

 City of Santa Ana Administrative Policies and Procedures	 City Manager's Authorization	
	Section Human Resources Department	
Subject POLICY AGAINST HARASSMENT, DISCRIMINATION, AND RETALIATION	Date May 2022	Number

I. PURPOSE

The purpose of this policy is to prohibit and prevent harassment, discrimination, and retaliation in all employment related matters based on a protected class as well as whistleblowing and/or union activities. Supervisors, co-workers, and third-parties with whom employees interact are prohibited from engaging in the proscribed conduct in this Policy.

Applicants, officers, officials, employees and contractors are protected from all forms of harassment, discrimination, or intimidation because of a protected class; perceived class; or, for associating with someone who is perceived to have a protected class under federal and/or state law.

This policy re-affirms the strong commitment of the City of Santa Ana ("City") to prohibit and prevent harassment, discrimination, and retaliation in employment with the City; defines harassment, discrimination, and retaliation; and sets forth a procedure for investigating and resolving complaints of harassment, discrimination, and retaliation.

II. POLICY

The City of Santa Ana has a zero tolerance policy for any conduct that violates this Policy or the spirit thereof. Conduct need not rise to the level of a violation of law to violate this Policy. An isolated derogatory comment, joke, racial slur, sexual innuendo, etc. may constitute conduct that violates this Policy. In addition, a person may violate this Policy even if he/she did not intend to harass, discriminate, or retaliate. It is not one's intentions but one's actual behavior and the suitability thereof analyzed in a complaint. If the City determines the conduct is reasonably considered inappropriate for the workplace, it may violate this Policy and provide grounds for discipline.

Harassment of, or discrimination against an applicant for employment with the City, an employee of the City, a customer, vendor or contractor of the City, or a volunteer or intern of the City by any City employee, elected official or appointee, volunteer or intern, or third party (non-employee) on the basis of any protected class or activity as set forth in Section III, herein, will not be tolerated.

This policy applies to all terms and conditions of employment, including, but not limited to, hiring; placement; promotion; job assignments; work schedule; disciplinary action; layoff; recall; transfer; leave of absence; and compensation and training.

Disciplinary action up to and including termination of employment will be instituted for any act of harassment, discrimination, or retaliation, including, but not limited to, the behaviors described in the definitions of harassment, discrimination, and retaliation set forth herein below.

The City prohibits any retaliation against a person for making a harassment or discrimination complaint, participating in an investigation of a harassment or discrimination complaint, or providing support to a complainant or victim of harassment or discrimination. Any employee found to be retaliating against another employee shall be subject to disciplinary action up to and including termination of employment.

III. DEFINITIONS

A. Protected classes include the following: race and traits historically associated with race including, but not limited to, hair texture and protective hairstyles such as braids, locks, and twists; color; national origin; religion; sex (including pregnancy, childbirth, breastfeeding and related medical conditions); ancestry; citizenship status; familial status; source of income; disability (including physical and/or mental, HIV/AIDS, and cancer); medical condition; marital status; age; political affiliation; sexual orientation (including homosexuality, bisexuality, or heterosexuality); gender; gender identity; gender expression; transgender; genetic characteristics (including genetic testing of the individual or the individual's family, and manifestation of a disease or disorder in the individual's family members); use of leaves protected under the law; and military or veteran status.

B. Protected Activities

1.) Whistleblowing is when an employee discloses information to a government or law enforcement agency where the employee has reasonable cause to believe that the information discloses:

- A violation of a federal or state statute;
- A violation or noncompliance with a federal or state rule or regulation; or
- With reference to employee safety or health, unsafe working conditions, or work practices in the employee's employment or place of employment.

2.) Union Activities are the forming, joining/refusing to join, and participation in employee organizations.

The City of Santa Ana and employee organizations shall not interfere with, intimidate, restrain, coerce, harass, or discriminate against an employee because of the exercise of his/her rights under the Meyers-Milias Brown Act (MMBA). In addition, the City shall not impose or threaten to impose reprisals on employees because of their exercise of rights under the MMBA.

- C. Discrimination is the practice of prejudicial treatment because of one's actual or perceived protected class or for associating with someone of an actual or perceived protected classification.
- D. Harassment refers to behavior, which is not welcome; objectively offensive; debilitates morale; and/or, has the purpose or effect of interfering with an employee's work performance or creating an intimidating, hostile, or offensive work environment.

Harassment may take on many forms, including, but not limited to the following:

- A. Verbal - epithets, derogatory comments, jokes, slurs, rumors, innuendos, suggestive sounds, stories or remarks about a person's clothing, body, or activities;
- B. Visual - posters, cartoons, gestures, written and electronic materials which depict or discuss people based on a protected status; and/or
- C. Physical - pinching, grabbing, patting, leering, staring, touching, blocking movement, or interfering with a person's normal work

Sexual Harassment is a specific type of gender harassment, which may take on any of the forms, described above and may include a conditional element as follows:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an employee's employment, or
- Submission to or rejection of such conduct by an employee is used as the basis for employment decisions affecting the employee.

It is not a defense to a complaint of harassment based on sex that the alleged harassing conduct was not motivated by sexual desire. In addition, an individual alleging sexual harassment is not required to sustain a loss of tangible job benefits in order to establish harassment.

- E. Retaliation is an adverse action taken by an employer or employee against a reporting party; someone who associates with a reporting party; an individual who participates in the complaint or investigation process; and/or an employee who has exercised a right or attempted to exercise a right provided by law.

IV. COMPLAINT PROCEDURE:

- A. An employee, intern, volunteer, contractor or job applicant who believes he/she has been subjected to harassment, discrimination, or retaliation on the basis of a protected class or protected activity as outlined in Section III, may make a complaint orally or in writing to any of the following persons:
1. His/her immediate supervisor;
 2. Any supervisor or manager within or outside of his/her Department;
 3. Any Department Head;
 4. City of Santa Ana's Equal Employment Opportunity ("EEO") Administrator; or
 5. Employee Relations Manager.
- B. Any supervisor, manager, or Department Head who receives a complaint of harassment, discrimination, or retaliation shall notify the City of Santa Ana's EEO Administrator, Employee Relations Manager, and/or Executive Director of Human Resources immediately.
- C. Upon receiving notification of a harassment, discrimination, or retaliation complaint, the Executive Director of Human Resources or designee(s) (EEO Administrator and/or Employee Relations Manager) shall :
1. Determine if the complaint falls within the parameters of this Policy;
 2. Take reasonable steps to protect the complainant/victim(s) from further harassment, discrimination, and/or retaliation as a result of communicating the complaint;
 3. Authorize and supervise an investigation of the complaint and/or investigate the complaint. The investigation may include interviews with: 1) the complainant; 2) the accused harasser or harassers; and 3) any other persons who may have relevant knowledge or information concerning the complaint.
 4. Review the information gathered through the investigation and determine whether the alleged conduct constitutes a violation of this policy. In making this determination, consideration shall be given to all information obtained, the totality of the circumstances, and the nature of the conduct that is the basis for the complaint.
 5. Assess whether or not the conduct is in violation of City Policy;
 6. Report the results of the investigation and the determination as to whether conduct in violation of this policy occurred to the appropriate persons, including potentially the complainant and the accused harasser(s).
 7. If appropriate, ensure appropriate remedial or disciplinary action, or recommend the appropriate remedial or disciplinary action to the harasser's supervisor.
 8. Provide a timely response and closure.

Investigators will be impartial, qualified, and have full authority to investigate all aspects of the complaint including details of the specific incident(s), frequency, date(s) of occurrence(s), and name(s) of witness(es). This authority subsumes access to records and the cooperation of any employees involved. During this process, all parties will be accorded appropriate due process and conclusions will be based on the evidence collected.

Employees, including the alleged complainant/victim, are required to fully cooperate in the investigation by responding truthfully and fully to all questions posed. The City will comply with the Public Safety Officers' Procedural Bill of Rights Act when applicable. In addition, an individual who is interviewed during the course of an investigation is prohibited from discussing the substance of the investigatory interview, except as otherwise directed by a supervisor or the investigator, due to legitimate business reasons such as preserving the integrity of the investigation. Any individual who discusses the content of an investigatory interview in violation of a direct order will be subject to discipline up to and including termination of employment.

No influence will be used to suppress any complaint, and no employee will be subject to retaliation for filing a complaint and/or for cooperating as a witness. Individuals who file false accusations that are deliberate, malicious, and/or intentional will be subject to disciplinary action up to and including termination of employment.

If a complaint is not sustained, the alleged offending party(ies) will be provided with a Notice of Determination exonerating him/her/them.

- D. 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), or both. These administrative agencies offer legal remedies and a complaint process. Employees can contact the nearest offices listed in the government section of the telephone book or employees can check the posters that are located on employer bulletin boards for office locations and telephone numbers. Employees can also contact these agencies at the following web addresses: www.eeoc.gov and www.dfeh.ca.gov.

V. CONFIDENTIALITY

When the City receives allegations of misconduct under this Policy, confidentiality will be maintained to the extent possible. Complete confidentiality cannot occur, however, due to the need to fully investigate and the duty to take effective remedial action. Any and all information and materials related to the complaints shall not be disclosed by the employer except where such disclosure is necessary for the purposes of investigating the complaint, taking remedial or disciplinary action, defending itself in adversarial proceedings, or as required by force of law.

Confidential assistance to employees for a wide range of problems, including workplace harassment, is available from the Employee Assistance Program; more information on this program is available on the Human Resources Department intranet site. You may also contact the City's current provider directly at www.reachline.com (password: reach) or by phone at (800) 273-5273.

VI. FALSE COMPLAINTS

Knowingly or intentionally making a false complaint of harassment, discrimination, or retaliation or providing false information regarding a complaint is, in itself, a form of harassment and will be treated as such. However, no disciplinary action will be taken against an employee for making a complaint of harassment in good faith, whether or not the complaint is substantiated.

An employee knowingly or intentionally make a false complaint of harassment, discrimination, or retaliation or providing false information regarding a complaint will be subject to discipline up to and including termination of employment.

VII. RESPONSIBILITY

This Policy applies to all City personnel including supervisory and non-supervisory employees. The City has an obligation to investigate instances of possible harassment, discrimination, or retaliation when brought to its attention. All employees share responsibility for creating a harassment, discrimination, and retaliation-free workplace and should immediately report instances of possible harassment, discrimination, or retaliation either verbally or in writing, to their immediate supervisor; any supervisor or manager within or outside of his/her department; any Department Head; the City of Santa Ana's Equal Employment Opportunity ("EEO") Administrator; or Employee Relations Manager. Supervisors and managers, by virtue of their authority, carry a greater responsibility for maintaining a work environment free of harassment, discrimination, and retaliation. Supervisors and managers are also responsible for taking prompt, appropriate action within their work units to avoid and minimize such incidents. The words harassment, discrimination, and retaliation are not required to trigger the duty to act. It is the involved behavior as described above that triggers the duty to act.

Any supervisor, manager, or Department Head who receives a complaint must immediately report it to the City of Santa Ana's EEO Administrator, Employee Relations Manager, and/or Executive Director of Human Resources. Failure to do so may, in and of itself, be grounds for disciplinary action up to and including termination of employment.

VIII. DISSEMINATION OF POLICY

All existing employees, supervisors, managers, Department Heads, and elected officials shall be directed to review this policy. All new employees shall receive a copy of this policy when they are hired. Upon receipt of this policy, all current and new employees shall complete and submit an *Acknowledgment of Receipt of the City's Policy Against Harassment, Discrimination, and Retaliation* to the Human Resources Department.

Attachments: Acknowledgment Form
 Inappropriate Conduct Complaint Form



ACKNOWLEDGMENT OF RECEIPT OF THE CITY'S

POLICY AGAINST HARASSMENT, DISCRIMINATION, AND RETALIATION

My signature below certifies that I have received, read, and understood the City's Policy Against Harassment, Discrimination, and Retaliation. I comprehend that, if needed, it is my responsibility to seek clarification regarding this policy from the Human Resources Department. I also understand that it is my responsibility to be familiar with and abide by the provisions in this policy and violation of this policy may result in disciplinary action up to and including termination of employment.

Printed Name

Signature

Date

Department

Employee ID Number



City of Santa Ana

HUMAN RESOURCES DEPARTMENT

INAPPROPRIATE CONDUCT COMPLAINT REPORT

REPORTING PARTY

Name: _____

Today's Date: _____

Job Title: _____

Phone #: _____

Department: _____

Email: _____

Supervisor Name: _____

Supvr. Phone #: _____

Did you, complainant and/or alleged victim notify a supervisor/manager prior to today?

_____ Yes _____ No _____ Unknown

Date(s) and time(s) on which incident(s) occurred:

Alleged Victim(s) (if not the same as Reporting Party)

Victim: _____ Job Title: _____

Phone #: _____ Email: _____

Victim: _____ Job Title: _____

Phone #: _____ Email: _____

Information on individual(s) whose behavior is in question:

Offending Party: _____ Job Title: _____

Phone #: _____ Email: _____

Offending Party: _____ Job Title: _____

Phone #: _____ Email: _____

Please list any and all witnesses to the incident (if none, please write "N/A"):

Name: _____ Phone number: _____

Name: _____ Phone number: _____

Name: _____ Phone number: _____

Please explain, with as much detail as possible, the nature of the incident(s). This would include actions by employees, contractors, vendors, or anyone else who does business with the City. Be sure to include what happened, who was involved and their association to the City, what was communicated specifically and by whom, if there was retaliation involved, and why you believe the behavior was inappropriate. You may attach additional notes if needed.

PREVIOUS COMPLAINTS, GRIEVANCES, OR CHARGES

1. Have you made a previous complaint on this subject to a supervisor, manager, or a member of the Human Resources Department?

Yes: _____ No: _____

If yes, to whom?

Date of previous complaint (if applicable):

Status of previous complaint (if applicable):

2. Outside of the City, have you filed an administrative charge on this subject with a State or Federal government agency?

Yes: _____ No: _____

If yes, which government agency?

Date of filing: _____ Status (if applicable): _____

B. OTHER INFORMATION

Please list any additional relevant, useful information and / or comments for Human Resources to consider:

C. CERTIFICATION

I certify that the information supplied is true and correct to the best of my knowledge. I further understand if I knowingly provide false or fraudulent information in a complaint, I may be subject to disciplinary action up to and including termination of employment.

_____	_____	_____
Name	Signature	Date

FOR HR USE ONLY:

Complaint received by: _____ on the following date: _____

Review / Recommendations:

Name

Signature

Date

Comments:

Name

Signature

Date