

Rules and Procedures

Rule 114

January 26, 2007

Rule 114 - HARASSMENT POLICY

PURPOSE: This rule is issued to replace Special Order 95-06, Sexual Harassment Policy, and amendments to that policy cited in Special Orders 96-15, 96-59, and 96-60, as well as Commissioner's Memorandum 95-126.

SEC. 1 GENERAL CONSIDERATIONS: The Boston Police Department is committed to promoting and maintaining a working environment that is free from harassment. The Department, in accordance with City of Boston policy, Mayoral Executive Orders and state and federal law, prohibits discrimination against or harassment of any person on the basis of race, color, gender, age, disability, national origin, religious creed, sexual orientation, veteran status, marital status, military status, or parental status. The focus of this Rule is on harassment and the Department's policies and procedures for handling harassment complaints.

Any form of retaliation against an employee who has complained of discrimination or harassment shall be considered prohibited conduct and could result in disciplinary action, up to and including termination of employment in accordance with the City's anti-harassment policy.

SEC. 2 DEFINITIONS: For purposes of this rule, the following definitions will apply:

Sexual Harassment

MGL Chapter 151 B defines the term sexual harassment as unwanted sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

A. Quid Pro Quo Harassment

- a) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or
- b) Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting that individual.

The following examples of conduct that could result in a claim of Quid Pro Quo harassment being filed are listed below:

1. Several openings exist in a new unit within your Bureau. You apply for one of them and your supervisor suggests that you get together after work to "discuss" your application. You decline to meet with your supervisor after work and your application is forwarded with an unfavorable recommendation.

2. After refusing to respond favorably to requests for a date from one of the supervisors assigned to your district, your regular assignment is changed whenever that supervisor is the Duty Supervisor.

B. Hostile or Abusive Work Environment Harassment

Whether an environment is “hostile” or “abusive” can be determined by looking at all the circumstances, which may include:

- a) The frequency of the conduct;
- b) The severity of the conduct; and
- c) Whether it unreasonably interferes with an employee’s work performance.

The following are examples of situation that could result in a claim of Hostile or Abusive Work Environment harassment being filed:

1. The people in your office spend so much time telling sexually offensive jokes during lunch that you are uncomfortable even eating your lunch in the cafeteria.
2. Although you have complained several times to your supervisor about individuals putting up vulgar and obscene posters and/or sexually explicit pictures in the locker room and in the guardroom, no apparent efforts are taken to discourage this activity.
3. Despite your objections and knowing that you blush easily, your co-workers enjoy telling you of their weekend sexual exploits.
4. Your immediate supervisor never lets a day go by without telling you how well dressed you are or how “good” you look. Although you’ve never been asked for a date, the constant references to your appearance make you feel unsettled. Although you have told your supervisor that compliments about your appearance make you feel uncomfortable, they continue to be made.
5. Several of your supervisors always seem to put a hand on your shoulder or arm whenever they give you a new assignment. You’ve told them that you would rather they not do that, but they always seem to “forget.”

SEC. 3 GENERAL INFORMATION: Sexual harassment can occur in a variety of circumstances, including, but not limited to the following:

- a) The complainant, as well as the alleged harasser, may be of either sex or the same sex;
- b) The alleged harasser may be the complainant’s supervisor, agent of the employer, a supervisor in another area, a co-worker, or in some circumstances, a non-employee;
- c) The complainant does not have to be the person harassed but could be anyone

- affected by the offensive conduct;
- d) A complainant is not required to prove serious psychological injury to establish a hostile work environment claim.

SEC. 4 RESPONSIBILITIES: All employees are responsible for promoting an environment free from harassment and to this end are encouraged to be sensitive to what other employees consider offensive or inappropriate conversation or behavior in the workplace.

Supervisory personnel are responsible for taking all necessary steps to prevent harassment and to promote and maintain a work environment free from harassment for employees and members of the general public. **Supervisory personnel will be held responsible for the conduct of an employee, which is known or should have been known to create or which could create harassment against an employee or member of the public, unless immediate and appropriate corrective action has been taken.**

SEC. 5 PROCEDURES: Any Boston Police Department employee who believes that he/she has been the victim of harassment is strongly encouraged to initiate a complaint immediately. In order to provide for the complainant's ease in filing a complaint, several procedural options are available. The complainant may choose to initiate the complaint by reporting it to any of the following:

1. The District Commander or Deputy Superintendent under whose command they work; or, if not applicable, the Superintendent of their Office or Bureau; or a member of the Internal Affairs Division;

Any Superior Officer informed that an individual wishes to make an allegation of harassment shall not take the complaint himself/herself but shall bring the individual to one of the above persons. If the complainant declines to accompany the Superior Officer to one of the above individuals, the Superior Officer shall make out a Form 26 detailing the complainant's allegations and submit it to the District Commander, Deputy Superintendent, or Bureau Chief.

2. The Boston Police Department's Director of Human Resources; the Affirmative Action Officer assigned to the Supervisor of Personnel at City Hall; and/or
3. Federal/State Compliance Agencies

Should the complainant choose options #1 or #2 (Internal Options) the following procedures shall be complied with:

The District Commander, Deputy Superintendent, Superintendent, member of the Internal Affairs Division, or Human Resource Director shall:

- a) Listen to the complainant's allegations.

- b) Discuss the complained of actions with discretion, sensitivity, and due concern for the dignity of those people involved.
- c) Inform the complainant that he/she may have a representative at the meeting to assist them in their decision-making (friend, lawyer, etc.).
- d) Inform the complainant of the Department's harassment policy and complaint procedures and provide the complainant with a copy of the Department policy.
- e) Explain the informal and formal processes to the complainant and ascertain which process the complainant wishes to proceed under. Complete either a BPD Form 1920 (Formal Process) or a BPD Form 26 (Informal Process) and any additional reports necessary and forward them through proper channels.
- f) Inform the complainant that complaints may be considered untimely if the actions occurred more than one year prior to the filing of the complaint. Inform the complainant that while every reasonable effort will be made to protect the confidentiality and privacy of the individuals involved, an investigation requires that the alleged harasser be informed of the specific allegations and that witnesses be interviewed. All persons contacted or interviewed during the investigation will be requested not to discuss the subject matter of the investigation.
- g) Inform the complainant that under the informal process, the possible actions that could be taken or agreed to could consist of additional sensitivity training, oral or written reprimands, or suspensions of up to 5 days.
- h) Notify the District/Unit Commanders of the parties involved of the complaint process chosen so they may take immediate, remedial action concerning the allegations. District/Unit Commanders shall attempt to determine if there are any working conditions or practices that encouraged or permitted the alleged conduct to take place, and if so, to eliminate them.

A. Informal Complaint Process

This process consists of the mediation and ultimate resolution of a complaint by a facilitation process. The informal process is designed to deal more with a clarification of appropriateness rather than an investigation of facts. It may not be used if:

- a) Either party disputes the material facts;
- c) Allegations amount to criminal conduct (i.e., indecent assault and battery, sexual assault, extortion, etc.);
- d) Acts complained about are so egregious as to constitute serious misconduct even if they are not criminal; or
- e) The alleged harasser has within seven years previously been permitted to resolve a complaint of harassment through the informal process.

The Human Resources Director shall be responsible for maintaining records on all complainants and alleged harassers and any agreed upon resolutions. If a second or subsequent complaint is received on the same employee within the last 7 years, **the complainant shall be informed that the informal process cannot be used and the Human Resource Director shall initiate a formal investigation, BPD Form 1920**, and shall inform

the complainant of such. All such records kept by the Human Resource Director are confidential and may only be accessed by the Human Resource Director and the Police Commissioner or his/her designee. With the permission of the Police Commissioner, the disclosure of such records to the Chief, Bureau of Professional Standards and Development, may be allowed solely for the purpose of determining whether any patterns exist which have encouraged or tolerated harassment.

This process shall be completed within 30 days upon receipt of the complaint. The complainant will choose from a list, maintained by the Human Resources Director, of potential facilitators trained in sexual harassment problem resolution. This list will include, but will not be limited to, Department employees. If the complainant chooses this process, the following procedures will apply:

1. The alleged harasser will be notified by his/her District/Unit Commander of the complainant's wish to proceed informally. The alleged harasser shall be informed that the possible results of an informal facilitation process could range anywhere from an agreement that no harassment took place up to and including a 5 day suspension, if agreed to by **both** parties. If it is an alleged "first offense" and if the alleged harasser agrees to the informal process, and only if he/she agrees, take place.
2. The complainant, the alleged harasser and the facilitator shall sign an agreement acknowledging that any statements or admissions made while participating in an informal facilitation process may not be used in any later administrative or disciplinary proceeding and that all such statements or admissions shall be confidential.
3. The Human Resource Director will be notified within 5 days if the alleged harasser has agreed to the informal process.
4. The Human Resource Director will provide the complainant with a list of facilitators from which to choose and will contact the facilitator chosen by the complainant as soon as possible, who will initiate the facilitation process within 5 days and who shall have complete discretion to determine how the facilitation process should proceed (i.e., written statements, interviews, etc.).
5. The facilitator will document the agreed upon recommended resolution and forward it to the Human Resource Director and to the Police Commissioner within 10 days of the start of his/her process, unless the complainant requests an extension.
6. The agreed upon recommended resolution will be implemented within 5 days if approved by the Police Commissioner and a copy of the resolution forwarded to the Affirmative Action Director at City Hall.
7. If the alleged harasser is not a "first offender," or does not agree to the informal process, or if no resolution can be reached, or if the Police Commissioner declines to approve any agreed upon resolution, the complainant may choose another option (i.e., formal investigation, BPD Form 1920; complaint with the Affirmative Action Officer assigned to the Supervisor of Personnel at City Hall; or complaint with applicable Federal or State compliance agencies).

B. Formal Complaint Process

The Formal Complaint Process will necessitate that a formal Internal Affairs investigation be completed subsequent to the filing of a BPD Form 1920.

1. The District Commander, Deputy Superintendent, Superintendent, Human Resource Director or a member of the Internal Affairs Division will complete a BPD Form 1920 detailing the specific allegations made by the complainant.
2. Every reasonable effort will be made to restrict information on the specifics of the complaint to those participating in the investigation. All persons contacted or interviewed during the investigation will be requested not to discuss the subject matter of the investigation
3. At any time during the investigation, the complainant may request the matter be resolved through a written "consent agreement" (similar to facilitation) drafted by the Legal Advisor's Office, which, if agreed to by all parties, will terminate the investigation.
4. The results of the investigation will be forwarded through proper channels to the Police Commissioner who in turn will notify the Affirmative Action Director at City Hall.

SEC. 6 REMEDIES: Available remedies shall consist of:

1. Progressive disciplinary procedures, up to and including termination of employment, will be used against the harasser and/or appropriate supervisory personnel.
2. This policy will not infringe upon the rights guaranteed in collective bargaining agreements, City ordinance or law, or the Constitution, laws or regulations of the Commonwealth of Massachusetts or the government of the United States.
3. Employees who feel they have been discriminated against have 300 days from the date the alleged discrimination occurred to file a complaint with either or both of the following agencies:

- § Massachusetts Commission Against Discrimination (MCAD),
One Ashburton Place, Room 601, Boston, MA 02108 (617) 994-6000
- § United States Equal Employment Opportunity Commission (EEOC),
JFK Federal Building, Room 475, Boston, MA 02203 (617) 565-3200

Note: Appendix A provides a list of Harassment Facilitators. The list includes sworn and civilian department personnel.

Edward F. Davis
Police Commissioner

APPENDIX A

Harassment Facilitators

Ayala-Leong, Norma	Detective	Fugitive Unit	343-4468
Brown, Gwen	Detective	SAU	343-4400
DeVoe, Richard	Detective	C-6	343-4742
Fisher, Lawrence	Sergeant	Range	343-5355
Lamberti, Maria	Civilian	Family Justice	343-4858
Lezama, Diane	Police Officer	E-5	343-4560
Perez, Marisela	Sgt. Detective	IAD/A&R	343-4323
Sheehan, Jane	Civilian	Academy	343-4410
Sumpter, Lynette	Police Officer	D-14	343-4260
Wash, Lori	Police Officer	ID Unit	343-4639
Williams-Mitchell, Angela	Police Officer	E-5	343-4560

Notes:

Amended by SO 07-016, issued April 2, 2007, update the organization names to reflect the new BPD organizational structures. Section 5 (A).