ARTICLE 18: SEXUAL HARASSMENT POLICY FOR EMPLOYER HAVING A CONTRACT WITH THE CITY

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§ 1-18.1 "Sexual harassment"—Definition.

For the purposes of this article, ***sexual harassment*** means any of the following:

(1) Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or visual display of a sexual nature directed by an officer or employee to a second officer or employee when:

(A) Submission to the advances, requests, or conduct is a term or condition of the second officer's or employee's employment;

(B) Submission to or rejection of the advances, requests, or conduct is used as the basis for employment decisions relating to the second officer or employee; or

(C) The advances, requests, conduct, or visual display has the purpose or effect of:

(i) Substantially interfering with the second officer's or employee's work performance; or

(ii) Creating an intimidating, hostile, or offensive working environment for the second officer or employee;

(2) Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or visual display of a sexual nature directed by an officer or employee to an individual under consideration for employment with an employer when:

(A) Submission to the advances, requests, or conduct is used as a term or condition for the employment of the individual;

(B) Submission to or rejection of the advances, requests, or conduct is used as the basis for a decision to employ or reject the individual; or

(C) The advances, requests, conduct, or visual display has the purpose or effect of:

(i) Substantially interfering with the individual's ability to display qualifications for employment; or

(ii) Creating an intimidating, hostile, or offensive environment in which the individual seeks employment; or

(3) Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or visual display of a sexual nature directed by an officer or employee to an individual engaged in business with an employer when:

(A) Submission to the advances, requests, or conduct is a term or condition of the individual's engagement in business with the employer;

(B) Submission to or rejection of the advances, requests, or conduct is used as the basis for a decision on the individual's engagement in business with the employer; or

(C) The advances, requests, conduct, or visual display has the purpose or effect of:

(i) Substantially interfering with the individual's engagement in business with the employer; or

(ii) Creating an intimidating, hostile, or offensive environment in which the individual engages in business with the employer.

(1990 Code, Ch. 1, Art. 18, § 1-18.1) (Added by Ord. 93-84)

§ 1-18.2 Other definitions.

For the purposes of this article, the following definitions apply unless the context clearly indicates or requires a different meaning.

City Officer in Charge. The city executive officer having the final authority to enter into or renew a contract with an employer.

Employee. An individual employed by an employer.

Employer. A sole proprietorship, partnership, profit or nonprofit corporation, or any other private person employing at least one individual.

Individual Engaged in Business with an Employer. An individual who:

(1) Is performing services as an independent contractor with an employer;

(2) Is seeking an independent contract with an employer;

(3) Is seeking to sell or has sold products or services to an employer;

(4) Is engaged or seeking to engage in a business activity jointly with an employer;

(5) Is a customer or seeking to become a customer of an employer; or

(6) Is a client or seeking to become a client of an employer.

Individual under Consideration for Employment with an Employer. An individual who has applied for and is being considered for employment with an employer.

Officer. An individual serving as a director, officer, partner, or proprietor of an employer.

(1990 Code, Ch. 1, Art. 18, § 1-18.2) (Added by Ord. 93-84)

§ 1-18.3 Applicability of article.

This article shall apply to the following employers having contracts with the city:

(1) An employer under contract to provide products or services to or on behalf of the city;

(2) An employer with a contract to lease real property from the city; and

(3) An employer with a contract to operate a concession on city property.

(1990 Code, Ch. 1, Art. 18, § 1-18.3) (Added by Ord. 93-84)

§ 1-18.4 Sexual harassment policy required of employer.

(a) Each employer to which this article applies shall have and enforce a policy prohibiting sexual harassment that sets forth the same or greater protections than those contained in Article 17 that are correspondingly applicable to the employer's business and including the following:

(1) Prohibitions against an officer's or employee's sexual harassment of the following:

(A) Another officer or employee of the employer;

(B) An individual under consideration for employment with the employer; or

(C) An individual doing business with the employer;

(2) A provision prohibiting a management or supervisory officer or employee from knowingly permitting a subordinate officer or employee to engage in the sexual harassment prohibited under subdivision (1);

(3) A prohibition against retaliation towards an officer, employee, or individual who has complained of sexual harassment, conducted an investigation of a complaint, or acted as a witness during an investigation of a complaint;

(4) A prohibition against a malicious false complaint of sexual harassment by an officer, employee, or individual;

(5) Provisions allowing an officer, employee, or individual to make a sexual harassment complaint to an appropriate management, supervisory, or personnel officer or employee;

(6) Procedures for investigating a sexual harassment complaint in an unbiased, fair, and discreet manner with appropriate safeguards to maintain confidentiality and protection from embarrassment;

(7) A provision requiring the use of the "reasonable person of the same gender standard," as described under § 1-17.6, to determine if sexual harassment has occurred;

(8) Disciplinary actions that may be imposed on an officer or employee who committed a prohibited act; and

(9) For an employer with at least five employees, a provision requiring the annual viewing of a video on the sexual harassment policy by each management or supervisory officer or employee.

(b) The policy required under this section shall be in effect for at least the duration of the employer's contract with the city.

(c) The department of budget and fiscal services shall prepare a standard form of the policy required under this section. The standard form shall set forth a policy containing minimum requirements which conform to this section.

(1990 Code, Ch. 1, Art. 18, § 1-18.4) (Added by Ord. 93-84)

§ 1-18.5 Pledge of compliance—Prohibition on contract without pledge—Revocation, termination, or suspension of contract for noncompliance with pledge.

(a) When entering into or renewing a contract with an employer, the city officer in charge shall require the employer to pledge compliance with:

(1) This article; and

(2) The sexual harassment policy set forth in the standard form prepared by the department of budget and fiscal services.

A provision in the contract or renewal document shall express the pledge. Approval of the contract or renewal document by the employer shall be deemed an agreement with the pledge.

(b) A city officer in charge shall not enter into or renew a contract with an employer unless the employer agrees to the pledge required by this section.

A city officer in charge may revoke, terminate, or suspend a contract with an employer if finding that the employer is not in compliance with the pledge required by this section.

(1990 Code, Ch. 1, Art. 18, § 1-18.5) (Added by Ord. 93-84)

§ 1-18.6 Debarment for violation.

(a) The director of budget and fiscal services may debar an employer who, contrary to a pledge made pursuant to § 1-18.5, has violated this article or the sexual harassment policy set forth in the standard form prepared by the department of budget and fiscal services.

The director of budget and fiscal services shall have discretion in determining whether to debar an employer for a violation. When making a debarment decision, the director of budget and fiscal services shall consider the seriousness of the violation and any remedial measures taken by or mitigating factors applicable to the employer.

(b) The debarment of an employer:

(1) Shall extend to the employer's divisions or other organizational elements; and

(2) May extend to a business affiliate of the employer if so ordered by the director of budget and fiscal services. A "business affiliate of the employer" means a business concern, organization, or individual that, directly or indirectly:

(A) Has the power to control the employer;

(B) Is subject to the control of the employer; or

(C) Is subject, along with the employer, to the control of a third party.

Any provision of this section applicable to a "debarred employer" also shall be applicable to a division or other organizational element of the debarred employer and, if so ordered by the director of budget and fiscal services, a business affiliate of the debarred employer.

(c) The director of budget and fiscal services shall set the debarment period for a debarred employer. The debarment period shall be commensurate with the seriousness of the employer's violation, but not more than three years.

(d) Unless the director of budget and fiscal services orders otherwise for a compelling reason, a debarred employer shall not be eligible for the following during the debarment period:

(1) The award or renewal of a contract with the city; or

(2) A subcontract to another person's contract with the city.

(e) The director of budget and fiscal services shall establish procedures for making a decision on the proposed debarment of an employer. The procedures shall include but not be limited to the following:

(1) Notice to the employer proposed to be debarred; and

(2) An opportunity for the employer to present arguments against debarment.

The director of budget and fiscal services also may establish rules or policies deemed necessary to implement this section.

The procedures, rules, and policies shall be in conformance with HRS § 103D-702 and any rules of the State procurement policy office.

(1990 Code, Ch. 1, Art. 18, § 1-18.6) (Added by Ord. 93-84)

§ 1-18.7 Rules.

The department of budget and fiscal services may adopt rules pursuant to HRS Chapter 91 to carry out the purposes of this article.

(1990 Code, Ch. 1, Art. 18, § 1-18.7) (Added by Ord. 93-84)