

DISTRICT OF COLUMBIA PUBLIC LIBRARY**NOTICE OF PROPOSED RULEMAKING**

The Interim Director and the Board of Trustees of the District of Columbia Public Library (“DCPL”), at its regular meeting held June 11, 2003 introduced the proposed amendment to § 810 to Chapter 8, Title 19 of the D.C. Municipal Regulations. At its regular meeting of November 12, 2003 the District of Columbia Library Board of Trustees took final action to approve and adopt the new amendment § 810 to Chapter 8, Title 19 of the D.C. Municipal Regulations. The Board of Library Trustees through D.C. Official Code §39-105 (2001 Ed.) designated the Chief Librarian to establish rules and manage the day-to-day operations of the library. The District of Columbia Public Library Board of Trustees, pursuant to the authority set forth in An Act To establish and provide for the maintenance of a free public library and reading room in the District of Columbia, approved June 3, 1896, 29 Stat. 244, ch. 315, § 5; April 1, 1926, 44 Stat. 230, ch. 98, §5; Mar. 3, 1979, D.C. Law 2-139, § 3205 (jjj), 25 DCR 5740; Sept. 5, 1985, D.C. Law 6 – 17, § 2, 32 DCR 3582; Apr. 12, 1997, D.C. Law 11-259, § 316, 44 DCR 1423; Oct. 21, 1998, 112 Stat. 2681 – 146, Pub. L. 105 – 277, § 156 (codified at D.C. Official Code § 39-105, 2001 Ed.); 27 DCRR §2.1, 24 DCR 11011, 11014 (June 30, 1978); as amended by Final Rulemaking published at 38 DCR 1011 (February 8, 1991), hereby gives notice of its intent to adopt the following regulation to § 810 to Chapter 8, Title 19 of the D.C. Municipal Regulations in not less than thirty (30) days from the date of publication of this notice in the D.C. Register. The newly adopted legislation will uphold the DCPL policy to provide and maintain a safe and secure environment in which every customer can attain equitable access to information, expanded opportunities and an increased quality of life. The guidelines will act as library rules of conduct for our customers, in order to deter and/or minimize the effect of unacceptable behavior by defining such behavior so that individuals may conduct themselves in a manner consistent with the purposes and functions of DCPL.

Amend and add a new § 810 to Chapter 8, Title 19 of the D.C. Municipal Regulations as follows:

810. Behavior Guidelines and Response Matrix

810.1 It is the policy of the District of Columbia Public Library (“DCPL”) to provide and maintain a safe and secure environment in which every customer can attain equitable access to information, expanded opportunities and an increased quality of life. The behavior guidelines or library rules of conduct are developed only to deter unacceptable customer behavior that may interfere or disturb other library customers or promote an unsafe and insecure environment. It is DCPL’s intention that by developing these guidelines its customers are free from harassment, abuse, harm or undue stress when utilizing its facilities. The DCPL wants to ensure its customers an environment that will provide a lifelong learning experience that is conducive to reading and use of information resources that will aid one’s personal growth and development, while also ensuring that its customers, both internal and external, receive the highest quality of services possible.

More importantly, the DCPL wants to guarantee that those customers using the library and its resources have a safe, comfortable environment that supports appropriate library services.

810.2 For the safety and comfort of the public and staff, and to create an environment conducive for library business the following activities are prohibited on library property and facilities:

GUIDELINE # & PENALTY	Offenses	Warning First	7 Days	30 Days	90 Days	6 Months	1 Year
SMOKING #1							
	1st Offense			X			
	Repeat Offense				X		
*GAMBLING #2							
	1st Offense			X			
	Repeat Offense				X		
*FIGHTING #3							
	1st Offense					X	
	Repeat Offense						X
SLEEPING, LYING, OR PLACING HEAD ON TABLES OR ON THE FLOORS #4							
	1st Offense	X					
	Repeat Offense		X	X			
<i>*Such violations are generally more serious in nature & may result in an arrest</i>							

GUIDELINE # & PENALTY	Offenses	Warning First	7 Days	30 Days	90 Days	6 Months	1 Year
DISTRIBUTING OR POSTING PRINTED MATERIALS WITHOUT AUTHORIZATION FROM AN ASSOCIATE DIRECTOR OF MARTIN LUTHER KING JR. MEMORIAL LIBRARY OR ASSOCIATE DIRECTOR OF NEIGHBORHOOD LIBRARIES, OR THE BRANCH MANAGER # 5							
	1 st Offense Repeat Offense	X	X	X			
TRESPASSING IN NONPUBLIC AREAS OR BEING IN THE LIBRARY WITHOUT PERMISSION OF AN AUTHORIZED LIBRARY EMPLOYEE BEFORE OR AFTER LIBRARY OPERATING HOURS AND CAMPING ON LIBRARY GROUNDS #6							
	1 st Offense Repeat Offense			X	X X	X	

GUIDELINE # & PENALTY	Offenses	Warning First	7 Days	30 Days	90 Days	6 Months	1 Year
*USE OR POSSESSION OF ILLEGAL DRUGS OR OPENED ALCOHOLIC BEVERAGES #7							
	1st Offense					X	
	Repeat Offense						X
*ENTERING THE FACILITY WITHOUT WEARING SHIRT AND/OR SHOES #8							
	1st Offense	X	X				
	Repeat Offense			X			
MORE THAN ONE LARGE AND ONE PERSONAL BAG NOT EXCEEDING A TOTAL OF TWO (2) BAGS FOR EACH CUSTOMER. THE OFFICIAL AIRPORT STANDARD "CARRY ON" SIZE – 9x14x22" WILL BE APPLIED TO THE LARGE BAG #9							
	1st Offense	X					
	Repeat Offense	X					
<i>*Such violations are generally more serious in nature & may result in an arrest</i>							

GUIDELINE # & PENALTY	Offenses	Warning First	7 Days	30 Days	90 Days	6 Months	1 Year
<p>*USING LIBRARY RESTROOMS FOR INAPPROPRIATE USE, E.G., BATHING, SHAMPOOING, DOING LAUNDRY, AND CHANGING CLOTHES #10</p>							
	<p>1st Offense</p>			<p>X</p>			
	<p>Repeat Offense</p>				<p>X</p>		
<p>*ANY ACTIVITY THAT INTERFERES WITH CUSTOMER OR STAFF USE OF THE LIBRARY, INCLUDING BUT NOT LIMITED TO:</p> <ul style="list-style-type: none"> • VERBALLY HARASSING OTHERS; • USE OF OBSCENE LANGUAGE; • STALKING <p>#11</p>							
	<p>1st Offense</p>	<p>X</p>	<p>X</p>				
	<p>Repeat Offense</p>			<p>X</p>	<p>X</p>		
<p>EXCESSIVE NOISE, INCLUDING LOUD CONVERSATION AND MUSIC #12</p>							
	<p>1st Offense</p>	<p>X</p>					
	<p>Repeat Offense</p>		<p>X</p>				

**Such violations are generally more serious in nature & may result in an arrest*

GUIDELINE # & PENALTY	Offenses	Warning First	7 Days	30 Days	90 Days	6 Months	1 Year
*INDECENT EXPOSURE, SEXUAL ACTIVITY, OR NAKEDNESS #13							
	1st Offense					X	
	Repeat Offense						X
ANIMALS, OTHER THAN SERVICE ANIMALS ASSISTING PERSONS WITH DISABILITIES # 14							
	1st Offense	X					
	Repeat Offense		X				
SELLING, SOLICITING OR PANHANDLING UNLESS AUTHORIZED BY CHIEF LIBRARIAN OR DESIGNEE. AUTHORIZED ACTIVITIES MAY NOT OBSTRUCT ENTRANCE TO AND EXITS FROM THE LIBRARY #15							
	1st Offense	X					
	Repeat Offense		X	X			

**Such violations are generally more serious in nature & may result in an arrest*

GUIDELINE # & PENALTY	Offenses	Warning First	7 Days	30 Days	90 Days	6 Months	1 Year
MOVING LIBRARY FURNITURE OR EQUIPMENT WITHOUT AUTHORIZATION FROM DCPL STAFF # 16							
	1st Offense	X					
	Repeat Offense		X	X			
BLOCKING LIBRARY ENTRANCES AND AISLES OR INTERFERING WITH THE FREE ACCESS TO BUILDING AND MATERIALS #17							
	1st Offense	X					
	Repeat Offense		X	X			
ABUSE OF INTERNET GUIDELINES (SEE INTERNET GUIDELINES.) #18							
	1st Offense			X			
	Repeat Offense				X		
<i>*Such violations are generally more serious in nature & may result in an arrest</i>							

GUIDELINE # & PENALT	Offenses	Warning First	7 Days	30 Days	90 Days	6 Months	1 Year
FRAUDULENT USE OF OTHER PEOPLE'S LIBRARY CARD OR NUMBER FOR ANY PURPOSE, INCLUDING RESERVING COMPUTERS # 19							
	1st Offense			X			
	Repeat Offense				X		
*STEALING, DAMAGING, ALTERING, OR INAPPROPRIATE USE OF LIBRARY PROPERTY INCLUDING MATERIALS, COMPUTER HARDWARE AND SOFTWARE, PRINTERS, COPIERS, PHONES OR OTHER EQUIPMENT # 20							
	1st Offense				X		
	Repeat Offense					X	

**Such violations are generally more serious in nature & may result in an arrest*

GUIDELINE # & PENALTY	Offenses	Warning First	7 Days	30 Days	90 Days	6 Months	1 Year
*CARRYING FIREARMS AND DANGEROUS WEAPONS OF ANY TYPE OR ITEMS THAT COULD POTENTIALLY BE USED AS A WEAPON #21							
	1 st Offense					X	
	Repeat Offense						X
FOOD AND BEVERAGES IN THE FOLLOWING AREAS: NEVER PERMITTED IN ANY DESIGNATED SPECIAL COLLECTION AREA, E.G., BLACK STUDIES CENTER, WASHINGTONIANA, CHILDREN'S ILLUSTRATOR COLLECTION, AND COMPUTER LAB. FOOD AND BEVERAGES MAY BE PERMITTED IN SPECIFIC ANNOUNCED LOCATIONS BY THE LIBRARY. #22							
	1 st Offense	X					
	Repeat Offense		X				
<i>*Such violations are generally more serious in nature & may result in an arrest</i>							

GUIDELINE # & PENALTY	OFFENSES	Warning First	7 Days	30 Days	90 Days	6 Months	1 Year
SPEECHES OR SERMONS OUTSIDE LIBRARY FACILITIES WITHOUT AN OFFICIAL PERMIT FROM THE CHIEF OF POLICE #23							
	1st Offense	X					
	Repeat Offense		X	X			
UNATTENDED PACKAGES, LUGGAGE, OR BAGS. THE LIBRARY IS NOT RESPONSIBLE FOR LOST OR MISSING ITEMS #24							
	1st Offense	X					
	Repeat Offense		X				
USE OF ROLLER SKATES, SCOOTERS, SKATEBOARDS, BICYCLES, OR OTHER SIMILAR DEVICES #25							
	1st Offense	X					
	Repeat Offense			X			
<i>*Such violations are generally more serious in nature & may result in an arrest</i>							

GUIDELINE # & PENALTY	Offenses	Warning First	7 Days	30 Days	90 Days	6 Months	1 Year
CHILDREN UNDER AGE EIGHT WITHOUT APPROPRIATE SUPERVISION (SEE “UNATTENDED CHILDREN’S POLICY”.) #26							
	1 st Offense	X					
	Repeat Offense	X					
CHILDREN UNDER AGE SIXTEEN (16) DURING REGULAR SCHOOL HOURS [TRAUNCY] BETWEEN THE HOURS OF 9:30 A.M. THROUGH 2:00 P.M. WITHOUT PARENTAL/GUARDIAN CONSENT. STAFF WILL NOTIFY PARENT OR GUARDIAN IF TRUANCY OCCURS (D.C. OFFICIAL CODE, TITLE 32-221 (2001 ED.)) D.C. SCHOOLS DEFINE TRUANCY AS THOSE STUDENTS WHO ARE ABSENT FROM SCHOOL WITHOUT A VALID REASON (WITH OR WITHOUT PARENTAL KNOWLEDGE OR CONSENT #27							
	1st Offense	X					
	Repeat Offense	X					
<i>*Such violations are generally more serious in nature & may result in an arrest</i>							

GUIDELINE # & PENALTY	OFFENSES	Warning First	7 Days	30 Days	90 Days	6 Months	1 Year
ADULTS AND TEENS, AGE FOURTEEN (14) AND OLDER, ARE RESTRICTED FROM CHILDREN'S AREAS AND COMPUTERS. THIS EXCLUSION DOES NOT APPLY TO PARENTS, GUARDIANS OR CARETAKERS WHEN PRESENT WITH CHILDREN IN THE AREA AND THOSE ADULTS THAT ARE SELECTING CHILDREN'S MATERIALS #28							
	1 st Offense	X					
	Repeat Offense	X					
<i>*Such violations are generally more serious in nature & may result in an arrest</i>							

GUIDELINE # & PENALTY	OFFENSES	Warning First	7 Days	30 Days	90 Days	6 Months	1 Year
ADULTS ARE RESTRICTED FROM TEENS AREAS AND COMPUTERS. THIS EXCLUSION DOES NOT APPLY TO PARENTS, GUARDIANS OR CARETAKERS WHEN PRESENT WITH TEENS IN THE AREA AND THOSE ADULTS WHO ARE SELECTING TEEN MATERIALS #29							
	1st Offense	X					
	Repeat Offense	X					
<i>*Such violations are generally more serious in nature & may result in an arrest</i>							

810.3 A customer that is aggrieved by an administrative decision involving a violation of the DCPL Behavior Guidelines may appeal the decision in writing to the Office of Public Safety within ten (10) working days of the decision. The Appeal Officer of the Office of Public Safety shall review the record regarding the incident giving rise to the decision. The Appeal Officer may

affirm, modify, or overrule the decision based upon his/her review of the record. Send written appeal to:

Appeal Officer
Office of Public Safety
901 'G' Street, N.W.
3rd Floor
Washington, D.C. 20001

810.4 If a customer enters any DCPL property while an official bar is in effect, the customer is subject to arrest for unlawful entry pursuant to D.C. Official Code §22-3302 (2001 Ed.).

Any person desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of the publication of this notice in the D.C. Register. Comments should be submitted to Grace Perry-Gaiter, DCPL, General Counsel, Martin Luther King Jr. Memorial Library, 901 'G' Street, N.W., 4th Floor, Washington, D.C. 20001. Copies of the proposed rulemaking may be obtained by writing to the address stated above.

DEPARTMENT OF EMPLOYMENT SERVICES

NOTICE OF PROPOSED RULEMAKING

The Acting Director of the Department of Employment Services, pursuant to the authority set forth in sections 11 and 14 of the Accrued Sick and Safe Leave Act of 2008, effective May 13, 2008 (D.C. Law 17-152; D.C. Official Code §§ 32-131.10 and 131.13 (2008 Supp.)) (“Act”), and Mayor’s Order 2008-153, dated November 6, 2008, hereby gives notice of intent to adopt a new Chapter 32 entitled “Accrued Safe and Sick Leave” to Title 7 (Employment Benefits) of the District of Columbia Municipal Regulations (“DCMR”).

The rulemaking is necessary to implement the provisions of the Act, which requires employers in the District of Columbia to provide paid leave to employees for illness and for absences associated with domestic violence and sexual abuse.

Final rulemaking action to adopt these rules shall be taken not less than thirty (30) days after the publication of this Notice in the D.C. Register and approval of the proposed rules by the Council of the District of Columbia pursuant to section 14 of the Act (D.C. Official Code §§ 32-131.13).

Title 7 (Employment Benefits) of the DCMR is amended by adding a new Chapter 32 to read as follows:

CHAPTER 32 ACCRUED SAFE AND SICK LEAVE

Secs.	
3200	Purpose and Scope
3201	Provision of Paid Leave; Amount of Paid Leave Required
3202	Exceptions to Calculation or Provision of Paid Leave
3203	Uses of Paid Leave
3204	Accessing Paid Leave
3205	Limitations on Use of Paid Leave
3206	Required Notice to Employers
3207	Form of Notice to Employers
3208	Certification of Leave Request
3209	Release of Information
3210	Carryover of Paid Leave
3211	Payout of Paid Leave
3212	Effect on Current Compensated Leave Policies
3213	Posting Requirements and Penalties
3214	Effect on Existing Employment Benefits
3215	Prohibited Acts
3216	Complaint Resolution
3217	Penalties
3218	Hardship Exemption
3299	Definitions

3200 PURPOSE AND SCOPE

3200.1 The purpose of this Chapter is to establish standards and procedures for the implementation of the Sick and Safe Leave Act of 2008 (“Act”).

3200.2 Unless otherwise required by law, all matters concerning the implementation and enforcement of the Act shall be determined in accordance with these regulations.

3201 **PROVISION OF PAID LEAVE; AMOUNT OF PAID LEAVE REQUIRED**

3201.1 An employee shall begin to accrue paid leave pursuant to the Act and this Chapter on his or her date of hire; provided, accrual shall not begin before November 13, 2008.

3201.2 An employer employing one hundred (100) or more eligible employees in the District of Columbia shall provide each employee not less than one (1) hour of paid leave for each thirty-seven (37) hours worked, not to exceed seven (7) days of paid leave per calendar year.

3201.3 An employer employing from twenty-five (25) to ninety-nine (99) eligible employees in the District of Columbia shall provide each employee with not less than one (1) hour paid leave for every forty-three (43) hours worked, not to exceed five (5) days of paid leave per calendar year.

3201.4 An employer employing twenty-four (24) or fewer eligible employees in the District of Columbia shall provide not less than one (1) hour of paid leave for every eighty-seven (87) hours worked, not to exceed three (3) days of paid leave per calendar year.

3201.5 The number of eligible employees employed by an employer in the District of Columbia shall be computed each calendar month and shall be equal to the number of full-time equivalent employees the employer employed in the District of Columbia at the beginning of the month.

3201.6 The employment location of an eligible employee shall be determined in accordance with the definition of the term “employee”.

3202 **EXCEPTIONS TO CALCULATION OR PROVISION OF PAID LEAVE**

3202.1 An employee who is exempt from overtime payment by reason of section 213(a)(1) of the Fair Labor Standards Act of 1938, approved June 25, 1938 (52 Stat. 1060; 29 U.S.C. § 201 *et seq.*) shall not accrue leave pursuant to this chapter for hours worked beyond a forty (40) hour work week.

3202.2 A person who works for an employer both as an employee and in a non-covered employment position shall accrue paid leave for the hours worked as an employee.

3202.3 If the employee does not suffer a loss of income when absent from work for the number of days of paid leave provided in § 3201, the employer shall not be required to provide paid leave to the employee as would have been otherwise required by the Act.

3203 **USES OF PAID LEAVE**

3203.1 An eligible employee may use paid leave for the following reasons:

- (a) An absence resulting from a physical or mental illness, injury, or medical condition of the employee;
- (b) An absence resulting from obtaining professional medical diagnosis or care or preventive medical care for the employee; or
- (c) An absence for the purpose of caring for a family member who has any of the conditions or needs for diagnosis or care described in paragraphs (a) and (b) of this subsection.

3203.2 An eligible employee may also use paid leave for an absence if the employee or the employee's family member is a victim of stalking, domestic violence, or sexual abuse and the absence is directly related to medical, social, or legal services pertaining to the stalking, domestic violence, or sexual abuse for the purposes of:

- (a) Seeking medical attention for the employee or the employee's family member to treat or recover from physical or psychological injury or disability caused by the stalking, domestic violence, or sexual abuse;
- (b) Obtaining services for the employee or the employee's family member from a victim services organization;
- (c) Obtaining psychological or other counseling services for the employee or the employee's family member;
- (d) The temporary or permanent relocation of the employee or the employee's family member;
- (e) Taking legal action, including preparing for or participating in any criminal or civil proceeding related to or resulting from the stalking, domestic violence, or sexual abuse; or
- (f) Taking other actions that could be reasonably determined to enhance the physical, psychological, or economic health or safety of the employee or the employee's family member or the safety of those who work or associate with the employee.

3204 ACCESSING PAID LEAVE

3204.1 Only an eligible employee may access paid leave.

3204.2 An eligible employee may access paid leave beginning on the date on which the employee becomes an eligible employee or ninety (90) days after the start of the employee's employment with the employer, whichever is later; provided, an employee shall not access paid leave earlier than February 11, 2009.

3204.3 An employee who is discharged after completion of a ninety (90) day probationary period and who is rehired within one (1) year after the date of discharge may access accrued paid leave immediately upon rehire if the employee is an eligible employee on the date of rehire. The rehired employee's accrual of paid leave shall begin upon the date of rehire and paid leave accrued during the prior period of employment shall not carry over.

3205 LIMITATIONS ON USE OF PAID LEAVE

3205.1 An eligible employee shall not use in any calendar year more paid leave than the maximum number of hours that the employee may accrue annually pursuant to § 3201 unless permitted to do so by the employer.

3205.2 If mutually agreed to by both the employer and employee, an eligible employee who chooses to work additional hours or shifts in the employer's same or next pay period in lieu of hours or shifts missed shall not use leave accrued pursuant to the Act in those hours or shifts; provided, however, that the employer does not require the employee to work such additional hours or shifts.

3206 REQUIRED NOTICE TO EMPLOYERS

3206.1 An eligible employee shall provide at least thirty (30) days prior written notice to his or her employer of the employee's planned use of paid leave, if the employee is aware of the need to use such paid leave at least thirty (30) days before the date on which the paid leave is to be used.

3206.2 If the eligible employee becomes aware of the need to use paid leave less than thirty (30) days before the date on which the paid leave is to be used, the eligible employee shall provide written notice to the employer of the need to use the paid leave on the day that the eligible employee becomes aware of the need to use the paid leave or, if such day is not a business day of the employer, on the earliest following business day.

3206.3 If an eligible employee becomes aware of the need to use paid leave after the eligible employee's work shift that immediately precedes the work shift for which the paid leave will be used, the eligible employee may orally request the use of paid leave and shall make such a request before the start of the work shift for which the paid leave is

requested. If an emergency prevents an eligible employee from notifying the employer of the need to use paid leave before the start of the work shift, the eligible employee shall notify the employer within twenty-four (24) hours after the onset of the emergency.

3206.4 An eligible employee shall make a reasonable effort to schedule paid leave in a manner that does not unduly disrupt the operations of the employer. If paid leave is requested in a non-emergency situation, the eligible employee shall consult with the employer regarding the date and time of the paid leave to be taken.

3207 FORM OF NOTICE TO EMPLOYERS

3207.1 The employer may prescribe a written notice form for the request of paid leave. A form shall require only the eligible employee's name, employee identification number (if any), information needed to designate the type of paid leave and the reason for taking the paid leave, and the date and time of the paid leave. The form shall not be used as a substitute for medical certification unless such use is accepted by the employer.

3207.2 If the employer prescribes a form but the form is not reasonably available to the eligible employee, the employee may provide written notice to the employer by setting forth in writing the information required by the employer on such form.

3207.3 If the employer has not prescribed a form, the eligible employee may provide written notice to the employer by providing to the employer in writing the employee's name, employment identification number (if any), type of paid leave to be taken, reason for taking the paid leave, and date and time of paid leave to be taken.

3208 CERTIFICATION OF LEAVE REQUEST

3208.1 An employer may require that a request for the granting of paid leave for three (3) or more consecutive days be supported by a reasonable certification of the reason given by the eligible employee for requesting the paid leave.

3208.2 A reasonable certification may include:

- (a) A signed document from a health care provider affirming the illness of the eligible employee or the eligible employee's family member;
- (b) A police report indicating that the eligible employee or the eligible employee's family member was the victim of stalking, domestic violence, or sexual abuse;
- (c) A court order indicating that the eligible employee or eligible employee's family member was the victim of stalking, domestic violence, or sexual abuse;
or

- (d) A signed written statement from a victim and witness advocate or a domestic violence counselor affirming that the eligible employee is involved in legal action or proceedings related to stalking, domestic violence, or sexual abuse.

3208.3 If the employer requires a certification, the certification may be provided by the eligible employee upon the employee's return to work.

3209 RELEASE OF INFORMATION

3209.1 Nothing in the Act or this chapter shall require a health care professional to disclose information in violation of section 1177 of the Social Security Act, effective August 21, 1996 (110 Stat. 2029; 42 U.S.C. § 1320d-6) or the regulations promulgated pursuant to section 264(c) of the Health Insurance Portability and Accountability Act of 1996, effective August 21, 1996 (110 Stat. 2033; 42 U.S.C. §1320d-2 note).

3209.2 Information provided to an employer pursuant to §§ 3206, 3207, or 3208 shall not be disclosed by the employer, except when such disclosure is:

- (a) Requested or consented to by the eligible employee;
- (b) Ordered by a court or administrative agency; or
- (c) Otherwise required by federal or local law.

3210 CARRYOVER OF PAID LEAVE

Unused paid leave in one calendar year shall carry over to the next calendar year.

3211 PAYOUT OF PAID LEAVE

Paid leave shall not be reimbursed upon the discharge or resignation of an eligible employee.

3212 EFFECT ON CURRENT COMPENSATED LEAVE POLICIES

3212.1 An employer that has a compensated leave policy (for example, paid time off or universal leave) that is at least equivalent to the paid leave provided by the Act shall not be required to change that policy.

3212.2 An existing compensated leave policy shall be presumed to be equivalent to the requirements of the Act if the policy allows the employee to:

- (a) Access and accrue compensated leave at the same rate or greater than the hours of leave provided in § 3201; and

- (b) Use the compensated leave for the same purposes as those set forth in § 3203.

3213 POSTING REQUIREMENTS AND PENALTIES

- 3213.1 An employer shall post and maintain in a conspicuous place a notice setting forth excerpts or summaries of the provisions of the Act and information pertaining to the filing of complaints asserting violations of the Act.
- 3213.2 The employer shall post the notice in English and in all languages spoken by its eligible employees with limited or no-English proficiency as defined in section 2(5) of the of the Language Access Act, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code § 2-1931(5)).
- 3213.3 An employer who willfully fails to post a notice pursuant to this section shall be assessed a civil penalty of one hundred dollars (\$100) per day for each day that the employer fails to post the notice; provided, that the total penalty shall not exceed five hundred dollars (\$500) per violation.
- 3213.4 An employer shall not be liable for failing to post a notice until thirty (30) days after the Mayor prescribes the notice under section 10 of the Act and provides the notice to the employer.

3214 EFFECT ON EXISTING EMPLOYMENT BENEFITS

- 3214.1 The provisions of the Act do not alter the obligation of an employer to comply with any collective bargaining agreement or any employment benefit or plan that provides compensated leave rights to employees which are greater than those established by the Act.
- 3214.2 An existing collective bargaining agreement that provides at least three (3) compensated leave days by its written terms shall be deemed to comply with the Act for the duration of such existing agreement.

3215 PROHIBITED ACTS

- 3215.1 No employer or person acting on behalf of an employer shall interfere with, restrain, or otherwise deny the exercise or attempt to exercise of any right provided by the Act.
- 3215.2 An employer shall not discharge or discriminate in any manner against an employee because the employee:
- (a) Opposes any practice by an employer made unlawful by the Act;
 - (b) Files or attempts to file a claim or charge for violation of the Act;
 - (c) Institutes or attempts to institute an proceeding under the Act;

- (d) Facilitates the institution of a proceeding under the Act;
- (e) Provides information or testimony in connection with an inquiry or proceeding related to the Act; or
- (f) Uses paid leave in accordance with the Act and this Chapter.

3215.3 The Act shall not be construed to prohibit an employer from creating and enforcing a policy that prohibits or sanctions the improper use of paid leave or that requires more frequent certifications from an employee if there is evidence of a pattern of abuse of paid leave. A pattern of abuse may be evidenced by the following:

- (a) Consistent taking of paid leave without advance notice when there is no emergency requiring it;
- (b) Consistent taking of leave on days for which vacation or annual leave have been denied;
- (c) A pattern of taking paid leave on days where the employee is scheduled to work a shift or perform duties perceived as undesirable, including high customer volume days; and
- (d) A pattern of taking paid leave on Mondays, Fridays, or the day immediately preceding or following holidays;

3216 COMPLAINT RESOLUTION

3216.1 A person who believes that any of the rights created by the Act has been improperly denied him or her may file a complaint with the Department of Employment Services in the manner prescribed by the Director. Complaints shall be filed within sixty (60) days after the event on which the complaint is based.

3216.2 The Director shall review all complaints and shall investigate those complaints which the Director determines require investigation.

3216.3 In the course of investigating and resolving and deciding complaints, the Director shall have the authority to:

- (a) Investigate and ascertain the length of service, hiring dates, paid leave usage requests, certifications provided by employees, and any other issue relating to the rights created by the Act;
- (b) Require sworn written statements from employers and employees concerning the issues raised by the complaint; and

- (c) Conduct informal investigations, examinations, or meetings at which employers and employees appear, give sworn statements, and answer questions from the Director or the adverse party.

3216.4 Following an investigation, the Director shall issue a decision concerning the complaint. Copies of the decision shall be served on each party.

3216.5 A party aggrieved by the Director's decision may appeal the decision as provided in the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*).

3216.6 Complaints shall be investigated and resolved in an expeditious manner consistent with the nature of the complaint.

3217 PENALTIES

Except as provided in § 3213.3, an employer who willfully violates the requirements of the Act shall be subject to a civil penalty in the amount of five hundred dollars (\$500) for the first violation, seven hundred and fifty dollars (\$750) for the second violation, and one thousand dollars (\$1,000) for the third and any subsequent violations.

3218 HARDSHIP EXEMPTION

3218.1 An employer may apply to the Associate Director of the Office of Labor Standards of the Department of Employment Services for an exemption from the provisions of the Act, pursuant to section 15 of the Act (D.C. Official Code § 32-131.14).

3218.2 The application shall be in writing and shall include a narrative fully explaining the basis for the request and shall be accompanied by supporting documentation sufficient to demonstrate that hardship has been or will be created by complying with the Act.

3218.3 Hardship means a negative impact caused or to be caused by the Act that:

- (a) Threatens or will threaten the financial viability of the employer;
- (b) Jeopardizes the ability of the employer to sustain operations;
- (c) Significantly degrades the quality of the employer's operations; or
- (d) Creates a significant negative financial impact on the revenues or income of the employer.

3218.4 After receipt of an application, the Associate Director may request additional information from the employer and designate a date by which such information shall be provided.

- 3218.5 If the employer establishes that the Act has caused or will cause hardship, the Associate Director shall approve the application, exempt the employer from application of the Act, and establish the time period during which the exemption shall apply.
- 3218.6 The time period during which the exemption applies shall be consistent with the time period during which the hardship is likely to exist; provided, if the time period is greater than one (1) year, the employer may be required to reapply for the exemption after one (1) year.
- 3218.7 The Associate Director shall issue a written decision within twenty-one (21) days after receiving a complete application, including any additional information requested pursuant to § 3218.4. The written decision shall fully explain the reasons for approving or rejecting the application and for establishing the specific time period during which the exemption shall apply.
- 3218.8 The employer may appeal the decision of the Associate Director to the Director within ten (10) days after issuance of the decision. An appeal shall be in writing and shall provide a clear explanation of the basis for the appeal.
- 3218.9 The Director shall issue a decision on the appeal within thirty (30) days after receiving the appeal.

3299 DEFINITIONS

When used in this Chapter, the term:

Act – the Accrued Safe and Sick Leave Act of 2008, effective May 13, 2008 (D.C. Law 17-152; D.C. Official Code § 32-131.01 *et seq.*).

Compensated leave – accrued increments of leave, for which the employee is paid at the same rate as if the employee were working, provided by an employer for use by an employee during an absence of work

Day – the length of the employee’s customary work day or work shift.

Director – the Director of the District of Columbia Department of Employment Services, or the Director’s designee.

Discharge – the involuntary severing of the employment relationship by the employer.

Domestic violence – an intra-family offense as defined in D.C. Official Code § 16-1001(5).

Eligible employee – an employee who has been employed by the same employer for at least one (1) year without a break in service except for regular holiday, sick, or personal leave granted by

the employer and has worked at least one thousand (1,000) hours of service with such employer during the previous 12-month period.

Employee – an individual employed by an employer who spends more than fifty percent (50%) of his or her working time for his or her employer in the District of Columbia or whose employment is based in the District of Columbia and who regularly spends a substantial time of his or her work time in the District of Columbia working for the employer and does not spend more than fifty percent (50%) of his or her work time working for the employer in any particular state; provided, that the term “employee” shall not include: (1) an independent contractor, (2) a student, (3) health care workers who choose to participate in a premium pay program, or (4) restaurant wait staff and bartenders who work for a combination of wages and tips.

Employer – a legal entity (including a for-profit or not-for-profit firm, partnership, proprietorship, sole proprietorship, limited liability company, association or corporation), or any receiver or trustee of such entity (including the legal representative of a deceased individual or receiver or trustee of an individual), who employs an employee. The term “employer” includes the District of Columbia government.

Non-covered employment position — (1) an independent contractor, (2) a student, (3) health care workers who choose to participate in a premium pay program, or (4) restaurant wait staff and bartenders who work for a combination of wages and tips.

Family member —

- (1) A spouse, including the person identified by an employee as his or her domestic partner, as defined in section 2(3) of the Health Care Benefits Expansion Act of 1992, effective June 11, 1992 (D.C. Law 9-114; D.C. Official Code § 32-701(3));
- (2) The parents of a spouse;
- (3) Children (including step-children, foster children, and grandchildren);
- (4) The spouses of children (including step-children, foster children, and grandchildren);
- (5) Parents (including step-parents);
- (6) Brothers and sisters (including step-brothers and sisters and half-brothers and sisters);
- (7) The spouses of brothers and sisters (including step-brothers and sisters and half-brothers and sisters);
- (8) A child who lives with the employee and for whom the employee permanently assumes and discharges parental responsibility; and

- (9) A person with whom the employee shares or has shared, for not less than the preceding of twelve (12) months a mutual residence and with whom the employee maintains a committed relationship, as defined in section 2(1) of the Health Care Benefits Expansion Act of 1992, effective June 11, 1992 (D.C. Law 9-114; D.C. Official Code §32-701(1)).

Paid leave – accrued increments of compensated leave provided by an employer for use by an employee during an absence from work for any of the reasons specified in section 3(b) of the Act.

Premium pay program – a plan offered by an employer by which an employee may voluntarily elect to receive additional pay in lieu of benefits.

Restaurant wait staff and bartenders – includes waiters, waitresses, counter personnel who serve customers, bus persons, server helpers, service bartenders, and barbacks.

Sexual abuse – an offense described in the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code § 22-3001 *et seq.*).

Student – a person employed by an employer who:

- (1) (A) Is a full-time student as defined by an accredited institution of higher education;
 - (B) Is employed by the institution at which the student is enrolled;
 - (C) Is employed for less than 25 hours per week (the number of hours being determined based on the standard or usual work week of the employee); and
 - (D) Does not replace an employee covered by the Act; or
- (2) Is employed as part of the Year Round Program for Youth as established by the Department of Employment Services.

All persons wishing to comment on these proposed rules shall submit written comments no later than thirty (30) days after the publication of this notice in the *D.C. Register* to Eugene Irvin, General Counsel, Department of Employment Services, 64 New York Avenue, N.E., 3rd Floor, Washington, D.C. 20002. Copies of the proposed ruled may be obtained from the same address between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday, excluding holidays.

D.C. OFFICE OF HUMAN RIGHTS**NOTICE OF PROPOSED RULEMAKING**

The Director of the Office of Human Rights, pursuant to section 301(c) of the Human Rights Act of 1977 (Act), effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1403.01(c)), hereby gives notice of the intent to amend Chapter 1 (Complaints of Discrimination in the District of Columbia Government) of Title 4 (Human Rights) of the District of Columbia Municipal Regulations (DCMR).

Proposed Rulemaking was published at 55 DCR 5986 on May 23, 2008. No comments were received during the thirty (30) day comment period. After further review, the Director has made a number of substantial alterations with respect to EEO Counselors' responsibilities, responsibilities for agency heads, and authority of hearing examiners. Minor alterations were also made to clarify the intent, meaning, or application of the proposed rules. These Proposed Rules supersede those published on May 23, 2008.

The Director also gives notice of the intent to take final rulemaking action to adopt these proposed rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 1 of Title 4 DCMR is deleted in its entirety and amended to read as follows:

**CHAPTER 1 COMPLAINTS OF DISCRIMINATION IN THE
DISTRICT OF COLUMBIA GOVERNMENT**

Secs.

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101	Coverage
102	Policy
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105	Pre-Complaint Processing
106	Filing and Presentation of Complaints
107	Mediation
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111	Conduct of Hearings by Hearing Examiners
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120	Remedial Action: Applicants for Employment
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100 SCOPE

100.1 The provisions of this chapter shall apply to all District government agencies subject to the Act.

101 COVERAGE

101.1 The provisions of this chapter shall govern the processing of any complaint involving discrimination on grounds of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, matriculation, political affiliation, genetic information, and disability.

101.2 The procedures set forth in this chapter shall apply to matters presently pending or hereafter filed with a District government agency.

101.3 Nothing in this chapter shall be construed to supersede any federal or District law, nor to invalidate any proceedings commenced under the authority of any prior regulations.

101.4 Sexual harassment shall be deemed to be a form of sex discrimination which is prohibited under District laws and regulations, including this chapter.

101.5 Employees of the District government shall have certain rights to file complaints with the United States Equal Employment Opportunity Commission (EEOC) pursuant to § 706 of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5, and to pursue remedies provided for in the Age Discrimination in Employment Act, as amended, 29 U.S.C. §§ 626 and 633.

102 POLICY

102.1 It shall be the policy of the Government of the District of Columbia in connection with any aspect of District government employment to do the following:

- (a) To prohibit sexual harassment;
- (b) To prohibit retaliation for filing Equal Employment Opportunity (EEO) complaints;

- (c) To provide equal employment opportunity for all persons; and
 - (d) To prohibit discrimination in employment because of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, matriculation, political affiliation, genetic information, and disability.
- 102.2 Sufficient resources shall be provided to administer the District's EEO program in a positive and effective manner.
- 102.3 A continuing program shall be conducted to eradicate every form of prejudice or discrimination with respect to any aspect of District government employment based upon race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, matriculation, political affiliation, genetic information, and disability.
- 102.4 The head of each District government agency subject to the Act shall be required to take affirmative action within that agency to assure equal opportunity in every aspect of employment.

103 RESPONSIBILITIES OF THE DIRECTOR OF THE OFFICE OF HUMAN RIGHTS

- 103.1 In addition to other duties, for purposes of this chapter, the Director shall advise the Mayor with respect to the preparation of plans, procedures, regulations, reports and other matters pertaining to the provisions of this chapter.
- 103.2 The Director shall prepare all reports in connection with the EEO program as may be required by the Mayor or the EEOC.
- 103.3 The Director shall recommend changes in policy, practices, and procedures designed to eliminate discriminatory practices and to improve the Mayor's program for equal employment opportunity.
- 103.4 The Director shall establish a system for periodically evaluating the effectiveness of the District government's overall EEO program, including the rules, and when appropriate report to the Mayor with recommendations for any improvement or correction needed, including remedial or disciplinary action with respect to managerial or supervisory employees who have failed to carry out the provisions of this chapter.
- 103.5 The Director shall consult with agency heads regarding the suitability of persons appointed or designated, or pending appointment or designation, as departmental EEO Officers and EEO Counselors. If the Director determines that an EEO Counselor or an EEO Officer has not responded to at least three (3) orders of OHR, the Director shall notify the responsible agency head and recommend that the EEO Counselor or EEO

Officer be removed from the EEO role.

- 103.6 The Director shall issue guidelines and procedures for counseling by an EEO Counselor of any aggrieved employee or applicant for employment who contends that he or she has been discriminated against because of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, matriculation, political affiliation, genetic information, and disability, with respect to any aspect of District government employment.
- 103.7 The Director shall receive and investigate complaints of alleged discrimination in personnel matters, from employees who contend that they have been discriminated against in connection with any aspect of District government employment because of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, matriculation, political affiliation, genetic information, and disability.
- 103.8 The Director shall publicize to all District government employees the address of the Office of Human Rights (OHR), as well as the names, agency addresses, and phone numbers of all District EEO Counselors and EEO Officers.
- 103.9 The Director shall submit to the Director of the Department of Human Resources for prior review all recommendations of in-depth investigative or statistical reports when the recommendations or reports relate to or would affect in any manner programs involving the employment, employee relations, or other personnel actions of the District government.
- 103.10 The Director shall designate, when necessary in the interest of fairness and justice, At-Large EEO Counselors to handle EEO problems on an informal basis. An At-Large EEO Counselor need not be an employee of the agency for which counseling service is provided. The OHR Compliance Officer may also take on this role.

104 RESPONSIBILITIES OF AGENCY HEADS

- 104.1 Each District agency head shall do the following:
- (a) Be personally responsible and accountable for execution of the EEO program within his or her agency;
 - (b) Establish procedures, consistent with § 103.7, whereby each complaint is reviewed promptly and processed promptly at every subsequent stage and cause agency records to reflect each date of review and the action taken;
 - (c) Appoint or designate one (1) or more EEO Officers and EEO Counselors;
 - (d) Upon request of the Director, consult with him or her regarding the suitability of persons appointed or designated EEO Officers and EEO Counselors and, upon

request, review appointments or designations and advise the Director of the determination. Consultation between agency heads and the Director prior to the appointment or designation of EEO Counselors and EEO Officers is encouraged;

- (e) The consultation between the Director and agency head shall also include monitoring the EEO Counselors and the EEO Officers to determine whether or not they are executing their responsibilities, including but not limited to:
 - (1) Providing the Exit Letter described in § 105.5 to the complainant within 30 days of complainant's filing date, or within 60 days if both parties determine that the investigation will continue;
 - (2) Providing a Position Statement or responding to a request for documents in the time allotted by the investigator;
 - (3) Responding to an Order of OHR within the time allotted by the investigator; and
 - (4) Informing all employees of their rights and responsibilities under the Act.
- (f) Publicize to agency employees by posting on agency bulletin boards, the following:
 - (1) The name, office address, and telephone number of each agency EEO Counselor and the organizational units served;
 - (2) Inform employees that they may contact an EEO Counselor outside their organizational unit if desired; and the time limit for contacting an EEO Counselor;
 - (3) The availability of the EEO Counselor to counsel an employee or qualified applicant for employment who believes he or she has been discriminated against because of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, matriculation, political affiliation, genetic information, and disability in connection with respect to any aspect of District government employment; and
- (g) Inform employees and applicants of the requirement of consulting with an EEO Counselor within one hundred eighty (180) days of an alleged unlawful employment practice.

104.2 Each District government agency head shall also publicize to all agency employees, and post permanently on official bulletin boards, the name, address, and telephone number of the Office of Human Rights, each agency EEO Officer, and the agency EEO Counselors.

104.3 Each District government agency head shall make reasonable accommodation for the religious needs of applicants and employees, including the needs of those who observe the Sabbath on a day other than Sunday, when that accommodation can be made without undue disruption to the business of the agency.

105 PRE-COMPLAINT PROCESSING

105.1 An employee or applicant who believes that he or she has been discriminated against because of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, matriculation, political affiliation, genetic information, and disability in connection with any aspect of District government employment shall consult an EEO counselor within one hundred-eighty (180) days of the occurrence of the alleged unlawful discriminatory practice, except that a complaint of sexual harassment may be filed directly with OHR.

105.2 After being consulted by a complainant, the EEO Counselor shall do and document the following:

- (a) Make a thorough review of the circumstances underlying the complaint, including the treatment of members of the complainant's group, if any, identified by the complaint, as compared with the treatment of other employees in, or applicants to, the organizational unit in which the alleged discrimination occurred;
- (b) Examination all pertinent records;
- (c) Review of any policies and practices related to the work situation or application process which may constitute, or appear to constitute, discrimination, even though they have not been expressly cited by the complainant; and
- (d) Interview all pertinent employees, including supervisors.

105.3 The EEO Counselor shall also do the following:

- (a) Advise the applicant or employee of the right to representation of his or her own choosing or through a Collective Bargaining Agreement;
- (b) Counsel the complainant or his or her representative concerning the issues of the matter;
- (c) Seek a solution of the matter on an informal basis; and
- (d) Keep a record of counseling activities so as to brief the agency or EEO Officer periodically of those activities.

- 105.4 The EEO Counselor shall, insofar as is practicable, conduct the final interview with the complainant and/or his or her representative not later than thirty (30) days after first being consulted by the complainant.
- 105.5 During the final interview, the EEO Counselor shall provide to the complainant and/or his or her representative written notice, the Exit Letter, of the complainant's right to file a formal complaint with the Director within fifteen (15) days of the final interview, if the matter has not been resolved to complainant's satisfaction.
- 105.6 A formal complaint to the Director shall be filed by the complainant within fifteen (15) days after the final interview has been conducted by the EEO Counselor.
- 105.7 Formal complaints filed after the fifteen (15) day period specified in § 105.6 shall be deemed untimely and dismissed as such by the Director.
- 105.8 In any event, a complainant may file a formal complaint with the Director between the 30th and 60th day of first consulting with the EEO Counselor. If between the 30th and 60th day, the complainant requests the Exit Letter and it is not provided for any reason, he or she may come to OHR for filing.
- 105.9 Formal complaints filed beyond the sixty (60) day period specified in § 105.8 shall be deemed untimely and dismissed as such by the Director.
- 105.10 Although the EEO Counselor should attempt to offer consultation on a confidential basis, he or she may disclose to the OHR Director and to the head of the cited agency circumstances surrounding the complaint that include, but are not limited to, safety, criminal actions, or patterns or practices of discriminatory or harassing conduct by the agency or any of its cited employees or managers.
- 105.11 The EEO Counselor shall be free from restraint, interference, coercion, discrimination, or reprisal and shall be given the assistance and cooperation of the agency in connection with the performance of his or her duties under this chapter.
- 105.12 At any stage in the proceeding under this chapter, the complainant shall be free from restraint, interference, coercion, discrimination, or reprisal, and shall have the right to be accompanied, represented, and advised by a representative of his or her own choosing or through a Collective Bargaining Agreement.
- 105.13 If the complainant is an employee of the District government, he or she shall have a reasonable amount of official time for preparation and presentation of his or her complaint.
- 105.14 If the complainant designates an employee of the District government as his or her representative, the representative shall be free from restraint, interference, coercion, discrimination, or reprisal, and shall have a reasonable amount of official time to prepare

and present the matter.

- 105.15 The Director may request that an adverse action be held in abeyance, unless he or she determines that it is shown that immediate and irrevocable harm to the agency will result or there will be a substantial interference with the efficient operation of the agency.

106 FILING AND PRESENTATION OF COMPLAINTS

- 106.1 A verified and written complaint of discrimination shall be submitted by the complainant to the Director within fifteen (15) days of the date of the complainant's final interview with the EEO Counselor.
- 106.2 The time limit for filing may be extended by the Director for good cause shown.
- 106.3 Upon filing of a complaint, the Director shall provide a copy to the agency representative of the agency in which the complainant is employed or, in the case of an applicant, to which the complainant applied.
- 106.4 The Director may dismiss or reject a complaint of discrimination for the following reasons:
- (a) It is not timely filed;
 - (b) Complainant does not state a claim for which relief can be granted under the DCHRA;
 - (c) The allegations fall outside the scope of this chapter;
 - (d) OHR does not have jurisdiction over the complainant or the respondent; or
 - (e) The complainant fails to prosecute or respond to inquiries from the investigator or mediator regarding the complaint within a prescribed time limit.
- 106.5 In the event of a rejection or dismissal of a complaint, the Director shall transmit the decision by letter to the complainant or his or her representative. The letter shall contain notice of the complainant's right to request reconsideration or the reopening of the case by the Director pursuant to § 114.4.
- 106.6 In order to resolve each complaint expeditiously, the complainant and the District government shall proceed with the complaint without undue delay so that the complaint is resolved, insofar as practicable, within two hundred ten (210) days after its receipt by the Director.
- 106.7 The complainant shall be responsible for prosecuting the complaint without undue delay so as to permit resolution of the complaint within the prescribed time limits.
- 106.8 The complainant shall provide reasonable assistance and all pertinent information to

OHR staff in processing the complaint.

- 106.9 The Director may dismiss a complaint pursuant to § 106.4(d) or, in his or her discretion, adjudicate the complaint on the basis of the existing record, if sufficient information for that purpose is available.
- 106.10 Officers and employees of District government agencies in which a complaint arises under this chapter shall not cause hardship, delay, or interference with the efforts of the EEO Counselor, the complainant or the complainant's representative, OHR staff members, or the Hearing Examiner, in their efforts and activities to process the complaint to a resolution.
- 106.11 All District agencies shall make every effort to make available as witnesses those employees whose testimony is determined to be necessary by the investigator or Hearing Examiner.
- 106.12 A complaint may be amended by the complainant at any time prior to the issuance of a Letter of Determination (LOD).
- 106.13 An amendment shall be in writing and verified, and shall be submitted by the complainant or the complainant's representative to the Director.
- 106.14 When an amendment is filed, the Director shall serve a copy of the amendment upon the respondent within five (5) work days of the amendment.
- 106.15 The respondent shall, within five (5) work days after service of the amendment, file an answer to the amendment.

107 MEDIATION

- 107.1 The complainant and respondent must attend a mandatory mediation session to be held on a mutually agreed upon date.
- 107.2 A Mediator shall be appointed by the Director, or his designee from a list of individuals qualified in alternative dispute resolution.
- 107.3 Prior to beginning the mediation session, the Mediator shall require both parties and their representatives to sign an agreement that all aspects of the mediation are to be kept confidential.
- 107.4 No aspect of the mediation shall become a part of the investigative record, and the Mediator shall not be called as a witness in any later proceeding between the parties.
- 107.5 During the mediation, the parties shall discuss the issues in the complaint in an effort to reach an agreement that satisfies the interest of all concerned parties.

- 107.6 The parties shall have forty-five (45) days from the date of the initial mediation session within which to mediate a settlement. If an agreement is reached during the mediation process, the terms of the agreement shall control resolution of the complaint.
- 107.7 OHR may initiate a preliminary investigation before the conclusion of the mediation proceedings. If the parties are finalizing a settlement agreement, the respondent may request an extension of time in which to file an answer.
- 107.8 If an agreement is not reached, OHR shall proceed with an investigation of the complaint.

108 INVESTIGATION

- 108.1 Each complaint shall be promptly investigated by OHR.
- 108.2 The investigator assigned to a case is authorized to administer oaths and require that the statement of a witness shall be under oath or affirmation, without a pledge of confidence.
- 108.3 A witness shall not be subjected to any form of restraint, interference, coercion, discrimination, or reprisal because of consultation with or information provided to the OHR staff.
- 108.4 Pursuant to a Freedom of Information Act (FOIA) request, the Director or his designee shall arrange to furnish the complainant, the complainant's representative, the appropriate agency EEO Officer, or the agency head a copy of the investigative file at the end of the reconsideration period.
- 108.5 The investigator, upon completion of the investigation, shall submit to the Director, through its Office of General Counsel, a written statement of proposed findings of fact, conclusions, and recommendations.
- 108.6 The activities of the Director under this chapter shall be considered investigations or examinations of municipal matters within the meaning of D.C. Official § 1-301.21 (2001) and D.C. Official Code § 5-1021 (2001), and the Director and hearing examiners shall possess the powers vested in the Mayor by those statutes.

109 ADJUSTMENT OF COMPLAINTS

- 109.1 At any time during the course of the investigation of a complaint under § 107, the Director may review the investigative file and may propose terms for adjustment of the complaint to the head of the agency in which the complaint arose.
- 109.2 Every effort shall be made to adjust a complaint informally. For example, a complaint

may be settled through voluntary action of an agency head to correct the situation out of which the complaint arose, and the complaint withdrawn by the complainant.

- 109.3 If an adjustment of the complaint is achieved, the terms of the adjustment shall be reduced to writing and made part of the complaint file. A copy of the terms of adjustment shall be given to the agency EEO Officer and the complainant and his or her representative, and the complaint file shall be closed.
- 109.4 Where a complaint has not been settled, dismissed, or the subject of a summary determination, the Director may, after investigative efforts, determine whether probable cause exists to believe that a violation has occurred. A determination as to probable cause shall be based on, and limited to, evidence obtained by OHR and does not reflect any judgment on the merits of allegations not addressed in the determination.
- 109.5 An LOD incorporating the probable cause decision and the basis for the finding shall be served on the complainant, his or her representative, and the respondent agency, including agency head, along with a notice inviting the parties to conciliate.
- 109.6 The respondent agency shall, within fifteen (15) days of receipt of the LOD, notify the Director in writing of its decision to enter into conciliation.
- 109.7 If the respondent agency accepts the invitation to conciliate and the complainant agrees, the Director or his or her designee shall set a date for a post-determination conciliation conference to be held within twenty (20) days of the receipt of the agency's acceptance.
- 109.8 If the parties cannot agree to a settlement, or if the agency fails to respond within the fifteen (15) days prescribed in § 108.6, or declines the invitation to conciliate, the Director or his or her designee shall notify the complainant in writing of the opportunity for a hearing or the right of the complainant to a summary determination as provided in § 110.
- 109.9 The complainant shall have fifteen (15) days from the receipt of the notice prescribed in § 108.8 to notify the Director in writing of his or her request for a hearing before an independent hearing examiner or for a summary determination.

110 SUMMARY DETERMINATIONS

- 110.1 After the probable cause determination and failure of the conciliation efforts, the Director may make a summary determination on the merits of a complaint based solely upon information in the complaint file.
- 110.2 A summary determination is a second review and consideration of the facts to determine if the probable cause determination is appropriate. The summary determination does not review any of the no probable cause findings. It may result in an affirmation or reversal of the original probable cause decision.

- 110.3 The Director may designate an independent reviewer to analyze the facts and make a recommendation as to whether probable cause exists to believe that discrimination has occurred.
- 110.4 In making a summary determination, the Director may issue an order to the agency head requiring appropriate remedial action, including, but not limited to, hiring, reinstatement, promotion, rescission of adverse action, or award of compensatory credits which are authorized by existing personnel regulations and statutes.
- 110.5 The Director may issue an order dismissing the complaint for lack of probable cause to credit the allegations.
- 110.6 Any order issued by the Director shall be in writing and shall advise the complainant and the agency head of their right to request reconsideration or the reopening of the case by the Director pursuant to § 114.
- 110.7 Within fifteen (15) days after issuance of any order by the Director, either party may request reconsideration or the reopening of the case pursuant to § 114.4.
- 110.8 If the Director determines that a matter is not appropriate for summary determination, the complainant shall be advised of the right to a formal hearing before an independent hearing examiner, with a subsequent decision by the Director based upon the Hearing Examiner's report and recommendations.
- 110.9 The complainant shall have fifteen (15) days from receipt of the notice to notify the Director whether or not he or she wishes to have a hearing.
- 110.10 If the complainant fails to respond to the hearing request within fifteen (15) days in accordance with § 109.9, the Director may make a determination on the merits of the complaint, based solely upon information in the complaint file, and may dismiss the complaint or order remedial action.

111 CONDUCT OF HEARINGS BY HEARING EXAMINERS

- 111.1 The Director or the assigned Hearing Examiner shall notify all necessary parties in writing that a hearing will be held.
- 111.2 Hearings shall be held by a qualified Hearing Examiner, who shall not be an employee of the agency in which the complaint arose, and who shall not have investigated the complaint or taken or reviewed an action giving rise to the complaint being heard.
- 111.3 The Director shall select a Hearing Examiner qualified to conduct a hearing on a discrimination complaint either from among impartial employees, including OHR employees, or from outside contractors of the District government.
- 111.4 In addition to any other power specified in this chapter, a Hearing Examiner shall have

the power to do the following:

- (a) Hold a hearing on the issue of the probable cause finding.
- (b) Hold pre-hearing conferences to narrow the issues of the complaint, provide notice and information of the hearing procedure, and to take other actions deemed necessary to expedite the hearing;
- (c) Administer oaths and affirmations;
- (d) Examine and cross-examine witnesses;
- (e) Request the issuance of subpoenas authorized under this chapter;
- (f) Rule upon offers of proof and receive evidence;
- (g) Regulate the course and conduct of the hearing, including the following:
 - (1) Continuing the hearings to a later date or different place by announcement at the hearings or other appropriate notice;
 - (2) Taking official notice of any material fact;
 - (3) Ruling upon the admissibility of evidence and testimony;
 - (4) Determining whether the hearing will be open to the public; and
 - (5) Taking appropriate measures to assure that there shall be no interference with the orderly conduct of the hearing; and
- (h) Prepare and deliver to the Director a Hearing Examiner's report, which shall include a brief and concise statement of the history of the subject matter of the hearing, findings of fact, conclusions of law, analysis, and a recommendation or proposed order.
- (i) If either party fails to respond to the Hearing Examiner's requests for information or hearing, the Hearing Examiner shall request that the Director issue an Order;
- (j) If either party fails to respond to the Order of the Director without reasonable excuse, the Director may issue a determination against the non-responsive party.

111.5 The Director shall transmit the complaint file to the Hearing Examiner.

111.6 The Hearing Examiner shall review the complaint file to determine whether further investigation is needed before scheduling the hearing.

- 111.7 If the Hearing Examiner determines that further investigation is needed, the Hearing Officer shall either return the complaint file to the Director for further investigation or arrange with the Director for the appearance of witnesses necessary to supply the needed information at the hearing.
- 111.8 The Hearing Examiner shall schedule the hearing for a convenient time and place.
- 111.9 The Director shall provide the Hearing Examiner adequate space, appurtenances, and services necessary for the hearing.
- 111.10 As in § 110.8, the Director may decide that a summary determination, not a hearing, is the appropriate action for any case. This may include cases where actual damages are not involved, including hostile workplace claims where only remedial damages can be awarded. If the Director orders a summary determination, the parties may request a reconsideration of the decision within ten (10) days of the date of the Director's order. After the ten (10) day period, any objection to summary determination shall be considered waived.

112 HEARING PROCEDURES

- 112.1 The Hearing Examiner shall conduct the hearing so as to bring out pertinent facts, including the production of pertinent documents.
- 112.2 The Hearing Examiner shall permit wide latitude in the introduction of evidence, but shall exclude irrelevant and unduly repetitious evidence.
- 112.3 The Hearing Examiner shall receive only evidence which may have a bearing upon the complaint or upon any other employment policy or practice related to the complaint.
- 112.4 District government employees shall be required to serve as witnesses at hearings held under the provisions of this chapter. Absence from regular duty to serve as a witness shall be without charge to leave or loss in pay.
- 112.5 Witnesses may be requested by either party, subject to the approval of the Hearing Examiner of the reasons given by either party as to the need for the witnesses.
- 112.6 The Hearing Examiner shall request the Director to make available at the hearing as a witness, through subpoena, any District government employee whose appearance is deemed necessary.
- 112.7 The Hearing Examiner shall request the Director to make available at the hearing any other person, through subpoena, whose appearance the Hearing Examiner deems necessary.
- 112.8 The denial of a request for the appearance of a person as a witness by the Hearing Examiner shall include the reasons for denial and shall be entered into the record of the

hearing.

- 112.9 Requests for witnesses may be submitted to the Director in writing by either party not later than three (3) working days in advance of the scheduled hearing date.
- 112.10 Each agency head shall make employees available to serve as witnesses whenever it is administratively possible and practicable to do so.
- 112.11 Reasons for denial by an agency head of a request for the service of an employee as a witness shall be sent in writing to the Director, along with a copy to the Hearing Examiner for inclusion in the complaint record and the hearing record.
- 112.12 If the agency head's explanation is deemed inadequate, the Hearing Examiner shall so advise the Director and request the Director to order, through subpoena, the employee to be made available as a witness at the hearing.
- 112.13 An agency head shall be required to make the employee available when directed by notice from the Director.
- 112.14 If the agency head's explanation is adequate, the Hearing Examiner shall insert it in the record of the hearing, provide a copy to the requesting party and the agency, and make arrangements to secure testimony from the employee through written interrogatories.
- 112.15 Witnesses shall not be subjected to restraint, interference, coercion, discrimination, intimidation, or reprisal in connection with their testimony.

113 RECORDS AND TRANSCRIPTS OF HEARINGS

- 113.1 Each hearing shall be recorded and transcribed verbatim.
- 113.2 The record shall consist of the complaint file, exhibits, transcripts, and all other documents submitted to and accepted by the Hearing Examiner related to the subject matter of the hearing and made a part of the record.
- 113.3 The Director shall be responsible for the reproduction of records, at the expense of the respondent agency.
- 113.4 A copy of the verbatim transcript, along with copies of each document made a part of the record by the Hearing Examiner, shall be furnished to the parties or their representatives, the agency involved, if not a party, the Hearing Examiner, and the Director.

114 FINDINGS AND RECOMMENDATION OF THE HEARING EXAMINER

- 114.1 Within thirty (30) days after receipt of the transcript or post hearing submissions, whichever is later, the Hearing Examiner shall transmit to the Director the following:

- (a) The complaint file;
- (b) The record of the hearing;
- (c) A report, including a brief and concise statement of the history of the subject matter of the complaint;
- (d) Findings of fact;
- (e) Conclusions of law; and
- (f) Analysis, recommendations, or proposed order.

114.2 A copy of the Hearing Examiner's report shall be transmitted to the parties or their representatives and, if not a party, to the agency involved, including a notice of the date on which the report was transmitted to the Director.

114.3 Any party who is aggrieved by the adoption of the Hearing Examiner's report and proposed recommendation or order, may, within twenty (20) days after receipt of the report, submit to the Director, OHR, a proposed substitute order or findings, along with arguments in support of the proposed substitute.

115 FINAL DECISION OF THE DIRECTOR

115.1 Following receipt of the Hearing Examiner's recommendations or proposed decision or order, and any argument or proposed substitute order or findings submitted by a party, the Director shall do one of the following:

- (a) Render a final decision which may adopt, reject, or modify the decision of the Hearing Examiner; or
- (b) Remand the matter for further hearings.

115.2 If the Director rejects or modifies the recommended decision of the Hearing Examiner, the final decision of the Director shall set forth in detail the specific reasons for rejection or modification.

115.3 The final decision of the Director shall be served on the parties or their representatives and, if not a party, the agency involved.

115.4 Either party may file a written request with the Director for reconsideration or to reopen the case within fifteen (15) days from the date of issuance of the final decision.

115.5 A request for reopening will only be considered if the requesting party demonstrates that there is newly discovered evidence that is competent, relevant, and material and was not

reasonably discoverable prior to issuance of the final decision by the Director and that such evidence, if credited, would alter the ultimate outcome in the case.

- 115.6 The final decision of the Director on a complaint for which there has been no hearing shall be transmitted by letter to the parties or their representatives and, if not a party, to the agency involved, stating the basis for the decision, including the findings of fact, analysis, and conclusions of law.
- 115.7 The letter transmitting the final decision of the Director shall advise the parties of their right to request reconsideration or the reopening of the case pursuant to § 114.4 or to seek judicial review of the decision by a court of competent jurisdiction.
- 115.8 If either party requests reconsideration or the reopening of the case pursuant to § 114.4, and the Director determines that the case should be reconsidered or reopened, the Director shall inform the parties that the case is being reconsidered or reopened and that the final decision previously issued by the Director is vacated.
- 115.9 If neither party requests reconsideration or the reopening of the case pursuant to § 114.4, the final decision of the Director shall become the final administrative action of the District government fifteen (15) days after issuance of the decision, and the parties shall be deemed to have exhausted all administrative remedies.
- 115.10 If the Director decides not to grant a request for reconsideration or to reopen a case, the Director shall so notify the parties in writing, and at the time the notification is issued, the decision previously issued shall become the final administrative action of the District government.
- 115.11 If no action is taken on a request for reconsideration or to reopen a case within one hundred twenty (120) days, the request shall be deemed disapproved and the decision previously issued shall become the final administrative action of the District government.
- 115.12 In the interests of justice, the Director may *sua sponte* reopen or reconsider any case in which the Director has issued a decision at any time prior to the filing of an appeal by either party with a court of competent jurisdiction.
- 115.13 If the Director decides to reconsider or reopen a case pursuant to § 114.12, the Director shall inform the parties that the case is being reconsidered or reopened and that the decision previously issued by the Director is vacated.

116 APPEALS

- 116.1 An appeal from the final decision of OHR may be taken to the Superior Court of the District of Columbia.
- 116.2 Pursuant to § 109 and § 113, the final decisions of the Director include a summary

determination or the final determination after the hearing examiner's recommendation.

- 116.3 The party must file a Petition for Review with the Clerk of the Civil Division within thirty (30) days after service of notice of the final decision.

117 THE COMPLAINT FILE

- 117.1 The Director shall establish and maintain a complaint file containing all documents pertinent to each complaint.

- 117.2 The complaint file shall not contain any document that has not been made available to the complainant. The complaint file shall include, as a minimum, copies of the following:

- (a) The complaint;
- (b) The written report of the EEO Counselor to the agency EEO Officer on all pre-complaint counseling efforts made with regard to the complainant's case;
- (c) The investigative file;
- (d) A signed written statement of the complainant or the complainant's representative, if the complaint is withdrawn by the complainant;
- (e) The written record of adjustment, if the complaint is adjusted informally under the provisions of this chapter;
- (f) A copy of the letter from the Director notifying the complainant of the proposed disposition of the complaint and of the right to a hearing, or a decision by the Director without a hearing if no adjustment of the complaint is reached;
- (g) A copy of the letter to the complainant transmitting the decision of the Director when the decision is made without a hearing under the provisions of this chapter;
- (h) The record of the hearing, including the Hearing Examiner's findings, analysis, and recommended decision on the merits of the complaint if a hearing was held; and
- (i) A copy of the letter to the complainant transmitting the decision of the Director if the decision is made after a hearing.

118 COMPLAINTS OF SEXUAL HARASSMENT

- 118.1 OHR shall receive complaints and allegations involving sexual harassment directed against officers and employees of the District government.

- 118.2 Allegations of sexual harassment shall be fully investigated, and corrective or disciplinary action taken if warranted.
- 118.3 Complaining parties shall be required to swear or affirm that the facts stated in the complaint are true to the best of the person's belief, knowledge, and information.
- 118.4 The complaint file, including all information and documents pertinent to a complaint, shall be confidential.
- 118.5 Only complaints of sexual harassment that concern incidents which occurred within a period of one (1) year immediately prior to the date the complaint is filed shall be considered.
- 118.6 An investigation shall be conducted of those complaints which are filed by a present or former employee within one (1) year of the last alleged occurrence.
- 118.7 Complaints shall be investigated and processed in accordance with the procedures and authorities set forth in this chapter.
- 118.8 Each agency shall follow the District government's sexual harassment policy, reflected in Mayor's Order 2004-177 (October 20, 2004), and promulgate internal procedures for an employee to follow when filing a complaint with an EEO Counselor.
- 118.9 Agency heads who have complaints of sexual harassment brought to their attention shall promptly investigate and attempt to resolve the complaints.
- 118.10 If a resolution cannot be reached within an agency within sixty (60) days, the agency head shall refer the complaint to OHR.
- 118.11 An employee may file a complaint directly with OHR, even if he or she does not bring an internal complaint to the agency EEO Counselor or an EEO Counselor in another District government agency.

119 FREEDOM FROM REPRISAL OR INTERFERENCE

- 119.1 Witnesses and those who serve in EEO capacities, such as EEO Officers and EEO Counselors, or those who are involved in any other way in the EEO program or complaint process shall be free from restraint, interference, coercion, discrimination and reprisals at any stage in the presentation of a complaint at either the informal or formal phase or in the performance of their EEO-related duties.
- 119.2 Anyone coming within the scope of § 118.1 who alleges restraint, interference, coercion, discrimination, or reprisal in connection with the presentation of a complaint under this section or in the performance of his or her EEO related duties, may, if an employee or applicant, have the allegation reviewed as an individual complaint of discrimination subject to applicable sections of this chapter.

119.3 In order to avoid any suggestion of restraint, interference, coercion, discrimination, or reprisal, no information of any kind relating to a complaint of discrimination, or the fact that an employee has made an allegation of discrimination, shall be placed in the employee's personnel records, except any personnel actions taken as a result of final order by the Director which have been upheld on appeal.

120 REMEDIAL ACTION: APPLICANTS FOR EMPLOYMENT

120.1 When the Director finds that an applicant for employment has been discriminated against and, except for that discrimination, would have been hired, the agency involved shall offer the applicant employment of the type and grade denied at the first opportunity that the employment becomes available.

120.2 The agency's offer of employment shall be made in writing.

120.3 The individual shall have fifteen (15) days from receipt of the offer within which to accept or decline the offer.

120.4 Failure to notify the agency of a decision to accept employment within the fifteen (15) day period shall be considered a refusal of the offer, unless the individual can show that circumstances beyond his or her control prevented a timely response.

120.5 If the offer is accepted, the appointment shall be retroactive to the date the applicant would have been hired, and backpay may be awarded for the retroactive period, but not to exceed two (2) years prior to the date the complaint was filed, and subject to any appropriate deductions required by law or regulation. During the period of retroactivity, the complainant shall be deemed to have performed services for all purposes, except for meeting service requirements for completion of a probationary or trial period.

120.6 If the offer is declined, the respondent agency shall award the complainant backpay subject to the limitations of § 119.5 and shall notify the complainant in its offer, of his or her right to this award in the event the offer is declined.

120.7 When the Director finds that discrimination existed at the time the applicant was considered for employment, but does not find that the individual is the one who would have been hired except for discrimination, the agency shall consider the individual for any existing vacancy of the type and grade for which he or she had been considered initially and for which he or she is qualified before consideration is given to other candidates.

120.8 If the individual is not selected, the agency shall record the reasons for non-selection.

120.9 If no vacancy exists, the agency shall give the applicant priority consideration for the next vacancy for which he or she is qualified.

121 REMEDIAL ACTIONS: EMPLOYEES

121.1 When the Director finds that an employee of an agency was discriminated against and as a result of that discrimination was denied an employment benefit, or was subjected to an adverse administrative decision, the agency shall take remedial actions which shall include one (1) or more of the following, but need not be limited to, these actions:

- (a) Retroactive promotion, when the record clearly shows that but for the discrimination the employee would have been promoted to a higher grade; provided, that the backpay liability may not accrue from a date more than two (2) years prior to the date the discrimination complaint was filed, or the actual date he or she would have been promoted;
- (b) If a finding of discrimination was not based on a complaint, the backpay liability may not accrue from a date earlier than two (2) years prior to the date the finding of discrimination was recorded, or the actual date the employee would have been promoted, whichever is the shorter period;
- (c) Consideration for promotion to a position for which the employee is qualified before consideration is given to other candidates, when the record shows that discrimination existed at the time selection for promotion was made, but it is clear that except for the discrimination the employee would have been promoted. If the individual is not selected, the agency shall record the reasons for nonselection;
- (d) Cancellation of an unwarranted personnel action and restoration of withheld benefits that would have accrued to the employee;
- (e) Expungement from the agency's records of any reference to, or any record of, an unwarranted disciplinary action that is not a personnel action; and
- (f) Full opportunity to participate in the employee benefit denied the employee (e.g., training, preferential work assignments, overtime scheduling), or a reasonable substitute.

121.2 Application of the provisions of § 120.1 shall be waived whenever the Director and the agency head concerned agree that sufficient and appropriate opportunities will be available to provide relief to the complainant if his or her complaint is sustained, or whenever the agency head effects the action on a temporary basis and the temporary action is made specifically subject to termination if the complainant's assertion of discrimination is upheld.

121.3 In cases where an appointment has proceeded to a point that a third party might be aggrieved if no basis is proved for the allegation of discrimination, a temporary appointment or promotion shall be effected.

121.4 When corrective action is ordered by the Director in connection with resolving a

complaint, the Director shall transmit a copy of the corrective order to the head of the agency concerned, and the corrective action ordered shall be taken without delay by the agency head.

- 121.5 If the agency head fails to comply with the corrective order within the stated time frame, the Director shall certify the order to the City Administrator, who shall direct the agency head to comply with the order.

122 THIRD PARTY ALLEGATIONS OF DISCRIMINATION

- 122.1 This section shall apply to general allegations by organizations or other third parties of discrimination in personnel matters within an agency of the District government which are unrelated to an individual complaint of discrimination.
- 122.2 The organization or other third party shall state the allegation with sufficient specificity, so that the agency may investigate the allegations.
- 122.3 The agency may require additional specificity as necessary to proceed with its investigation.
- 122.4 The agency shall establish a file on each general allegation, and this file shall contain copies of all material used in making the decision on the allegation.
- 122.5 The agency shall furnish a copy of this file to the party submitting the allegation and shall make it available to the Director for review on request.
- 122.6 The agency shall notify the party submitting the allegation of its decision, including any corrective action taken on the general allegations, and shall furnish to the Director or the City Administrator, on request, a copy of its decision.
- 122.7 If the third party disagrees with the agency decision, it may within thirty (30) days after receipt of the decision, request the Director to review it.
- 122.8 The request shall be in writing and shall set forth with particularity the basis for the request.
- 122.9 Upon receipt of the request, the Director shall make, or require the agency to make, any additional investigation he or she deems necessary.
- 122.10 The Director shall issue a decision on the allegation ordering corrective action, as he or she considers appropriate.
- 122.11 Pursuant to § 114.4, either the third-party complainant or the agency may request the Director to reconsider the decision or to reopen the matter.

123 DISCRIMINATION COMPLAINTS IN OTHER PROCEEDINGS

- 123.1 Whenever an issue of discrimination as specified in § 101.1 is raised by a party in a grievance or adverse action proceeding before any appropriate agency of the District government, the hearing office shall inform the person raising the complaint of discrimination that the complaint will not be admitted as an issue in the grievance or adverse action proceeding and that the complaint should be submitted to the Director.

124 CRIMINAL BACKGROUND CHECKS

- 124.1 If an applicant to District government is denied employment, or if an employee is terminated because of information from a criminal background check, the applicant or employee may file a complaint with OHR.
- 124.2 The complaint may allege discrimination with respect to the denial of employment or termination, or it may allege a non-discriminatory, but allegedly unfair basis.
- 124.3 The complaint must be filed within one hundred eighty (180) days of the denial of employment or termination.
- 124.4 The applicant or employee is not required to file an initial complaint with an agency EEO Counselor. He or she may file directly with OHR.
- 124.5 If the applicant or employee files directly with OHR, he or she must do the following:
- (a) Submit a pre-complaint questionnaire by mail, online, or in person; and
 - (b) Schedule an appointment with an intake officer.
- 124.6 The case will be assigned to an investigator, who will request information from both parties and submit an investigative report and recommendation to the OHR Office of General Counsel (OGC).
- 124.7 OGC will submit an LOD to the Director for review, approval, and issuance to the parties.

199 DEFINITIONS

- 199.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Act - the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Code § 2-1401.01 *et seq.*).

Age - eighteen (18) years of age or older, except that, in a case of employment, age shall be defined as eighteen (18) to sixty-five (65) years of age, unless otherwise defined by law.

Agency - any office, department, division, board, commission or other agency of the government of the District of Columbia with respect to which the Mayor or the Council are authorized by law to establish administrative procedures.

Day - a calendar day, unless otherwise specified.

Director - the Director of OHR, or his or her designee.

Disability - a physical or mental impairment that substantially limits one or more of the major life activities of an individual having a record of such an impairment or being regarded as having such an impairment.

Domestic partnership - the same meaning as that defined in section 2(4) of the Health Care Benefits Expansion Act of 1992, effective June 11, 1992 (D.C. Law 9-114; D.C. Official Code § 32-701(4)).

EEO Counselor - an individual appointed by the agency head, or his or her designee, to provide informal counseling in response to a complaint of discrimination by an employee or applicant and to conduct an informal inquiry with the affected parties, as directed.

EEO Officer - an individual appointed by the agency head, or his or her designee, to supervise the EEO Counselors, prepare EEO reports, and conduct discrimination investigations, as directed.

Employee - any individual employed by or seeking employment from an agency of the District of Columbia government.

Familial status - one or more individuals under 18 years of age being domiciled with: (1) a parent or other person having legal custody of the individual; or (2) the designee, with written authorization of the parent, or other persons having legal custody of individuals under 18 years of age. The protection afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or in the process of securing legal custody of any individual under 18 years of age.

Family responsibilities - the state of being, or the potential to become, a contributor to the support of a person or persons in a dependent relationship, irrespective of the number of such persons, including the state of being the subject of an order of withholding or similar proceedings for the purpose of paying child support or a debt related to child support.

Gender identity or expression - a gender-related identity, appearance, expression, or behavior of an individual, regardless of the individual's assigned sex at birth.

Genetic information - information about the presence of any gene, chromosome, protein, or certain metabolites that indicate or confirm that an individual or an individual's family member has a mutation or other genotype that is scientifically or medically believed to cause a disease, disorder, or syndrome, if the information is obtained from a genetic test.

Intrafamily offense - an offense as defined in D.C. Official Code § 16-1001(5).

Marital status - the state of being married, in a domestic partnership, single, divorced, separated, or widowed and the usual conditions associated therewith, including pregnancy or parenthood.

Matriculation - the condition of being enrolled in a college, or university; or in a business, nursing, professional, secretarial, technical or vocational school; or in an adult education program.

OHR - the District of Columbia Office of Human Rights, as established by section 202 of the Act (D.C. Official Code § 2-1411.01).

Personal appearance - the outward appearance of any person, irrespective of sex, with regard to bodily condition or characteristics, manner or style of dress, and manner or style of personal grooming, including, but not limited to, hair style and beards. It shall not relate, however, to the requirement of cleanliness, uniforms, or prescribed standards, when uniformly applied for admittance to a public accommodation, or when uniformly applied to a class of employees for a reasonable business purpose; or when such bodily conditions or characteristics, style or manner of dress or personal grooming presents a danger to the health, welfare or safety of any individual.

Position Statement- the initial response by the respondent in the discrimination claim to complainant's Charge of Discrimination.

Political affiliation - the state of belonging to or endorsing any political party.

Religion - any institutionalized system or personal set of attitudes, beliefs, and practices which relate to moral or ethical standards.

Sexual harassment - unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when the following occurs:

- (a) Submission to such conduct is made either explicitly or implicitly a term or condition of employment;
- (b) Submission to or rejection of such conduct by an employee is used as the basis for employment decisions affecting the employee; or
- (c) The conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile, or offensive working environment. Sexual harassment may include, but is not limited to, verbal harassment or abuse, subtle pressure for sexual activity, patting or pinching, brushing against another employee's body, and demands for sexual favors.

Sexual orientation - male or female homosexuality, heterosexuality and bisexuality, by preference or practice.

Source of income - the point, the cause, or the form of the origination, or transmittal of gains of property accruing to a person in a stated period of time; including, but not limited to, money and property secured from any occupation, profession or activity, from any contract, agreement or settlement, from federal payments, court-ordered payments, from payments received as gifts, bequests, annuities, life insurance policies and compensation for illness or injury, except in a case where conflict of interest may exist.

Persons desiring to comment on these proposed rules should submit comments in writing to the Office of Human Rights, Office of the General Counsel, 441 4th Street, N.W., Suite 570N, Washington, D.C. 20001, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of these proposed rules may be obtained between 8:30 A.M. and 5:00 P.M. at the address stated above.