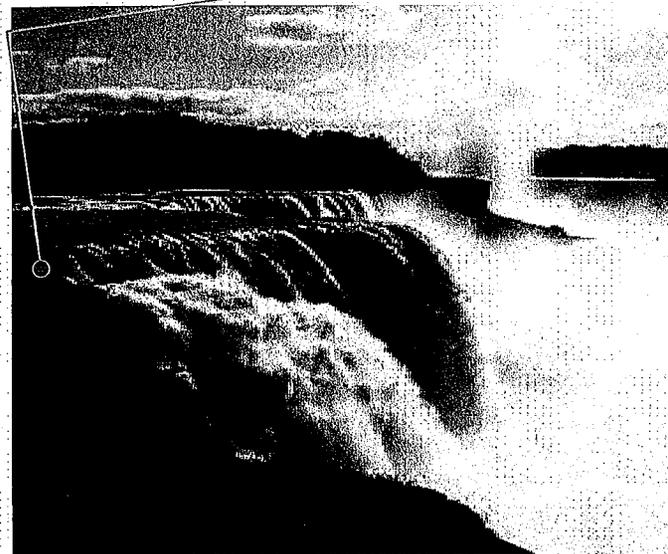


## Equal Employment Opportunity Policies

January 2012



City Of Niagara Falls

### Equal Employment Opportunity & Workforce Diversity Office

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### Equal Employment Opportunity is THE LAW

*“The law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, such as leave and health insurance, and any other term or condition of employment.”*

U.S. Equal Employment Opportunity Commission

## The City of Niagara Falls

### Equal Employment Opportunity and Workforce Diversity

The City of Niagara Falls recognizes the right of all persons to equal employment opportunities and a workplace environment free from discrimination, harassment and retaliation. It is the City's policy to provide equal employment opportunity without regard to age, race, creed, color, national origin, sex, sexual orientation, gender identity or marital status, military status, or domestic violence victim status. Equal employment opportunity exists when decisions, practices and procedures relating to the workplace are made in a way that provides everyone with a chance to succeed. This includes decisions regarding recruitment, hiring, promotions, terminations and other terms and conditions of employment.

The Equal Employment Opportunity & Workforce Diversity (EEO) Office has primary responsibility for administering and enforcing the City's EEO Policies and programs in coordination with Department of Human Resources, Corporation Counsel, the Niagara Falls Human Rights Commission and City department heads. We:

1. Investigate and resolve employee complaints of discrimination, harassment and/or retaliation;
2. Devise plans to further workplace diversity and equal employment opportunities;
3. Create and implement outreach, training, development programs for the workplace regarding EEO and fair employment practices;
4. Monitor and ensure compliance with federal, state and local antidiscrimination laws and City's discrimination and harassment policy and complaint procedures;
5. Maintain and analyze statistical data on the composition of the City's workforce and the region's labor markets.

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Definitions

## **Age Discrimination Policy**

It is the policy of the City of Niagara Falls to prohibit Age Discrimination and/or harassment which involves treating an applicant or employee less favorably because of age. The Age Discrimination in Employment Act (ADEA), as amended, protects applicants and employees 40 years of age or older from discrimination based on age in employment, potential employment or terms and conditions of employment. The New York Human Rights Law protects applicants and employees 18 years of age or older from discrimination based on age. The City of Niagara Falls does not discriminate against any individual on the basis of age.

## **Background Checks Policy**

*Uniformed Fire and Police personnel follow Departmental Rules and Regulations for public safety personnel\**

It is the policy of the City of Niagara Falls to conduct a background check of potential employees to verify background information, including criminal history. The purpose of the background check is to ensure that individuals are well qualified, have a strong potential to successfully fulfill the requirements of the job, and have honestly presented their background and qualifications as outlined on their application and resume.

Background checks apply to new hires, as a condition of employment, after a contingent job offer is made. Employment is contingent upon the results of the background check. Background checks are conducted on current employees who transfer to positions that are sensitive from a security, safety, or financial standpoint.

Having an arrest record or criminal conviction does not automatically disqualify applicants from employment. The nature of the offense is taken into consideration. Any applicant that provides misleading, erroneous or deceptive information on the application form, resume, or in an interview may be immediately eliminated from further consideration for employment and possibly terminated if discovered after employment begins.

## **Behavior at Work Policy**

The City of Niagara Falls prohibits the deliberate, repeated bullying of one employee by another, which prevents the targeted individual from performing his/her work. The term "bullying" includes, but is not limited to, disparaging or disrespectful verbal or physical behavior even if it is unrelated to a person's age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, religion, disability, predisposing genetic characteristics, marital status, military status, or domestic violence victim status. It can involve demeaning remarks, public humiliation, offensive language, threats, etc. Bullying shall be considered workplace harassment and subject to conditions defined in Section 178.03 Prohibition Against Workplace Harassment, i.e., when such conduct:

- has the purpose or effect of unreasonably interfering with the individual's terms, conditions, and/or privileges or employment; or
- has the purpose or effect of creating an intimidating, hostile, or offensive working environment; or
- otherwise adversely affects an individual's employment benefits, conditions, or opportunities.

The City will exercise reasonable care to prevent or correct any bullying behavior by separating the alleged "bully" from his/her victim while conducting a prompt and thorough investigation. Any employee found to have engaged in bullying will be subject to disciplinary action up to and including dismissal. Managers and supervisors who know or should have known of bullying behavior and fail to report such behavior, or fail to take immediate, appropriate, corrective action, will be subject to disciplinary action up to and including dismissal.

The City recognizes that gossip can be extremely detrimental to a workplace. It can damage reputations, hurt morale, and decrease productivity. Therefore, the spreading of gossip that involves sensitive subjects or harms a co-worker, supervisor, customer, etc. is strictly prohibited.

## Behavior at Work Policy Cont.

Employees are encouraged to show common courtesy and to enjoy each other's company. However, the City does not endorse excessive socializing during work hours. Excessive socializing affects performance and productivity and if continued, may lead to negative performance evaluations and disciplinary action. Insubordination, including improper conduct toward a supervisor or refusal to perform tasks assigned by a supervisor in the appropriate manner, is considered inappropriate workplace conduct.

It is the policy of the City to prohibit improper and inappropriate behavior in the workplace in order to maintain a professional, ethical and legal working environment.

## Conflict of Interest in Personnel Decisions Policy

*\*Uniformed Fire and Police personnel follow Departmental Rules and Regulations for public safety personnel\**

Persons who may have a personal interest in a position or who could be viewed as having a conflict of interest involving applicants, potential applicants or current employees should not be part of the search panel, recommend appointments, supervise, or conduct employee evaluations. Even the appearance of a conflict of interest should be avoided. If a relative or other close ally as defined below is a potential applicant, the employee should disclose the nature of the relationship to the appointing department head, excuse him/herself from committee membership, and abstain from making personnel decisions regarding the relative or other close ally. There should be no supervisory relationship between relatives or other close allies.

**Relative:** Any spouse, parent, step-parent, child, step-child, sibling, step-sibling, sibling's spouse, uncle, aunt, nephew, niece, first cousin, grandparent and/or grandchild or household member of a municipal officer or employee, and individuals having any of these relationships to the spouse of the officer or employee.

**Close allies:** Associations where there are personal, private or financial interests sufficient to appear to influence the objective exercise of his/her duties as an employee of the City of Niagara Falls or have the potential to compromise or bias professional judgment and objectivity.

## Disability Discrimination Policy

It is the policy of the City of Niagara Falls to comply with the Americans with Disabilities Act (ADA) as amended by the ADA Amendments Act of 2008, prohibiting discrimination against "qualified individuals with disabilities" in all employment practices, terms, conditions and privileges of employment. We consider a qualified individual with a disability as a person who meets legitimate skill, experience, education, or other requirements of an employment position that he/she holds or seeks.

The City requires the ability to perform "essential" job functions to assure that an individual with a disability will not be considered unqualified simply because of an inability to perform marginal or incidental job functions. If the individual is qualified to perform essential job functions, except for limits caused by a disability, we will consider whether the individual could perform these functions with a reasonable accommodation. The City will not ask or require a job applicant to take a medical examination before extending a conditional job offer. Except under lawful circumstances, we will not make any pre-employment inquiry about a disability or the nature or severity of a disability. But we may ask questions about the ability to perform specific job functions and may, with certain limitations, ask an individual with a disability to describe or demonstrate how he/she would perform these functions.

The City retains the right to conduct medical examinations where there is evidence of job performance or safety problems to determine an employee's current "fitness" to perform at his/her job, and on voluntary basis as part of employee health programs.

### Accommodations:

The City will provide reasonable accommodation to enable a qualified applicant with a disability to perform the essential functions of the job that he/she is seeking, and to enable a qualified employee with a disability to perform the essential functions of a job currently held. A qualified applicant or employee is an individual with a disability who satisfies the requisite skill, experience, education, and other job-related requirements of a position and who can perform the essential functions of that position with or without reasonable accommodation.

### **Disability Discrimination Policy *cont.***

Applicants must request accommodations for the application, interview, and testing process (if applicable). All applicants shall be informed of this policy upon being invited to apply or interview for any available positions. Applicants may direct their request for accommodation to the hiring manager, Human Resources or to the EEO office. We will not be able to make an accommodation that would impose an undue hardship on the operation business. The ADA defines an undue hardship as an action that requires significant difficulty or expense. Each accommodation request will be handled on a case-by-case basis, and every effort will be made to comply with the Act.

### **Diversity Policy**

It is the policy of the City of Niagara Falls to have diversity in the workplace. The City is committed to seeking out and finding the most talented employees to ensure top business growth and potential. Diversity benefits employees, customers, and the City as a whole as all employees bring their own capabilities, experiences, and characteristics to their work. Diversity has differences such as ethnicity, gender, age, religion, socio-economic status, education, experience, etc. All employees must undergo diversity training. It raises awareness about issues that surround diversity and developing diversity management skills.

### **Hiring Policy**

It is the policy of the City of Niagara Falls to prohibit discrimination in the hiring process on the basis of age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, religion, disability, predisposing genetic characteristics, marital status, military status, or domestic violence victim status. Complete records of this process will be kept, and all job openings not filled from within the City will be placed as equal employment opportunity ads. The City will always try to hire the best qualified applicant. The City will not tolerate any personal or professional prejudice

### **Hiring Policy *cont.***

against any applicant because of age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, religion, disability, predisposing genetic characteristics, marital status, military status, or domestic violence victim status. No person employed by the City shall discriminate against any other person in employment, potential employment or terms and conditions of employment based on any protected category.

### **Hiring of Relatives Policy**

The following policy sets forth and describes policies for employment of relatives of City of Niagara Falls employees. The policy is designed to assure reliability and fairness in the best interests of the City, to assure and maintain accountability and to avoid the potential for employment related conflicts of interest.

It is the policy of the City of Niagara Falls not to discriminate in its employment and personnel actions with respect to its employees and applicants on the basis of marital and familial status.

Relatives of City of Niagara Falls employees are eligible for employment at the City. However, to ensure that the professional integrity of the City is maintained, the employment of relatives should NOT:

1. Create a direct supervisory relationship between relatives or a relative member of the employee's household;
2. Allow one relative to influence the job assignments, promotional opportunities, compensation, discipline, and performance review of another relative or a relative member of the employee's household;
3. Allow one relative to approve compensation of another relative or a relative member of the employee's household;
4. Allow one relative to audit or monitor the work of a relative member of the employee's household.

## Hiring of Relatives Policy *cont.*

The employment of relatives in the same area or department where there is a potential for creating adverse impact is generally avoided. Whenever a department head proposes an exception to the policy, he/she shall submit a written request that includes an alternative procedure for supervision to the City Administrator, who after seeking a written opinion from Corporation Counsel shall approve or deny the exception to the policy.

When two existing employees marry or begin cohabiting and a determination has been made that the potential for creating adverse impact as described in items #1- 4 exists, the department head in conjunction with Human Resources and the EEO Office, shall make reasonable efforts to minimize problems or supervision, or safety, security, or morale through reassignment of duties or transfer. The proposed plan for accommodation shall be submitted to the City Administrator for approval.

This policy should be taken into consideration when relatives of employees are being reviewed for new job assignments, transfers, or promotions. Uniformed Fire and Police personnel shall be exempt from this policy, but are governed by departmental rules and regulations and contractual agreements.

Relative: Any spouse, parent, step-parent, child, step-child, sibling, step-sibling, sibling's spouse, uncle, aunt, nephew, niece, first cousin, grandparent and/or grandchild or household member of a municipal officer or employee, and individuals having any of these relationships to the spouse of the officer or employee.

Relative member of the employee's household: Includes individuals who are cohabiting with the employee as well as any individual of the cohabitant who are relatives by blood, marriage or adoption including the following: parent, child, spouse, brother, sister, grandparent, aunt, uncle, niece, nephew, grandchild, legal guardian, foster child, in-laws and step relationships.

## Hiring of Relatives Policy *cont.*

Supervision: Shall mean any employee, regardless of job description or title, having authority (or practical power) in the interest of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend this action, if, in the connection with the foregoing, the exercise of this authority is not merely routine or clerical in nature, but requires the use of independent judgment.

## **Pregnancy Discrimination Policy**

It is the policy of the City of Niagara Falls to prohibit discrimination of its employees because of pregnancy, childbirth, or a medical condition related to a pregnancy or childbirth in the workplace. The City of Niagara Falls will not tolerate harassment of employees because of pregnancy.

No person employed by the City shall discriminate against any other person in employment, potential employment or terms and conditions of employment based on pregnancy or conditions related to pregnancy.

Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer. If an employee is temporarily unable to perform her job due to pregnancy or childbirth, the employer must treat her the same as any other temporarily disabled employee.

## **Race/Color Discrimination Policy**

It is the policy of the City of Niagara Falls to prohibit race/color discrimination of its employees in the workplace. The City of Niagara Falls will not tolerate harassment of any employee based on his/her race or color in regard to hiring, termination, promotion, compensation or training. Harassment can include, for example, racial slurs, offensive or derogatory remarks about a person's race or color, or the display of racially-offensive symbols. Although the law doesn't prohibit simple teasing, off-hand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer. No person employed by the City shall discriminate against any other person in employment, potential employment or terms and conditions of employment based on race/color.

## **Rehire Policy**

It is the policy of the City of Niagara Falls to be an equal opportunity employer and to hire individuals on the basis of their qualifications and ability to do the job to be filled. The City of Niagara Falls will consider former employees for reemployment. Performance and employment history, as well as current qualifications will be reviewed. As with all job seekers, it is the responsibility of former employees to identify and submit timely employment applications for positions desired.

Employees who ARE NOT ELIGIBLE for rehire would have one of the following termination reasons including, but not limited to, for cause, criminal conduct, dismissal for disciplinary reason, gross misconduct (misappropriation of funds, sex crimes, repeated written warnings to

## **Rehire Policy Cont.**

perform job properly, violent or threat of violent behavior, crimes of moral turpitude), resignation without notice, etc. In some instances, even acts that occur away from the workplace may qualify as gross misconduct.

Employees leaving the City of Niagara Falls because of position eliminations are eligible to apply for reemployment. Employees who retire may not be eligible for full-time, part-time, temporary or seasonal reemployment for a two year period after retirement, unless the employee has specialized technical skills deemed necessary for training or continuity of special projects.

In which case, the employee may return for a limited duration specifically for training or continuity purposes. The limited duration is not to be considered for calculations of pay rate, accruals or health benefits.

Decisions to interview and/or re-hire will be based upon position requirements and qualifications, barring collective bargaining agreements, grievance resolutions, civil service rules and the Federal Uniformed Services Employment and Reemployment Rights Act (USERRA).

All rehires will be treated as new employees with no service restoration of seniority for pay, longevity, vacation accrual or other benefits unless specified by collective bargaining agreements and/or Civil Service guidelines

## **Religion Policy**

It is the policy of the City of Niagara Falls to prohibit discrimination of its employees based on religious beliefs in the workplace. The City of Niagara Falls will not tolerate harassment of an employee based on his/her religion. No person employed by the City shall discriminate against any other person in employment, potential employment or terms and conditions of employment based on religion.

## **Religion Policy cont.**

Unless it would be an undue hardship on the employer's operation of its business, an employer must reasonably accommodate an employee's religious beliefs or practices. This applies not only to schedule changes or leave for religious observances, but also to such things as dress or grooming practices that an employee has for religious reasons. These might include, for example, wearing particular head coverings or other religious dress (such as a Jewish yarmulke or a Muslim headscarf), or wearing certain hairstyles or facial hair (such as Rastafarian dreadlocks or Sikh uncut hair and beard). It also includes an employee's observance of a religious prohibition against wearing certain garments (such as pants or miniskirts).

When an employee or applicant needs a dress or grooming accommodation for religious reasons, he should notify the employer that he needs such an accommodation for religious reasons. If the employer reasonably needs more information, the employer and the employee should engage in an interactive process to discuss the request. If it would not pose an undue hardship, the employer must grant the accommodation.

## **Retaliation Policy**

It shall be prohibited for an employee of the City to engage in retaliation against an individual on the ground that the individual complained about prohibited discrimination or harassment or testified, provided information, or otherwise assisted in any investigation of alleged prohibited conduct as defined by law or this Policy.

Retaliation occurs when an employee suffers an adverse employment action, such as a demotion, discharge, or significant change in work assignment, or when other action is taken that might discourage a reasonable worker from opposing a discriminatory practice or making or supporting a charge of discrimination. Intimidation, coercion, threats, reprisals, or discrimination against any person for complaining about discrimination or harassment, as described in this Policy, is also prohibited. Any such retaliatory conduct is illegal and will result in disciplinary action against the retaliator.

## **Sexual Harassment Policy**

It is the policy of the City of Niagara Falls to prohibit Sexual Harassment of its employees in the workplace. The City of Niagara Falls will not tolerate verbal or physical conduct by any employee that harasses, disrupts or interferes with another's work performance or which creates an intimidating, offensive, or hostile environment. Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

No person employed by the City of Niagara Falls shall discriminate against any other person in employment, potential employment or terms and conditions of employment based on sex. It shall be prohibited for an employee of the City to engage in sexual harassment of another employee of the City.

1. Prohibited conduct includes sexual advances that are not welcome, requests for sexual favors, and other verbal, nonverbal or physical conduct of a sexual nature when:

- Submission to such conduct is made, either explicitly or implicitly, a term or conditions of an individual's work; or
- Submission to, or rejection of, such conduct by an individual is used as the basis for workplace decisions such as promotion, transfer, or termination; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

2. Sexual harassment refers to behavior of a sexual nature that an individual does not welcome; that is personally offensive; that fails to respect the rights of others; that lowers morale and that, therefore, has the purpose or effect of interfering with an individual's work performance and

### **Sexual Harassment Policy cont.**

effectiveness; or that creates an intimidating, hostile, or offensive working environment.

Specific forms of behavior that the City would consider sexual harassment include, but are limited to, the following:

A. Sexual Advances: Demands, direct or indirect, for sexual favors such as a condition of employment, for favorable employment decisions, or for any other reason.

B. Verbal Harassment: Hostile or abusive verbal language related to a person's sex, including sexual innuendos; epithets; slurs; suggestive, derogatory, or insulting comments or sounds; staring; whistling; jokes of a sexual nature, even when not directed toward a specific individual; conversations with obvious sexual overtones, even when not directed toward a specific individual; sexual propositions; and threats.

C. Non-Verbal Harassment: Abusive written language; showing, displaying or circulating, including by the use of email, pornographic or sexually explicit jokes, objects or pictures, graphic commentaries; leering; or obscene gestures in the workplace that unreasonably interfere with an individual's work performance or creates an intimidating, hostile, or offensive working environment.

D. Physical Harassment: Any physical contact which is not welcome, including touching, kissing, embracing, petting, pinching, coerced sexual intercourse, assault, or persistent brushing up against a person's body.

3. A victim of sexual harassment does not have to be the opposite sex of the harasser. The harasser does not have to be the victim's immediate supervisor. The harasser could be an agent of a supervisor, another supervisor, a co-worker, or even someone not on the payroll of the City might have occasion to appear at a work site or enter a City building or facility.

### **Sexual Harassment Policy cont.**

A victim of discriminatory or sexual harassment does not necessarily have to be the person harassed but could be anyone affected by the offensive conduct directed at another person or not directed at any specific person.

4. Conduct which may not rise to the level of a violation may nonetheless violate this policy.

## **Sex/Gender Discrimination Policy**

It is the policy of the City of Niagara Falls to prohibit discrimination of an employee in the workplace based on his/her sex (gender). The City of Niagara Falls will not tolerate harassment of an employee based on his/her gender in regard to hiring, termination, promotion, compensation or training. This also includes treating someone unfavorably because of his/her connection with an organization or group that is generally associated with people of a certain sex. No person employed by the City of Niagara Falls shall discriminate against any other person in employment, potential employment or terms and conditions of employment based on sex (gender).

## Definitions

**Complainant** – A person who makes a complaint or files a formal charge or accusation, either verbally or in writing.

**Creed** – A formal statement of religious belief; confession of faith

**Disability** - A physical, mental or medical impairment that substantially limits one or more major life activities.

**Discrimination** – Unequal and unlawful treatment based upon one's membership in a protected class.

**Domestic Violence Victim** - An individual who is a victim of an act which would constitute a family offense.

**Employment Decisions** – Actions affecting employment including hiring, promotions, terminations

**Gender Identity or Expression** – An individual's sense of being either male or female or the actual or perceived external characteristics and behaviors that are socially defined as either masculine or feminine, such as dress, mannerisms, speech patterns and social interactions.

**Harassment** – Unwelcome conduct, based upon an individual's membership in a protected class, that is a condition of employment or creates a hostile environment. Harassment is a form of discrimination and may be verbal (language, slurs, innuendos, whistling), non-verbal (written language, emails, objects, pictures, gestures) or physical (physical contact such as touching, kissing, embracing, pinching, persistent brushing up against a person's body).

**Marital Status** - Marital status means the state of being unmarried, married, or separated, as defined by applicable state law. The term "unmarried" includes persons who are single, divorced, or widowed.

## Definitions Cont.

**Military Status** - A person's participation in the military service of the United States or the military service of the state, including but not limited to, the armed forces of the United States, the army national guard, the air national guard, the New York naval militia, the New York guard, and such additional forces as may be created by the federal or state government as authorized by law.

**National Origin** – An individual's ancestry, heritage, place of origin

**Retaliation** – Conduct causing any interference, coercion, restraint, or reprisal against a person complaining of harassment or participating in the resolution of a complaint of harassment.

**Predisposing Genetic Characteristics** - Any inherited gene or chromosome, or alteration thereof, and determined by a genetic test or inferred from information derived from an individual or family member that is scientifically or medically believed to predispose an individual or the offspring of that individual to a disease or disability, or to be associated with a statistically significant increased risk of development of a physical or mental disease or disability

**Protected Class** – A group of people who share common characteristics and are protected from discrimination and harassment by federal and/or state laws.

**Respondent** – A person complained of, who responds to a charge or accusation

**Sex** – Physical, biological or anatomical identity

**Sexual Orientation** - An enduring emotional, romantic, sexual, or affectional attraction toward men, women, both or neither gender.