

Easy-to-Read Digest: Mayor's Order 2017-313

Government of the District of Columbia

APRIL 6, 2018



EASY-TO-READ DIGEST

DISTRICT OF COLUMBIA MAYOR'S ORDER 2017-313

PART I: REQUIREMENTS AND APPLICATION OF MAYOR'S ORDER

What is Mayor's Order 2017-313?

Mayor's Order 2017-313 is a robust District government policy that prohibits workplace sexual harassment and provides protections to victims of sexual harassment. It also outlines procedures for reporting incidents of sexual harassment.

The Order went into effect on December 18, 2017. A copy of the Order can be located at: <https://dchr.dc.gov/sexual-harassment>.

Does the Order impose new requirements on agencies?

YES. The requirements and applicable deadlines for agencies reporting to the Mayor are set forth below.

Requirement	Deadline
Disseminate the Order. All agencies must disseminate the Order to all employees, within thirty (30) days of the effective date of the Order	January 17, 2018
Put up a Notice Poster. All agencies must post a Notice Poster	January 17, 2018
Designate a Sexual Harassment Officer (SHO). All agencies must designate a SHO , who will investigate reported incidents of sexual harassment. The designation must be sent to the Office of Human Rights at ohr@dc.gov . <i>See OHR SHO Designation Guidance for more information.</i>	January 17, 2018
Train agency General Counsels (GC). All GCs must be trained.	January 31, 2018
Ensure all employees are trained. All employees must take a sexual harassment training course, available online at: https://dchr.skillport.com .	February 28, 2018
Send managers to training. OHR and DCHR to ensure approximately 1500 managers are trained through an in-person workshop.	March 14, 2018

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Who is **prohibited from engaging in workplace sexual harassment?**

The Order's prohibitions against sexual harassment apply to:

- All employees and officials under the Mayor's jurisdiction;
- Third parties doing business with the District government, such as vendors, contractors, grantees, customers, and other persons visiting or working at District worksites inside and outside District agencies; and
- Members of the District of Columbia Boards and Commissions that report up to the Mayor.

Who is **protected from workplace sexual harassment?**

The Order's protection from sexual harassment applies to:

- Employees, contractors, interns and other persons engaged by the District to provide permanent or temporary employment services at DC worksites inside and outside DC agencies;
- Members of Board and Commissions;
- Applicants for employment with the District of Columbia government; and
- Members of the public dealing with government employees are protected from being sexually harassed by government employees.

The Order also provides that the above individuals are protected from sexual harassment committed by:

- Contractors, grantees, clients, applicants and members of the public with whom they interact with in the scope of their employment.

What about agencies that do not report to the Mayor?

The DC Human Rights Act, which applies to all agencies in the District, including those that do not report to the Mayor, prohibits sex discrimination and sexual harassment. Agencies that do not report to the Mayor are asked to follow the procedures identified in the Order.

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PART II: DEFINITION OF SEXUAL HARASSMENT

What kind of behavior constitutes sexual harassment?

Under the Mayor's Order 2017-313, there are two (2) types of sexual harassment: (1) Quid Pro Quo (meaning "this for that") and (2) Hostile Environment. Each type is explained below.

- **Quid Pro Quo** (*"this for that"*)
 - Certain types of conduct or behavior may be seen as a "quid pro quo" sexual harassment when an individual with supervisory authority makes certain sexual remarks, requests, or favors in exchange for a term or condition of employment; or
 - If an individual with supervisory authority uses the victim's rejection or submission to sexual conduct as a basis for making employment decisions.
 - The sexual conduct or behavior at issue must have been unwelcomed by the subjected individual.
- **Hostile Work Environment**
 - Other conduct of a sexual nature, whether committed by a person with supervisory authority or not, may still be considered "sexual harassment" if the conduct was **severe** or sufficiently **pervasive** as to cause a hostile work environment such that the behavior alters or changes the working conditions.
 - Conduct of a sexual nature may be seen as severe or pervasive if it:
 - Has the purpose or effect of unreasonably interfering with an individual's work performance; or
 - Creates an intimidating, hostile or offensive work environment.
 - The victim must inform the person creating such an environment that the conduct is unwelcome or that it must stop. There may be some exceptions for sexual conduct which is particularly severe or pervasive.

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What are some examples of unwelcome sexual conduct that may create hostile or intimidating work environment?

The following types of conduct are **NOT acceptable** in the District of Columbia government, ***including during work related travel*** (for complete listing, see Order at (III)(b)):

- Using sexually oriented or sexually degrading language describing an individual or his/her body, clothing, hair, accessories or sexual experiences;
- Leering, ogling, or making sexually suggestive gestures or sounds, such as whistling or kissing noises;
- Making inquiries about someone's private sex life or describing one's own sex life;
- Sexually offensive comments or off-color language, jokes, or innuendo that a reasonable person would consider to be of a sexual nature, or belittling or demeaning to an individual or a group's sex, sexual orientation, or gender identity;
- Sexting" or seeking or sending pictures of intimate body parts, or taking or displaying pictures of body parts meant to be covered up (such as "upskirting" pictures), including by sending messages of a suggestive nature on self-destructive messaging apps where documentation of the written word or images is difficult to document;
- Displaying or disseminating sexually suggestive objects, books, screensavers, magazines, photographs, music, cartoons, or computer internet sites or references;
- Unnecessary and inappropriate touching or physical contact, such as intentional and repeated brushing against a colleague's body, touching or brushing a colleague's hair or clothing, massages, groping, patting, pinching, or hugging, that a reasonable person would consider to be of a sexual nature;
- Workplace sexual comments, conduct, displays and suggestions **between two willing parties** that would **cause a reasonable third party** to be offended;
- Sexual assault, stalking, trapping someone such that they are not free to leave and a sexual encounter is expected or threatened, threats of bodily harm relating to sex or the refusal to have sex, or other crimes related to egregious acts of sexual harassment.

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Does the gender or sexual orientation of the person involved matter?

NO. Sexual harassment may be committed by:

- Persons of the same sex, or perceived sex;
- Those who share the same sexual orientation or the same gender identity or expression, or
- Persons of the opposite sex or gender identity.

Is sexual harassment limited to supervisors?

NO. Sexual harassment can occur between any level or position of employees. It can even occur by an employee towards a supervisor. However, supervisors are responsible for making sure a workplace is free of sexual harassment.

What about sexual harassment by non-employees?

Employees are protected from sexual harassment committed by non-employees, such as customers and clients. In these instances, the agency **must** still investigate and remedy the situation if it is brought to the agency's attention. Similarly, as noted earlier, DC government employees cannot sexually harass members of the public with whom they interact.

Are consensual relationships permissible?

- Consensual sexual or romantic relationship between employees and supervisors in the same chain of command are strongly discouraged.
- DCHR will issue guidance on reporting consensual relationships in order to safeguard against conflicts of interest and "paramour preferences."
- The existence of a consensual sexual or romantic relationship between an employee and a supervisor may be factor in any complaint of sexual harassment, including those reported by third parties.

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What if a relationship which was initially consensual becomes unwanted or undesired?

Conduct that was once welcome or consensual **may become** unwelcome. Once it is no longer welcome and the individual is informed that the behavior is unwelcome, the unwelcome behavior **must** stop.

- If an employee engages in a limited consensual relationship with a supervisor or colleague, such as going out to dinner or on dates, the employee is free to refuse further courting or requests to engage in sexual or romantic activities.
- Additionally, the employee has the right to demand that behavior, which was previously consented to, stop. If the employee makes such a demand, the behavior **MUST** stop.
- If an employee feels uncomfortable telling the supervisor or the perpetrator to stop, the employee may seek the assistance of another supervisor, manager, the agency General Counsel, or Sexual Harassment Officer, in demanding that the sexual conduct stop.

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PART III: REPORTING TO THE AGENCY AND AGENCY RESPONSIBILITY

What should a victim do if they feel they have been subjected to unwelcome sexual conduct?

First, **ALL employees** are responsible for ensuring the workplace is free from sexual harassment. **Employees** who know of incidents of sexual harassment **should report** the conduct to agency Sexual Harassment Officer as soon as possible.

Second, the victim:

- **MUST** tell the person engaging in sexual conduct that the conduct is unwelcome and that it must stop. This may be done either by:
 - Telling the person directly; OR
 - Asking a manager/supervisor, the agency General Counsel, or the designated Sexual Harassment Officer to tell the person.
- **SHOULD** report the incident to the agency **Sexual Harassment Officer** as soon as possible so that the agency can investigate the matter and provide a prompt remedy. If the victim is unable to reach the SHO, the victim can also report the incident to a manager or agency GC. However, in either instance, the manager or GC will notify the SHO for investigation of the report unless the SHO is the alleged harasser (see below).

Note: Reporting incident(s) of sexual harassment to the SHO does not limit or delay a victim's legal rights to file a formal complaint with OHR or a civil action in court within one year of the harassment. However, the intent of the Mayor's Order is to maintain a workplace that is free from harassment, and so agencies **MAY** consider reports of sexual harassment, even if it is reported after the legal one-year statute of limitation.

What if the SHO is the alleged harasser or a witness to an incident?

Report the incident to a manager or agency General Counsel and they will work with the agency back-up SHO or by agreement between agencies, a SHO from another agency.

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Who would a victim report to if an incident involved a senior official?

- If the complaint is against an **agency director**, it shall be reported to an SHO at the appropriate Deputy Mayor's office for review.
- If the complaint is against a **Deputy Mayor**, it shall be reported to an SHO at the Office of the City Administrator.
- If the complaint is against the **City Administrator**, it shall be submitted to the Mayor's General Counsel, who shall also receive complaints against any agency director in the Executive Office of the Mayor.
- If the complaint is against the **Mayor's General Counsel or the Mayor**, an independent consultant shall be hired to conduct an investigation, and a final investigative report shall be submitted to the Inspector General for the District of Columbia for review.

What happens after reporting to the agency Sexual Harassment Officer?

All agencies have an identified **Sexual Harassment Officer** who is responsible for receiving and investigating reports of sexual harassment. If a report is made to a manager or agency GC, they will notify the SHO as soon as possible.

- The SHO will inform the agency General Counsel of the incident and the GC will in turn report it to the Mayor's Office of Legal Counsel (MOLC).
- The SHO will then notify the alleged harasser of the reported behavior and conduct an investigation. The agency will issue a finding as soon as practicable, but no later than sixty **(60) days**. The finding will be communicated to the victim, the alleged harasser, and MOLC.

If any employee makes any knowing and intentional false statements or representations relating to a report of sexual harassment, the agency shall take the appropriate disciplinary action, including and up to termination

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- Based on the finding from the investigation, the agency will take appropriate steps to ensure the conduct ceases. In certain cases, the agency will take immediate action prior to completion of an investigation.

To the greatest extent possible, and to protect both the complainant and the alleged harasser, information about allegations of sexual harassment shall be treated as confidential.

- If the agency finds that the alleged harasser engaged in inappropriate conduct, the agency shall impose appropriate discipline and if the employee is not terminated, the employee shall be required to attend mandatory sexual harassment training within sixty (60) days of the finding.
- If the report also involves **potential ethical violations**, the SHO or agency GC will report the suspected violations to the Board of Ethics and Government Accountability (BEGA). Examples of ethical violations, include but are not limited to:
 - Giving gifts for sexual favors;
 - Giving gifts to a witness to a sexual harassment incident; or
 - Using government resources to disseminate inappropriate pictures or to otherwise engage in other sexual misconduct.
- If the report includes allegations of **criminal misconduct**, such as sexual assault, kidnapping, stalking, and threats to bodily harm, the agency should seek counsel from the agency General Counsel and then, it MAY place the victim and/or the alleged harasser on administrative leave with pay pending final outcome of the agency investigation or outcome of any criminal proceeding.
- The victim, at their discretion, may report the alleged criminal violation to the Metropolitan Police Department (MPD).
- If the agency or an appropriate law enforcement officer finds that a criminal violation occurred, the agency **SHALL** recommend discipline of the perpetrator up to and including termination.

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Are employees required to participate in agency investigation?

YES. All employees are expected to cooperate in the agency SHO's investigation. Failure to do so may result in disciplinary action. However, the disciplinary action should only be taken after careful consideration and upon consultation with the agency GC and MOLC.

What if the victim does NOT want to participate in the SHO investigation?

If a victim declines to participate in the SHO's investigation, the agency through the SHO may still initiate its own investigation in order to ensure that the workplace is free from harassment.

Does the alleged harasser have any rights or protections?

YES. Individuals accused of sexual harassment retain their full rights and protections under the law, including the presumption of innocence pending the outcome of an investigation and the right to have counsel or representation, including those from a labor union or other representative of their choosing. The right to counsel does **NOT** mean the right to having the government pay for counsel.

Can the agency take immediate remedial action before an investigation is concluded?

YES. In order to prevent any further potential harassment, agencies may take prompt personnel actions that do **NOT** result in any adverse employment action to either party.

*If a victim requests separation from the alleged harasser, the request may be fulfilled, but **ONLY** after receiving such requests in **WRITING**.*

Remedial actions taken during the pendency of the investigation should be administrative rather than disciplinary, and may include but are not limited to:

- Transfers
- Reassignment of duties
- Reassignment of reporting requirements
- Mandatory administrative leave with pay

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- **NOTE:** DCHR is first encouraged to find **alternative, reasonably comparable placements** (even if the position is in a different agency) before placing employees on administrative leave with pay where possible
- Other appropriate measures that do not result in reduction of pay, demotion in title or responsibility, or other loss of employee benefits.

Note: In cases involving multiple alleged harassers, once an investigation comes to a conclusion that Mayor's Order 2017-313 has been violated as to one perpetrator, the agency is free to take appropriate remedial action as to that perpetrator, even if other aspects of the investigation remain open, relating to the full scope of the harassment, other victims, or other perpetrators.

What if an employee is retaliated against for reporting an incident of sexual harassment?

Retaliation is strictly prohibited.

Managers and supervisor shall NOT retaliate against an employee for engaging in the following **protected activities**, including but are not limited to:

- Reporting an incident of sexual harassment;
- Filing a complaint of sexual harassment;
- Assisting another person in filing or asserting a claim of sexual harassment;
- Opposing or objecting to sexual harassment;
- Acting as a witness in a sexual harassment investigation;
- Refusing to follow directives which are sexual in nature or would result in sexual harassment;
- Intervening to protect others from sexual harassment or advancements; or
- Challenging an allegation of sexual harassment.

Actions that may constitute retaliation can include but are not limited to the following:

- Unwarranted reprimands;
- Unfair downgrading of personnel evaluations;
- Transfers to less desirable positions;
- Verbal or physical abuse; or
- Change in work schedule that is more inconvenient.

Note: Employees found to have engaged in retaliation **SHALL** be recommended for **termination**.

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PART IV: FILING FORMAL LEGAL COMPLAINTS

Can an employee file a formal sexual harassment complaint with the Office of Human Rights?

YES. The agency reporting procedure (via the SHO) does not prevent you from seeking legal remedies. If you are a victim of sexual harassment and you wish to file a legal complaint to seek a remedy (damages, etc.) you can file a formal complaint with the DC Office of Human Rights within **one year** of the harassment. Employees who wish to file a complaint with OHR must complete an intake questionnaire. Forms can be found online at: <https://ohr.dc.gov/service/file-complaint>. Employee may choose to fill out intake forms online or use the print version; both may be submitted online.

*It is **NOT necessary to undergo EEO Counseling** in sexual harassment cases. You may file a complaint **DIRECTLY** with the Office of Human Rights. While not required, employees may choose to consult with an EEO Counselor within 180 days of the incident or discovery thereof.*

Note: Reporting to your agency via the SHO or a manager is **NOT the same as filing a legal claim with the Office of Human Rights**. Conversely, filing a complaint with OHR is not a substitute for reporting to the agency. Reporting to the SHO puts the agency on notice of the incident and allows the agency to address the issue within 60 days. Filing a formal complaint with OHR initiates a legal action against the agency, but OHR will require at least 180 days to make a probable cause finding, and if OHR finds probable cause, the matter will proceed to a formal hearing on the merits of the complaint. Alternatively, you can also file a civil action with the D.C. Superior Court within one year of the alleged harassment.

Can an employee file a formal complaint for retaliation with the Office of Human Rights?

YES. However, prior to filing a formal complaint with OHR, the employee **MUST first report retaliation to an EEO Counselor** within **180 days** of the alleged retaliation. Upon receipt of the Exit Letter from the EEO Counselor, the employee must file a formal complaint with OHR within fifteen **(15) days** of receipt of the Exit Letter.

ADDENDA

ADDENDUM A

OHR SHO DESIGNATION GUIDANCE

What Is Required of Agencies?

In compliance with [Mayor's Order 2017-313](#), each District Agency must:

- Designate a Sexual Harassment Officer (see below on who can be designated)
- Designate an office within the agency or an alternate person for when the SHO is unavailable
 - Smaller agencies may, by agreement, utilize SHOs from larger agencies or make other mutually agreeable arrangements, but still must submit the names of designees to OHR
- Submit an email to OHR at OHR@dc.gov with the names of designees by January 17, 2018 using the subject line "Agency Name – SHO Designations"; Submit any changes to the SHO designation to OHR within 10 business days of the change

Who Can Agencies Designate as an SHO?

- Agencies may use their discretion to designate any individual who is competent or familiar with EEO laws, and who can review and investigate reports of sexual harassment. The chart below provides more information.

Who May Be Designated?	Who Should Not Be Designated?
<ul style="list-style-type: none">➤ HR Advisors, HR Managers➤ Individuals competent in or familiar with EEO Provisions➤ Individuals with investigation experience➤ EEO Officers (NOT EEO Counselors)	<ul style="list-style-type: none">➤ <u>EEO Counselors</u> <i>Rationale:</i> Could cause significant confusion. Designating EEO counselors as an SHO could cause confusion between the two processes: (1) new agency reporting process and (2) the right to file a claim with OHR. Further, EEO Counselors assist with facilitating resolution of EEO claims; they do not investigate or make findings. Finally, in most cases, but not in cases of sexual harassment, undergoing EEO counseling is required before filing with OHR.➤ <u>General Counsel or Attorney Advisors in OGC</u> <i>Rationale:</i> Conflict of interest. An SHO's role involves conducting an impartial investigation and making an unbiased determination. This may cause a conflict of interest if General Counsel or an Attorney Advisor in OGC were designated as an SHO because OGC would ultimately have to represent and defend the agency.

ADDENDUM A

OHR SHO DESIGNATION GUIDANCE

	Lastly, designating a GC or an Attorney Advisor could result in agency attorneys becoming witnesses to a case.
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What is the Role of an SHO and How Does it Affect the EEO Counseling Process?

For general overview of the EEO Counseling Process, see OHR Website:
<https://ohr.dc.gov/page/EEOcounselors>)

When Reporting Incidents to the Agency

- SHOs are responsible for:
 - Accepting, reviewing, and investigating reports of sexual harassment incidents;
 - Communicating reports of sexual harassment incidents to agency General Counsel, who will in turn report the incident to the Mayor's Office of Legal Counsel (MOLC);
 - DCHR in concert with OHR will issue guidance materials for SHOs on how to conduct the investigation.
 - **Note:** Individuals do **NOT** have to consult with an EEO Counselor before reporting to the agency.

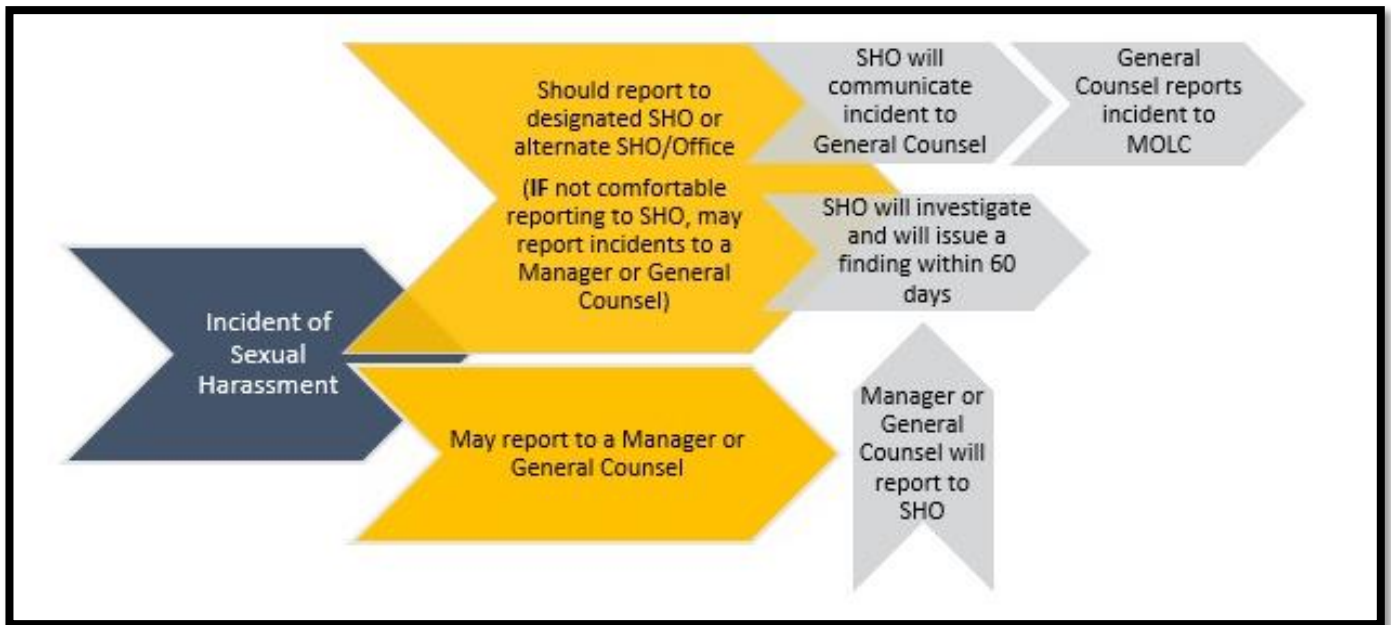
When Filing a Legal Administrative Complaint with OHR

- EEO Counseling is NOT required
 - Individuals do **NOT** have to consult with an EEO Counselor or report to the agency before filing a claim with OHR. They may proceed directly with OHR within one year of the incident or discovery thereof. However, individuals retain the right to consult with an EEO Counselor within 180 days of the incident or discovery thereof.

Consult the visual guides on the next page for more information.

ADDENDUM B VISUAL GUIDE

Agency Reporting Structure (via SHO)



Filing Legal Claims

