

Career Service Rule Section 2-20 B. - Adoption, Amendment or Repeal of Career Service Rules ("Rules"). When the Board or the OHR Executive Director determines that a change in the Rules is necessary or desirable, the procedure shall be as follows: ... 2) The proposed rule change shall be posted on the same bulletin boards as the local, state, and federal-mandated posters, as well as the Career Service Board's internet page, and made available to appointing authorities, employees, and the general public for comments and suggestions. A short summary of the proposed rule change and the reason(s) for the proposed change shall be posted with the proposed rule change... 4) A public hearing on the proposed rule change shall be held by the Board.

**PLEASE POST ON ALL BULLETIN BOARDS**  
**AS SOON AS POSSIBLE**

Public Hearing Notice - No. 580

A Career Service Board Public Hearing has been scheduled regarding proposed revisions to Career Service Rule 16 **CODE OF CONDUCT AND DISCIPLINE** and related rules.

The scheduled time for the public hearing is **THURSDAY, June 21, 2018, at 9:00 A.M.** in **Room, 4.G.2.**, Webb Municipal Building, 201 West Colfax Avenue.

If anyone wishes to submit written comments or talk to OHR staff regarding this notice, please contact:

*Lauren Locklear*  
Office of Human Resources  
201 West Colfax  
Department 412  
Denver, Colorado 80202  
[Lauren.Locklear@denvergov.org](mailto:Lauren.Locklear@denvergov.org)  
(720) 913-5618

Comments regarding this notice should be submitted no later than **12:00 P.M. on MONDAY, June 18, 2018.**

If anyone wishes to address the Board regarding this notice please contact George Branchaud at (720) 913-5650 or at [george.branchaud@denvergov.org](mailto:george.branchaud@denvergov.org) no later than **12:00 P.M. on MONDAY, June 18, 2018** to get on the agenda. You are encouraged to submit written comments regarding the subject matter of your testimony at this time so that the Board has time to adequately consider your input.

**PLEASE POST ON ALL BULLETIN BOARDS**  
**AS SOON AS POSSIBLE**

**RULE PROPOSAL 472B**

**TO:** Appointing Authorities, Managers, and Employees  
**FROM:** Karen Niparko, OHR Executive Director  
**DATE:** June 7, 2018  
**SUBJECT:** Proposed revisions of Career Service Rule 16 CODE OF CONDUCT AND DISCIPLINE and related rules

**THIS PROPOSED REVISION TO THE CAREER SERVICE RULES IS BEING POSTED FOR PUBLIC COMMENT AND HEARING TO BE HELD ON**

**THURSDAY, June 21, 2018, at 9:00 A.M.**  
**Webb Municipal Building Room 4.G.2**

Please refer to the following table for additional information on the former rule description, the revised rule description and the intended impact of the revisions to Rule 13-23:

<b>Rule 16 CODE OF CONDUCT AND DISCIPLINE</b>			
<b>CURRENT RULE</b>	<b>REVISED RULE</b>	<b>RULE NUMBER</b>	<b>REVISION INTENTION &amp; IMPACT</b>
Lists protected characteristics with respect to harassment and discrimination	Expands protected characteristics to include creed, ancestry, transgender status, and pregnancy; defines certain characteristics	16-22 A	Include protected characteristics covered by the Colorado Anti-Discrimination Act ("CADA"); define certain characteristics that may not be self-explanatory
n/a	Defines discrimination	16-22 B	The prior rule did not include a definition of discrimination outside of harassment
Defines harassment based on protected characteristics; provides examples	Further defines the 2 types of harassment (quid pro quo and hostile work environment); removes detailed examples	16-22 C	Provide clarity surrounding the subjects of harassment and how they are defined

**Rule 16 CODE OF CONDUCT AND DISCIPLINE**

CURRENT RULE	REVISED RULE	RULE NUMBER	REVISION INTENTION & IMPACT
n/a	Explains how employees can report alleged discrimination, harassment, and retaliation if they <b>experience it</b>	16-23 A	Mimics the procedures in the City's sexual harassment training video; meant to provide detailed guidance so employees feel comfortable reporting harassment, discrimination, and retaliation
n/a	Explains how employees can report alleged discrimination, harassment, and retaliation if they <b>witness it</b>	16-23 B	Provides guidance for those who witness discrimination, harassment, or retaliation
n/a	Explains how <b>supervisors</b> should handle reports of alleged discrimination, harassment, and retaliation	16-23 C	Provides guidance for supervisors on how to escalate reports of discrimination, harassment, and retaliation; clarifies that supervisors should not investigate unless asked to or required to; states that allegations should be kept as confidential as possible
n/a	Describes how allegations of the discrimination, harassment, and retaliation are handled once reported	16-24	Provides insight into how allegations are responded to and investigated within the Career Service; meant to ensure alleged victims feel more comfortable with reporting
Describes prohibitions on retaliation for reporting harassment or discrimination or participating in an investigation	Updates the examples of retaliation to make them more relevant	16-25	Provide clarity surrounding how retaliation may manifest in the workplace

<b>Rule 16 CODE OF CONDUCT AND DISCIPLINE</b>			
<b>CURRENT RULE</b>	<b>REVISED RULE</b>	<b>RULE NUMBER</b>	<b>REVISION INTENTION &amp; IMPACT</b>
regarding harassment or discrimination			
<b>Related Rules</b>			
Describes deadlines and reporting procedures for harassment, discrimination, retaliation, and violence in the workplace	Removes violence in the workplace; moves reporting procedures to Rule 16	18-31	Employees should refer to Executive Order 112 for information regarding violence in the workplace; the reporting procedures for discrimination, harassment, and retaliation fit better organizationally in Rule 16
Lists out protected characteristics	Refers to protected characteristics as defined in Rule 16	2-40	Protected characteristics are now consistently defined throughout the Career Service Rules
Lists out protected characteristics	Refers to protected characteristics as defined in Rule 16	Rule 3 <u>Purpose Statement</u>	Protected characteristics are now consistently defined throughout the Career Service Rules

ATTACHED BELOW YOU WILL FIND A STRIKETHROUGH VERSION OF THE PROPOSED REVISION TO RULE 16 CODE OF CONDUCT AND DISCIPLINE AND RELATED RULES.

**RULE 16  
CODE OF CONDUCT  
AND DISCIPLINE**

(Revised February 12, 2016; Rule Revision Memo 18D)

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16-22 Harassment and Discrimination

**A. Protected Characteristics**

Career Service employees have a right to work in an environment free of discrimination and harassment because of ~~based on their~~ the employee's race, color, religion, **creed**, national origin/**ancestry**, sex, sexual orientation, **transgender status**, gender identity and expression, disability, genetic information, military status, age, marital status, political affiliation, **pregnancy or related condition**, or any other status protected under federal, state, and/or local law. **These characteristics are referred to as "Protected Characteristics". The following definitions are intended to provide assistance in interpreting the above terminology:**

- **National origin/ancestry: the country where an employee was born, the place of origin of the employee's ancestors, and the physical, cultural, ethnic, or linguistic characteristics of a particular national origin or ethnic group.**
- **Sexual orientation: an employee's orientation toward heterosexuality, homosexuality, bisexuality, or transgender status or an employer's perception thereof.**
- **Gender identity and expression: an employee's innate sense of the employee's own gender.**

**B. Discrimination**

**Discrimination occurs when an employee experiences an adverse employment action based on one or more of an employee's Protected Characteristics. Adverse employment actions include, but are not limited to, termination, suspension, involuntary demotion, and failure to promote. Adverse employment actions that are taken for any reason other than an employee's Protected Characteristic(s) are not discrimination. Behavior may violate this Rule 16-22 B even if it would not constitute a violation of federal, state, or local law.**

**C. Types of Harassment**

Harassment **based on one or more of an employee's Protected Characteristics is a form of prohibited discrimination.** because of race, color, religion, national origin, sex, sexual orientation, gender identity and expression, disability, genetic information, military status, age, marital status, political affiliation, or any other status protected under federal,

state, and/or local law, includes but is not limited to: **There are two types of harassment:**

1. **Hostile Work Environment: This type of harassment exists when an employee is subjected to unwelcome and offensive conduct by someone the employee interacts with on the job when such conduct is based on a Protected Characteristic and is sufficiently severe or pervasive as to create an intimidating, hostile, or offensive work atmosphere. In order to constitute a hostile work environment, the conduct must be:**

- **based on one or more Protected Characteristics; and**
- **subjectively offensive to the employee; and**
- **objectively offensive to a reasonable person; and**
- **severe or pervasive.**

**However, harassing conduct does not have to rise to the level of a hostile work environment to warrant discipline under these rules. Harassing conduct may be verbal, visual, or physical in nature, and may include derogatory comments, mocking, slurs, jokes, photographs, posters, cartoon drawings, social media content, gestures, unwanted touching, and blocking normal movement, among other forms of conduct.**

2. **Quid Pro Quo (“This for that”): This type of harassment exists when a supervisor takes or threatens to take an adverse employment action or withholds or threatens to withhold an employment benefit based upon a subordinate employee engaging or refusing to engage in certain behaviors (typically sexual favors). The behavior must be based on, or related to, a Protected Characteristic.**

1. ~~Verbal conduct such as epithets, derogatory comments, slurs, unwanted sexual advances, invitations, or comments;~~
2. ~~Visual conduct such as derogatory posters, photographs, cartoons, drawings, or gestures;~~
3. ~~Physical conduct such as assault, unwanted touching, blocking normal movement, or interfering with work directed at an employee because of the employee’s sex, race, or other protected basis; and~~
4. ~~Threats or demands to submit to sexual requests in order to keep a job or avoid some other loss, and offers of job benefits in return for sexual favors.~~

**Behavior may violate this Rule 16-22 C even if it would not constitute a violation of federal, state, or local law.**

### **16-23 Reporting Alleged Discrimination, Harassment, or Retaliation**

**A. Experiencing Discrimination, Harassment, or Retaliation**

**1. If an employee is subjected to discriminatory, harassing, or retaliatory behavior from a co-worker, another City employee not in the employee's chain of command, or an individual the employee encounters while performing their duties who is not employed by the City, the employee is strongly encouraged to:**

- a. Make it clear to that person the behavior is offensive or makes the employee uncomfortable and ask that individual to stop; if the inappropriate behavior happens again, the employee must report the behavior to a supervisor and/or a human resources representative, or both; or**
- b. Report the behavior to a supervisor, a human resources representative, or both; or**

**If the individual alleged to have committed the discriminatory, harassing, or retaliatory behavior is a City employee:**

- c. Request mediation by contacting OHR (see CSR §18-20); or**
- d. File a grievance by completing the OHR grievance form and delivering the grievance form to the appointing authority or an HR representative of the employee's department or agency (see CSR § 18-30), unless the adverse employment action is subject to direct appeal (see CSR § 19-20 or § 20-20 (Deputy Sheriffs)).**

**2. If an employee is subjected to discriminatory, harassing, or retaliatory behavior from a supervisor in his or her chain of command, the employee is encouraged to:**

- a. If the employee feels comfortable doing so, address the behavior with that supervisor directly, explain that the behavior is offensive or makes the employee uncomfortable, and ask the supervisor to stop; or**
- b. If the employee doesn't feel comfortable speaking to the supervisor directly about the behavior, or has done so already and either the behavior hasn't stopped or the employee is being subjected to retaliation, promptly contact a human resource representative or another supervisor to report the behavior; or**
- c. Request mediation by contacting OHR (see CSR §18-20); or**
- d. File a grievance by completing the OHR grievance form and delivering the grievance form to the appointing authority or an HR representative of the employee's department or agency (see CSR § 18-30), unless the adverse employment action is subject to direct appeal (see CSR § 19-20 or § 20-20 (Deputy Sheriffs)).**

3. Department of Safety employees may also report discriminatory, harassing, or retaliatory behavior to Safety HR or their department's Internal Affairs division.
4. Employees who experience an adverse employment action based on or resulting from discrimination, harassment, or retaliation by a supervisor that is subject to direct appeal may only file a direct appeal to the Hearings Office by following the procedures set forth in Rules 19 or 20 (Deputy Sheriffs). Actions that are subject to direct appeal cannot be grieved.

**B. Witnessing Discrimination, Harassment, or Retaliation**

If an employee witnesses discrimination, harassment, or retaliation in violation of this rule by or against any City employee, the employee must report such behavior to a supervisor, human resource representative, or both. Department of Safety employees may also report such behavior to Safety HR or their department's Internal Affairs division.

**C. Receiving a Complaint of Discrimination, Harassment, or Retaliation as a Supervisor**

1. A supervisor who receives a report of discrimination, harassment, or retaliation must notify a human resource representative immediately or as soon as practicable.
2. Supervisors are also strongly encouraged (and may be required by their department's policy) to notify their department's appointing authority or a supervisor in their chain of command about the report, particularly if the allegation involves discrimination, harassment or retaliation by a supervisor against a subordinate employee.
3. Supervisors should not investigate the allegations unless directed to do so by human resources, or as required by their department's policy.
4. Supervisors should keep allegations as confidential as possible and only share information about the reported allegations on a need-to-know basis, such as with their department's appointing authority, a supervisor in their chain of command, or a human resource representative. Supervisors in the Department of Safety that receive complaints of discrimination, harassment, or retaliation may share that information with their department's Internal Affairs division.

**16-24 Actions Taken in Response to Allegations of Discrimination, Harassment or Retaliation**

All allegations of discrimination, harassment, and retaliation will be promptly investigated in accordance with Rule 18-40. Pending the outcome of the investigation, appropriate precautionary steps may be taken to separate and/or restrict contact between the alleged perpetrator and alleged victim, which may include placing the alleged perpetrator on paid investigatory leave. Absent extenuating circumstances and

**approval of the City Attorney's Office, the alleged victim shall not be negatively impacted by those precautionary steps. After the investigation is concluded, appropriate remedial action will be taken, which may include discipline or dismissal of the employee who engaged in the discrimination, harassment or retaliation.**

#### 16-2~~5~~3 Retaliation Prohibited

Retaliation against employees for reporting or threatening to report harassment or discrimination or assisting the City in the investigation of any complaint is strictly prohibited. Retaliation can include, but is not limited to, ~~such acts as refusing to recommend an employee for a benefit for which he or she qualifies, spreading rumors about the employee,~~ **unwarranted discipline or unfavorable performance ratings,** encouraging hostility from co-workers, and escalating the harassment. Any employee engaging in retaliation may be subject to **discipline** corrective action, up to and including dismissal. **Behavior may violate this Rule 16-25 even if it would not constitute a violation of federal, state, or local law.**

**NOTE – The remaining sections of Rule 16 will be renumbered in accordance with the additions above.**

**RULE 18**  
**DISPUTE RESOLUTION**

(Revised February 12, 2016; Rule Revision Memo 18D)

18-31 Grievances of Alleged Discrimination, Harassment, or Retaliation, or Violence in the Workplace

**Grievances** that allege actions of discrimination, harassment, or retaliation, or violence in the workplace, when the underlying action is not subject to a direct appeal, shall **follow the** be handled through **standard** grievance procedure, except as modified below.

- A. **Deadlines**: The deadlines for filing a grievance and responding to such a grievance shall not apply when the grievance alleges discrimination, harassment, **or** retaliation, or violence in the workplace. **Employees who experience or witness discriminatory, harassing, or retaliatory behavior are urged to report such behavior promptly so it can be investigated and addressed.**
- B. 4. Employees who experience **discrimination**, harassment, or retaliation, or violence in the workplace, in violation of these rules, are urged to **follow the reporting procedures in Rule 16-23**:
- a. Make it clear that such behavior is offensive to them and request that such behavior be discontinued; and
  - b. File a grievance with the employee's appointing authority or HR representative.
- ~~2. Employees who experience discrimination, harassment, retaliation or violence in the workplace, in violation of these rules, by someone in the employee's chain of command, are urged to:~~
- ~~a. Address the matter with a supervisor or manager in the employee's chain of command; or~~
  - ~~b. File a grievance with the employee's appointing authority or HR representative.~~

## RULE 2 CAREER SERVICE BOARD

### Section 2-40 OHR Executive Director

#### A. Powers and Duties:

The OHR Executive Director shall serve at the pleasure of the Board, report directly to the Board, and perform all duties and responsibilities as directed by the Board, including those contained in these Rules, and as delegated by the Denver Revised Municipal Code. In addition, the OHR Executive Director's powers and duties are:

1. To interpret and enforce the Rules adopted by the Board in such a manner as to promote and maintain the principles of a merit-based personnel system and the just, speedy and effective resolution of disputes (Revised January 22, 2010; Rule Revision Memo 44C);
2. To prepare and administer examinations, determine qualifications of applicants, establish eligible lists and refer eligible applicants to appointing authorities to fill vacancies;
3. To establish and maintain a roster of all Career Service employees;
4. To establish and maintain such records, forms and procedures as necessary to control personnel actions;
5. To consider reasonable suggestions from appointing authorities, the public, and employees or their representatives, pertaining to any phase of the personnel program;
6. To delegate to a designee such duties as, in his/her opinion are appropriate, unless otherwise specifically provided in these rules;
7. To administer the Education Refund Program in accordance with the Denver Revised Municipal Code; and
8. To perform such other duties as may be necessary to foster and maintain a merit-based personnel system for the Career Service, further equal employment opportunity for all employees and applicants without regard to **the Protected Characteristics as defined in Rule 16-22** ~~face, color, religion, national origin, sex, sexual orientation, gender identity and expression, disability, genetic information, military status, age, marital status, political affiliation, or any other status protected under federal, state and/or local law~~, or otherwise ensure the efficient operation of OHR. (Revised September 21, 2017; Rule Revision Memo 28D)

**RULE 3**  
**RECRUITMENT AND SELECTION**  
(Revised January 3, 2017; Rule Revision Memo 23D)

Purpose statement:

The purpose of this rule is to provide policy and practices for an efficient and consistent competitive hiring process that promotes ***both*** equal employment opportunity without regard to ***the Protected Characteristics as defined in Rule 16-22*** ~~race, color, religion, national origin, sex, sexual orientation, gender identity and expression, disability, genetic information, military status, age, marital status, political affiliation, or any other status protected under federal, state and/or local law~~ and a highly productive, engaged workforce. (Revised September 21, 2017; Rule Revision Memo 28D)

As defined in the City Charter, the Office of Human Resources (OHR) oversees and administers hiring principles and practices, made on the basis of merit and ability for all Career Service system jobs.

Career Service employees have a right to work in an environment free of discrimination and harassment because of any status protected by federal, state or local laws (see Rule 16 **CODE OF CONDUCT AND DISCIPLINE**).