's authority to take any disciplinary or other action at the conclusion of the investigation.

C. Disciplinary and Other Actions

When an investigation finds that an employee, contractor, intern, or volunteer has violated this Policy by engaging in discrimination, harassment, or retaliation, the Attorney General shall take disciplinary action, up to and including termination.

When an investigation finds that an outside party has violated this Policy by engaging in discrimination, harassment, or retaliation, the Attorney General shall take actions to stop the discrimination, harassment, or retaliation. Such actions may include, for example, terminating a relationship with a vendor or reporting the conduct to the offender's employer.

V. Confidentiality

All complaints and related investigatory files shall be confidential and shall only be disclosed to authorized individuals as permitted or required by law or court order or as part of complaint resolution with the D.C. Office of Human Rights or the federal Eqaul Employment Opportunity Commission. The complaint files may also be shared with OAG attorneys representing the agency in civil litigation filed relating to the underlying complaint or a related complaint.

This confidentiality provision does not preclude OAG from reporting suspected illegal acts, *e.g.*, assaults or threats, to an appropriate enforcement agency and cooperating in any law-enforcement investigation.

VI. Additional Avenues for Victims of Discrimination, Harassment, or Retaliation to Seek Redress

The OAG processes discussed above are intended to assist OAG in maintaining a work environment free from discrimination, harassment, and retaliation. While the actions that OAG takes at the conclusion of its investigations may provide alleged victims with some redress (*e.g.*, termination or reassignment of an offender), victims may also seek redress through additional, separate processes before, during, or after an OAG investigation. Some of those processes include:

- filing a complaint with the D.C. Office of Human Rights (OHR);
- filing a complaint with the federal Equal Employment Opportunity Commission (EEOC);
- filing civil litigation; and/or
- filing criminal complaints with law enforcement.

If an employee, contractor, intern, or volunteer chooses to seek redress through these or other alternative processes, the employee, contractor, intern, or volunteer must still report the allegations to the Chief of Staff or the Chief Human Resources Officer within 24 hours of the alleged incident, and OAG will still conduct its own investigation and take any action deemed appropriate to address any discrimination, harassment, or retaliation. If an individual seeking services from OAG chooses to pursue these or other alternative avenues, the individual is still

encouraged to report the allegations to OAG, so that OAG may promptly investigate the allegations and take any actions that may be warranted.

For more information on how to file a complaint with OHR (including deadlines that may apply), please visit OHR's website. For a list of EEO Counselors, please check here.

For more information on how to file an EEOC complaint (and deadlines that may apply), please visit the EEOC's website.

VII. Effective Date and Relationship to Other Orders

This Order will take effect immediately and supersedes Office Order 2018-04.

Brian L. Schwalb
Attorney General

Dated this 29th day of August 2023