

## **Section 16. Harassment and Discrimination Prevention Policies**

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The City of Oakley strives to provide a professional work environment where all employees can work together comfortably and productively, free from harassment, discrimination, and retaliation on the basis of one's membership in a protected class. The City is committed to providing a workplace free of sexual harassment. While the legal standards and consequences of harassment, discrimination, and retaliation are still evolving, the City's policy has been and remains more all-encompassing than the law requires. The City's policy rests on the fundamental precept that each individual treat all others with respect, dignity, and professionalism. Deviation from that fundamental precept will not be tolerated. Whether or not the individual means to offend or believed her/his comments or conduct was welcome is not significant. The City's workplace is not limited to the City's facilities, but may also include client and vendor facilities, as well as anywhere a City business-related function is taking place.

The City is responsible for taking all reasonable steps to prevent harassment, discrimination and retaliation. It is also the policy of the City to provide a procedure for investigating alleged harassment, discrimination and/or retaliation in violation of this Policy. Any retaliation against a person for filing a complaint or participating in the complaint investigation or resolution process is prohibited. Individuals found to be retaliating in violation of this Policy will be subject to appropriate disciplinary action.

Investigation guidelines for the informal and formal process for resolving sexual harassment/discrimination complaints are located in Appendix J of this Manual.

The good faith actions of supervisors intended to provide employee discipline, such as deficiency notices, performance evaluations, oral warnings, reprimands, and other supervisory actions intended to promote positive performance do not constitute harassment.

## **COVERED INDIVIDUALS AND SCOPE OF POLICY**

This Policy protects employees regardless of rank or title, elected or appointed officials, applicants, volunteers, and interns (including unpaid interns). Supervisors, co-workers and third-parties are prohibited from engaging in harassment, retaliation, or any other behavior which violates this Policy. Employees have an obligation to comply with this Harassment and Discrimination policy. Failure to do so may result in disciplinary action up to and including termination.

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

## **DEFINITIONS**

### **Protected Classification**

This Policy prohibits harassment and discrimination based on an individual's protected classification. "Protected classification" includes: race/color, national origin/ancestry, sex (including gender, gender identity, and gender expression), religious creed (including all aspects of religious belief, observance, and practice, including religious dress and grooming), age, mental or physical disability, veteran status, medical condition, marital status or status as a registered domestic partner, sexual orientation, citizenship status (including a driver's license issued to undocumented persons), pregnancy (including,

medical conditions related to pregnancy or childbirth, and breastfeeding, or medical conditions related to breastfeeding), and any other consideration made unlawful by federal, state, or local law.

### **Discrimination**

This Policy prohibits treating covered individuals differently 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.

### **Harassment**

Prohibited harassment includes, but is not limited to, unwelcome conduct undertaken because of a covered individual's actual or perceived protected classification, such as:

Verbal harassment - epithets, derogatory comments, or slurs.

Examples: Speech such as name calling, belittling, epithets, derogatory comments or slurs, sexually explicit or degrading words to describe an individual, race, ethnicity or sexually-oriented jokes and stories, comments about an employee's anatomy and/or dress, including physical features, gender identification, sexually oriented noises or remarks, questions about a person's sexual practices, use of patronizing terms or remarks, verbal abuse, graphic verbal commentaries about the body.

Physical harassment - assault, impeding or blocking movement, or any physical interference with normal work or movement, when directed at an individual.

Examples: Assault, touching, pinching, patting, grabbing, brushing against, or poking another employee's body, hazing, or initiation that involves a sexual component, requiring

an employee to wear sexually suggestive clothing, or making explicit or implied job threats or promises in return for submission to physical acts.

Visual harassment - derogatory posters, cartoons, or drawings.

Examples: Displaying derogatory pictures, writings, cartoons, emails, drawings, or objects related to a protected classifications, obscene letters or invitations, staring at an employee's anatomy, leering, sexually oriented gestures, mooning, unwanted love letters or notes.

Sexual favors - unwanted sexual advances which condition of an employment benefit upon an exchange of sexual favors.

Examples: Continued requests for dates, any threat of demotion, termination, etc. If requested, sexual favors are not given, making or threatening reprisals after a negative response to sexual advances, propositioning an individual.

While it is impossible to define every action or all words that could be interpreted as harassment, the examples listed above, along with the state definition of harassment, are not meant to be a complete list of objectionable behavior nor do they always constitute harassment. Harassment on the basis of sex need not be motivated by sexual desire in order to constitute unlawful harassment.

### **Quid Pro Quo Harassment**

Under state and federal law, unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's appointment
2. Submission to or rejection of such conduct by an individual is used as the basis for

employment decisions affecting such individuals

3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating a intimidating, hostile, or offensive working environment

### **Retaliation**

Retaliation occurs when adverse conduct is taken against a covered individual because of the individual's protected activity as defined in this Policy. "Adverse conduct" may include but is not limited to: disciplinary action, counseling, taking sides because an individual has reported harassment or discrimination; spreading rumors about a complainant or about someone who supports or assists the complainant; shunning or avoiding an individual who reports harassment or discrimination; or making real or implied threats of intimidation to prevent or deter an individual from reporting harassment or discrimination.

### **GUIDELINES FOR IDENTIFYING HARASSMENT**

Harassment includes any conduct which would be unwelcome or unwanted to an individual of the recipient's same protected classification. The following guidelines to determine if conduct is unwelcome or unwanted should be followed:

1. It is no defense that the recipient "appears" to have consented to the conduct at issue by failing to protest about the conduct. 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.

2. 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. Small, isolated incidents might be tolerated up to a point. The fact that no one has yet complained does not preclude someone from complaining if the conduct is repeated in the future.

3. Even visual, verbal, or physical conduct between two people who appear to welcome the conduct can constitute harassment of a third person who witnesses the conduct or learns about the conduct later. Conduct can constitute harassment even if it is not explicitly or specifically directed at a particular individual.

4. Conduct can constitute harassment even if the individual 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 would find it offensive (e.g., gifts, over-attention, endearing nicknames, hugs).

## **COMPLAINT PROCEDURE**

### **Report and Investigation of Complaint**

If an individual believes that any City employee, vendor, client or other business contact has harassed her/him, then the individual should IMMEDIATELY report the incident to her/his supervisor or Department Director, orally or in writing. If the immediate supervisor or Department Director is involved in the reported conduct or, for some other reason, the individual feels uncomfortable about reporting to that supervisor or Department Director, the individual should then report directly to the City Manager. If the individual feels uncomfortable about reporting to the City Manager, then the individual should report directly to the Human Resources Division. If the individual feels uncomfortable about

reporting to the Human Resources Division then the individual should report directly to City Attorney.

Any employee, who sees or learns of conduct that may constitute harassment under this policy, shall immediately advise her/his Department Director of the incident and actions taken. The Department Director shall immediately report the incident and actions taken to the City Manager.

Upon receiving notification of a harassment complaint, the City Manager will complete and/or delegate the following steps. If the City Manager is accused, or a witness to the events at issue, an individual with higher authority will complete and/or delegate the following steps.

1. Authorize and supervise the investigation of the complaint and/or investigate the complaint. The investigation will usually include interviews with: 1) the complainant; 2) the accused; and 3) other persons who have relevant knowledge concerning the allegations in the complaint
2. Review the factual information gathered through the investigation to determine whether the alleged conduct violates the Policy 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.
3. Report a summary of the determination as to whether this Policy has been violated to appropriate persons. If discipline or sanctions are imposed, the level of discipline or sanctions will not be communicated to the complainant.
4. 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.
5. Take reasonable steps to protect the complainant from further harassment, discrimination or

retaliation.

## **PROACTIVE APPROACH**

The City takes a proactive approach to potential violations of this Policy and will conduct an investigation if its supervisory or management employees become aware that harassment, discrimination, or retaliation may be occurring, regardless of whether the recipient or third party reports a potential violation.

### **No Retaliation**

The City will not retaliate, nor will it tolerate retaliation, against individuals who complain in good faith about harassment in the workplace. The City will investigate any such report and will take whatever corrective action is deemed necessary, including disciplining and dismissing from employment any individual who is found to have violated these prohibitions against harassment and/or retaliation. All employees and supervisors have a duty to cooperate in the City's investigation of alleged harassment and/or alleged retaliation. Failure to cooperate or deliberately providing false information during an investigation shall be grounds for disciplinary action, including termination.

### **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 posters that are located on City bulletin boards for office locations and telephone numbers.



## **Confidentiality**

Every 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 employee who is interviewed during the course of an investigation is prohibited from attempting to influence any potential witness while the investigation is ongoing. An employee may discuss his or her interview with a designated representative. 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.

## **Responsibilities**

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

1. Treating all individuals in the workplace or on worksites with respect and consideration.
2. Modeling behavior that conforms to this Policy.
3. Participating in periodic training.
4. Cooperating with the City's investigations by responding fully and truthfully to all questions posed during the investigation.
5. Taking no actions to influence any potential witness while the investigation is ongoing.
6. Reporting any act he or she believes in good faith constitutes harassment, discrimination, or retaliation as defined in this Policy, to his or her immediate supervisor, or department head, or City Manager

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

for:

1. Informing employees of this Policy.
2. Taking all steps necessary to prevent harassment, discrimination and, retaliation from occurring, including monitoring the work environment and taking immediate appropriate action to stop potential violations, such as removing inappropriate pictures or correcting inappropriate language.
3. Following up those have complained to ensure that the behavior has stopped and that there are no reprisals.
4. Informing those who complain of harassment or discrimination of his or her option to contact the EEOC or DFEH regarding alleged Policy violations.
5. Assisting, advising, or consulting with employees and the City Manager regarding this Policy.
6. Assisting in the investigation of complaints involving employee(s) in their departments and, when appropriate, if the complaint is substantiated, recommending appropriate corrective or disciplinary action accordance with these Policies, up to and including termination.
7. Implementing appropriate disciplinary and remedial actions.
8. Reporting potential violations of this Policy of which he or she becomes aware to the City Manager, regardless of whether a complaint has been submitted.
9. Participating in periodic training and scheduling employees for training.

*City of Oakley*

***HARASSMENT AND DISCRIMINATION  
PREVENTION POLICIES***

**ACKNOWLEDGEMENT OF RECEIPT**

I, \_\_\_\_\_, acknowledge receipt of the Harassment Policy and two hours of harassment prevention training on September 29, 2016.

I understand that I am responsible for reading, understanding and complying with the policy and standards of conduct referenced and contained in this document. I further understand that if I have questions regarding the policy or the issues addressed in the workshop I can discuss these with my supervisor or the Human Resource Division.

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Printed Name**