

CITY OF SAN LEANDRO



ADMINISTRATIVE PROCEDURE

**AP-1000: HARASSMENT/DISCRIMINATION
PREVENTION COMPLAINT
PROCESS**

DATE ISSUED: 05/20/97

DATE REVISED: 10/01/2010

APPROVED BY CITY MANAGER:

A handwritten signature in black ink, appearing to be "JCB", written over the "APPROVED BY CITY MANAGER" text.

I. APPLICABLE TO

All employees.

II. PURPOSE

The purpose of this procedure is:

- A. To reaffirm the City's commitment to prohibit and prevent unlawful discrimination (including harassment) in all workplaces of the City of San Leandro.
- B. To define discrimination and harassment prohibited under this policy; and
- C. To set forth a complaint procedure to be utilized in resolving allegations of harassment or discrimination.

III. DEFINITIONS

A. Harassment

- 1. Prohibited harassment for purposes of this policy includes, but is not limited to:
 - a. Speech: Such as epithets, derogatory comments or slurs, and lewd propositions on the basis of race, sex, gender, religion, national origin, ancestry, physical or mental disability, medical condition, marital status, age or sexual orientation.
 - b. Physical Acts: Such as assault, impeding or blocking movement, offensive touching or physical interference with normal work or movement when directed at an individual on the basis of race, sex, gender, religion, national origin, ancestry, physical or mental disability, medical condition, marital status, age or sexual orientation. This includes pinching, grabbing, patting, propositioning, leering or making explicit or implied threats or promises in return for submission to physical acts.
 - c. Visual Insult: Such as derogatory posters, cartoons or drawings related to race, sex, gender, religion, national origin, ancestry, physical or mental disability, medical condition, marital status, age or sexual orientation.
 - d. Retaliation: Harassing conduct done in retaliation for good faith submission of discrimination or harassment charges, or good faith participation in an investigation made pursuant to this policy.

2. Verbal, physical, visual or retaliatory conduct based on race, sex, gender, religion, national origin, ancestry, physical or mental disability, medical condition, marital status, age or sexual orientation constitutes harassment when it:
 - a. Has the purpose or effect of creating an intimidating, hostile or offensive working environment.
 - b. Has the purpose or effect of unreasonably interfering with an individual's work performance; or
 - c. Otherwise adversely affects an individual's employment opportunities.
3. Sexual harassment is a form of unlawful harassment and will not be tolerated by the City. Federal and State law provide that unwelcome sexual advances, requests for sexual favors and other verbal, visual or physical conduct of a sexual nature constitutes unlawful harassment when:
 - a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment.
 - b. The submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
 - c. Sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature that has the purpose or effect of unreasonably interfering with an employee's work performance or of creating an intimidating, hostile or offensive work environment.

B. Discrimination: Examples of what may be considered discrimination depend on the facts and circumstances include, but are not limited to, the following:

1. Hiring Practices - Refusing to hire an otherwise qualified candidate because of that person's race, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, sex, sexual orientation or age.
2. Employment Practices - Treating an employee differently from other similarly situated employees in such things as promotion, discipline, work schedules, compensation, work assignments or training because of that person's race, religion, color, national origin, ancestry, physical or mental disability, medical condition, sexual orientation, marital status, gender or age.

IV. GUIDELINES

Harassment on the job is prohibited whether it involves co-worker harassment, harassment by a supervisor or superior, or harassment by or to persons doing business with or for the City. All employees have a responsibility to ensure that their actions and conduct in the workplace are professional and that they do not offend, discriminate, or in any way, harass

other employees. Supervisory and management personnel have an obligation to ensure that the work place is free from all types of discrimination, including harassment. They are also responsible for ensuring that all employees receive a copy of this policy and receive all available training regarding the City's policy on harassment and discrimination.

Any incidents of observed or alleged discrimination or harassment must be treated seriously and immediately reported, orally or in writing, as detailed in Section V. Prompt and appropriate corrective or remedial action must be taken to end any reported and verified discrimination or harassment and to prevent any future discrimination or harassment from reoccurring.

V. PROCEDURE

- A. Any supervisor, manager or command personnel observing conduct which might be construed as discrimination or harassment, is required to immediately report such conduct to his/her department head who will then immediately report the conduct to the Human Resources Director or his/her designee. Failure to do so may result in disciplinary action, up to and including termination. The department head will consult with the Human Resources Director regarding the appropriate action that should be taken.
- B. Any employee who believes he/she is being harassed or discriminated against, or who witnesses harassment or discrimination against another employee, should report the behavior to their supervisor immediately. In the event that the other involved party is a supervisor, manager, command officer, or for other legitimate reasons, the employee shall immediately report the incident to his/her department head or the Human Resources Director or his/her designee. The report may be made orally or in writing. ***Once made aware of the complaint, the department head shall immediately inform the Human Resources Director of any allegations regarding harassment and/or discrimination.***
- C. All complaints of harassment or discrimination shall be treated seriously. *With approval from Human Resources, the investigation may be conducted by the department. Otherwise, all investigations shall be conducted by the Human Resources Department in accordance with the City of San Leandro's Investigation Guidelines (Attachment A).* In that case, the appropriate department head, in consult with the Human Resources Director or his/her designee, shall take the necessary steps to initiate an investigation of the allegations as quickly as possible after the allegations and/or observations are made.
- D. If the acts complained of are not very serious and it is believed that the accused party may not realize that his/her conduct is offensive or in violation of City policy, the department, in consultation and/or with assistance from Human Resources, may utilize

an informal process to stop the conduct and to make sure that it never occurs again. However, this informal process may only be used if the complaining employee wants to resolve the problem informally, rather than make a formal complaint. In no event can the informal process be used if the acts complained of are serious; if the accused employee continued to engage in the offensive conduct after the complaining employee told the accused employee to stop; or if the complaining employee wishes to file a formal complaint.

- E. In all other cases a complete investigation should be made as soon as possible. The Human Resources Director or his/her designee, in consult with the department head, shall determine who shall conduct the harassment/discrimination investigation, making sure that the individual chosen is able to conduct the investigation fairly, thoroughly and objectively. If the department conducts the investigation, the Human Resources Director or his/her designee shall be informed and kept apprised of the steps and results of the investigation.
- F. If it is determined that an employee has violated this policy and engaged in acts of harassment or discrimination of any type or for any duration, the employee may be subject to disciplinary action, up to and including termination of employment.
- G. The City shall take all necessary steps to insure that corrective action is taken to prevent future workplace harassment or discrimination. In addition to disciplinary action, up to and including termination, such steps may include, but are not limited to, changing shifts and/or assignments of employees and providing additional supervision and monitoring. It may be necessary to implement these measures while the investigation is pending.
- H. Any further incidents of harassment/discrimination or retaliation suffered by an employee should be reported to the department head and to the Human Resources Director or his/her designee immediately so that additional corrective action can be taken.
- I. Acts of retaliation against employees who complain of harassment or discrimination or who participate in a harassment or discrimination investigation shall not be tolerated and may result in disciplinary action, up to and including termination, against the individuals who engaged in such action.
- J. The Human Resources Department shall keep a file of all complaints and investigations alleging harassment, discrimination or retaliation.

Investigation Guidelines For Formal Complaints

Investigation Procedure: Any investigation shall be conducted in accordance with the City's applicable regulations and/or procedures. The following investigation guidelines should be utilized when a formal complaint against a City employee has been made or if warranted given the particular facts of each case.

1. **Treat All Complaints Seriously/Act Promptly:** Even if a complaining employee insists that he/she wants nothing done about the complaint, the City has an obligation to promptly investigate each complaint and when appropriate, utilize the following procedure to ensure that all necessary steps are taken so that if the conduct has occurred, it does not continue.
2. **Neutral Investigator:** All investigations need to be objective, fair and thorough. It is important that the individual chosen to do the investigation is unbiased when conducting the investigation. Important factors to consider are:
 - a. Does the investigator have any personal knowledge that would be needed as part of the investigation? Could the investigator be a possible witness (even a "reputation witness" for either the complaining party or the accused party?
 - b. Has the investigator ever been the subject of a similar complaint or accused someone else of similar misconduct which may affect his/her ability to be unbiased?
 - c. Is the investigator too close to either the complaining party or the accused person to investigate the case without it impacting the credibility of the findings?
3. **Conduct of Investigator:** Regardless of what the investigator thinks may have happened, all complaints of harassment must be treated seriously and promptly investigated. The investigator should assure the employee that he/she is taking the complaint very seriously. The investigator should be sensitive and objective while listening to the situation and not make any comments or gestures that would indicate his/her belief regarding the veracity of the complaint.
4. **Detailed Interview with Complainant:** The first step in any investigation is an interview with the complaining employee. The complaining employee should be asked specific questions in order to obtain detailed information about the allegations. The investigator should not assume that he/she knows what the employee means. The employee should be asked to explain any vague or ambiguous statements. Very specific facts should be elicited. Possible questions the investigator might ask the complaining party are:
 - a. Who is being accused of the offensive or objectionable behavior?
 - b. What kind of relationship did the complainant have with the accused person? Has there ever been a different relationship with the accused person - prior intimate relationship or friendship?
 - c. Specifically, what happened? Get details of exactly what was said and done.
 - d. Where did the incident take place? (Did the incident take place during or at work or a work function?)

- e. When did the incident take place?
 - f. How many times have such incidents occurred?
 - g. Have there been other types of incidents? Where and when did they take place?
 - h. Did the complainant ever tell the accused that the conduct was offensive and to stop? (It is not required that the complaining employee confront the offender. However, if the employee does, it shows that the accused person had notice that the conduct was offensive).
 - i. Were there any witnesses?
 - j. What did the complaining employee do after the incident?
 - k. Did the complaining employee tell anyone about the incident and if so, whom?
 - l. Does the complaining employee know of any other employees who have been treated this way or who may have a similar complaint about the accused employee?
 - m. What is the remedy sought by the complaining employee?
5. **Confidentiality of Investigation:** The complaining party should be told that the investigation will be handled as confidentially as possible. The complaining employee and all other individuals who are subsequently interviewed must be advised that they are not to discuss the matter with anyone else, except for the employee's union or employee association representative if desired. Any union or employee association representative who is informed of such a complaint shall keep the matter strictly confidential and shall only discuss the case on a "needs-to-know" basis with union or association officials and/or the Human Resources Director. The complaining employee should also be advised that the accused party will be confronted and given an opportunity to respond, but will be warned that any acts of retaliation are strictly prohibited and may subject him/her to disciplinary action up to and including termination. The complaining employee should be instructed to immediately inform the investigator, his/her supervisor, or the Human Resources Director if any similar acts continue.
6. **Offer Employee Assistance:** Any complainant should be offered employee assistance counseling, regardless of whether the employee appears in need of counseling and regardless of any initial opinion(s) regarding the veracity of the allegations complained of by the employee.
7. **Determine What Conduct Is At Issue:** When considering the conduct that has been alleged, it is important to consider what type of conduct is at issue. The following questions may be helpful in determining how to categorize the allegations that are made:
- a. What conduct or speech is being complained of?
 - b. Does the conduct or speech, if true, constitute misconduct or a violation of the City's regulations or procedures?
 - c. If harassment, is it quid pro quo or hostile work environment?
8. **Interview All Potential Witnesses/Gather All Possible Evidence:** Although it is impossible to determine all the steps that may be needed in any investigation, the investigator should interview any percipient witnesses and/or other persons whom the accused may have similarly harassed, and obtain and evaluate any other evidence that may tend to prove or disprove the allegation.

9. **Interview the Accused Employee:** A necessary step in any investigation is the interview of the accused employee. The investigator should:
 - a. Interview the accused employee (if there are allegations of physical contact or touching, there may be criminal charges involved, so the interview should be conducted accordingly.)
 - b. Interview all witnesses or names of individuals the accused person provides to disprove the allegation, including any reputation witnesses.
 - c. Investigate and gather any additional evidence that the accused employee either raises or that comes to light as a result of the interview.

10. **Analysis of Investigation:** In analyzing the evidence from the investigation, the investigator should keep in mind that the objective is to determine whether there has been a regulation violation. In many cases, there will be no witnesses, so it is necessary to evaluate the credibility of the complaining witness and the accused employee. The following factors may be important in evaluating the final outcome of the investigation:
 - a. Does the complainant have an improper motive to make the complaint? (Has the complainant made similar complaints against other employees? Is the complainant trying to avoid scrutiny or supervision? Be careful not to turn the investigation into only a background investigation of the complaining party - all evidence should be investigated.)
 - b. Have there been similar complaints made against the accused person? (Complaints made many years ago, even beyond what could be considered for discipline, should be looked into and may be considered for purposes of corroborating the current complaint.
 - c. Personality conflicts or friction between the two individuals does not, in and of itself, mean that anything improper occurred or that there was an improper motive or retaliation. However, such evidence should be considered.
 - d. Has there been a violation of the City Policies and/or Procedures?

11. **When the Employee Denies the Allegations of Misconduct/Evidence of Misconduct is Inconclusive:** If the accused employee denies the allegations of misconduct and there is no evidence to substantiate the complaint one way or the other, the investigator should:
 - a. Advise the accused employee that if the alleged conduct had occurred, it would be a violation of the respective regulations and would subject him/her to serious discipline, up to and including, termination.
 - b. Advise the accused employee that any retaliation against the complaining party is strictly prohibited and may result in disciplinary action, up to and including, termination.
 - c. Advise the accused employee that a copy of the written complaint and the entire investigatory report with the ultimate determination will kept in a separate file by the Human Resources Department.
 - d. Even if the charges cannot be sustained, the investigator in conjunction with the department should take whatever action that he/she believes is necessary to reduce

the chance of the alleged misconduct from occurring again.

- e. Advise the complaining party that the investigator was unable to conclusively determine that the allegations occurred, however, a copy of the complaint and the disposition will be kept by the Human Resources Department and management will be alerted to the problem. The complaining party should be told of any corrective action that will be made to reduce the chance of the incident happening again. The complainant should be told to immediately report any further incidents or retaliation.

12. **If Evidence Supporting the Allegation(s) is Found:** If the accused employee admits to the misconduct, and/or other evidence in the investigation reveals that a regulation was violated, the investigator should do the following:

- a. If the accused employee admits to the misconduct, advise him or her that the conduct must stop immediately and take whatever corrective action is needed to ensure that it is discontinued.
- b. Work with the department to implement appropriate disciplinary action, taking into consideration that the City's regulation indicates that all forms of harassment/discrimination are considered serious misconduct.
- c. Inform the complaining employee of the results of the investigation and any corrective action. The employee should be informed that all steps are being taken to prevent any further incidences from occurring. However, any disciplinary action taken against the accused employee is confidential.
- d. The complaining employee should be instructed to report any further incidences of sexual harassment, discrimination or retaliation immediately.
- e. If the accused employee is not terminated, he/she needs to be informed that any further incidents or acts of retaliation will be grounds for further discipline up to an including termination.

13. **Documentation of Harassment:** Since personnel files can be purged, the Human Resources Department shall keep a separate file on all harassment and discrimination complaints that are filed or raised by or against any individual. Such complaints would be available for purposes of corroboration or to find potential patterns of misconduct that would tend to verify the veracity of any future complaints.