

CITY OF FORT PIERCE - OFFICE OF THE CITY ATTORNEY

MEMORANDUM

TO: Robert J. Bradshaw, City Manager

FROM: Robert V. Schwerer, Esq., City Attorney

SUBJECT: Active EEOC Claims for July 14, 2014 Conference Agenda Meeting

DATE: June 25, 2014

RECEIVED
TIME _____
JUN 26 2014
CITY OF FT. PIERCE
CITY MANAGER'S OFFICE

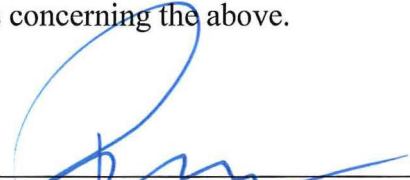
This is in response to your memorandum of June 23, 2014 concerning a list of the active EEOC claims. According to my records, there is only one remaining active EEOC claim, being the claim of Officer Donald Spence. We recently sent communications to the EEOC on behalf of the City, with a copy to the Commission and your office.

Your memorandum indicates Commissioner Alexander would like to have a discussion concerning the manner in which the City of Fort Pierce handles complaints and to discuss methods to reduce claims. Please keep in mind that this office provides a legal defense and response to such complaints after they are filed with the EEOC and this is generally the only extent of our involvement unless there is a specific legal question from Management in the early stages of an investigation.

As you are aware, the City has a policy requiring Management to investigate claims of discrimination, harassment and retaliation. This policy is set out in Section 24.03 of the City's Personnel Rules and Regulations, a copy attached. The rule relates to investigating claims of discrimination, harassment and retaliation under Title I (ADA) and Title VII (Discrimination & Retaliation), and includes claims of discrimination related to age, sex, race, retaliation, hostile work environment, etc. As stated in the policy, employees are encouraged to make their claims known to Management so that they may be fully investigated and handled before the employees resort to an EEOC filing. Even after EEOC charges are filed, we encourage Management to still conduct an investigation of the claims if the employee did not make such claims known to Management before filing directly with the EEOC.

It is suggested you reach out to your HR Director and his Department to involve him in this discussion. His office and yours would appear to have the most knowledge as to how employee complaints are handled and potential methods to reduce those claims. This office may also have suggestions but they would generally be case specific and of a legal nature. You may include this memorandum with any materials Management will provide to the Commission related to this Conference Agenda item.

Please let me know if there are any questions concerning the above.



Robert W. Schwerer, Esq.
City Attorney

enclosure

RVS/cf

cc: Fort Pierce Mayor & Commissioners
Nick Mimms, Deputy City Manager
Tony Barnes, Director of Administrative Services

of the relief requested. The decision of the Civil Service Appeals Board shall be final.

24.03 COMPLAINTS OF DISCRIMINATION, HARASSMENT AND RETALIATION:

A. Original Complaints

1. All City employees share the responsibility of understanding and assisting the City in preventing discrimination, retaliation, and harassment. Individuals who believe that they have observed or have been subject to discrimination, retaliation, or harassment have the responsibility to inform the City that such conduct has occurred. Individuals who believe that they have observed or been subjected to discrimination, retaliation or harassment are encouraged to promptly advise the offender that his or her behavior is unwelcome and request that it be discontinued. Whether or not an individual addresses the offender directly, he or she must report all incidents of discrimination, retaliation or harassment in compliance with the procedures set forth herein.
2. All instances of discrimination, retaliation or harassment must be reported to the victim or observer's immediate supervisor or to any supervisor within the victim or observer's chain-of-command up to and including the Department Head. If no such supervisor is available to receive the report or, if reporting to such supervisor or Department Head would be inappropriate, the victim or observer must report the incident to the Personnel Manager or the Appointing Authority.
3. In order to conduct an effective investigation, the report must be complete and accurate. To facilitate this goal, the City prefers that all reports of discrimination, retaliation and harassment be reduced to a written complaint signed by the victim or observers; however, the complaint may be oral or written. In the event such employee refuses to draft such a complaint, the complaint shall be drafted by the supervisor, department head, or Personnel Manager who receives the initial complaint. The complaint will be provided to the complainant with a request to review and verify its accuracy.
4. The written complaint received or drafted by a supervisor pursuant to this section shall be forwarded through the complainant's department head to the Personnel Manager, or in the case of an allegation against a police department employee to the chief of police for investigation as provided herein.

B. Investigations

1. The following procedures shall apply to all complaints of discrimination, retaliation or harassment unless stricter procedural requirements are mandated by federal or state statutes or regulations. *See e.g.*, Fla. Stat. §§112-Part VI (Police Officers' Bill of Rights); 112-Part VIII

(Firefighters' Bill of Rights); and 468.619 (Building Officials' Bill of Rights). Complaints of discrimination, retaliation or harassment shall be investigated by the Personnel Manager or the Chief of Police's designated internal affairs officer, if such claim arises from within the Police Department, whether or not the complaint is signed by the complainant. In order to protect the privacy of the parties involved, the investigation shall remain as confidential as the circumstances allow. However, all investigations shall involve interviews of the complainant, the alleged victim of discrimination, retaliation or harassment, the alleged perpetrator of the prohibited conduct, and all witnesses to the incident. In order to promptly remedy incidents of discrimination, retaliation and harassment, it is imperative that all employees participate in such investigations when the investigator determines such participation is necessary. Therefore, any employee's failure to participate in such an investigation may be determined to be a violation of the City's Code of Conduct.

2. The investigation shall conclude within ninety (90) business days of the original complaint or one hundred eighty (180) days, if conducted pursuant to Police Department procedures for administrative investigations. The purpose of the investigation shall be to determine whether an alleged instance of conduct violates the City's policies prohibiting discrimination, retaliation or harassment. At the conclusion of the investigation, the investigator shall generate a report recounting the accusation, a summary of interviews with witnesses relevant to the investigation, a description of other materials relied upon, and specific findings of fact. The report shall also make conclusions including whether the original allegations are sustained or not sustained, whether the investigation revealed additional infractions of City Rules and Regulations and, the identity of all employees found to have violated a policy, identification of the policies violated and the group offense to which the policy belongs, if applicable. The report shall also make recommendations. The recommendations may include suggested formal discipline for any policy infraction, counseling to specific individuals, groups of individuals or departments; suggestions for further supervisory or employee training; and any other recommendation the investigator believes will prevent future complaints of discrimination, harassment or retaliation and which will remedy any remaining interpersonal conflicts.

C. Resolution of Investigation

The investigator's report shall be submitted to the Appointing Authority for final review. The Appointing Authority, in his or her sole discretion, may adopt, modify or reject the report's recommendations. Within fifteen (15) days following the conclusion of the report, the Appointing Authority shall meet separately with the complainant, the respondent, and any other individuals found in the report to have violated a City policy. The Appointing Authority shall notify each such person of the findings of the

investigation and his or her ultimate resolution of the recommendations set forth in the report. The notice to the Complainant shall be in writing. The investigation of discrimination and retaliation shall be concluded upon the Appointing Authority's notice to employees in compliance with this paragraph and no further review shall be provided by the City. However, any employee in the classified service who is disciplined as a result of the investigation may seek review following the City's grievance procedures (§24.01) or appellate procedures (§24.03~~2~~) as may be applicable.

D. Prohibition Against Retaliation

1. In accordance with applicable law, no employee will be disciplined or retaliated against because that employee: (i) opposed an unlawful employment action; (ii) filed a complaint or charge with any federal, state, or local agency authorized to receive such complaints or charges, or filed such complaints or charges prior to or without using the City's grievance procedures; (iii) participated in an investigation initiated under City procedures or (iv) participated in an investigation conducted by federal, state, or local agencies authorized to receive such complaints or charges. Nothing in this paragraph shall stay an adverse action taken against an employee for any reason other than making a complaint of discrimination.
2. The procedure provided for by this subsection assumes that submitted complaints are objectively reasonable and made in good-faith. Nothing within this subsection shall be construed to prevent the City from disciplining employees who submit false allegations in complaints or provide false information during investigations.



INTEROFFICE MEMORANDUM
FROM THE OFFICE OF THE
CITY MANAGER

TO : Robert V. Schwerer, City Attorney

JUN 23 2014

FROM : Robert J. Bradshaw, City Manager

A handwritten signature in black ink, appearing to read "RJB", is written over the name of the sender.

RE : **Active EEOC Claims for July 14, 2014 Conference Agenda Meeting**

DATE : June 23, 2014

Please be advised that Commissioner Alexander has requested that an item is scheduled on the July 14, 2014 Conference Agenda meeting agenda regarding a list of the active EEOC claims by employees. Commission discussion will include the manner in which the City of Fort Pierce handles complaints and methods to reduce claims. Please schedule this item for discussion.

If you have any questions or need additional information, please do not hesitate to contact me.

RJB:jdr

c: Commissioner Alexander
Nick Mimms, Deputy City Manager