



City of Cleveland Memorandum

Frank G. Jackson, Mayor

Report of Findings and Recommendations (Investigation of CDPH) September 15, 2020

The City of Cleveland opened an investigation into several matters within the Cleveland Department of Public Health (CDPH). Those matters are as follows:

1. The re-opening of the EEO complaint filed by Ms. Karen Aluma,
2. The loss of the HIV/STI grant,
3. A review of the vacancies, hiring and attrition within CDPH, and
4. Employee morale and culture within CDPH.

The Department of Human Resources led an investigation into the above referenced matters with Martin Flask and Tracy Martin Thompson. The investigation revealed several areas of concerns indicating negligence which must be immediately addressed. The investigation revealed Departmental managers made detrimental mistakes when attempting to assign work, communicate, and hold employees accountable in their diverse workplace. For example, in March of 2020, CDPH employees were issued instructions on their work schedules during the onset of the pandemic. In April of 2020, the City issued the Family First Coronavirus Response Act temporary work rule, which designated employees as critical, essential, or non-essential. Critical employees were required to report to work. All employees within CDPH were designated as critical employees, however, these employees were not provided clear administrative direction on reporting to work, working from home or leaves of absence.

I. Re-Organization of CDPH:

The recommended reorganization of CDPH personnel will allow for a new management structure and provide existing employees to operate in a more productive manner as individuals and a collective team. The reorganization is also intended to improve culture, morale and address any employee perceptions or misconceptions that management personnel act based upon any bias. The investigation did not demonstrate intentional or unintentional mistreatment of employees based on a protected class; the investigatory team does understand and recognize that all people have bias. The discipline of Diversity, Equity and Inclusion teaches that all employees have implicit bias, the City of Cleveland through our Diversity training has adopted this theory. Further, the team found employees of all races and ethnicities were treated unfairly due the lack of skill in supervising employees. As a result, the following recommendations are offered in an effort to correct any employee impressions of unconscious bias motivating decisions within CDPH, and to improve the culture and morale within the Department.

1. The reassignment of Director Merle Gordon.
2. A pre-disciplinary hearing for Commissioner Persis Sosiak.
3. A pre-disciplinary hearing for Lead Epidemiologist Katherine Romig.
4. Centralization and realignment of duties for CDPH-HR employees under the Department of Human Resources.
5. As a result of this report Karen Aluma will no longer report to Katherine Romig. In the interim or until another supervisor is determined by management, Ms. Aluma will continue to report to Assistant Commissioner Patrick Cusick.
6. The City will post a Request for Proposal (RFP) to employ a consultant to conduct a Diagnostic Review (management efficiency study with recommendations and action plan) of CDPH as an organization.

II. Professional Development within CDPH:

1. Citywide Employees - During Hispanic Heritage Month in 2020, the City will sponsor an event for its employees celebrating the contributions and influence of Hispanic Americans to the history, culture, and achievements of the United States. National Hispanic Heritage Month is celebrated from September 15 to October 15 in celebration and recognition of the histories, cultures, and contributions of American citizens whose ancestors came from Spain, Mexico, the Caribbean and Central and South America.
2. All CDPH Staff - Training on equal employment opportunity law, with an emphasis on anti-discrimination based on race, ancestry, age, and national origin. This training will also include a component on cultural competency, cultural sensitivity, and implicit bias.
3. Executive Team – Anti-Racist Organizational Toolbox. A development series to support employees and leaders in their ability to integrate an approach of racial equity and inclusion into their organizations. This toolkit includes dialogues, foundational training on bias, a racial equity and justice series, and an anti-racist policy and procedure analysis.
4. Supervisory Personnel – Two (2) training sessions will be scheduled for supervisory personnel:
 - a. Supervisor/Management training to include training on effective communication with coworkers.
 - b. Roles and Responsibilities training on the progressive disciplinary process and grievance hearing procedures.

III. CDPH Hiring and Vacancies: The Departments of Human Resources and Civil Service will lead bi-weekly (twice (2x) a month) meetings with CDPH leadership to discuss the status of vacancies, requisitions, hires, promotions, transfers and Civil Service job descriptions within CDPH.

Citywide Human Resources Leads- The City of Cleveland will partner with the Diversity Center to conduct professional development sessions on "Mitigating Bias in the Hiring Process". This training is being offered as the citizens of the City of Cleveland are entitled to be represented by and have interactions with individuals that represent the community. According to the Diversity Center, biases can surface in all stages of the hiring process, from posting the position, to reviewing resumes, and interviewing and selecting candidates. This working session includes an examination of existing procedures and the development of new practices that mitigate potential sources biases in the hiring process. Further, as stated by the Diversity Center, the business case for diversity and inclusion will be discussed and participants will first gain an understanding of where these biases are often found in the process. Participants will then see examples of best practices that can be used to remove these biases from the hiring process. Finally, participants will examine existing policies and/or procedures and identify ways to mitigate bias throughout the process. The goal of this session is to ensure, Human Resource professionals citywide have to tools to foster a positive operational and culturally diverse working environment.

IV. The loss of the HIV/STI Grant: CDPH has partnered with the state since 1995 on HIV/AIDS intervention programs. In 2019, the program was expanded from three counties to include Cuyahoga, Lake, Geauga, Ashtabula, Medina and Lorain counties and would have – if approved,

provided \$1.5M funding for HIV/AIDS prevention, education, testing and treatment programs as well as funding sexually transmitted infections (STIs) intervention programs. The ODPH issued a Corrective Action Plan to CDPH in February 2019. That action plan followed discussions between the State and CDPH in which the State outlined CDPH's deficiencies and the State's expectations for improvement. The Ohio Department of Health subsequently declined to renew the grant funding for 2020 and declined Cleveland's attempt to reverse the decision, citing multiple reasons for their decision. The State, however, did agree to extend grant funding for thirty days to allow for a transition from CDPH to another provider effective February 1, 2020.

After a review and investigation of the loss of this grant, the City will develop a grant oversight and audit committee including personnel from CDPH, the Departments of Human Resources, Finance, and the Office of the Mayor. This Committee will review the status of each CDPH grant on a monthly basis to ensure grant objective, compliance, targets, activities and programs, reports, and outcomes are being met timely and in accordance to the grantor specifications.

- V. Employee morale and culture within CDPH:** The investigation and survey results revealed a large percentage of employees responded that their supervisor was available, provided guidance/coaching and their performance improved after interactions with their supervisor. Unfortunately, the survey results do not fairly represent the state of employee morale, rather only that their supervisor is present and engaged. The results did not translate to the same large percentages of approval when asked about morale or their attitude toward coming to work or the Department in general. When employees were asked to describe how they feel when they think about work the responses were mixed, with the majority of individuals feeling either neutral or negative about their feelings towards work (CDPH). In addition to the above referenced reorganization and professional development, the City will provide team dynamics and change management (i.e. the ADKAR model) professional developmental series to support the reorganization within the Department. Employees will continue to be surveyed in order to gauge effectiveness.
- VI. Karen Aluma EEO Investigation:** The original Report of Findings and Recommendations regarding Karen Aluma's EEO complaint, authored by Austin Opalich, dated April 7, 2019 (the report date is an error; the report date should have been **April 7, 2020**) is being rescinded in its entirety. The retraction of this report includes any findings, and/or recommendations contained within the original report. This report serves as the comprehensive replacement to Mr. Opalich's report. The investigatory team's investigation revealed the report was overbroad in its summary of incidents and quotations attributed to employees were misleading. While the investigatory team did not find willful fraudulent conduct on behalf of Mr. Opalich, it is understandable that the over generalizations within the report caused confusion and were misleading. Notwithstanding the rescission of the original Report of Findings and Recommendations, the City of Cleveland found no credible evidence of unlawful discrimination against Karen Aluma because of her national origin and/or age. The City of Cleveland also found no credible evidence of an unlawful hostile work environment based upon Ms. Aluma's national origin and/or age. However, the City did find leadership within CDPH made decisions which were profoundly and severely damaging and counterproductive to workforce trust, respect for others and employee confidence.

Definitions of Discrimination and Harassment per the EEOC:

Race/Color Discrimination Race discrimination involves treating someone (an applicant or employee) unfavorably because he/she is of a certain race or because of personal characteristics associated with race (such as hair texture, skin color, or certain facial features). Color discrimination involves treating someone unfavorably because of skin color complexion. Race/color discrimination also can involve treating someone unfavorably because the person is married to (or associated with) a person of a certain race or color. Discrimination can occur when the victim and the person who inflicted the discrimination are the same race or color.

Race/Color Discrimination & Work Situations The law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

Race/Color Discrimination & Harassment It is unlawful to harass a person because of that person's race or color.

Harassment can include, for example, racial slurs, offensive or derogatory remarks about a person's race or color, or the display of racially-offensive symbols. Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted). The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

Race/Color Discrimination & Employment Policies/Practices: An employment policy or practice that applies to everyone, regardless of race or color, can be illegal if it has a negative impact on the employment of people of a particular race or color and is not job-related and necessary to the operation of the business. For example, a "no-beard" employment policy that applies to all workers without regard to race may still be unlawful if it is not job-related and has a negative impact on the employment of African-American men (who have a predisposition to a skin condition that causes severe shaving bumps).

National Origin discrimination involves treating employees unfavorably because they are from a particular country or part of the world, because of ethnicity or accent, or because they appear to be of a certain ethnic background (even if they are not). The law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term of condition of employment.

National Origin harassment involves harassment of an employee because of his or her national origin. Harassment can include for example, offensive or derogatory remarks about a person's national origin, accent, or ethnicity. Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision.

Age Discrimination involves treating an applicant or employee less favorably because of his or her age. Individuals age 40 or above are protected from discrimination. The law forbids discrimination in any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, benefits, and any other term or condition of employment.

Age Harassment involves harassment because of an employee's age. Harassment can include, for example, offensive or derogatory remarks about a person's age. Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that aren't very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision.

Legal Definition of Fraud: Fraud has six elements: (a) a representation, or where there is a duty to disclose, concealment of a fact; (b) which is material to the transaction at hand; (c) made falsely, with knowledge of its falsity, or with such utter disregard and recklessness as to whether it is true or false that knowledge may be inferred; (d) with the intent of misleading another into relying upon it; (e) justifiable reliance upon the representation or concealment; and (f) a resulting injury proximately caused by the reliance.