GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2008-64
April 17, 2008

SUBJECT: Designation of the Office of Disability Rights as the EEO Counselor for Employees with Disabilities

ORIGINATING AGENCY: Office of Disability Rights

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(11) of the District of Columbia Home Rule Act of 1973, as amended, 87 Stat. 790; Pub. L. No. 93- 198, D.C. Official Code § 1-204.22(11), and in accordance with section 3(b)(1) of the Disability Rights Protection Act of 2006, effective March 8, 2007 (D.C. Law 16-239; D.C. Official Code § 2-1431.02(b)(1) (2007 Supp.), it is hereby **ORDERED** that:

I. Purpose

The purpose of this Order is to establish the Office of Disability Rights (ODR) as the Equal Employment Opportunity (EEO) Counselor available to all District government employees with disabilities. Further, the Order establishes the duty of all District government agencies to notify their employees of equal employment opportunity counseling services available at ODR.

II. Individuals and Agencies Affected

This Order applies to all District government employees and applicants with disabilities and all agencies and instrumentalities of the District government.

III. Definition and Duties of an Equal Employment Opportunity Counselor

The ODR plays a vital EEO counseling role in the complaints process. ODR establishes an open and objective channel through which employees and applicants may raise questions, find answers, discuss problems, and obtain resolution to alleged employment discrimination on a basis of disability. ODR is an informal problem solver, fact finder, mediator, and a bridge between employees with disabilities and management. ODR is also an advisor to agencies and their staff on compliance with the disability rights laws.

The ODR has six clearly defined EEO counseling duties:

1. Advise the aggrieved person about the EEO complaint process and other avenues of relief.
2. Determine the issues and any EEO bases of the complaint.
3. Conduct a limited inquiry to furnish information for settlement efforts and/or determine jurisdiction, if a formal complaint is filed.

4. Advise the agency and seek a resolution of the complaint.
5. Document the resolution through a settlement agreement or a withdrawal. If the complaint is not resolved or withdrawn, advise the complainant of the right to file a formal discrimination complaint. Furnish the complainant with an Exit Letter to allow him or her to file at the Office of Human Rights.
6. Prepare a report sufficient to determine that required counseling actions have been taken and resolve any jurisdictional questions that may arise.

IV. Responsibility of District Agencies

Within thirty (30) days after the effective date of this Mayor's Order, all District government agencies and instrumentalities must disseminate a copy of this Order to each employee. District of Columbia Office of Human Resources must disseminate a copy of this Order to each new employee, during his or her employee orientation.

All District of Columbia employees are expected to cooperate in the investigation of alleged employment discrimination on a basis of disability, as conducted by ODR. Employees of all District government agencies and instrumentalities shall not cause hardship, delay, or interference with the efforts of ODR, the complainant, or the complainant's representative, in their efforts and activities to investigate and resolve the complaint.

V. Informal Complaints of Disability Rights Violations

When an agency becomes aware that an employee or an applicant believes he or she is being, or has been, discriminated against in their employment or application on the basis of disability, the agency should advise the employee or an applicant that he or she can seek the assistance of ODR.

Employees or applicants may seek EEO counseling assistance from ODR if they believe they are experiencing or have experienced discrimination on the basis of disability, including:

- Denial of reasonable accommodations;
- Disparate treatment on the basis of disability;
- Lack of physical access to areas of employment;
- Retaliation;
- Discrimination on the basis of association with a person with a disability; or
- Other disability-related discrimination.

If an employee or applicant seeks assistance from ODR, ODR shall notify the agency EEO Counselor. If an employee or applicant with a disability seeks assistance from an agency EEO Counselor, or an EEO Counselor of another agency, the Counselor shall notify ODR. Investigation and resolution efforts will be conducted by the agency EEO Counselor, other agency EEO Counselor, or ODR, as selected by the employee or applicant.

VI. Prohibition Against Retaliation

Under no circumstances shall any employee, supervisor, manager or other person acting on his or her behalf, or under his or her direction, retaliate against, harass, or coerce an employee because that employee has expressed desire to or has sought out counsel of the ODR, or has assisted another person in obtaining the services of ODR. Employees found to have engaged in retaliatory behavior shall be recommended for disciplinary action.

VII. Discipline and Corrective Action on a Finding of Employment Discrimination on the Basis of Disability

ODR may recommend appropriate disciplinary action, up to and including termination, of any employee found to have discriminated in the current employment or application for employment of a person based on his or her disability. ODR shall recommend corrective action to the District agency found to have discriminated in the employment or application of a person based on his or her disability.

VIII. Discipline for Making False Statements or Representations

In recognition of the seriousness of employment discrimination on the basis of disability, ODR shall recommend disciplinary action, up to and including termination, of any employee found to have made materially false statements or representations, knowingly and intentionally, in relation to matters being investigated by ODR.

IX. Applicability of Personnel Rules

Any personnel action recommended by ODR, as a result of this Mayor's Order, is subject to the District of Columbia Personnel Regulations as set out in the District of Columbia Personnel Manual, respective Collective Bargaining Agreements, as well as the Comprehensive Merit Personnel Act.

X. Implementation

The Director of ODR, or the designee thereof, is authorized and directed to implement this Order and to monitor the compliance of District agencies and employees with its directives.

XI. Rescission/Repeal

Mayor's Order 83-243, dated October 12, 1983, and Mayor's Order 85-70, dated May 24, 1985, are rescinded.

To the extent that any provision of this Order is inconsistent with the provisions of any

Commissioner's Order, Order of the Commissioner, or other previous Mayor's Orders, the provisions of this Order shall prevail and shall be deemed to supersede the earlier provisions.

XII. EFFECTIVE DATE: This Order shall become effective immediately.

ADRIAN M. FENTY
MAYOR

ATTEST: _____
STEPHANIE D. SCOTT
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL

Legal Counsel Division

MEMORANDUM

TO: **Alexis P. Taylor**
General Counsel
Office of Human Rights

FROM: **Wayne C. Witkowski**
Deputy Attorney General
Legal Counsel Division

DATE: **March 25, 2008**

SUBJECT: **Legal Sufficiency Review of Draft Mayor's Order Establishing the Office of Disability Rights as the Equal Employment Opportunity Counselor for District Government Employees with Disabilities (AM-08-038 C)**

This responds to your January 20, 2008 e-mail, by which you request that this Office review the above-referenced draft Mayor's Order (Order) for legal sufficiency.

The Order[1] would, among other things, designate the Office of Disability Rights (ODR) as the Equal Employment Opportunity (EEO) Counselor for District government employees[2] with disabilities,[3] define ODR's EEO counseling role and duties, and set out general procedural guidelines for resolving informal complaints.

Subject to technical review by the Office of Documents and Administrative Issuances, I find the attached revised version of the Order to be legally sufficient.[4]

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[1]The Order is authorized by section 422(11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, D.C. Official Code § 1-204.22(11) (2006 Repl.), and by section 3(b)(1) of the Disability Rights Protection Act of 2006, effective March 8, 2007, D.C. Law 16-239, D.C. Official Code § 2-1431.02(b)(1) (2007 Supp.).

[2] Under the Order, ODR's EEO role would also extend to applicants for District government employment.

[3] Under the Order, employees or applicants may seek ODR's counseling assistance if they believe they are experiencing or have experienced discrimination on the basis of disability, including, among other things, denial or reasonable accommodations, disparate treatment based on disability, and lack of physical access to areas of employment.

[4] The attached revised version of the Order reflects the comments of Assistant Attorney General John J. Grimaldi, II, Legal Counsel Division, as approved by you and Eve Hill, Director, ODR.

If you have any questions about this memorandum, please contact either Mr. Grimaldi at 724-5198, or me at 724-5524.

WCW/jjg

Attachment (as stated)

Copy to: Eve Hill, Director, Office of Disability Rights