

ADMINISTRATIVE ORDER NUMBER 2-16

SUBJECT: Discrimination and Harassment Policy and Complaint Procedure

Responsible Department: Personnel Services

Date Issued: January 15, 2003

Date Revised: June 25, 2019

Approved: *Signature on File*

Policy

The City is obligated to maintain a work environment that is free of harassment and discrimination to comply with the Civil Rights Act of 1964, the Americans with Disabilities Act and the Fair Employment and Housing Act, in addition to other state and federal laws. Consistent with the obligations set forth in the respective laws, it is the policy of the City to maintain and foster a work environment in which all employees can work free of discrimination and harassment based on protected classifications. This policy also prohibits retaliation against an employee who brings or participates in a complaint of discrimination or harassment. No form of discrimination or harassment based on race, color, ancestry, national origin, sex, gender, gender identity, gender expression, religious creed, disability (physical or mental), medical condition, marital status, sexual orientation, age, genetic information, military or veteran status, or any other classification protected by law, toward any employee will be tolerated (i.e., protected classifications). These protections extend to individuals perceived to have any characteristics of the above protected classifications or an employee who is associated with a person who has or is perceived as having any of those protected characteristics.

This policy applies to all employees of the City. For the purpose of this policy ONLY, the term “employee(s)” includes unpaid interns or volunteers, independent contractors, and persons providing services pursuant to a contract in City workplaces such as vendors, suppliers, and other contractors.

Departments may implement additional anti-harassment policies and procedures separate and apart from this policy. If Departments’ policies and procedures conflict with this policy, Administrative Order 2-16 takes precedence and shall be followed.

I. DISCRIMINATION, HARASSMENT, SEXUAL HARASSMENT, RETALIATION

A. DISCRIMINATION

1. Discrimination is conduct that subjects an employee to disparate treatment on account of their protected classification.

2. Examples of verbal, physical or visual conduct that may constitute discrimination include, but are not limited to, depriving an employee of employment opportunities on the basis of a protected classification such as:
 - a. Refusing to hire or promote a person because of a protected classification;
 - b. Terminating an employee on the basis of a protected classification;
 - c. Subjecting an employee to different performance standards or reviews because of protected classification other than in conjunction with a reasonable accommodation offered to a qualified individual with a disability;
 - d. Disciplining an employee on the basis of a protected classification; or
 - e. Depriving an employee of job benefits or compensation on the basis of a protected classification.

B. HARASSMENT

1. Harassment can be verbal, visual, or physical. Although what constitutes harassment will vary with the particular circumstances, it is defined as unwelcome and directed or related to an employee's protected classification.

The California Legislature has declared harassment that unreasonably alters an employee's working conditions so as to make it more difficult for that employee to do their job could create an unlawful hostile work environment based on the totality of circumstances, even if it is based on a single incident.

Be advised, an employee who engages in harassment of anyone protected under this policy may be personally liable for the harassment, regardless of whether the City knew or should have known of the conduct and/or failed to take appropriate corrective action.

2. Examples of conduct that may constitute harassment are:

- a. Verbal harassment such as harassing phone calls, jokes, slurs, epithets, anecdotes, or other derogatory comments directed to an employee or group of employees on account of a protected classification of the employee, even if not made directly in context of an employment decision or uttered by a non-decision maker;
- b. Visual harassment, through the use of writings, graffiti, e-mail, posters, objects or symbols that insult, ridicule or demean an employee or group of employees' protected classification; and
- c. Physical harassment, such as unwelcome or offensive touching, stalking, or impeding or blocking movement on the basis of a protected classification.

C. SEXUAL HARASSMENT

1. Sexual harassment is conduct meeting the criteria in Section B and can be verbal, visual, or physical. Although what constitutes sexual harassment will vary with the particular circumstances, it is defined as unwelcome sexual advances, requests for sexual favors and other acts of sexual nature, where submission is made a term or condition of employment, where submission to or rejection of the conduct is used as the basis for employment decisions, or where the conduct alters the working conditions such that the conduct makes it more difficult for the employee to do their job or creates an intimidating, hostile, or offensive working condition. In addition, gender-based discrimination, which may include acts of verbal, nonverbal, or physical aggression, intimidation or hostility based on a person's gender, gender identity, or gender expression, but not involving conduct of a sexual nature, may be a form of sexual harassment.

Not all sexual harassment occurs between persons of differing power. Sexual harassment may also occur between co-workers. In addition, while the majority of reported cases of sexual harassment involve a male harassing a female, sexual harassment may also involve a female harassing a male, or a person harassing another person of the same, or any other, gender. The harassing conduct need not be motivated by sexual desire.

In determining a hostile work environment, the type of workplace or particular job does not matter even if it had more frequent sexually related commentary or conduct in the past, unless it is integral to the performance of the employee's job duties.

2. Examples of verbal, physical, or visual conduct that may constitute sexual harassment include, but are not limited to:
 - a. Direct propositions of a sexual nature;
 - b. Sexual innuendoes and other seductive behavior, including subtle pressure for sexual activity such as repeated, unwelcome requests for dates, and repeated inappropriate comments, staring or touching;
 - c. Direct or implied threats that submission to sexual advances will be a condition of employment, promotion, etc.;
 - d. Conduct that has the effect of discomforting, humiliating or both, and that includes one or more of the following:
 - (1) Comments of a sexual nature, including sexually explicit statements, questions, jokes, anecdotes or graphic material (e.g., sexually explicit visuals such as pin-ups);
 - (2) Unnecessary or unwanted touching, patting, massaging, hugging, or brushing against a person's body or other conduct of a physical nature;
 - (3) Remarks of a sexual nature;
 - (4) Insulting sounds or gestures, whistles, etc.; and
 - (5) Unwelcome and inappropriate letters, telephone calls, electronic mail, social media, or other communications.
 - e. Stalking;
 - f. Impeding or blocking movement, or any physical interference with normal work or movement, when

directed at an individual on a basis of their protected classification; and

g. Sexual assault.

D. RETALIATION

The City acknowledges and understands that in order to implement a non-discrimination/non-harassment policy, it is essential that all persons who witness or experience discrimination or harassment of the type prohibited by this policy report that discrimination or harassment immediately in order to facilitate early, effective, efficient, and impartial investigation and intervention by the City. Accordingly, any retaliation against an employee for making a discrimination/ harassment complaint, reporting discrimination/harassment that they have witnessed, or assisting in a discrimination/harassment investigation, is strictly prohibited.

E. CORRECTIVE ACTION

Employees are subject to corrective action up to and including termination upon the City's notice of a violation of this policy consistent with the City's rules and regulations, including Administrative Order (AO) 2-14 where applicable.

II. PROCEDURE FOR INTERNAL COMPLAINTS

In the event an employee alleges that they have been subjected to or witnessed employment discrimination practices, harassment on the job, a hostile work environment, or retaliation for having filed a complaint, the procedures below shall serve as the process for resolving such allegations.

A. OPTIONAL INFORMAL RESOLUTION

An employee may discuss the problem with the offending party in an effort to reach a solution. The problem may simply be a misunderstanding or lack of communication, which may not constitute a violation of this policy. This optional resolution is not available if the problem involves actions prohibited by this policy, in which case the employee is required to report behavior that may violate this policy as set forth in paragraph B below.

B. MANDATORY REPORTING

If the problem is not a misunderstanding or lack of communication, the employee is to report it to any of the following:

- Their supervisor or any other supervisor or manager;
- Department Director;
- Director of Personnel Services;
- City Attorney; or
- City Manager.

C. INVESTIGATION

Complaints shall be investigated promptly. The nature and details of the investigation process will vary depending on the issues. The City's objective is to make a fair determination on what happened so it can then take corrective action, if warranted, as soon as possible. Refusal to investigate, or intentionally delay in investigating, is a violation of this policy. An independent investigative officer may be assigned to conduct the investigation if the Director of Personnel Services and/or City Manager determines it is in the best interests of the City.

While a report of discrimination, harassment, and/or retaliation is being investigated, the complainant's supervisor/manager shall make every effort to temporarily separate the complainant and the accused. When feasible and practical, the complainant's wishes should be given preference.

Upon the completion of the investigation, the Director of Personnel Services shall notify the complainant and the accused. If the investigation reveals misconduct on the part of the accused, the Department Director or their designee shall advise the accused of the investigative findings that will form the basis of corrective or disciplinary action. The required signatures under AO 2-14 will apply for disciplinary actions of employees subject to AO 2-14. If misconduct is found of an employee, the City will take reasonable and appropriate corrective action as determined by the Department Director and the City Manager, with advice from the Director of Personnel and/or the City Attorney's Office.

III. EXTERNAL COMPLAINTS

If an employee believes they are a victim of unlawful discrimination, harassment, or retaliation, they have the right to file a complaint with the California Department of Fair Employment and Housing ("DFEH") or the U.S. Equal Employment Opportunity Commission ("EEOC"). The agencies can be contacted at:

DFEH: (800) 884-1684 or TTY (800) 884-1684; or online at www.dfeh.ca.gov

EEOC: (800) 669-4000 or TTY (800) 669-6880; or online at www.eeoc.gov

IV. RIGHTS AND RESPONSIBILITIES

A. The Director of Personnel Services shall:

1. Ensure that this policy and complaint procedure is disseminated to all employees;
2. Coordinate training and provide assistance to department directors, managers, supervisors, and employees in preventing and addressing discrimination and harassment; and
3. Take appropriate remedial measures, in collaboration with the respective department, if this policy is found to have been violated after investigation.

B. Department Directors shall:

1. Report any complaints of misconduct under this policy to the City Manager's Office and the Director of Personnel Services;
2. Ensure that their respective departments remain free of discrimination, harassment, and retaliation;
3. Coordinate and cooperate with the Director of Personnel Services in disseminating this policy to all its respective employees;
4. Coordinate and cooperate with the Director of Personnel Services in the investigation of complaints involving their respective employees, and when discrimination/harassment/retaliation has occurred:
 - a. Take prompt and appropriate remedial action against the accused;
 - b. Take reasonable steps to protect the complainant from further discrimination/harassment;
 - c. Take reasonable steps to protect the complainant from retaliation as a result of communicating or participating in the complaint;
 - d. Take action to remedy the effects of discrimination/harassment/retaliation; and
 - e. Monitor the environment to ensure the effectiveness of the remedy.

C. Managers/Supervisors shall:

1. Report any complaints of misconduct under this policy to their immediate supervisor and/or the Director of Personnel Services;
2. Ensure that their respective areas of management/supervision remain free of discrimination, harassment, and retaliation;
3. Coordinate and cooperate with the Department Director in disseminating this policy to all employees under their management/supervision;
4. Cooperate with the Department Director and/or Director of Personnel Services in the investigation of complaints involving employees under their management/supervision and, when discrimination/harassment has occurred:
 - a. Take reasonable steps to protect the complainant from further discrimination/harassment/retaliation;
 - b. Take action to remedy the effects of discrimination/harassment/retaliation.
5. Participate in discrimination and harassment prevention training provided by the City.

D. Employees

1. Employees shall not violate any provision of this policy;
2. Employees are to report violations of this policy;
3. When employees are provided with a copy of this policy, they shall certify in writing that they have received a copy of this policy;
4. Employees shall participate in anti-discrimination/harassment/retaliation training provided by the City; and
5. Employees shall cooperate fully with investigations of discrimination, harassment, and retaliation.

V. INTERACTION WITH NON-EMPLOYEES

- A. Prohibited Actions By Employees include discrimination, harassment, and retaliation, as defined in this policy. It also encompasses harassment by employees towards non-employees whom City employees come into contact during work, such as employees of contractors, customers,

vendors, suppliers and temporary employment agency employees. Employees are prohibited from engaging in conduct prohibited in this policy of non-employees with whom they come into contact, such as employees of contractors, customers, suppliers, and temporary employment agency employees.

- B. Contracts Involving Non-Employees When departments enter into contracts with independent contractors and persons providing services pursuant to a contract in City workplaces, the Department Director shall ensure language is provided in the contract requiring those contractors to be responsible for ensuring that effective policies and procedures concerning the prevention of discrimination, harassment, and retaliation exist in their companies/businesses. Appropriate action will be taken if the employee of a customer, vendor, supplier, agency, contractor, or other entity with whom the City does business engages in conduct prohibited by this policy.

VI. CONFIDENTIALITY

To the extent possible, the City will make a reasonable effort to investigate complaints in a manner that will protect the confidentiality and privacy interests of all parties.