

**REPORT ON
THE EFFECTIVENESS OF AND COMPLIANCE WITH
SEXUAL HARASSMENT POLICIES AND PROCEDURES
JULY 2012 TO APRIL 2018**



**City Controller
Rebecca Rhynhart**



CITY OF PHILADELPHIA

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City Controller

CHRISTY BRADY
Deputy City Controller

Mr. Richard Lazer, Deputy Mayor of Labor
Mayor's Office of Labor Relations
City Hall, Room 205
Philadelphia, PA 19107

Dear Deputy Mayor Lazer,

The Office of the City Controller conducted a performance audit of the City of Philadelphia's sexual harassment policies and procedures pursuant to Section 6-400(c) of the Home Rule Charter. The objectives of this audit were to determine whether the city has clear and effective procedures for reporting sexual misconduct, performs investigations into employee complaints appropriately, and dispenses discipline fairly and consistently. We also reviewed compliance with sexual harassment training requirements and the financial cost to the city resulting from litigated claims of employee sexual misconduct. The results of our work, which was performed in accordance with *Government Auditing Standards*, is detailed in the attached report.

Our report assessed incidents and complaints over the period of July 2012 through April 2018 with the specific intent to focus not only on one mayoral administration, but the policy and its implementation over time. The findings paint a troubling picture of a policy and procedures that do not protect or support victims of sexual misconduct and improperly prepare supervisors to receive, investigate and resolve complaints. Broadly, our audit finds that the city lacks a clear and comprehensive policy, poorly implements the required procedures, administers discipline unevenly across departments for substantiated claims, and likely misses cases of sexual harassment by not properly documenting complaints, as found through our phone line.

Our specific findings and recommendations to improve the policy, procedures, and training, are detailed in the report we shared with you and your staff during our exit conference. We believe that our recommendations, if implemented by management, will improve the city's sexual harassment prevention policy and the enforcement of it, and provide transparency and accountability for individuals reporting claims of sexual misconduct.

We would like to express our thanks to you, your staff, and all city agencies for the courtesy and cooperation in the conduct of our audit.

Very truly yours,

REBECCA RHYNHART
City Controller

cc: Honorable James F. Kenney, Mayor
Honorable Darrell L. Clarke, President
and Honorable Members of City Council
Marcel Pratt, City Solicitor
Pedro Rodriguez, Director of Human Resources



CITY OF PHILADELPHIA

REPORT ON THE EFFECTIVENESS OF AND COMPLIANCE WITH SEXUAL HARASSMENT POLICIES AND PROCEDURES

EXECUTIVE SUMMARY

In the wake of the #METOO movement and in light of recent revelations about serious inappropriate behavior in different city departments, as well as a \$1.25 million payout in response to a case involving the Philadelphia Police Department, the Office of the City Controller conducted a performance audit of the city's sexual harassment prevention policies and procedures. The audit sought to determine if the city's policy has clear and effective procedures for reporting sexual misconduct, performs investigations into employee complaints appropriately, and dispenses discipline fairly and consistently. We also looked at the financial cost to the city from litigated claims of employee sexual misconduct over the period of July 2012 through April 2018.

Sexual misconduct can take many forms – jokes, touching, leering. It's harassment. It's discrimination. And sometimes, it's assault. Since the 1980s, the City of Philadelphia has attempted to address and prevent the many forms of sexual harassment through its sexual harassment prevention policy. Over the years, the policy has been updated to include the use of technology, recognize same sex complaints and more. While these changes are important to reflect a more inclusive and of the moment reality, the policy itself has maintained the same core structure since its inception.

Findings on Sexual Harassment Policy and Procedures

The Sexual Harassment Prevention Policy is a one-size fits all document that does not adequately meet the needs of its employees. While the policy provides employees with an accurate definition of what sexual harassment is and what reporting options - to a supervisor, a departmental administrator, or a department's Equal Employment Opportunity officer (EEO) - are available to them, it does not provide an employee who wants to report harassment with information about which reporting option is best.

Moreover, supervisors across departments aren't given thorough instructions on how to investigate a complaint, when to elevate it, or what information to document during the complaint process. In the current training provided to supervisors, just two of 52 slides pertain to the technical approach of handling harassment. There is no formal guidance on disciplinary actions in substantiated claims or for repeat offenders, or what procedures to use when an elected official is the alleged offender.

Overall, the procedures outlined in the policy reflect a decentralized system for addressing and preventing sexual harassment. Most frequently, sexual harassment complaints are received, investigated and resolved at the departmental level. The process for addressing a complaint or recommending disciplinary action is not standardized across departments. Some offices may use an employee panel to investigate and resolve complaints, while others may seek support from the Mayor's Office of Labor Relations.

Under the policy, each city department is required to appoint an EEO officer. Departments are supposed to inform staff of who the EEO officer is, including posting their contact information, and what their role is. However, we found that 13 departments did not have an EEO officer and 32 departments did not post the contact information for their EEO officer. This means staff in 45 of 50 departments may not have known who or had someone to report sexual harassment to in their office.

Our testing also showed that 59% of supervisors, managers and executive staff had not received sexual harassment prevention training in the last five years. Twenty-seven of the 38 personnel officers we interviewed were not in compliance with this training standard; 21 of these employees had no record of ever having sexual harassment training.

It's important to note that the policy identifies the city's Office of Human Resources (OHR) as the principal contact for all matters regarding sexual harassment and misconduct, but these responsibilities have been transferred to the Mayor's Office of Labor Relations. This change, which occurred in 2017, has not been updated in the policy.

Our audit found that the city does not have a procedure in place to handle a situation in which the individual accused of sexual harassment is an elected official, as was the case earlier this year in the Sheriff's Office. The policy states that copies of the completed investigation must be given to the cabinet official and department head. As a result, the Mayor's Office of Labor Relations provided the offending city official with the completed investigation substantiating the claim against him and subsequent disciplinary recommendation.

As part of the audit, we found that discipline for substantiated claims of sexual misconduct is not commensurate with offenses, varied greatly between departments, and in five cases was more severe for lower level employees than for supervisors with similar infractions in the same department.

Our review of case files and personal accounts of reporting sexual harassment collected through the Controller's Office phoneline noted common grievances, from employees not understanding their reporting options to not knowing how to address the wrong-doing. Additionally, the personal accounts collected from the phoneline raised questions about whether the case files we received reflected the full breadth of misconduct occurring or being documented within city government. Callers to the phoneline provided their incidents of misconduct and indicated that they reported these interactions and filed complaints. However, many of the incidents shared through the phoneline were not present in the documentation provided by the city.

The city's policy is inadequate, decentralized and implemented poorly across city departments. The process for reporting is opaque and complicated, with several points of contact and the potential for confusing "formal" and "informal" complaints. The procedures in place leave many questions for individuals experiencing sexual misconduct as a City of Philadelphia employee and for supervisors, human resources personnel and EEO officers who largely are responsible for receiving, investigating and resolving a complaint. These factors present a significant potential for financial liability.

Findings on Complaints and Payouts

Working with the city's Law Department and the Mayor's Office of Labor Relations, we were provided with 121 sexual misconduct case files for the time period of July 2012 through April 2018. Some of the 121 cases included a combination of complaints. In total, we received:

- 102 complaints of verbal harassment;
- 44 complaints of sexual misconduct; and
- 7 complaints of coercion.

Of the 121 cases we received, 63 were investigated and substantiated and 53 were investigated and deemed unsubstantiated. The Controller's Office assessed the quality of investigations completed by the EEO Unit and found that generally the quality of the investigations mostly adhered to best practices. The audit scope did not review the quality of investigations completed internally within departments. However, as noted earlier, the city's policy fails to provide instruction to managers or supervisors regarding how to address complaints or when to elevate them. Additionally, the training provided does not fully address how to undertake investigations, presenting reasonable concerns.

It is important to note that the case files submitted by the Law Department represent only complaints that were reported and properly documented. If a complaint was mismanaged, improperly recorded or not recorded at all, there would be no documentation of the allegation to provide.

Of the cases that escalated to a lawsuit, we requested that the Law Department provide our office with a summary of settlement and punitive litigation costs. This presented a problem for the Law Department and an unintended finding for this audit – the Law Department's internal system for tracking litigation is inadequate for identifying and reporting on specific types of cases and the settlement costs paid by the city. The system could not identify sexual harassment from the more widely defined gender discrimination lawsuits. Additionally, the Law Department failed to identify other cases that should have been included in information provided to us. Eventually, it was determined that the city had paid out \$2.2 million from July 2012 to April 2018. However, we believe the number could be greater.

To improve the sexual harassment reporting and resolution process, better protect city workers and reduce the city's liability for payouts, the Controller's Office recommends considerable changes to its approach in addressing, preventing and responding to sexual harassment. Five of the most important recommendations for change are:

- The city should consider centralizing the process for sexual harassment claims. Not only would this enable consistency in the standards of investigations and discipline, it would also ensure the complainant has a reliable and unbiased third-party investigator, improving the complainant's reporting experience and potentially resulting in better informed investigations and resolution of claims.
- The city should establish a standardized guideline for recommended discipline to ensure instances of misconduct are dealt with fairly and consistently, citywide.
- The policy should be updated to give explicit instruction to those making a complaint on how to report claims and what to expect if you are filing a complaint.
- The city should develop a comprehensive, high-quality sexual harassment prevention training program and require all employees receive the training every three years.
- The Law Department should also revise its current system for tracking cases and the settlement costs associated with them to ensure complaints, lawsuits and payouts are easier to find.

Additional recommendations can be found in the body of this report.

CITY OF PHILADELPHIA

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JULY 2012 TO APRIL 2018

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INTRODUCTION

BACKGROUND

Sexual Harassment Defined

The U.S. Equal Employment Opportunity Commission (EEOC)¹ defines sexual harassment as “*unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when this conduct explicitly or implicitly affects an individual’s employment, unreasonably interferes with an individual’s work performance, or creates an intimidating, hostile, or offensive work environment.*” It further describes sexual harassment as a form of sexual discrimination under Title VII of the Civil Rights Act of 1964.²

Generally, there are two main types of sexual harassment, “quid pro quo”, and “hostile work environment”. Quid pro quo (literally meaning “this for that”) occurs when an employee is required to choose between submitting to sexual advances or losing a tangible job benefit, or when an employee’s submission to or rejection of sexual advances or conduct of a sexual nature is used as the basis for employment decisions affecting the employee or is made a term or condition of employment.³ Quid pro quo occurs most often in supervisor to subordinate working relationships.

Hostile work environment occurs when unwelcome sexual conduct unreasonably interferes with an individual’s job performance or creates a hostile, intimidating, or offensive work environment even though the harassment may not result in tangible or economic action against the individual.⁴

Sexual harassment in the workplace can take many forms. It can be physical if the conduct involves assaults of a sexual nature (e.g. sexual battery or intending to cause fear of bodily harm) or actions that could be construed as sexual, such as touching a person’s body, pinching or grabbing, or intentionally brushing against another person. Sexual harassment can also be non-physical, which includes sexually-oriented gestures, sounds, and speech. Prohibited behavior includes sexual innuendo, jokes, repeated propositions for a date, leering, whistling, and making sexual comments about a person’s clothing. Displaying or electronically transmitting pictures, cartoons, calendars, or other sexually suggestive materials is also prohibited.

The EEOC further states that “sexual harassment can occur in a variety of circumstances, including but not limited to the following:

- the victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.
- the harasser can be the victim’s supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.

¹ The federal agency responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee. The agency also has the authority to investigate charges of discrimination against employers.

² This law applies to employers with 15 or more employees, including the federal, state and local governments, as well as employment agencies and labor organizations.

³ Source: City of Philadelphia Sexual Harassment Training – Protecting the Civil Rights of Employees

⁴ Ibid

- the victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- unlawful sexual harassment may occur without economic injury to or discharge of the victim.
- the harasser’s conduct **must** be unwelcome.”

History of Sexual Harassment Policies and Procedures in the City

City of Philadelphia (city) management attempted to address sexual harassment in its own workforce through a series of executive orders and policy statements that stressed the importance of preventing discrimination and sought to modify inappropriate employee behavior

before it became a serious problem.

Sometime in the mid-eighties, the city’s Office of Human Resources (OHR)⁵ issued its *Policy for Preventing Sexual Harassment in City Government*, the first known plan to address this matter. The policy was an early version of the current *Sexual Harassment Prevention Policy*. It contained the EEOC’s definition of sexual harassment, offered examples of inappropriate conduct, and prohibited retaliation for complaints. It also established a formal and informal process by which employees could seek a resolution of their grievances, and outlined procedures for investigating and resolving formal complaints. OHR revised the policy in August 1998 to recognize complaints from persons of the same gender as the accused and to prohibit sexual harassment using city technology. In January 2016, the policy was revised again to require that all employees, both current and new hires, receive and sign for a copy of the policy.

In January 2011, the administration issued *Executive Order No. 4-11: Prohibition of Sexual Harassment in City Government*. This order sought to reinforce the city’s intention to “establish a workplace free of harassment or discrimination on the basis of gender, gender identity, or sexual orientation.” The order also adopted and incorporated, by reference, OHR’s August 1998 *Policy for Preventing Sexual Harassment in City Government*.

Finally, in December 2017, City Council introduced *Resolution No. 171134 (As Amended 2/13/18)*, proposing an amendment to the Philadelphia Home Rule Charter and requiring mandatory sexual harassment prevention training at least once every three years, for all city officials and employees. This referendum was included as a ballot question (for the May 2018 election) per *Bill No. 171109-A* and was approved by the electorate.

PURPOSE OF THE AUDIT

In the wake of the national #MeToo movement and local revelations about sexual harassment within the Philadelphia Police Department, Sheriff’s Office, and the Fire Department, the Office of the Controller (Controller’s Office) conducted a performance audit of the city’s sexual harassment prevention policies and procedures. The objectives of this audit were to determine whether the city has clear and effective procedures for reporting sexual misconduct, performs investigations into employee complaints appropriately, and dispenses discipline fairly and consistently. We also determined compliance with sexual

⁵ Formerly referred to as the Department of Human Resources and the Personnel Department.

harassment educational requirements, and the financial costs to the city resulting from litigated claims of employee sexual misconduct. We initiated this audit pursuant to Section 6-400(c) of the Home Rule Charter, which authorizes the city controller to perform audits of the financial affairs of every city department, board or agency, as well as to conduct special audits when, in the controller's judgment, it appears necessary. The city should strive for a workplace that is safe for all its employees and ensures victims of sexual misconduct that their concerns will be addressed with compassion, due diligence, and propriety.

FINDINGS AND RECOMMENDATIONS

FINDINGS AND RECOMMENDATIONS

In conducting this performance audit, the Controller's Office reviewed the city's *Sexual Harassment Prevention Policy* and its related training procedures. We requested and obtained copies of employee complaints along with details pertaining to their eventual resolution, and obtained financial settlement information from the city's Law Department. We created a designated phone line to encourage past and current city employees to share their experiences with sexual misconduct while employed by the city. The Controller's Office also interviewed departmental personnel officers,⁶ and reviewed sexual harassment training records for supervisors, managers, and departmental administrators.

Speaking with complainants through the Controller's phone line and reviewing the case files gave us anecdotal, and very personal, insight into the working conditions that employees have faced. In reports written by complainants, we have noted common grievances from employees not understanding their options for making a complaint, or not knowing how to address the wrongdoing. Employees reported that they endured ongoing misconduct and tried to cope with the behavior of their colleagues long before making a complaint, citing fear of reprisal. In other instances, employees had taken the appropriate steps to address misconduct, but inadequately trained supervisors and departmental personnel officers did not adhere to the proper reporting procedures. Consequently, they could not support and protect the employees who came to them for help.

In an earlier⁷, but well-publicized case involving the Police Department, the city paid a female officer \$1.25 million to settle her case of sexual harassment assault, and subsequent retaliation. The officer claimed she was subjected to indecent exposure from male colleagues, lewd comments, and rumors about sexual relationships with other co-workers. Sometime thereafter, she was sexually assaulted by her commanding officer. In 2014, the victim filed written complaints with her superiors, but the department's Internal Affairs Unit investigator, who was also under investigation for sexual harassment, sided with the commander. Furthermore, despite a recommendation to the contrary from a lieutenant involved in the investigation, the Internal Affairs Unit failed to escalate the claim to the city's District Attorney's Office. The victim was reassigned to another district, which she considered retaliation for making the complaint, and eventually resigned from the department. She subsequently filed a lawsuit with the EEOC against the Police Department and her commanding officer, resulting in the significantly large payout. The judge presiding over the case wrote that the accuser "*had provided sufficient evidence for a reasonable jury to conclude the city knew of its specific problems with sexual assault and harassment in the department...but did little or nothing to stop such conduct.*" It was noted that another female officer filed a sexual harassment complaint against this same commander in 2008, and the Internal Affairs Unit cleared the commander of wrongdoing. While the city did attempt to demote the commander, he appealed this disciplinary action through arbitration, and his rank was subsequently re-instated. He has since been promoted.

⁶ Departmental personnel officers are now referred to as Human Resources Managers or any of several other job titles. For the sake of simplicity, we will continue to refer to these employees as departmental personnel officers.

⁷ The case began in 2004 but was not settled until 2017. Records show that the allegations of sexual misconduct continued into 2014.

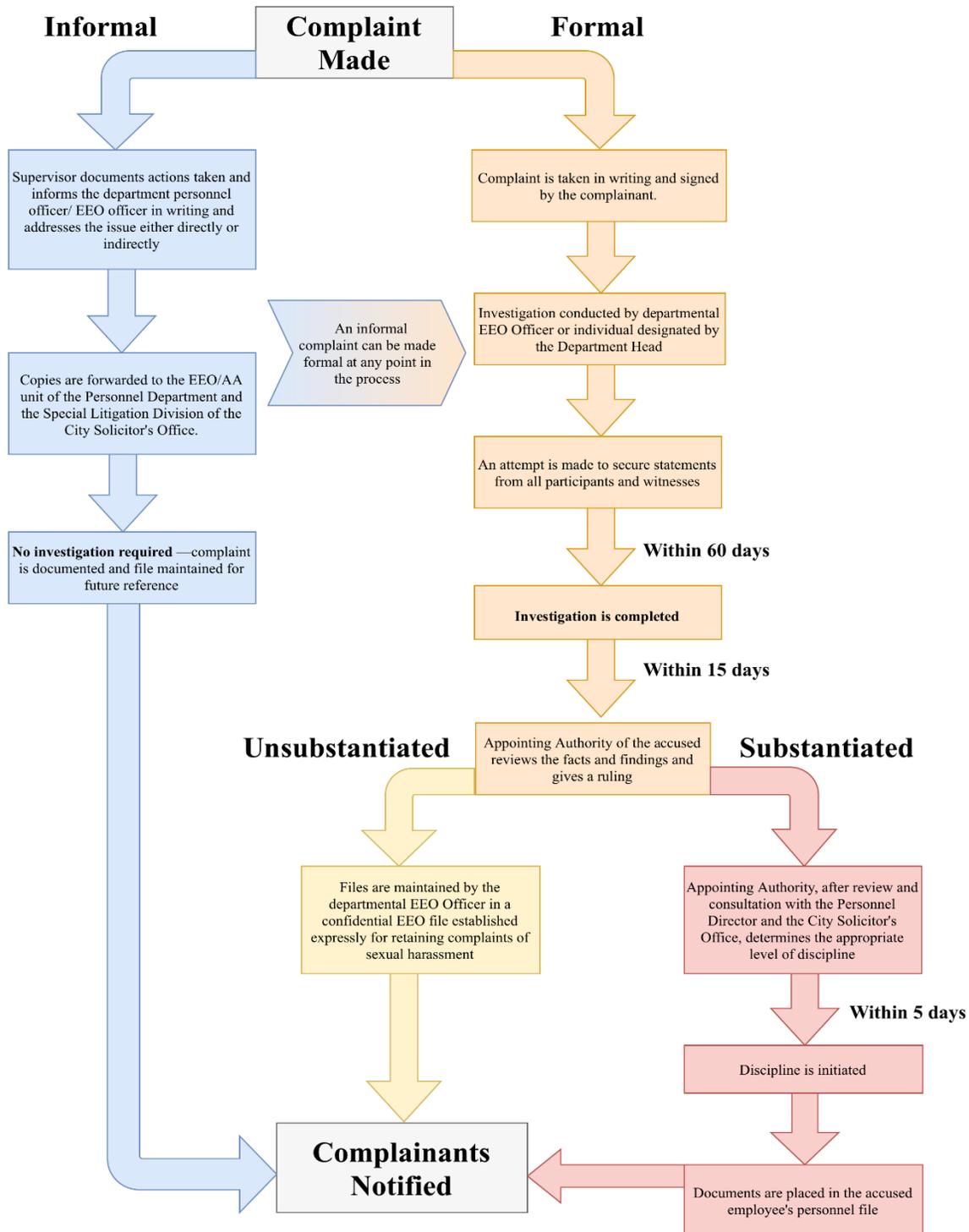
While the circumstances of the complaints varied in nature, we noted common deficiencies with the system that underscores the need for a change in workplace culture, the administration’s response to complaints, and the city policies that govern them. We believe that these, and other conditions noted below, diminish the city’s ability “to promote a workplace environment free of discrimination or harassment.”

THE CITY’S DECENTRALIZED SYSTEM FOR REPORTING AND INVESTIGATING SEXUAL MISCONDUCT REDUCES ITS EFFECTIVENESS

To obtain an awareness of the adequacy of the city’s *Sexual Harassment Prevention Policy* and how well department management understands and follows the policy, we interviewed departmental personnel and EEO officers, chiefs of staff or administrative services directors to determine how they address employee complaints of sexual misconduct. Many of the city officials we interviewed answered our questions based on a working knowledge of the complaint system. Others who asserted that they had no complaints, responded hypothetically based on their understanding of the process. Twenty-one of the 39 officials interviewed (54%) reported that they were unaware of any sexual harassment complaints received by their departments during the six years under review (July 2012 through April 2018).

OHR’s *Sexual Harassment Prevention Policy* is the official set of procedures used by the city for instructing employees about inappropriate behaviors in the workplace and investigating employee claims of sexual misconduct. As presented today, the policy reflects a decentralized system, which distributes responsibility for the proper implementation of the procedures, to each city department. Complaints are usually received, investigated and resolved at the department level. Many of the larger departments, such as Fire and Licenses and Inspections handle complaints internally within their departments, some using panels of employees to hear cases and decide the final disposition of sexual harassment complaints and other employee misconduct cases. Smaller departments may discuss reported allegations with the city’s EEO Officer or his staff in the MOLR Employee Relations Unit. Copies of complaints and completed case files are required to be sent to OHR, the Law Department and the appropriate cabinet member for purposes of case tracking and determining overall compliance with the policy. The following flowchart shows the process for receiving and investigating a complaint.

FIGURE 1: Process for Investigating a Complaint



How the City Intended the Process to Work

An employee who is being sexually harassed, or is aware of sexual harassment in the workplace, has two primary avenues for lodging a complaint, as illustrated in the flowchart on page 6. Per the *Sexual Harassment Prevention Policy*, employees may file an informal or formal complaint, both of which can be handled entirely within the department. Employees also have the option of contacting the city's EEO Officer, who will initiate an independent formal investigation outside of the department.

The informal complaint process allows the target of sexual harassment to address the situation in two ways. He or she may speak directly to the alleged harasser, asking for the behavior to stop, or request a supervisor to intervene. The supervisor can meet with the alleged harasser, or communicate to the entire unit that inappropriate workplace behavior will not be tolerated. The alleged harasser may be required to participate in non-disciplinary counseling, but no further investigation or subsequent discipline will occur. The supervisor should then document the alleged incident and how it was addressed, and forward the information to the departmental personnel officer. Copies of the complaint and supervisor intervention should then be sent to the OHR's EEO/Affirmative Action (AA) Unit and the Special Litigation Division of the Law Department. To comply with Executive Order No. 4-11, the supervisor who addressed the misconduct should notify the department head of the incident within five working days.

A formal complaint differs in how it is initiated. Formal complaints filed within a department can be given to either a supervisor or a departmental personnel officer. The employee who is receiving the complaint would document the complaint in writing and have the complainant sign it. The complaint is then submitted to the department head, OHR EEO/AA Unit, the Special Litigation Division of the Law Department, and the appropriate cabinet official.

This complaint would then be investigated. Investigations require the departmental personnel officer to interview all parties involved in, or witness to, the alleged incident, and review any other evidence presented, such as emails or text messages. The investigation should last no longer than 60 days, unless extenuating circumstances require an extension. This extension, limited to an additional 25 days, must be authorized by the department head, and communicated to the complainant. The entire case file should be forwarded to the department head within another 15 days.

After the investigation has been completed, the department head should review the investigation report and make a judgment regarding disposition. If the allegations are substantiated, the department head should then confer with the personnel director and the Law Department to determine appropriate discipline. Disciplinary measures should be enacted within five working days of this consultation.

For substantiated complaints, a copy of the entire case file, including the department head's written findings, should be placed in the harasser's personnel file, and other copies sent to the OHR EEO/AA Unit, the Special Litigation Division of the Law Department, and the department's cabinet official. Documentation from unsubstantiated cases should be retained by the departmental EEO officer in a confidential EEO file.

In a perfect world, the procedures noted above would show that employees are aware of the options available to them for making a complaint, supervisors and managers would be familiar with how to document employee allegations, departmental personnel directors would know how to perform complete and competent investigations, and department heads would dispense fair and appropriate discipline. Additionally, the various oversight agencies would be aware of all incidents of sexual misconduct within the city, and could track them accordingly. However, we found that the process is not working as intended.

Why the Policy Does Not Function as Intended

The *Sexual Harassment Prevention Policy*, as written, contains many inadequacies and inconsistencies, attempting to target the needs of its entire workforce through just one set of procedures. There are variations with terminology, and vague references to procedures that may or may not exist. While the policy is clear that employees have the choice of making reports through their supervisors, departmental administrators or the EEO Officer, they are not provided with instructions on when to choose one option over the other or what to expect by way of a response from the administration. Supervisors and managers are not given explicit instructions for how to address complaints, what information to document, and when to escalate a complaint that is beyond their scope of authority. Departmental personnel officers, with elevated responsibilities, are not specifically given clear instructions on how to initiate an investigation, what questions to ask of the parties involved, or what manner of discipline is warranted. The policy does not explain why case information is forwarded to the OHR, Law Department and cabinet official or for what purposes it will be used. Finally, the policy does not address what should or could occur in the aftermath of the case, such as following up with the complainant or providing him or her with procedures to follow in the event of retaliation. As a result, misunderstandings and miscommunication could prevent victims of sexual harassment from coming forward with their complaints.

Many of the issues discussed here arise from misconceptions created by the *Sexual Harassment Prevention Policy* itself. We found that, generally, departments were unclear about, or were not following, on average six of seventeen specific policy statements selected for testing. This is a city-wide problem, as every department failed to implement some part of the policy. The departments showing the most instances of non-compliance include the District Attorney’s Office and the Commerce Department, each failing to implement 10 of the policy statements. Table 1 on page 26 summarizes these findings for all departments. The inherent confusion of the policy, however, does not negate the professional responsibility that supervisory staff, departmental personnel officers, and department heads have to properly implement the current policy. The conditions we describe below address how employees report complaints, what actions supervisory staff take when receiving informal complaints, how departmental personnel officers or EEO officers investigate formal complaints, and how department heads determine discipline. We also discuss what actions the city should take once the case is officially completed.

Filing Complaints

Before discussing the problems associated with the informal and formal filing options available for resolving employee complaints, attention must first be given to problems within the policy itself. Many of the procedures cite inaccurate or outdated information that could confuse and frustrate complainants or discourage employees from coming forward with their concerns.

Foremost, we noted that the *Sexual Harassment Prevention Policy* incorrectly identifies OHR as the primary contact point for guidance, making complaints, and submitting documentation. An unnecessary barrier is immediately presented for employees trying to voice their concerns, as the policy misrepresents the department that is responsible for overseeing the process. While the policy is still published under the OHR heading, and frequently references the OHR EEO/AA Unit's involvement in investigations and oversight, the unit was transferred to the MOLR during 2017 and renamed the Employee Relations Unit. Moreover, the policy is still presented on the OHR website, and the results from conducting a web search for the City of Philadelphia EEO provide links to outdated webpages, with old contact information. These inaccurate and confusing representations continue despite the personnel director informing us that OHR no longer has any involvement in this process.

Furthermore, employees needing guidance when reporting sexual misconduct are encouraged to consult with their "departmental personnel officer/EEO Officer". This statement implies that a departmental personnel officer and an EEO Officer could be the same person as the job titles are used interchangeably. However, this is misleading as the departmental personnel officer is not a class title in the city's current job class specifications. This function is most commonly performed by departmental human resource officers.

In 45 of the 50 departments tested, there was also inadequate communication about the role of the EEO Officer. This leaves employees in 90% of city departments without a clear path to address sexual misconduct. In thirteen of the 50 departments we tested, no one was assigned to this position. The current departmental personnel officers did not identify themselves as EEO Officers, nor did they realize that one should have been appointed. An employee trained in EEO compliance can help foster a positive working environment and help ensure that all employees know how to address instances when inappropriate conduct occurs. The policy also requires that contact information for the departmental EEO Officer be clearly posted in a location where all employees can see it. For the 37 departments that have established an EEO officer, 32 did not display contact information in a prominent location.

The *Sexual Harassment Prevention Policy* also states that "it is the responsibility of each Appointing Authority to ensure that all employees, both current and new hires, receive and sign for a copy of this policy". While departmental personnel officers or EEO Officers reported providing employees with a copy of the sexual harassment policy at the time they were hired or as part of an employee handbook distributed during an employee's first days of employment, this may be the only time employees receive information regarding prohibited sexual misconduct. While the city does not require posting the policy where employees can clearly locate it, we observed that only four of the 50 departments tested prominently displayed the policy for their staff. Frequent discussion and consistent dissemination of the policy better informs employees of the types of conduct they are expected to adhere to, and employees dealing with harassment are better informed about the options available to address the concerns. It should also be noted that the term "Appointing Authority" appears throughout the policy, which could create further confusion at various stages of the process when it's unclear who this refers to. We interpreted the Civil Service definition as referring to

department heads since they have responsibility for employees hired or fired by their departments, and are ultimately responsible for the actions of their agents.⁸

In the process of filing a complaint, employees may not be aware that they have several options available to resolve their concerns. The *Sexual Harassment Prevention Policy* states that employees may have their concerns addressed through either an informal or formal resolution process. Refer to Figure 1 on page 6. In an informal complaint, an employee could directly confront the alleged harasser about the inappropriate behavior. However, including this in the policy puts the onus for correcting the behavior back on the complainant. The policy does not subsequently instruct the complainant to document and submit their actions to their departmental personnel officer. This undermines the possibility for identifying repeat offenders.

The complaint process is also compromised when all available options are not presented to employees. Departmental personnel officers and EEO Officers from 30 departments reported not using the “informal” process for addressing complaints of sexual harassment. They often expressed the rationale that all sexual harassment must be treated as a serious offense and dealt with through formal channels. While we do not disagree with the reasoning that all harassment is serious, having an informal complaint option available may be beneficial to employees. Requiring that all complaints of sexual harassment follow the format of written reports, thorough investigation of the claims, substantiation, and subsequent discipline (if necessary) can create an atmosphere in which employees feel that their concerns would be better kept to themselves than addressed through this formal channel. A properly handled informal complaint could be addressed by an employee’s supervisor, or manager, in a conversation with the alleged offender or, if necessary, the entire unit about appropriate behavior. After addressing the incident, and documenting it, the supervisor or manager would provide this documentation to the departmental personnel officer. This approach will seek to curtail misconduct, set the appropriate tone, and provide evidence of earlier offenses should the behavior continue.

Ambiguity exists in the formal complaint process when the type of the complaint is not explicitly discussed with the employee filing the complaint. In circumstances shared with the Controller’s Office, some employees spoke of making complaints to their supervisor or departmental personnel officer believing that they had addressed their grievances formally. However, the supervisor or departmental personnel officer receiving the complaint handled it informally, resulting in no discipline to the harasser, no documentation, and no closure for the complainant.

Lastly, while the city’s EEO staff have expertise in handling complaints of sexual misconduct, employees may be unaware of the Employee Relations Unit and not understand that they may make a complaint outside of their department. Having an external resource for filing a complaint is especially important when the alleged harasser is an executive-level employee.

⁸ Civil Service regulations define the Appointing Authority to be “the employer, supervisor, officer, board, commission, division or department head empowered by law or ordinance, or by lawfully delegated authority, to make appointments to positions in the City service or, in cases where delegation is not prohibited by Charter or law, such other persons as may properly be designated or empowered to act.”

Receiving Complaints

Once a supervisor or manager receives a sexual misconduct complaint, the city's *Sexual Harassment Prevention Policy* fails to offer any specific procedures or guidelines for helping them address and document the allegations. The policy states that any supervisor who receives a sexual harassment complaint shall refer to the "Procedures for Processing Sexual Harassment Complaints." This statement is objectively unclear, as we could not locate a document with this title and current officials of the MOLR admitted that they interpreted it to mean a subsection of this same *Sexual Harassment Prevention Policy*, but they could not confirm that.

Additionally, the policy does not provide written procedures regarding the type and format of information required in either a formal or informal report, or specifically how the supervisor or manager should address the complaint. It also fails to address other valid considerations that supervisors may have, such as, whether it's necessary to meet with an employee privately or in the presence of a manager, and when to have union representation present. It also neglects to specify when it's best to speak with the entire unit regarding employee conduct versus speaking solely with the alleged harasser. An effective policy document must be easily understood by the reader, without the need for additional questions and further clarification.

Finally, the *Sexual Harassment Prevention Policy* omits any mention of consequences for those who fail to address a complaint involving sexual harassment. When employees accept a supervisory role, they also accept responsibility for the welfare of the employees who report to them. Receiving a complaint of sexual harassment, even off-handedly, should result in documented actions to prevent future misconduct.

Investigating Complaints

The next steps in the *Sexual Harassment Prevention Policy*, conducting investigations, apply only to formal complaints, and constitute a substantial part of the complaint process. Supervisors or EEO Officers receiving a complaint of sexual harassment are required to take the details of the complaint in writing and have the complainant sign it. While this statement appears to be relatively clear, it is not. A supervisor is unlikely to be the person responsible for documenting the details of the complaint when a formal complaint is made. This action is usually performed by the departmental EEO Officer or departmental personnel officer.

The policy continues by instructing the investigator to secure statements from all participants in, and witnesses to, the alleged incident, but it lacks guidance to assist the investigator in this endeavor. Specifically, it does not reference other sources to consult for questions to be asked during an investigation. It would be beneficial for an investigator to have specific questions to ask, to help ensure that the process is performed accurately, completely, and consistently. Questions for the complainant could include when, and how often the offending behavior occurred, the employee's relationship with the alleged harasser, what type of documentation is available to support the allegation, and whether there is a fear of retaliation. Questions for the alleged harasser could include his or her recollection of the incident, what is their response to the complaint, and whether there is other relevant information that could refute the allegation. Investigators would also know to ask witnesses how they became familiar with the incident, what they personally saw or heard, and how the alleged harasser treats others in the workplace. In evaluating the city's *Sexual Harassment Prevention Policy*, we found that the U.S. Environment Protection Agency (EPA)'s *Procedures for Addressing Allegations of Workplace Harassment* provided us an example of best practices, offering clear and detailed

questions that should be asked of the complainant, of the alleged harasser, and any possible witnesses to the incident.

Addressing complaints timely is the next component of the investigatory process. The *Sexual Harassment Prevention Policy* states that the investigation should be completed within sixty (60) days from the filing of the complaint. This requirement applies regardless of whether the investigation is performed by the departmental personnel officer or the city's EEO officer and his staff. Review of the MOLR Employee Relations Unit's sexual harassment case files indicated that the city's EEO officer often takes between 90 days and six months to complete an investigation. Similarly, testing of investigations performed by city departments revealed 19 cases involving six departments that took longer than the required 60 days to complete, eleven of these were investigations within the Department of Prisons.

Of the departments interviewed, sixteen indicated that an investigation would likely take longer than sixty days. Some departmental personnel officers asserted that the time required to complete an in-depth investigation conflicted with other time sensitive daily duties. Others believed that an investigation could be done within an hour, which further validates our assertion that the lack of specific guidance could affect the quality of the investigation. Allowing time to lapse between a complaint and completion of an investigation could result in a failure to adequately support a complainant's allegation of employee misconduct, inaccurate reports from witnesses, and repeated occurrences of misconduct.

It should be acknowledged that the policy specifically mentions that complaints involving sexual assault, rape, or conduct of a criminal nature should be reported to the Philadelphia Police Department and an official report of the incident made. It further advises that questions involving what constitutes criminal activity should be discussed with the Law Department, although it doesn't specify which unit.

Reviewing the Investigation

The *Sexual Harassment Prevention Policy* continues with the requirement that the investigation report should be sent to the department head for review within 15 days after the completion of an investigation. At this stage of the process, the department head is responsible for determining whether the facts and findings revealed in the investigation result in the allegation being substantiated or unsubstantiated. However, the policy does not specifically provide department heads with the knowledge necessary to evaluate the validity of the complaint. Best practices, such as those used by the EPA, provide criteria that would assist the department head in establishing the credibility determinations.⁹

Proper oversight from the department head is crucial to ensure that the policy is being implemented fairly, correctly, and consistently. We found that 27 of the 50 departments we tested (54%) indicated that they would not include their department head in the process of reviewing the results of the investigation. Most of the responsibility for handling complaints of sexual misconduct and determining substantiation is delegated to the departmental personnel officer or EEO official. While in many cases the departmental personnel officer

⁹ Credibility determinations include reviewing inherent plausibility of the allegation, any hidden motives of the parties, and possible corroborations and contradictions in the testimony presented.

did consult with relevant authorities (i.e. the OHR EEO/AA Unit, and now the MOLR Employee Relations Unit) to determine discipline, the department head is not always involved as required. The EPA's *Procedures for Addressing Allegations of Workplace Harassment* safeguards impartiality of the decision-making process by specifying that the investigator (fact-finder) and the decision-maker should not be the same person. Within the MOLR Employee Relations Unit, the EEO Officer also tends to be both the fact-finder conducting the investigation and the decision-maker determining whether the allegations should be substantiated. The Employee Relations Unit mitigates the risk of bias by collaborating with other unit members on investigations. However, documentation from their investigations does not clearly demonstrate this collaboration.

Additionally, interviewed parties should be asked to review their statements and sign a written copy to verify the accuracy of the fact-finder's notetaking. Otherwise, we found that the investigatory process conducted by the city's EEO Officer addressed claims in a detailed and systematic manner, following many of the same guidelines used by the EPA. Auditors did not assess the quality of each department's investigative procedures.

Lastly, comprehensive procedures that include recommended disciplinary guidelines would mitigate subjective interpretations of the policy. The current policy does not outline disciplinary guidelines. Therefore, arbitrary penalties, which depend on the subjective judgment of the department head, or his or her agent, are dispensed. Further review of the inconsistencies we found in how departments dispense discipline can be found under "Discipline is Not Commensurate with Offenses" on page 17. The current policy also fails to adequately address situations where the alleged harasser is the department head, specifically an elected official, who is responsible for determining discipline, or could exert influence over the individual determining discipline.

Concluding the Investigation

The *Sexual Harassment Prevention Policy* finally states that, upon completion of the investigation, "documents regarding substantiated charges of sexual harassment are permitted to be placed in the employee's personnel file. Documents regarding unsubstantiated charges shall not be placed in personnel files, but shall be maintained by the departmental EEO officer in a confidential EEO file...". Proper document retention is essential for tracking inappropriate behavior, determining if training or discipline measures have been effective, and for reducing the likelihood of potential liability to the city.

However, 18 of the 50 departments reported that documentation from substantiated cases would not be included in the alleged harasser's employee file. Omitting the investigation report from an employee's personnel file, would almost certainly ensure that an employee moving from department to department receives a clean slate with each change. Should the inappropriate behavior continue, there is no documented history to cite when determining appropriate recourse.

Alternately, in one department, documentation from an unsubstantiated claim was erroneously included in the alleged harasser's file. This could create an undue burden on the employee's professional reputation. Departments should retain documentation for unsubstantiated claims in a separate EEO file, as required, to support possible patterns, should there be subsequent claims of misconduct.

The policy also requires that copies of the completed investigation report be sent to the OHR, Law Department, and the appropriate cabinet official, but it does not explain why it is necessary to do so. Failing to explain the importance of submitting complaint information and investigation files to appropriate officials, and requiring that departments adhere to these policy requirements, undermines the city's ability to maintain appropriate oversight of this process, and accumulate information necessary to track the cases and report on the outcomes. Departmental personnel officers and EEO Officers from 38 of the 50 departments we tested (76%) reported that they do not always send copies of complaints or finalized investigation files to departments or officials identified in the policy.

No Follow-Up with the Complainant

The policy also omits information regarding actions that should, or could, occur after discipline is determined. Departmental personnel or supervisors addressing a complaint of sexual misconduct are not required to follow up with the complainant to ensure that the resolution was effective. Failing to follow up with employees who have made complaints could leave them feeling unprotected in the workplace. Additionally, it does not adequately explain how, or to whom, employees should make a subsequent complaint of retaliation. Retaliation is mentioned at the end of the definitions of prohibited conduct, but there are no further instructions for an employee who feels as though they are being subjected to it.

City Does Not Have an Overarching Code of Conduct

One final note – After reviewing the *Sexual Harassment Prevention Policy* and some of the case files we received, it became apparent that the city does not have an overarching code of conduct for its employees. While some departments have established their own standards of acceptable behavior, there is no published city-wide policy addressing consequences of inappropriate behavior that could damage the reputation of a city department, create a potential liability for the city, or injure the public. Inappropriate conduct that falls outside the scope of sexual harassment includes, but is not limited to, sexual relationships between managers and subordinates, overtly sexual banter, or sexual acts while working or within the workplace. Such behavior raises concerns relating to abuse of authority, conflicts of interests, favoritism, and unfair treatment. Some of the incidents we reviewed started with these types of inappropriate workplace behaviors and later evolved into cases of sexual misconduct.

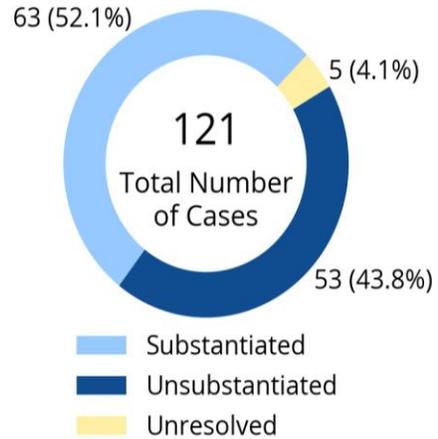
BETTER REPORTING AND TRACKING OF SEXUAL MISCONDUCT CLAIMS, CASES, AND PAYOUTS IS NECESSARY

To obtain a better understanding of the city's history in addressing sexual misconduct allegations, we requested that each of the 50 departments provide internal case files pertaining to complaints of harassment and misconduct. The requested files included the claims and resolutions of these incidents, over a six-year period beginning on July 1, 2012. We also requested complaint case files from the MOLR's Employee Relations Unit, as this unit can also handle sexual misconduct claims from any of the individual departments.

Review of Complaints and Investigations

We received complaint files supporting 121 sexual misconduct cases for the time period covering July 2012 to April 2018.

FIGURE 2: Outcomes of Reported Cases



These cases included:

- 102 complaints of verbal harassment,
- 44 complaints of physical misconduct, and
- 7 complaints of coercion.^{10,11}

Sixty-three of the 121 allegations were investigated and substantiated, while 53 were investigated and determined to be unsubstantiated. The remaining five complaints were still pending resolution.

However, information shared through the Controller’s Office phone line cause us to question whether the case files we received, as reported above, reflect the full breadth of misconduct occurring within city government. Discrepancies were noted between incidents that callers spoke of reporting and the documentation provided per our request for all complaint files. The callers indicated that they appropriately reported complaints, which should have resulted in documentation, whether the allegations were substantiated or not.

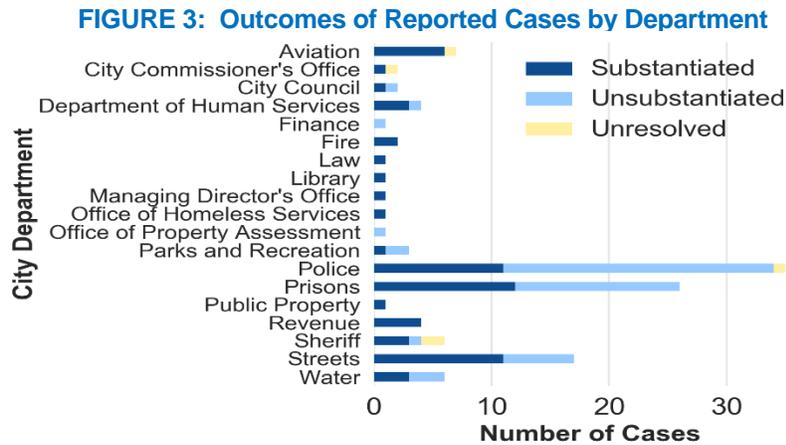
- One caller spoke of sexual misconduct from a high-ranking official, with subsequent retaliation since making the report.
- One caller spoke of making a detailed sexual misconduct report to the departmental personnel officer, despite this same personnel officer adamantly informing us that there were no reported incidents of sexual misconduct in that department.
- One caller spoke of being asked to make a sexual misconduct complaint, indicating that department supervisors were aware of the allegations against the alleged harasser, only to find that the harasser faced no subsequent repercussions.
- Two callers spoke of inappropriate behavior and gender-based hostility from the same city employee.
- Two callers spoke of separate incidents with the same subcontracted employee.
- One caller spoke of misconduct involving an employee of the same gender, citing this as the reason why the report was not taken seriously.

Stories like these, involving employees from many city departments, indicates that sexual misconduct and mishandling of reports is a city-wide problem.

¹⁰ Coercion as it relates to sexual harassment is the unwelcome or inappropriate promise of rewards in exchange for sexual favors.

¹¹ Some complaints consist of a combination of allegations.

Figure 3 below shows the breakdown of the 121 cases by city department.



A determination that allegations are unsubstantiated does not conclude that the misconduct did not occur, only that it was determined the evidence provided was insufficient to substantiate the allegation. Auditors did not assess the quality of each investigation. Six of the cases that the city monetarily settled were previously reported to a departmental personnel officer or an EEO committee of the applicable department prior to a lawsuit being filed. It should be noted that an inadequate investigation, which erroneously clears an offender, could subject the city to additional liability.

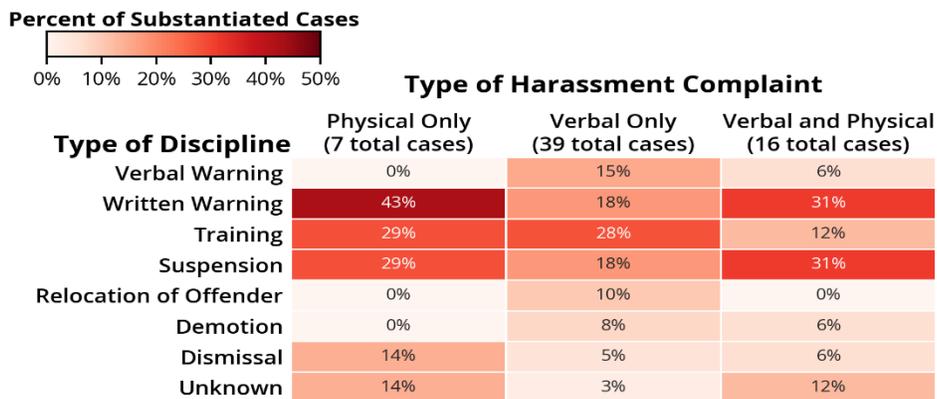
Investigation & Discipline

Additionally, we interviewed the MOLR’s Employee Relations Unit about their specific investigatory process. When the unit completes an investigation, and concludes the complaint was substantiated, a letter is sent to the department head informing the official of the final disposition of the investigation. No specific discipline is suggested with these letters. Instead, the unit sometimes suggests mandatory training courses, for which they have stated, “Training is not seen as a punitive measure, but rather as a career development tool.” Describing training as a development tool, and not recommending further discipline, sends the wrong message to both the harasser and complainant. The administration needs to respond with significant consequences to deter ongoing behavior, and meet the needs of the victim. In cases with more significant infractions, the letter sent to the department head recommends that the official “take appropriate administrative measures against offenders that are commensurate with the sustained allegation.” This vague recommendation exacerbates the arbitrary levels of discipline between departments. As is, the department head is responsible for determining discipline, and should be held accountable when the discipline does not match the gravity of the offense. Furthermore, when substantiated complaints are made against department heads, specifically elected officials, as was found to have occurred earlier this year in the Sheriff’s Office, they are still the recipient of the final case file and are responsible for taking the “appropriate measures” against themselves. This makes it difficult to determine what, if any, discipline was dispensed.

Discipline is Not Commensurate with Offenses

For most of cases we reviewed, discipline took the form of verbal or written warnings, suspensions, and occasionally, employment terminations. There is a spectrum of both verbal and physical misconduct upon which adequate discipline should be reflective of the offense. For example, physical misconduct is sometimes more severe than verbal misconduct and should carry stronger discipline, if not immediate police intervention. Auditors reviewed the circumstances surrounding the 63 substantiated cases and found that the discipline dispensed varied significantly between departments for similar infractions. Several departments issued suspensions between one and three days for inappropriate conversations, while another merely issued a written warning for an employee groping a coworker.

FIGURE 4: Complaint Types and Discipline Dispensed



More concerning, while the policy states that “Supervisors shall be held to a higher standard of conduct and shall be subject to a higher level of discipline when engaging in sexual harassment,” auditors identified situations within the Division of Aviation, Sheriff’s Office, Police, Streets, and Fire Departments where lower-level employees received harsher punishments than employees working in a supervisory capacity, sometimes for an objectively lesser infraction. In a Fire Department case in which there were multiple offenders, lower-level employees received extensive suspensions while a higher-ranking official received a written warning for similar conduct. However, given the specifics of this case, stronger discipline should have been dispensed across the board. For a summary of the types of substantiated complaints we received and the discipline dispensed, refer to Table 2 on page 27.

Tracking of Settlements and Payouts Need Improvement

When the cases escalated to a lawsuit, we requested that the Law Department provide us with a summary of litigation and settlement costs. We found that the Law Department could not easily provide this information to us since their internal system for tracking litigated cases could not identify sexual harassment from the more widely defined gender discrimination lawsuits. Consequently, their initial reporting of the case list was largely inflated due to the erroneous inclusion of these unrelated cases.

We also noted that the Law Department failed to identify other cases that should have been included in the list they presented to us. For example, the MOLR provided us with information involving a case that the Law Department litigated through federal court. However, this case, which resulted in the employee's termination, was not identified through the Law Department's case tracking system.

Furthermore, when we requested where we could find litigation costs in the city's accounting system, Law Department officials could not immediately provide us with this information. For experienced users of the city's accounting system, finding an expenditure, or what fund it was charged to, should be a relatively easy task. The user would only need to know the expenditure class code¹² and index code.¹³ The confusion stemmed from the fact that the city's expenditure codes include several classes (e.g. civil rights, miscellaneous indemnities, employee claims) that could be used for charging litigation costs. Actual costs for the six years under review were, in fact, charged to different class codes. After requesting an additional review of its settlement costs for these six years, it was finally determined that the city paid \$2.2 million to settle sexual misconduct claims. The originally inaccurate and incomplete information we received indicates that the Law Department's internal system for identifying litigation cases and costs by type is inadequate for tracking and analyzing legal settlements.

EMPLOYEES ARE NOT RECEIVING ADEQUATE TRAINING

Departments Are Not Compliant with Required Employee Training

Ending sexual misconduct within the workplace requires a shift in the cultural understanding of what constitutes appropriate office behavior. Clear, effective, and ongoing training is critical for changing attitudes and reinforcing proper employee codes of conduct. Recognizing this, City Council drafted and enacted

Resolution No. 171134, which amended the Philadelphia Home Rule Charter to require sexual harassment prevention training every three years for all city employees.

Prior to passing this legislation, the city used Executive Order No. 14-84, as the basis for employees receiving sexual harassment prevention training. This order required that all newly hired supervisors and managers attend training classes to prepare them to assume leadership roles in city government. OHR, and now MOLR, have further utilized this executive order to require that these same employees receive sexual harassment prevention training every 5 years,¹⁴ although the number of years is not specified in the executive order.

The *Sexual Harassment Prevention Policy* further specifies that it is the responsibility of each department head to ensure that all supervisors and managers specifically receive sexual harassment training. Despite this mandate, departmental personnel officers from 14 of the 50 departments we tested reported that some of their supervisory staff had not received recent training on the *Sexual Harassment Prevention Policy*. The other 36 departmental personnel officers asserted that all supervisors and managers in their departments have received the required training. However, our review of the training records in the SmarterU Learning

¹² Expenditure codes identify disbursements by nature (e.g. full-time salaries, transportation or computer equipment).

¹³ Index codes are used to ensure that expenditures are charged to the correct department, unit, or division.

¹⁴ A recent City Council resolution changed training requirements to every three years for ALL employees in the city.

Management System (LMS)¹⁵ revealed significant discrepancies between what was reported by management and what was recorded in LMS. Maintaining adequate training records and ensuring that employees attend mandated training seminars are essential for preparing supervisors to both set the expectation for appropriate conduct, and familiarizing them with the resources and processes necessary for addressing complaints.

We selected 36% of department supervisory and management personnel and reviewed the LMS training records to determine the latest date the employees received sexual harassment prevention training, and if such training was completed within the last five years. Our testing revealed that 1,189 of the 2,031 employees tested (or 59%) had not recently received the mandatory training.

We also reviewed the training records for the 38 departmental personnel officers we interviewed, as well as 50 department heads. Twenty-seven of the 38 employees (71%) working in a human resources capacity were not compliant with this training standard. These are the front-line employees responsible for overseeing sexual harassment complaints. Six of these employees were non-compliant due to noncurrent training; the remaining 21 officials had no record of ever receiving sexual harassment prevention training. Testing of department heads yielded more favorable results, with 35 (70%) holding a valid certificate of recent sexual harassment prevention training. The results of our testing indicate that there is considerable room for improvement, especially when the city's goal is to develop a workplace culture that does not tolerate sexual misconduct, and creates a clearly identified path for employees to seek protection without reprisal.

Overall, our testing revealed that only 41% of supervisors, managers, and executive staff had received sexual harassment prevention training in the last five years. We could not locate records showing that any of the employees selected for the District Attorney's Office, Mural Arts, and the Board of Revision of Taxes had received the mandated training. Only the Mayor's Office of Sustainability -- a department established in 2017 -- had timely trained all the employees we selected for testing.

It is the responsibility of each department head to ensure compliance with this training standard. While departmental personnel officers should be informed of upcoming training opportunities and requirements at monthly OHR meetings, the significance of the deficiencies noted in our testing results indicates that more work is needed to ensure compliance - especially as the city moves to train *all* employees. Simplifying the process by which employees obtain training, and improving the tracking of employee training will help increase compliance. The MOLR began using LMS in 2017, allowing the city to more effectively track when employees are due for refresher courses.

Training Is Not Tailored to Employee Rank and Responsibilities

City employees could also benefit from changes in how sexual harassment prevention training is provided. Content of the current four-hour training session consists of the definitions of sexual harassment, examples of inappropriate behavior, a brief discussion

¹⁵ LMS is the system implemented by the Chief Administrative Office to track employee training and allow employees to independently sign up for training and attend classes remotely.

about the effects of sexual harassment, and contact information for reporting incidents. These sessions are available to all employees regardless of rank or job function. Training classes are tailored for the specific needs of some departments, such as the Prisons. Additionally, within the usual monthly course that MOLR offers, some impromptu adjustments can be made to address the diverse needs of those in attendance. However, the needs and responsibilities of employees, from rank and file personnel to department heads, vary greatly enough that the training should be specifically tailored and offered exclusively to those with similar responsibilities.

In addition to understanding what constitutes inappropriate workplace conduct, employees who feel they were the target of harassment, or those who were witnesses to harassment, need to know what the complaint process entails. Training should specifically address the benefits and drawbacks of an informal versus formal complaint, who they need to talk to, how long the process will take, and what kind of information they need to present. This last point is especially important since hostile work environment cases require the complainant to provide specific information, such as documenting that he or she suffered intentional discrimination and that it detrimentally affected them. Knowing the documentation requirements would provide a victim of abuse with an increased chance of a successful grievance, while also saving the department administration the time involved in investigating unsupported charges.

Supervisors, managers, and department personnel officers would also benefit from a training program that addresses both the behavioral aspects of sexual harassment as well as the steps necessary to document and investigate a complaint. Currently, only two of 52 slides in the sexual harassment prevention training presentation pertain to the technical approach of handling a sexual harassment complaint. These slides repeat the same general procedures for investigating a complaint that are mentioned in the *Sexual Harassment Prevention Policy* (see flowchart on page 6) but they do not provide detailed steps for doing so. For example, it would benefit the investigator to know what kind of questions to ask the person affected by the conduct, and the potential witnesses, as well as how to discuss the complaint with the alleged harasser. The training session should also address making credibility determinations, obtaining and considering past records of similar behavior, and the manner and timing for formalizing a resolution. The absence of a comprehensive and detailed training program for those receiving and investigating complaints increases the probability of inappropriate and possibly inaccurate resolutions.

CONCLUSIONS AND RECOMMENDATIONS

The lack of a clear, comprehensive and centralized sexual harassment policy, in concert with an inadequate training program, that is poorly attended, created the perfect union of circumstances to expose employees to sexual harassment.

Centralization of the process for investigating sexual harassment complaints would be a formidable undertaking, but we believe the benefits would outweigh the costs. Removing investigations from a department's purview would ensure that the standards of the investigation are consistent for all cases. Furthermore, this would mitigate the possibility of bias from the investigator in favor of, or against, the complainant or the alleged harasser. A centralized unit devoted to handling employee complaints would also

be better prepared to compile clear and consistent documentation and provide for improved historical records of incidents. Centralization would also reduce the arbitrary variation in corrective action between and within departments, conceivably by establishing disciplinary guidelines for consistent and fair discipline that is proportionally responsive to the level of misconduct. Lastly, a unit devoted to complaints of sexual harassment would be faster to adapt to societal, procedural, and legal changes. With so many drastic shifts in the expectations of acceptable conduct that have occurred over the last few decades, it would be prudent to allow for further changes as we strive to become more inclusive, and aware of the needs of all people and protected classes.

Therefore, we recommend that the city consider centralizing the process for investigating sexual harassment complaints under one department or unit, which would oversee cases from the initial formally documented complaint to its final resolution. An obvious choice for centralization would be to expand the duties of the MOLR Employee Relations Unit, which currently administers all EEO matters. [200318.01]

Additionally, to establish an effective policy to properly address complaints of sexual harassment and suitably train its workforce, we recommend that the city:

- Revise the current *Sexual Harassment Prevention Policy* to:
 - Remove procedures that are no longer applicable, especially those that refer to OHR and OHR units that no longer exist or claim no involvement in the process. [200318.02]
 - Ensure that all job titles or other information used in the policy reflects current city positions and relevant terminology. [200318.03]
 - Create separate sections of the policy to address the needs of each of the levels of involvement, i.e. the complainant, the supervisor or manager, the departmental personnel officer and the appointing authority, if applicable. These policy sections should include information for how rank and file employees report misconduct, and what to expect by way of a response from the administration. The section for supervisors and managers should include explicit instructions for how to address complaints, specific information to document, and when to escalate a complaint that is beyond their purview. A third set of standards could be written to provide departmental personnel officers (or the centralized unit) with a clear understanding of their elevated responsibilities. [200318.04]
 - Create recommended discipline guidelines that would ensure that victims receive closure and clearly egregious instances of misconduct are dealt with fairly and consistently. [200318.05]
 - Establish procedures advising employees as to the resolution of their complaint and the procedures to follow if they are subject to retaliation. [200318.06]

- Include consequences for supervisory or executive-level staff who fail to address a complaint involving sexual harassment. [200318.07]
- Consider creating a city-wide employee code of conduct, which would reinforce positive behavior and prohibit inappropriate actions that could create a hostile work environment or cause a liability to the city. [200318.08]
- Require that each department has an assigned EEO Officer, or someone in authority who has received adequate training in addressing the *Sexual Harassment Prevention Policy*. Their contact information should also be posted in a prominent location. [200318.09]
- Ensure that all employees attend sexual harassment prevention training in accordance with City Council Bill No. 171109-A. [200318.10]
- Ensure that all employees receive a copy of the *Sexual Harassment Prevention Policy* and are aware of what constitutes inappropriate office behavior and how to make a complaint if they are subjected to, or become aware of sexual harassment or misconduct in their workplace. This policy should also be posted prominently. [200318.11]
- Instruct employees on the options available for making a complaint, i.e. informally or formally, and assist them in deciding what is appropriate for their circumstances. [200318.12]
- Send ALL complaints of sexual harassment and misconduct to the centralized department or unit chosen to investigate and/or oversee these allegations. [200318.13]
- Require that departments, or a centralized unit, adhere to an established timeline for documenting and investigating employee complaints to ensure that the matter is addressed in a timely manner. [200318.14]
- Enforce the policy requirement that all reported instances of sexual misconduct be communicated to the department head to ensure their knowledge of and involvement in resolving employee complaints. [200318.15]
- Develop or obtain responsive on-line training courses that would allow employees with limited ability to attend live classes to meet the mandatory requirements at a time and location that suits their scheduling needs. [200318.16]
- Tailor any revisions to the content of the training classes to the specific needs of the audience, i.e. rank and file employees, supervisory and executive personnel, or departmental personnel officers. [200318.17]

- Research and consider incorporating best practices employed by private industry or other government entities, such as the U.S. EPA’s *Procedures for Addressing Allegations of Workplace Harassment*, when revising the city’s *Sexual Harassment Prevention Policy*. [200318.18]

We also recommend that the Law Department revise its current system for tracking the type of cases it litigates, and the settlement costs associated with them, to allow for better tracking, analysis, and ease of data retrieval. [200318.19] Additionally, the department should consider charging all litigation expenditures to class codes that reflect the nature of the settlement with more specificity, by categorizing sexual harassment and other forms of sexual discrimination separately. [200318.20]

APPENDIX I: OBJECTIVE, SCOPE, AND METHODOLOGY

This appendix provides information on the scope of work and methodology we used to ascertain whether city departments were properly addressing complaints of sexual harassment, whether supervisory employees received sexual harassment prevention training as required, and what retribution was paid by the city to complainants negatively impacted by employee sexual misconduct.

To accomplish our objectives we performed the following:

Obtained background information on how the city addresses sexual harassment complaints, including mayors' executive orders, statements of policy, and the January 2016 copy of the *Sexual Harassment Prevention Policy*, issued by the Office of Human Resources.

Interviewed human resources officials and other employees responsible for personnel functions within each department regarding knowledge and implementation of the January 2016 *Sexual Harassment Prevention Policy*.

Interviewed the city's Equal Employment Opportunity (EEO) Officer to understand the EEO's investigation processes and any related outcomes.

Obtained copies of the materials distributed at the Sexual Harassment Prevention training sessions from the EEO Unit. Compared information in the training material to the January 2016 *Sexual Harassment Prevention Policy*.

Obtained employee training records from the MOLR. Using a sample that included all department executives, human resource managers, and a randomly selected sample of supervisory and managerial employees, determined whether these employees were receiving the required training.

Reviewed accounting records to determine how the city accounts for monetary settlements resulting from legal claims relating to sexual harassment.

Reviewed responses received through the city controller's sexual harassment phone line to evaluate if departmental records reflect information obtained directly from complainants.

Evaluated the city's January 2016 *Sexual Harassment Prevention Policy* against "best practices" obtained from private organizations and other large local governments.

In some instances, departmental personnel officers perform their duties for multiple departments. When this was the case, the employee was only interviewed once, with their responses applying to all the departments they oversee. It should be noted that the First Judicial District (FJD) is subject to the personnel policies established by the Supreme Court of Pennsylvania, not those of the city. Consequently, since the purpose of this review is to evaluate the implementation of the city's *Sexual Harassment Prevention Policy*, we omitted the FJD from our testing.

Many department officials were initially reluctant to share requested case files with us due to the sensitive nature of the content. Others cited concerns about violating employee privacy. With full knowledge that these cases should be handled with discretion, we accepted the departments' requests that all information be forwarded to officials in the Law Department, who as the city's lawyers, would review the files and redact the identifies of those involved in the cases. Since the Law Department clearly communicated that they would protect the interests of the departments, we obtained outside counsel to represent the Controller's Office in the conduct of the audit. We requested that the Law Department provide us with the details of the case, the discipline dispensed, and the initials of the alleged harasser to allow us to search for repeat offenders. The files submitted represent only complaints that were reported and properly documented. Were a complaint mismanaged, or improperly recorded, there would be no written support of the allegation. Furthermore, since the documents we received were at the discretion of the departments, it is possible that the cases we were given did not represent the entire population of complaints made.

We performed our work from February 2018 through June 2018 in accordance with *Generally Accepted Government Auditing Standards* (GAGAS) issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX II: TABLES

TABLE 2: Complaint Types and Disciplined Dispensed by Department

Department	Supervisor Involved in the Incident (Yes, No)	Type of Harassment Complaint				Type of Discipline							
		Verbal	Physical	Coercion	Other	Verbal Warning	Written Warning	Training*	Suspension	Relocation	Demotion	Dismissal	Unknown
Prisons	Yes	<					<						
	Yes	<					<						
	No	<	<				<						
	No	<	<				<						
	Yes	<	<				<						
	No	<	<				<						<
	No	<	<				<						<
	No	<	<				<						<
Police	1	<				<		<				<	
	1	<	<			<		<				<	
	1	<	<			<		<				<	
	1	<	<			<		<				<	
	1	<	<			<		<				<	
	1	<	<			<		<				<	
	1	<	<			<		<				<	
	1	<	<			<		<				<	
Streets	2	<				<		<					
	2	<	<			<		<					
	2	<	<			<		<					
	2	<	<			<		<					
	2	<	<			<		<					
	2	<	<			<		<					
	2	<	<			<		<					
	2	<	<			<		<					
Aviation	3	<				<		<					
	3	<	<			<		<					
	3	<	<			<		<					
	3	<	<			<		<					
Revenue	Yes	<	<			<		<					
	Yes	<	<			<		<					
	Yes	<	<			<		<					
	No	<	<			<		<					
Human Services	Yes	<	<			<		<					
	Yes	<	<			<		<					
	Yes	<	<			<		<					
Water	No	<	<			<		<					
	Yes	<	<			<		<					
	Yes	<	<			<		<					
Sheriff	4	<	<			<		<					
	4	<	<			<		<					
	4	<	<			<		<					
Fire	5	<	<			<		<					
	5	<	<			<		<					
City Council	Unknown	<	<			<		<					
Parks and Recreation	Yes	<	<			<		<					
Public Property	No	<	<			<		<					
Homeless Services	No	<	<			<		<					
Law Department	No	<	<			<		<					
Library	No	<	<			<		<					
Managing Director	No	<	<			<		<					
City Commissioners	No	<	<			<		<					

Source: Prepared by Office of the Controller using case files obtained from city departments.

Note (*): While training is listed as a form of discipline, the Employee Relations Unit has indicated that training is a career development tool, not discipline.

Numbers 1 through 5 indicate instances where lower level employees received greater discipline than supervisors for lesser or comparable violations.

RESPONSES TO AUDITOR'S REPORT



CITY OF PHILADELPHIA

JAMES F. KENNEY, Mayor

Mayor's Office of Labor

RICHARD LAZER
Deputy Mayor for Labor
205 City Hall
Philadelphia, PA 19107
(215) 686-2163

July 16, 2018

Honorable Rebecca Rhynhart
Philadelphia City Controller
Municipal Services Bldg.
1401 JFK Boulevard, 12th Floor
Philadelphia, PA 19102

Re: Report on the Effectiveness of and Compliance with Sexual Harassment Policies and Procedures

Dear Controller Rhynhart:

The Office of Labor would like to extend its sincere appreciation to the Office of the Controller for the thorough, compassionate review of the City's policies and practices aimed at preventing sexual harassment, and welcomes the opportunity to incorporate the Controller's recommendations into those policies and practices.

After reviewing the Controller's Report on the Effectiveness of and Compliance with Sexual Harassment Policies and Procedures, it is clear that the Controller shares the same goal as the Kenney Administration: to ensure that City personnel have a work environment that is inclusive and safe, free from sexual harassment, intimidation or discrimination. Sexual misconduct in the workplace is a serious issue and, we as a City, must make changes in our practices to enact the necessary reforms to maintain a hostile free environment. Cultivating and maintaining a culture of respect in the workplace empowers all employees to be fully engaged and maximizes employee satisfaction and productivity.

The elimination of sexual misconduct is fundamental to the continued vitality of the City's most important resource: its employees. It is paramount that the City of Philadelphia take proactive measures to ensure that all employees are aware of, understand and comply with the Sexual Harassment Prevention Policy. To that end, as reflected in your report, the functions that were previously housed within the Office of Human Resources to conduct the Sexual Harassment Prevention Training Program and assist departments with investigations were transferred to Mayor's Office of Labor Relations in FY 18 and the Employee Relations Unit (ERU) was established. The purpose of this transfer of work was to centralize the oversight of EEO matters throughout the City.

Additionally, in late 2017, the City created a working group to undertake a comprehensive review of the City's policies and practices around sexual harassment training, reporting and investigations with an eye towards incorporating the lessons we, as a society, have learned recently about sexual harassment. We reviewed our current policies and those from other municipalities as well as from exemplary employers in the private sector. After seven months of collaboration, the working group has recommended revisions to the City's policy, complaint process, and training that will help foster the safe, inclusive workplace that City employees deserve.

The working group identified many of the same weaknesses in the City's policies, practices, and training that the Controller's Office recognized in its report. The primary areas for improvement are described below.

First, the City's organizational structure can create opportunities for inconsistent discipline in cases of sexual misconduct, both because the quality of investigations may differ depending on the experience level of the investigator, and because departmental disciplinary decisionmakers may not be aware of how similar offenses were treated in other departments.

The Controller's Office recommended that the City centralize investigations (200318.01) and introduce disciplinary guidelines (200318.05) to combat this issue. As you concluded, departments have human resources staff within their organization, but may not have the necessary resources or capacity to do so. Many have not shared information with the previous EEO unit as required under the current policy.

Clearly, uniformly thorough investigations and consistent recommendation and application of discipline across the government is a necessary component to addressing sexual misconduct. Under the City's revised Sexual Harassment Prevention policy, the Employee Relations Unit will investigate complex or sensitive investigations, while other investigations will remain the province of department-level staff contingent upon ERU approval. The revised policy, however, requires that the Employee Relations Unit review and approve all decisions to deem investigations substantiated or unsubstantiated, and approve all discipline resulting from those investigations. This approval process will ensure consistent application of the policy across the government. The City has made changes to mandate that the ERU will be responsible for the oversight of all sexual misconduct investigations. Additionally, as part of the enhanced training program, ERU will be implementing a training program to provide greater guidance and support to department-level staff.

Additionally, the MOLR will be rolling out a City-wide centralized case management database to electronically record and track sexual misconduct complaints, investigations, and resulting discipline. This system will allow the City to identify additional areas for improvement immediately, and ensure that all investigations are completed within a 90-day window.

When allegations of sexual harassment arise, the City is obligated to respond quickly and decisively to appropriately resolve the matter pursuant to law and regulation, but also because our employees are our greatest asset and deserve to work in an environment that is free from harassment.

Second, the City's policy on sexual harassment prevention will be clearer about how employees may report complaints of sexual misconduct. Placement on the City's website also provides the opportunity for all employees to access the complaint information from their mobile device or computer.

The Controller's Office recommended that the City's policy accurately reflect current job titles (200318.03) and procedures (200318.02), that the City post contact information for staff authorized to handle complaints in prominent locations (200318.09), that the City train employees on how to report misconduct (200318.11), and that the City instruct employees on how to make a complaint and advise them when to choose a particular complaint method (200318.12).

Ensuring a harassment-free workplace begins with providing employees with an easy method for making complaints, and having clear, consistent guidance on how to use that method. The City's revised sexual harassment prevention policy has clarified that departments are expected to post not only the policy, but also contact information for staff authorized to handle complaints. The revised policy also now accurately reflects job titles and procedures. Employees must also be made aware that there are resources in the ERU, should they prefer to speak with someone outside of their department. In the early Spring, the ERU implemented a dedicated phone line for employees and the MOLR is in the process of finalizing an online portal for reporting complaints.

Finally, the City's sexual harassment prevention training needs to reach additional employees, and be designed for the needs of specific segments of the City workforce. In May, the voters of Philadelphia approved a charter change that would require us to expand our training to all employees every three years. Therefore, the City intends to redesign its existing training for managers and supervisors in addition to training for individual contributors throughout the government.

The Controller's Office recommended that departmental EEO officers receive adequate training on implementing the sexual harassment prevention policy (200318.09), require that all employees attend sexual harassment prevention training at least once every three years (200318.10), develop an online sexual harassment prevention training module (200318.16), and tailor training content to the specific needs of the audience (200318.17).

Proper training is at the core of any sexual harassment prevention effort. Unfortunately, as a small unit of 3, we have not yet been able to reach every single employee in the City with the much-needed training on sexual harassment prevention. However, since the creation of the Employee Relations Unit on July 1, 2017, 1900 employees have received the current Sexual Harassment Prevention Training program. The Mayor's Office of Labor Relations is committed to providing high-quality differentiated training on an

ongoing basis to all City employees. We are committed to providing training to every employee upon hire, promotion and in accordance with Bill No. 171109-A.

Immediately, the Office will revise the City's current training materials to account for the revised sexual harassment prevention policy and ensure that these materials are up-to-date and relevant. In addition to increasing the regularity of training and expanding the pool of who is trained, we are updating our educational materials to make employees more aware of how to create an inclusive workplace. It should also be noted that the Administration created a centralized onboarding program for newly hired employees.

By the end of 2018, the City will be providing executive-specific training to its high-level managers and executives that focuses on the role of the decisionmaker in cultivating and maintaining a culture of respect in the workplace. The culture in an organization can only change with the backing and support of its leadership team. The Administration is committed to championing the culture shift on this most crucial initiative.

By June 2019, the City is projected to roll out an online training module, using its learning management system, that all employees with access to a computer will be required to take. This module will be designed to provide all employees knowledge of the revised policy and of their rights and responsibilities and provide them with the information on how to identify sexual misconduct in the workplace and where to file a complaint should an employee encounter sexual harassment in the workplace.

The City is also planning to provide all human resources staff responsible for conducting investigations specific training on handling and investigating complaints, with a focus on providing compassionate, effective services to those affected by sexual misconduct.

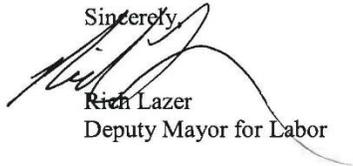
More importantly, the revised policy will not be allowed to stagnate. The City has committed to reviewing the policy yearly, in combination with the data that will be gathered from the City-wide case management tracking system and feedback solicited from City managers and employees to ensure that the policy both accurately describes current conditions and practices, and is meeting the needs of City employees.

Additionally, the City has created a website, (<https://beta.phila.gov/services/working-jobs/file-a-sexual-harassment-complaint-against-a-city-employee/>), where employees may file a sexual misconduct complaint online. Complaints made through this method will be reviewed by the Mayor's Office of Labor Relations, Employee Relations Unit, and thoroughly investigated pursuant to the City's revised policy. We hope that using technology to make filing a complaint easy and painless will ensure that City employees feel able to voice their concerns, and allow the City to track, investigate, and resolve those complaints.

As you can see, many of the Controller's recommendations are being put into practice, as our goals are aligned on this issue. The taskforce is in the final stages of revisions to the policy and will continue working diligently to create and rollout additional training programs for all employees as described above.

Eliminating sexual harassment is a tremendous, but vital, task. We are grateful for the Controller's Office thorough, articulate report on this issue, and look forward to partnering with them in the future to ensure the City's workplace culture embodies the values of respect, professionalism, and service that are the pillars of this Administration's commitment to the public and its employees.

Sincerely,



Rich Lazer
Deputy Mayor for Labor

cc: Honorable James F. Kenney, Mayor
Honorable Darrell L. Clarke, President & Honorable Members of City Council
Pedro Rodriguez, Director of Human Resources



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July 17, 2018

Honorable Rebecca Rhynhart
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1401 JFK Boulevard, 12th Floor
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Re: Report on the Effectiveness of and Compliance with Sexual Harassment Policies and Procedures

Dear Controller Rhynhart:

I commend you and your staff for undertaking a comprehensive and thorough performance audit of the City of Philadelphia's sexual harassment policies and procedures. It is critically important that the City continuously reevaluate its policies and procedures to ensure that all City employees enjoy a welcoming, supportive, and respectful work environment. I am confident that many of the matters raised in your report will complement the ongoing work of our Executive and Legislative branches.

I am pleased that the Law Department could help facilitate the completion of your audit through aiding in the production of substantial amounts of data and information from departments and offices across the City. As a result of our collaboration, I am grateful that your audit identified an important data-tracking issue in the Law Department regarding the electronic labeling of litigation settlements by case type. While the Law Department readily maintains and can easily deliver extensive information for each individual case that the City settles, your audit has highlighted several limitations that our staff face when trying to assign electronic labels that sort cases into categories. For example, an individual lawsuit almost always raises multiple types of causes of action; some include dozens. Some cases containing a lengthy list of causes of action may receive electronic labels according to the predominant or lead cause of

Honorable Rebecca Rhynhart
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action, instead of every individual claim that appears in those lawsuits. Nonetheless, your audit has challenged us to find ways to capture more information about lawsuit allegations through electronic labeling that would facilitate the ease of conducting crucial analyses like the one your office just performed, while simultaneously maintaining efficiency and pursuing what is practical in light of the above-noted constraints.

Thank you for the opportunity to submit this letter.

Sincerely,



Marcel S. Pratt
City Solicitor

cc: Honorable James F. Kenney, Mayor
Honorable Darrell L. Clarke, President & Honorable Members of City Council
Pedro Rodriguez, Director of Human Resources