

ANTI-HARASSMENT AND NON-DISCRIMINATION POLICY

City Council Policy #CC-21-022

Adopted April 13, 2021



Purpose

The purpose of this Policy is to: establish a strong commitment to prohibit and prevent discrimination, harassment, and retaliation in employment; to define those terms; and to set forth a procedure for investigating and resolving internal complaints. The City encourages all covered individuals to report – as soon as possible – any conduct that is believed to violate this Policy.

Policy

The City has zero tolerance for any conduct that violates this Policy. Conduct need not rise to the level of a violation of law to violate this Policy. A single act can violate this Policy and provide sufficient grounds for discipline or other appropriate sanctions.

Harassment or discrimination against an applicant, unpaid intern, volunteer, or employee by a supervisor, management employee, elected or appointed official, co-worker, member of the public, or contractor on the basis of race, religion, color, sex (including gender, gender identity, gender expression, transgender, pregnancy, and breastfeeding), national origin, ancestry, citizenship status, disability, medical condition, genetic characteristics or information, marital status, age (40 or over), sexual orientation (including homosexuality, bisexuality, or heterosexuality), military or veteran status, or any other protected classification as defined below, will not be tolerated.

This Policy establishes a complaint procedure by which the City will investigate and resolve complaints of discrimination, harassment and retaliation by and against covered individuals. The City encourages all covered individuals to report any conduct that they believe violates this Policy as soon as possible.

This Policy applies to all terms and conditions of employment, including, but not limited to, hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, compensation, and training.

Disciplinary action or other appropriate sanction up to and including termination will be instituted for prohibited behavior as defined below.

Any retaliation against a person for filing a complaint or participating in the complaint resolution process is prohibited. Individuals found to be retaliating in violation of this Policy will be subject to appropriate sanction or disciplinary action up to and including termination.

Definitions

- A. Protected classifications: This Policy prohibits harassment or discrimination because of an individual's protected classification. "Protected classification" includes race, religion, color, sex (including gender, gender identity, gender expression, transgender, pregnancy, and breastfeeding), national origin, ancestry, citizenship status, disability, medical condition, genetic characteristics or information, marital status, age (40 and over), sexual orientation (including homosexuality, bisexuality, or heterosexuality), and military or veteran status, or any other basis protected by law.
- B. Policy coverage: This Policy prohibits discrimination, harassment or retaliation for the following reasons: 1) an individual's protected classification; 2) the perception that an individual has a protected classification; or 3) the individual associates with a person who has or is perceived to have a protected classification.
- C. Discrimination: This policy prohibits treating individuals differently and adversely because of the individual's protected classification, actual or perceived; because the individual associates with a person who is a member of a protected classification, actual or perceived; or because the individual participates in a protected activity as defined in this Policy.
- D. Harassment may include, but is not limited to, the following types of behavior that is taken because of a person's protected classification. Note that harassment is not limited to conduct that City's employees take. Under certain circumstances, harassment can also include conduct taken by those who are not employees, such as elected officials, appointed officials, persons providing services under contracts, or even members of the public:
 - 1. Speech, such as epithets, derogatory comments or slurs, and propositioning on the basis of a protected classification. This might include inappropriate comments on appearance, including dress or physical features, or dress consistent with gender identification, or race-oriented stories and jokes.

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- 2. Physical acts, such as assault, impeding or blocking movement, offensive touching, or any physical interference with normal work or movement. This includes pinching, grabbing, patting, propositioning, leering, or making explicit or implied job threats or promises in return for submission to physical acts.
 - 3. Visual acts, such as derogatory posters, cartoons, emails, pictures, or drawings related to a protected classification.
 - 4. Unwanted sexual advances, requests for sexual favors and other acts of a 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 is intended to or actually does unreasonably interfere with an individual's work performance or create an intimidating, hostile, or offensive working environment.
- E. Guidelines for identifying harassment: To help clarify what constitutes harassment in violation of this Policy, use the following guidelines:
- 1. Harassment includes any conduct which would be "unwelcome" to an individual of the recipient's same protected classification and which is taken because of the recipient's protected classification.
 - 2. It is no defense that the recipient "appears" to have voluntarily "consented" to the conduct at issue. A recipient may not protest for many legitimate reasons, including the need to avoid being insubordinate or to avoid being ostracized or subjected to retaliation.
 - 3. Simply because no one has complained about a joke, gesture, picture, physical contact, or comment does not mean that the conduct is welcome. Harassment can evolve over time. The fact that no one is complaining now does not preclude anyone from complaining if the conduct is repeated in the future.
 - 4. Even visual, verbal, or physical conduct between two individuals who appear to welcome the conduct can constitute harassment of a third individual who observes the conduct or learns about the conduct later. Conduct can constitute harassment even if it is not explicitly or specifically directed at an individual.
 - 5. Conduct can constitute harassment in violation of this Policy even if the individual engaging in the conduct has no intention to harass. Even well-intentioned conduct can violate this Policy if the conduct is directed at, or implicates a protected classification, and if an individual of the recipient's same protected classification would find it offensive (e.g., gifts, over attention, endearing nicknames, hugs, prolonged or frequent staring.)
- F. Retaliation: This policy prohibits discrimination, harassment, or retaliation because of an individual's protected activity. Protected activity includes: (1) making a request for an accommodation for a disability; (2) making a request for accommodation for religious beliefs; (3) making a complaint under this Policy; (4) opposing violations of this Policy; or (5) participating in an investigation under this Policy. Retaliation occurs when an employer takes adverse conduct against a covered individual because of the individual's protected activity as defined in this Policy. "Adverse conduct" includes but is not limited to: (1) disciplinary action; (2) counseling; (3) taking sides because an individual has reported harassment or discrimination, (4) spreading rumors about a complaint, (5) shunning and avoiding an individual who reports harassment or discrimination, or (6) making real or implied threats of intimidation to prevent or deter an individual from reporting harassment or discrimination. The following individuals are protected from retaliation: those who make good faith reports of harassment or discrimination, those who associate with an individual who is involved in reporting harassment or discrimination, and those who participate in the complaint or investigation process

Complaint procedure

- A. A covered individual who believes he or she has been subjected to discrimination, harassment, or retaliation may make a complaint verbally or in writing and there is no need to follow the chain of command. Complaints may be made verbally or in writing to any of the following:
- 1. His or her immediate supervisor;
 - 2. Any supervisor or manager within or outside of the department;
 - 3. A department head; or
 - 4. A Human resources officer

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- B. Any supervisor, management employee, or department head who receives a discrimination, harassment, or retaliation complaint must notify a Human resources officer immediately.
- C. Upon receiving notification of a discrimination, harassment, or retaliation complaint, the Human resources division shall complete and/or delegate the following steps:
 - 1. Provide the complainant with a timely response indicating that the complaint has been received and that a fair, timely, and thorough investigation will be conducted.
 - 2. Authorize and supervise a fair and thorough investigation of the complaint by impartial and qualified personnel and/or investigate the complaint. The investigation will afford all parties with appropriate due process and include interviews with: 1) the complainant; 2) the accused harasser; and 3) other persons who have relevant knowledge concerning the allegations in the complaint.
 - 3. Review the factual information gathered through the investigation to reach a reasonable conclusion as to whether the alleged conduct constitutes harassment, discrimination, or retaliation giving consideration to all factual information, the totality of the circumstances, including the nature of the conduct, and the context in which the alleged incidents occurred.
 - 4. Report a summary of the determination as to whether this Policy has been violated to appropriate persons. If discipline is imposed, the level of discipline will not be communicated to the complainant.
 - 5. If conduct in violation of this Policy occurred, take or recommend to the appointing authority prompt and effective remedial action. The remedial action will be commensurate with the severity of the offense.
 - 6. Take reasonable steps to protect the complainant from further harassment, discrimination, or retaliation.
 - 7. Take reasonable steps to protect the complainant from retaliation as a result of communicating the complaint.
- D. The City takes a proactive approach to potential Policy violations and will conduct an investigation if its officers, supervisors, or managers become aware that harassment, discrimination, or retaliation may be occurring, regardless of whether the recipient or third party reports a potential violation.
- E. Option to report to outside administrative agencies: An individual has the option to report harassment, discrimination, or retaliation to the U.S. Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing (DFEH.) These administrative agencies offer legal remedies and a complaint process. The nearest offices are listed on the internet, in the government section of the telephone book or employees can check the posters that are located on City bulletin boards for office locations and telephone numbers.

Confidentiality

Every possible effort will be made to assure the confidentiality of complaints made under this Policy to the greatest extent allowed by law. Complete confidentiality cannot occur, however, due to the need to fully investigate and the duty to take effective remedial action. An individual who is interviewed during the course of an investigation is prohibited from attempting to influence any potential witness while the investigation is ongoing. Any individual who is interviewed during the course of an investigation is prohibited from discussing the substance of the interview, except with his or her designated representative or as otherwise directed by a supervisor or the Human resources manager. Any individual who otherwise discusses the content of an investigatory interview will be subject to discipline or other appropriate sanction. The City will not disclose a completed investigation report except as it deems necessary to support a disciplinary action, to take remedial action, to defend itself in adversarial proceedings, or to comply with the law or court order.

Training

The City will provide training to all employees in accordance with applicable Federal or State law.

Employees who act in a supervisory capacity and elected officials shall receive at least two hours of classroom or other effective interactive training and education regarding sexual harassment and the negative effects of abusive conduct. All managers and supervisors must receive at least two hours of training every two years. New supervisors must receive training within six months of being hired or promoted and then at least every two years thereafter.

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All non-supervisory employees must participate in at least one hour of classroom or other effective interactive training and education regarding sexual harassment and abusive conduct within six months of assuming their positions.

Training will be presented by knowledgeable trainers or educators with expertise in the prevention of harassment, discrimination, and retaliation and will include: information and practical guidance regarding Federal and State statutory provisions concerning the prohibition against, and the prevention and correction of, sexual harassment; the remedies available to victims of sexual harassment in employment; practical examples aimed at instructing employees in the prevention of harassment, discrimination, and retaliation.

Responsibilities

Each non-manager or non-supervisor is responsible for:

- A. Treating all individuals in the workplace or on worksites with respect and consideration.
- B. Modeling behavior that conforms to this Policy.
- C. Participating in periodic training.
- D. Cooperating with the City's investigations by responding fully and truthfully to all questions posed during the investigation.
- E. Taking no actions to influence any potential witness while the investigation is ongoing.
- F. Reporting any act, he or she believes constitutes harassment, discrimination, or retaliation as defined in this Policy, to his or her immediate supervisor, or department head, or a human resources officer.

In addition to the responsibilities listed above, each manager and supervisor is responsible for:

- A. Informing employees of this Policy.
- B. Modeling appropriate behavior.
- C. Taking all steps necessary to prevent harassment, discrimination, or retaliation from occurring.
- D. Receiving complaints in a fair and serious manner, and documenting steps taken to resolve complaints.
- E. Monitoring the work environment and taking immediate appropriate action to stop potential violations, such as removing inappropriate pictures or correcting inappropriate language.
- F. Following up with those who have complained to ensure that the behavior has stopped and that there are no reprisals.
- G. Informing those who complain of harassment or discrimination of his or her option to contact the EEOC or DFEH regarding alleged Policy violations.
- H. Assisting, advising, or consulting with employees and the human resources director regarding this Policy and complaint procedure.
- I. Assisting in the investigation of complaints involving employee(s) in their departments and, if the complaint is substantiated, recommending appropriate corrective or disciplinary action in accordance with City personnel rules, up to and including discharge.
- J. Implementing appropriate disciplinary and remedial actions.
- K. Reporting potential violations of this Policy of which he or she becomes aware, regardless of whether a complaint has been submitted, to the human resources division or the department head.
- L. Participating in periodic training and scheduling employees for training.

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Dissemination of Policy		
All employees shall receive a copy of this Policy when they are hired. The Policy may be updated from time to time and redistributed with a form for the employee to sign and return acknowledging that the employee has received, read, and understands this Policy.		
Procedure history		
Action	Date	Notes
Procedure adoption	April 13, 2021	