

# Equal Opportunity Policy

(Discrimination/Harassment Complaint Procedure)

**Scope: CITYWIDE**

## Policy Contact

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## Regulatory References

California Government Code § 12900 et seq.  
Title VII of the 1964 Civil Rights Act et al.

## Supersedes

- Policy Statement on Discrimination and Harassment  
**Effective: 2012**
- Policy Statement on Sexual Harassment  
**Effective: 2012**
- Policy Statement on Disability Discrimination  
**Effective: 2012**

Reviewed/Effective: **November 17, 2016**



**Charter Officer Review and Acknowledgement**  
**Equal Opportunity Policy**

**City Manager**

**City Attorney**

**City Clerk**

**City Treasurer**

## **POLICY STATEMENT**

The City of Sacramento is an equal opportunity employer and is committed to creating and maintaining a work environment that is free of all forms of discrimination and harassment, including sexual harassment, retaliation, and malicious false accusation. In furtherance of this commitment, the City will consider any report of harassment, discrimination, retaliation, or malicious false accusation to be deserving of investigation.

All employees, applicants, and independent contractors working with the City of Sacramento are to be treated with dignity and respect, and the City will not tolerate discrimination or harassment in the hiring, promotion, discharge, compensation, fringe benefits and other privileges of employment. Further, the City will not tolerate harassment or discrimination of its workers by others with whom the City has a business, service, or professional relationship.

The non-discrimination policies of the City may be more comprehensive than state or federal law. Conduct that violates these policies may not violate state or federal law but still could subject an employee to discipline. The City will take preventive and corrective action, up to and including termination, to address any of the following, but not exhaustive, list of behaviors:

- Failure to follow any provision of this policy and/or for behavior that violates this policy or the rights it is designed to protect.
- Making unfounded allegations of harassment or discrimination.
- Purposely impeding an investigation involving harassment or discrimination.
- Retaliation related to the reporting or investigation of harassment or discrimination.

The Director of Human Resources is the City Manager's designee to direct, coordinate, and supervise the activities associated with the City's Equal Opportunity Policy and the Discrimination/Harassment Complaint Procedure.

All new hires shall receive training on harassment and discrimination.

### **I. Policy Statement on Discrimination and Harassment**

The City prohibits all forms of discrimination, including any employment-related action by an employee that adversely affects an applicant or worker and is based on any protected classification identified in this policy, including age, ancestry, color, physical or mental disability, gender, gender expression, gender identity, genetic information, marital status, medical condition, military and veteran status, national origin, race, religious creed, sex, sexual orientation, and any other classification protected by law. The City's commitment to equal opportunity and non-discrimination extends to all job applicants, employees, and all aspects of employment, including but not limited to recruitment, hiring, training, assignment, promotion, compensation, transfer, layoff, reinstatement, benefits, education, and termination, as well as to the provision of reasonable accommodation to qualified persons with disabilities.

The City prohibits discrimination against an individual for having a driver's license obtained without proof of lawful presence in the United States. The City cannot require an employee to present a driver's license unless required by state or federal law or when otherwise

permitted by law (e.g., a driver's license is needed to perform an essential function of the job).

Harassment, including sexual harassment, is verbal or physical conduct that demeans or shows hostility or aversion toward an individual based upon that individual's protected class. It has the effect of interfering with an individual's work performance or creating a hostile or abusive work environment.

Conduct that may, under certain circumstances, constitute harassment, can include making derogatory comments, crude and offensive statements or remarks, making slurs or off-color jokes, stereotyping, engaging in threatening acts, displaying indecent gestures, pictures, cartoons, posters or material, making inappropriate physical contact, or using written material or City equipment and/or systems to transmit or receive offensive material, statements or pictures. Such conduct is contrary to City policy and to the City's commitment to a discrimination free work environment.

Retaliation is treating a person differently or engaging in acts of reprisal or intimidation against the person because he/she has engaged in protected activity, filed a charge of discrimination, participated in an investigation or opposed a discriminatory practice. Retaliation will not be tolerated.

## 2. Additional Policy Statement on Sexual Harassment

Sexual harassment is a form of harassment. Sexual harassment includes, but is not limited to, unwelcome sexual advances, requests for sexual favors or other verbal, visual or physical conduct of a sexual nature when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of employment, position or compensation.
- Submission to, or rejection of, such conduct is used as the basis for any employment decisions affecting the worker.
- Such conduct has the purpose or effect of substantially interfering with a worker's work performance or creating an intimidating, hostile, or offensive work environment.

Conduct which seems innocent or trivial to some people may constitute unlawful sexual harassment.

Some examples are:

- Physical: Assault, touching, leering, impeding movement;
- Visual: Derogatory or sexually explicit posters, photographs or drawings; written slurs, "bumper stickers" and the like;
- Verbal: Slurs, derogatory sexual comments, requests for sexual favors, invitations to engage in sexual activities, which need not be based on genuine sexual interest or desire.

### **3. Additional Policy Statement on Racial Harassment**

Title VII of the Civil Rights Act of 1964, as amended, prohibits discrimination in any aspect of employment on the basis of race. The City will not tolerate any racial harassment. Examples of racial harassment include derogatory remarks based on race, discriminatory behavior based on race, and any act which places the employee at a deliberate disadvantage based on race.

### **4. Additional Policy Statement on Disability Discrimination**

Discrimination on the basis of disability against any applicant or employee who is a qualified individual with a disability by a supervisor, management employee or coworker will not be tolerated. This policy applies to the job application process and all terms and conditions of employment including, but not limited to: recruitment, hiring, training, assignment, promotion, compensation, transfer, layoff reinstatement, benefits, education, termination and also in the provision of City programs, services and activities.

- a. Discrimination on the basis of disability includes, but is not limited to, the following:
  1. Limiting, segregating, or classifying a job applicant or employee in a way that may adversely affect opportunities or status because of the applicant's or employee's real, perceived, or history of disability.
  2. Participating in a contract which could subject an applicant or employee with a disability to discrimination.
  3. Using any standards, criteria or method of evaluation which could have the effect of discriminating on the basis of disability.
  4. Denying equal jobs or benefits because of a disability or the perception of a disability.
  5. Failing to make reasonable accommodations for known physical or mental limitations of an otherwise qualified individual unless it can be shown that the accommodation would impose an undue hardship or create a direct threat.
  6. Using selection criteria which exclude persons with disabilities unless the criteria is job-related and consistent with business necessity; and
  7. Failing to use employment tests in a manner that ensures that the test results accurately reflect the applicant's or employee's skills or aptitude for a particular job.

#### **Other Considerations**

Discrimination and discriminatory harassment do not include actions that are in accordance with established rules, principles, or general standards of professional decorum including but not limited to:

- Acts or omission of acts based solely upon bona fide occupational qualifications under Equal Employment Opportunity Commission and the Department of Fair Employment and Housing guidelines.
- Reasonable requests or demands by a supervisor that a worker improve his/her work quality or output, that the worker report to the job site on time, that the worker comply with City or department rules or regulations, or any other appropriate work-related communication between supervisor and worker.

## 5. Policy Guidance

### Responsibilities

This policy applies to all workers. All workers shall follow the intent of this policy in a manner that reflects professional work-place standards and the best interest of the City and its mission.

Employees are encouraged to promptly report any discriminatory, retaliatory or harassing conduct or known violations of this policy to a supervisor, whether that conduct is directed at that employee, or the employee has observed such conduct directed at another employee. Any employee who is not comfortable with reporting violations of this policy to his/her immediate supervisor may bypass the chain of command and make the report to a higher ranking supervisor or manager. Complaints may also be filed with the Department Head, the Human Resources Director, Civil Rights' staff, or Labor Relations' staff.

#### A. Individual Employees

- Any worker who believes that he/she has been discriminated against, harassed, subjected to retaliation, or who has observed harassment or discrimination, is encouraged to promptly report such conduct in accordance with the procedures set forth in this policy.
- Workers who believe they are experiencing discrimination, harassment or retaliation are encouraged to inform the individual that his/her behavior is unwelcome. However, this step is not required. If the worker feels uncomfortable, threatened or has difficulty expressing his/her concern, or if doing so does not resolve the concern, assistance should be sought from a supervisor or manager who is at least one level higher than the alleged transgressor. Human Resources may also assist.
- Any worker who observes others engaging in harassing or discriminating behavior towards another employee shall report the actions to a supervisor or manager, even if the person harassed does not complain.

#### B. Management and Supervisory Personnel

Each supervisor and manager shall:

- Continually monitor the work environment and strive to ensure that it is free from all types of unlawful discrimination, including harassment or retaliation.

- Take prompt, appropriate action within their work units to avoid and minimize the incidence of any form of discrimination, harassment or retaliation.
- Ensure their subordinates understand their responsibilities under this policy.
- Ensure workers who make complaints or who oppose any unlawful employment practices are protected from retaliation and that such matters are kept confidential to the extent possible.
- Notify Human Resources in writing of the circumstances surrounding any reported allegations or observed acts of discrimination, harassment or retaliation as soon as possible and no later than the next business day.
- Because of differences in individuals, supervisors and managers may find it difficult to recognize that their behavior or the behavior of others is discriminatory, harassing or retaliatory. Supervisors and managers shall be aware of the following considerations:
  - Behavior of supervisors and managers should represent the mission, vision, values and goals of the City and professional work-place standards.
  - False accusations of discrimination, harassment or retaliation can have negative effects on the careers of innocent workers.
  - Supervisors and managers must act promptly and responsibly in the prevention, reporting, and resolution of any form of discrimination, harassment or retaliation.

Nothing in this section shall be construed to prevent supervisors or managers from discharging supervisory or management responsibilities, such as determining work assignments, evaluating or counseling workers or issuing discipline, in a manner that is consistent with established procedures.

#### C. Human Resources

The Director of Human Resources or his/her designee is responsible for:

- Keeping records of all harassment complaints for a minimum of two years. No destruction should be made without compliance with the City's records destruction resolution.
- Taking all complaints seriously and coordinating an unbiased investigation of complaints.
- Tracking each investigation into each complaint to ensure that the investigation is concluded in a timely fashion, and that the complaining party receives an appropriate and timely response.

- Initiating appropriate disciplinary action based on the finding of an investigation undertaken in consultation with the Department Head and/or supervisor.
- Taking appropriate action to prevent retaliation against a complaining party.

**Further Considerations/Information**

To achieve the goals of this City policy, it is necessary that each worker understand the importance of the policy and his or her individual responsibility to contribute toward its maximum fulfillment. Workers are encouraged to report any and all incidents of harassment and are assured that there will not be any retaliation for having reported, in good faith, any incident of suspected harassment or discrimination.

Anyone having questions regarding the meaning of any of the terms or provisions of this policy should immediately contact the Director Human Resources.

**Training**

All new workers shall be provided with a copy of this policy as part of their orientation. The policy shall be reviewed with each new worker. The worker shall certify by signing the prescribed form that he/she has been advised of this policy, is aware of and understands its contents and agrees to abide by its provisions during his/her term of employment.

All workers shall receive information on the requirements of this policy and shall certify by signing the prescribed form that they have reviewed the policy, understand its contents and agree that they will continue to abide by its provisions.

## **Complaint Procedure**

Employees are encouraged to promptly report any discriminatory, retaliatory or harassing conduct or known violations of this policy to a supervisor, whether the conduct is directed at that employee or the employee has observed such conduct directed at another employee. Any employee who is not comfortable with reporting violations of this policy to his/her immediate supervisor may bypass the chain of command and make the report to a higher ranking supervisor or manager. Complaints may also be filed with the Department Head, the Human Resources Director, Civil Rights' staff, or Labor Relations' staff.

Anyone receiving a complaint of harassment, discrimination, or retaliation shall immediately document the complaint in writing and refer the complaint to the Human Resources Department, who will ensure that a timely, effective, thorough, and objective confidential investigation of the allegation(s) is undertaken. In addition, Human Resources will fully inform the employee of:

- His or her rights to complain and redress the harassment or discrimination;
- The worker's own obligations to secure his or her rights; and
- Any assistance available under City policies.

All complaints of discrimination or harassment shall be fully documented and promptly and thoroughly investigated. The participating or opposing employees should be protected against retaliation, and the complaint and related investigation should be kept confidential to the extent possible.

The assigned investigator has the full authority to investigate all aspects of the complaint. Investigative authority includes access to records and the cooperation of any workers involved. No influence will be used to suppress any complaint and no worker will be subject to retaliation or reprisal for filing a complaint, encouraging others to file a complaint or for offering testimony or evidence in any investigation.

During the pendency of any investigation, the supervisor/manager of the involved workers should, in cooperation with the Office of Civil Rights or Labor Relations, take prompt and reasonable steps to mitigate or eliminate any continuing abusive or hostile work environment.

Formal investigation of the complaint will be confidential to the extent possible and will include, but not be limited to, details of the specific incident, frequency, dates of occurrences, and names of any witnesses. Witnesses will be advised regarding the prohibition against retaliation, and that a disciplinary process, up to and including termination, may result if retaliation occurs.

If it is determined that harassment, discrimination, or retaliation has occurred, effective remedial action will be taken in a manner consistent with the circumstances. Discipline ranging from verbal or written warnings and up to and including termination may be administered.

After the investigation and findings have been concluded, the City will communicate the confidential finding to the complainant, alleged harasser, and any other concerned party. No provision of this policy shall be construed to prevent any worker from seeking legal redress outside the Department. Workers who believe they have been harassed or discriminated against are entitled to bring complaints of employment discrimination to federal, state and/or local agencies responsible for investigating such allegations. Specific time limitations apply to the filing of such charges. Employees are advised that proceeding with complaints under the provisions of this policy does not in any way affect those filing requirements. Additionally, if a worker thinks he or she has been harassed, discriminated against, or that he or she has been retaliated against for complaining, that person may file a complaint or obtain additional information from the State of California Department of Fair Employment and Housing at 800-884-1684 and/or U.S. Equal Employment Opportunity Commission, 800-669-4000.

### **Human Resources Information**

Office of the Director – 916-808-7173  
Historic City Hall, 915 I Street, First Floor, Sacramento, CA 95814

Civil Rights – 916-808-5270  
Historic City Hall, 915 I Street, First Floor, Sacramento, CA 95814

Labor Relations – 916-808-5541  
Historic City Hall, 915 I Street, First Floor, Sacramento, CA 95814

Human Resources Administration – 916-808-5731  
Historic City Hall, 915 I Street, First Floor, Sacramento, CA 95814

## **DISCRIMINATION/HARASSMENT**

### **Discrimination**

Treating, considering or making a distinction in favor of or against an employee, job applicant or group based on their actual or perceived protected status in relation to a decision or the terms and conditions of employment, that is reasonably likely to negatively affect prospects for hire, advancement, promotion or job performance. Discrimination includes treatment that deprives, or tends to deprive, the employee or job applicant of employment opportunities or employment status. It is also discrimination to fail to provide reasonable accommodation to an employee or applicant with a disability unless doing so creates an undue hardship or direct threat.

### **Harassment**

Discriminatory harassment, including sexual harassment, is verbal or physical conduct that demeans or shows hostility or aversion toward an individual based upon that individual's protected class. It has the effect of interfering with an individual's work performance or creating a hostile or abusive work environment.

### **Protected Group Member**

An individual who falls within a group that is identified in the City Equal Employment Opportunity Policy. Those groups include:

- Age - Any individual who has reached their 40<sup>th</sup> birthday.
- Ancestry – One's family or ethnic descent, lineage. A person's origin or background.
- Color – Based on skin pigmentation (lightness or darkness of skin) complexion, shade, or tone. May occur between persons of different races or ethnicities, or between persons of the same race or ethnicity.
- Gender - Refers to sex, gender identity, gender expression, and transgender.
- Gender Expression –A person's gender-related appearance or behavior, whether or not stereotypically associated with the person's sex at birth.
- Gender Identity – A person's identification as male, female, a gender different from the person's sex at birth, or transgender.
- Genetic Information - Any information with respect to genetic test of an individual or test of their family member or the manifestation of a disease or disorder in family members. Excludes information on sex or age.
- Marital Status - Either married or unmarried.
- Medical Condition - Cancer and genetic characteristics - Any health impairment related to or associated with a diagnosis, record or history of cancer or any scientifically or medically identifiable gene or chromosome that is known to be a cause of a disease or disorder or a statistically increased risk of developing a disease or disorder.

- Military and Veteran Status - A member or veteran of any US armed force or reserve or US or California National Guard.
- National Origin –Ancestors from a particular country, ethnicity or accent, or particular ethnic background, or marriage or association with someone of a particular nationality based on birthplace, surname or linguistic characteristic, including language use restrictions.
- Physical or Mental Disability - Any physiological disease, disorder or condition, including HIV and AIDS, cosmetic disfigurement or anatomical loss. Also includes any mental or psychological disorder or condition. Excludes any sexual behavior disorder, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorder resulting from the current illegal use of a controlled substance or other drug.
- Race –Ancestry or cultural characteristics associated with a certain group of people such as skin color, hair texture or style or certain facial features.
- Religious Creed - All aspects of religious belief, observation and practice. Includes dress and grooming practices. Very broadly defined covers traditional, organized religions and new, uncommon beliefs that are not part of a formal church or sect.
- Sex –Gender, but also includes pregnancy, childbirth, breastfeeding, and any related medical conditions, and gender identity and expression.
- Sexual Orientation –Heterosexuality, homosexuality and bisexuality.
- Transgender – A person whose gender identity differs from the person’s sex at birth. A transgender person may or may not have a gender expression that is different from the social expectations of the sex assigned at birth. A transgender person may or may not identify as “transsexual.”

## **SEXUAL HARASSMENT**

### **Sexual Harassment**

Any unsolicited and unwelcomed sexual advances, request for sexual favors, or other verbal, visual or physical conduct of a sexual nature by an employee, supervisor, or manager when:

- Submission to such conduct is made either explicitly or implicitly as a term or condition of employment.
- Submission or rejection of such conduct is used as a basis for employment decisions affecting the employee.
- Such conduct has the purpose or effect of unreasonably interfering with an employee’s work performance or creating an intimidating, hostile, or offensive working environment.

Sexual Harassment can occur in Verbal, Physical or Visual Forms. While it is not possible to list all circumstances that may constitute sexual harassment, the following are some samples of conduct and offensive behavior, which, if unsolicited and unwelcomed, may constitute sexual harassment:

- Sexually suggestive jokes, propositions or comments about a person's body
- Physical contact such as unwelcomed or unsolicited touching, patting, pinching, hugging, grabbing, cornering, or brushing against another person's body, assaults or threats of assault
- Explicit or implicit statements that suggest an employee's lack of submission to another's sexual advances will effect a term or condition of employment
- Leering, sexual looks or gestures with hands or through body movement
- Sexually suggestive visual displays, objects including electronic media or pictures

## **DISABILITY DISCRIMINATION**

### **Direct Threat**

Is a significant risk of substantial harm to the health or safety of the employee or others, which cannot be eliminated or reduced by a reasonable accommodation.

### **Disability**

A person is recognized as disabled if he/she:

- has a physical or mental impairment that limits (i.e., it makes the achievement of the major life activity difficult) one or more major life activities (construed broadly to include physical, mental, social activities and working)
- has a history of such an impairment known to the employer; or is incorrectly regarded or treated as having or having had such an impairment
- is regarded or treated as having or having had such an impairment that presently has no disabling effects, but may become a qualifying impairment in the future

### **Perceived Disability**

Means being regarded as, perceived as, or treated as having a physical or mental impairment.

### **Qualified Individual with a Disability**

Is an applicant or employee who has the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desired, and who, with or without reasonable accommodation, can perform the essential functions of such position.

### **Reasonable Accommodation**

Is any change in the work environment or in the way things are customarily done that enables an individual with a disability to perform the essential functions of a job, enjoy an equal

opportunity or that accommodates an individual's religious beliefs. There are four types of reasonable accommodations:

- Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position that the applicant desires
- Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position
- Modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities
- Modifications or adjustments that allow an individual to exercise a "sincerely held" religious belief or practice

### **Undue Hardship**

When a reasonable accommodation causes significant difficulty or expense. This determination focuses on the resources and circumstances of the particular employer in relationship to the cost or difficulty of providing a specific accommodation.

## **ADDITIONAL DEFINITIONS**

### **Malicious False Accusation**

Malicious means to knowingly lie about someone or something with the intent to cause damage to them. To accuse means to make a charge of wrongdoing against another. An accusation that is contrary to fact or truth is a false accusation.

### **Retaliation**

Retaliation is treating a person differently or engaging in acts of reprisal or intimidation against the person because he/she has engaged in protected activity, filed a charge of discrimination, participated in an investigation or opposed a discriminatory practice. Retaliation will not be tolerated.