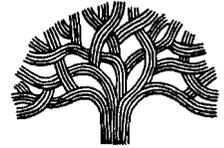


CITY OF OAKLAND



ADMINISTRATIVE INSTRUCTION

SUBJECT	Equal Employment Opportunity/Anti-Discrimination/Non-Harassment Policy and Complaint Procedure	NUMBER	71
REFERENCE		EFFECTIVE	January 1, 2008
SUPERSEDE	AI 70, AI 71 dated 1/1/03, AI 115, AI 116, AI 126, AI 71 dated 4/1/04		

I. PURPOSE

The purpose of this Administrative Instruction is: (1) to outline the City's policy, standards, requirements, complaint procedures and disciplinary guidelines regarding inappropriate and/or unprofessional conduct that could potentially rise to the level of discrimination and/or harassment; and (2) set out complaint and investigation procedures for all employees and job applicants who feel they have been subjected to inappropriate workplace conduct based on their protected status.

II. POLICY

A. Equal Employment Opportunity - Right to Workplace Free of Discriminatory and Harassing Conduct Based on Protected Status

The City of Oakland is committed to equal employment opportunity and to ensuring that all employees have a work environment that is free of conduct that could be considered discriminatory or harassing based on an employee's protected status (i.e., race, color, religion/religious creed, sex/gender, pregnancy, marital status, age, national origin/ancestry, physical and/or mental disability, medical condition, sexual orientation, gender identity, military or veteran status, or status in any other group protected by federal, state or local law.) The City will not allow anyone, including any supervisor, co-worker, vendor, client or customer, to unlawfully harass or discriminate against City employees or applicants for employment. The City will take prompt and effective remedial action upon discovery of such conduct.

B. Who and What the Policy Covers

This Policy applies to all employees and job applicants and covers all terms and conditions of employment including but not limited to recruitment, hiring, placement, promotion, termination, discipline, layoff, recall, transfer, leaves of absence, position classification, training, compensation and benefits. Harassment is also prohibited against any person providing services to or working with the City pursuant to a contract. This Policy applies to all City locations, as well as

to all employer-sponsored activities, such as training, social or other events, whether held at the City or at other locations.

C. Prohibited Types of Behavior

1. Unlawful discrimination, harassment or other inappropriate conduct based on protected status

The City of Oakland strictly prohibits any form of unlawful employment discrimination and/or harassment or other inappropriate conduct based on race, color, religion/religious creed, sex/gender, pregnancy, marital status, age, national origin/ancestry, physical and/or mental disability, medical condition, sexual orientation, gender identity, military or veteran status, or status in any other group protected by federal, state or local law. The City will not tolerate any harassing or discriminatory conduct on these bases or any inappropriate conduct that affects tangible job benefits, that interferes unreasonably with an individual's work performance, or that creates an intimidating, hostile, or offensive working environment. The City does not allow anyone, including any supervisor, co-worker, vendor, client or customer, to unlawfully harass or discriminate against City employees or applicants for employment. Harassment is also prohibited against any person providing services to or working with the City pursuant to a contract. The City will take prompt and effective remedial action upon discovery of such conduct.

2. Discrimination or harassment based on a perception or belief that a person is a member of protected group or a person's association with a protected group

The City prohibits discrimination and/or harassment based on a perception that a person has any of the above characteristics, or that the person is associated with a person who has, or is perceived to have, any of the above characteristics. Harassment and/or discrimination based on these characteristics (whether actual, perceived or by association) is prohibited.

3. Retaliation against a person based on his/her expressed concern about unlawful discrimination or harassment or for having filed a complaint or participated in an investigation of possible discrimination and/or harassment

The City prohibits retaliation against anyone who has expressed a good faith concern about unlawful discrimination or harassment or who has filed a complaint or participated in an investigation of any such complaint. The City will not tolerate retaliatory conduct on these bases.

4. Inappropriate, unprofessional, disrespectful conduct based on protected status that may not constitute unlawful workplace harassment.

The City of Oakland prohibits not only unlawful harassment, but also any conduct that is unprofessional, disrespectful or inappropriate based on a protected status/characteristic, whether or not it rises to the level of legally prohibited

harassment. It is the City's goal to prevent the occurrence of harassing activity and to stop harassing conduct when it occurs and before it becomes a violation of law. This Policy therefore covers activities that are inappropriate in a work environment, whether or not they are sufficiently severe, persistent or pervasive to constitute unlawful harassment.

Additionally, the City wishes to note that behavior can be inappropriate but not constitute workplace harassment. Inappropriate behavior is only workplace harassment when it is based on membership in a protected category (e.g., race, sex/gender, etc.) For example, even though employees are often offended when a manager yells at them, yelling itself is not workplace harassment unless the yelling can be linked to a protected status (e.g., yelling racist names, only yelling at women, etc.) While such behavior may not violate this Policy, as it is not based on a protected characteristic, it is the responsibility of all City employees to behave in a professional and respectful manner so as to create a comfortable work environment for everyone.

5. Policy will be interpreted in accordance with federal and state law

This Policy will be interpreted in a manner that is consistent with federal and state laws regarding harassment, such as Title VII of the Civil Rights Act of 1964, California's Fair Employment and Housing Act, and the Americans with Disabilities Act. A determination as to whether a violation of this Policy has occurred will be based on the context in which the alleged conduct occurs.

III. DEFINITIONS AND APPLICATIONS

A. Harassing Conduct

Prohibited behavior may include, but is not limited to, verbal, visual, physical or any other type of conduct that denigrates, demeans or shows hostility or aversion towards an employee because of his or her membership in a protected group. Some examples of the types of conduct that could violate City policy include, but are not limited to, the following:

1. **Physical conduct:** Unwanted touching, leering, prolonged staring, assault, violence, impeding or blocking movement, or any physical interference with normal work or movement, as well as defacement of a person's property;
2. **Verbal conduct:** Epithets, slurs, derogatory or demeaning comments, even if not directed at a specific person or persons, innuendo, jokes or ridicule, hostile or more severe treatment based on a person's protected characteristic or status, threats of violence or comments indicating stereotyping;
3. **Visual conduct:** Obscene, derogatory or demeaning posters, photos, cartoons, e-mail, screen savers or drawings; and

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4. **Other conduct:** Hostility, harsh or less favorable treatment, or selection of assignments based on a person's protected status.

B. Sexual/Gender Based Discrimination or Harassment

The City of Oakland incorporates in this Policy the Equal Employment Opportunity Commission's definitions of "sexual harassment" as they have been interpreted and supplemented by federal and state case law:

1. **Hostile Work Environment:** Unwelcome sexual advances, or visual, verbal, physical or other conduct of a sexual or gender-based nature, or which creates an intimidating, hostile or offensive work environment, or which substantially interferes with an individual's work performance based on gender;
2. **Quid Pro Quo Harassment:** Unwelcome sexual advances, requests for sexual favors, and/or other verbal or physical conduct of a sexual nature that is made a term or condition of an individual's employment;
3. **Unlawful Sexual Favoritism:** An employee in a work group who is not involved in a sexual relationship with a supervisor is denied employment opportunities by a supervisor who grants greater opportunities to an employee who is involved in a sexual relationship with that supervisor; and
4. **Examples:** Inappropriate conduct based on sex or gender includes, but is not limited to:
 - a) Any display of sexually explicit pictures, greeting cards, articles, books, images, photos, cartoons, e-mails, calendars, screen savers or other similar material;
 - b) Comments reflecting gender-based stereotypes;
 - c) Harsh or less favorable treatment based on gender;
 - d) Off-color language or jokes of a sexual nature;
 - e) Sexual flirtation, touching or leering;
 - f) Sexually suggestive comments, propositions or advances;
 - g) Slurs and other verbal, graphic or physical conduct relating to an individual's gender.

C. Race/National Origin/Color/Ancestry Discrimination or Harassment

1. **Hostile Work Environment:** Racial or ethnic harassment may include, but is not limited to, threats, physical conduct, pranks, vandalism, jokes, slurs, ridicule, verbal, graphic, or written materials, or hostility or less favorable treatment directed at an employee because of his or her race, color, ancestry or national origin.
2. **Examples:** Inappropriate conduct based on race, color, ancestry or national origin includes, but is not limited to:

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- a) Assault, impeding or blocking movement, or any physical interference with normal work or movement because of race, color, national origin or ethnicity;
 - b) Defacement of a person's property, derogatory or demeaning posters, cartoons, emails, screen savers, drawings or other similar materials depicting racial or ethnic stereotypes;
 - c) Derogatory or demeaning racial or national origin-based comments even if not directed at a specific person or persons, including stereotyping or mimicry based on race, color, ancestry or national religion;
 - d) Jokes or ridicule directed to a specific person or persons about their race, color, national origin or ethnicity, including demeaning comments or stereotyping concerning ancestry, ethnic food or customs, attire, appearance or other ethnic or national origin-based characteristics;
 - e) Racial or national origin-based epithets or slurs;
 - f) Threats of, or actual violence based on race, color, national origin or ethnicity.

D. Physical and/or Mental Disability Discrimination and Disability-Based Harassment

State and federal laws that prohibit discrimination and disability-based harassment and protect individuals with disabilities include, but are not limited to, the following:

1. **Americans with Disabilities Act of 1990 ("ADA"):** The Act defines a person with a disability as:
 - A person with a physical or mental impairment that *substantially* limits one or more of his/her major life activities;
 - A person with a record of having such an impairment; or
 - A person regarded as having such impairment.
2. **California Fair Employment and Housing Act ("FEHA"):** FEHA's definition of a person with a disability differs significantly from the ADA's definition. FEHA defines a person with a disability as:
 - A person with a physical or mental impairment that *limits* one or more of his/her major life activities, a person with a record of such a disability, and/or a person who is regarded as having such a disability.
3. **Examples:** Harassment based on disability includes, but is not limited to, the following conduct: verbal, physical, visual or other conduct described above, or more severe or less favorable treatment based on disability. Additional examples include, but are not limited to: comments, expressions of resentment, jokes, slurs, behavior that derides the abilities of an individual with a disability or portrays an

individual with a disability as someone to be feared, mimicry or attempts to imitate an individual's disability, comments or other conduct evidencing stereotyping of individuals with disabilities.

4. Employees who are qualified individuals with disabilities protected by FEHA and/or the ADA are entitled to reasonable accommodation of their disabilities.
5. The complaint procedures for persons reporting allegations of discrimination/harassment based on disability are the same as that for reporting other forms of prohibited discrimination/harassment.
6. See Administrative Instruction No. 139 for *Procedures for Complying with Employment Aspects of the ADA/FEHA* (addresses requests for Reasonable Accommodation under the ADA/FEHA).

E. Discrimination and/or Harassment Based on Sexual Orientation

1. **Hostile Work Environment:** Harassment may include, but is not limited to, threats, physical conduct, actions, pranks, vandalism, jokes, slurs, verbal, graphic, written materials, hostility or less favorable treatment directed at an employee because of his or her sexual orientation or perceived sexual orientation.
2. **Examples:** Inappropriate conduct or harassment based on sexual orientation includes, but is not limited to, derogatory or demeaning comments, epithets or slurs, mimicry or gestures, comments or conduct evidencing stereotyping based on sexual orientation, comments implying a lack of masculinity or femininity, or appropriate male or female behavior, comments that denigrate or disparage on the basis of sexual orientation, contempt, condemnation, hostility or disgust at a person's sexual orientation or openness regarding sexual orientation.

F. Discrimination and/or Harassment Based on Gender Identity

1. **Hostile Work Environment:** Harassment may include, but is not limited to, threats, physical conduct, actions, pranks, vandalism, jokes, slurs, verbal, graphic or written materials, hostility or less favorable treatment directed at an employee because of his or her transgender status or actual or perceived gender identity.
2. **Examples:** Inappropriate conduct or harassment based on transgender status or actual or perceived gender identity includes, but is not limited to, derogatory or demeaning comments, epithets or slurs, mimicry or gestures, comments or conduct evidencing stereotyping based on a person's transgender status or actual or perceived gender identity, comments implying a lack of masculinity or femininity or of appropriate male or female behavior or dress, comments that denigrate or disparage on the basis of transgender status or actual or perceived gender identity, contempt, condemnation, hostility or disgust at a person's transgender status or

actual or perceived gender identity or openness regarding transgender status or gender identity.

G. Discrimination and/or Harassment Based on Religion

1. **Hostile Work Environment:** Harassment may include, but is not limited to, threats, physical conduct, actions, pranks, vandalism, jokes, slurs, verbal, graphic or written materials, hostility or less favorable treatment directed at an employee because of his or her religion, religious beliefs or lack of religion or religious beliefs.
2. **Examples:** Inappropriate conduct or harassment based on religion, lack of religion, religious beliefs or religious practices includes, but is not limited to, the following: derogatory or demeaning comments, epithets, slurs or gestures, comments or conduct implying the superiority of one religion over another, hostility or less favorable treatment based on an employee's religion or religious beliefs, stereotyping religion, religious practices or religious beliefs, unwanted invitations to participate in religious activities or practices.
3. Employees have a right to reasonable accommodation of religious observance, practice and belief that does not constitute an undue burden on the City.

H. Discrimination and/or Harassment Based on Age

1. **Hostile Work Environment:** Harassment may include, but is not limited to, threats, physical conduct, actions, pranks, vandalism, jokes, slurs, verbal, graphic or written materials, hostility or less favorable treatment directed at an employee because of his or her being at least 40 years of age or older.
2. **Examples:** Inappropriate conduct or harassment based on age includes, but is not limited to, derogatory or demeaning comments, epithets, slurs, jokes, ridicule or gestures, comments, treatment or conduct implying inferiority or inability based on age, hostility or less favorable treatment based on an individual's age, and stereotyping based on age.

I. Discrimination and/or Harassment Based on Medical Condition

1. **Hostile Work Environment:** Harassment may include, but is not limited to, threats, physical conduct, actions, pranks, vandalism, jokes, and slurs, verbal, graphic or written materials directed at an employee because of his or her medical condition. Discrimination and/or harassment based on medical condition include, but are not limited to, harassment because of a health impairment related to or associated with a medical condition such as cancer, HIV/AIDS, or gender dysphoria.

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2. **Examples:** Inappropriate conduct or harassment based on medical condition includes, but is not limited to, derogatory or demeaning comments, epithets, slurs, jokes, ridicule or gestures, comments, treatment or conduct implying inferiority or inability based on medical condition, hostility or less favorable treatment based on an individual's medical condition, stereotyping and negative comments about an individual taking job-protected medical leave.

J. Discrimination and/or Harassment Based on Marital Status or Pregnancy

1. Harassment may include, but is not limited to, threats, physical conduct, actions, pranks, vandalism, jokes and slurs, verbal, graphic or written materials directed at an individual or individuals because of their marital status and/or pregnancy.
2. Inappropriate conduct or harassment based on marital status and/or pregnancy includes, but is not limited to, derogatory or demeaning comments, epithets, slurs, jokes, ridicule or gestures, comments, treatment or conduct related to an individual's marital status, pregnancy, childbirth or medical conditions and/or use of medical leave related to pregnancy or childbirth or favorable treatment on such bases.

K. Discrimination and/or Harassment Based on Military/Veteran Status

1. Harassment may include, but is not limited to, threats, physical conduct, actions, pranks, vandalism, jokes, slurs, verbal, graphic or written materials directed at an individual or individuals because of their service or former service in any branch of the armed services and/or National Guard.
2. Inappropriate conduct or harassment based on military/veteran status include, but is not limited to, derogatory or demeaning comments, epithets, slurs, jokes, ridicule or gestures, comments, treatment or conduct relating to an individual's military or veteran status.

L. CONFIDENTIALITY

The City cannot guarantee absolute confidentiality with respect to complaints and/or investigations. All personnel involved in the investigation of a complaint are required to maintain confidentiality to the fullest extent possible. Dissemination of information will be limited to those individuals who must be contacted in order to fulfill the City's obligations to investigate and resolve the complaint.

M. RETALIATION

The City of Oakland strictly prohibits any retaliation against an employee who has filed a complaint of discrimination, harassment or retaliation, or has participated in an investigation or proceeding related to such a complaint. The City of Oakland also strictly prohibits retaliation

against an employee who has opposed any practice or conduct that violates this policy. Retaliation is defined as any adverse employment action, including discharge, discipline, demotion or transfer.

IV. PROCEDURES

A. COMPLAINT AND REPORTING PROCEDURE

1. It is the responsibility of each job applicant or employee who believes that (s)he has experienced conduct that may violate this policy to report the conduct promptly, preferably within 30 days, but in any event no later than 180 days after being subjected to it.
2. A complaint may be made by any employee on the following bases:
 - a) The applicant or employee reasonably believes (s)he was subjected to conduct that violates this policy;
 - b) The applicant or employee reasonably believes (s)he has been treated in an unlawful, discriminatory, or retaliatory manner; or
 - c) The applicant or employee witnesses, observes or otherwise becomes aware of conduct by City employee(s) that may violate this policy.
3. Verbal or written complaints ought to be made to the following:
 - a) Equal Opportunity Programs Division (EOPD), City Administrator's Office, 150 Frank H. Ogawa Plaza, 2nd Floor, Wilson Building, Oakland, CA 510/238-3500.
 - b) Additional complaint sources:
 - Immediate supervisor
 - Any department or agency head, director, manager, or supervisor
4. Any manager or supervisor who becomes aware of or acquires knowledge of conduct in violation of this policy, or who receives a verbal or written complaint, is required to report it immediately to the EOPD Manager, Equal Opportunity Programs Division (EOPD), City Administrator's Office, 150 Frank Ogawa Plaza, 2nd Floor, Wilson Building, 510/238-3500.
5. An employee or applicant may also complain directly to the Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing (DFEH) in accordance with their procedures.

B. PROCESSING COMPLAINTS/INVESTIGATION PROCEDURE

1. An EOPD Specialist will contact the complainant in a timely manner upon receiving a complaint of discrimination/harassment or retaliation. The assigned specialist will seek information sufficient to determine if the EOPD has jurisdiction to investigate the complaint allegations.
2. When the assigned specialist determines there is sufficient information to support EOPD jurisdiction, the specialist will initiate an investigation into the allegations contained in the complaint.
3. The assigned specialist, whenever possible, will obtain a written, signed statement from the complainant describing the allegations in detail.
4. The assigned specialist will interview the complainant, the charged party(ies), and all relevant witnesses to obtain further information. The assigned specialist will also seek to obtain and retain all documentary and other evidence pertaining to the complaint allegations.
5. Upon completion of an investigation, the specialist will prepare a thorough, written, fact-finding report that will contain findings related to each factual allegation in the complaint.

C. CONCLUSION OF THE INVESTIGATION

1. If the assigned specialist concludes that a City policy has been violated, the specialist will notify Employee Relations and the department director/manager in which the harassment or discriminatory conduct occurred. The department director/manager will collaborate with Employee Relations to determine appropriate remedial action. The remedial action will be sufficient to end the harassing or discriminatory conduct. The department director/manager will inform EOPD specialist what remedial action was taken and provide proof of said action for EOPD's file. Remedial actions may include, but are not limited to, discipline up to and including termination, training, coaching, suspension, and other measures that will remedy the situation giving rise to the violation. Disciplinary actions will be based on the nature, frequency and severity of the conduct, in addition to any prior discipline imposed for violation of this Policy.
3. Upon completion of the investigation, the assigned specialist will prepare closing letters to the complainant and the accused summarizing his/her findings. The complainant will not be informed of the nature of the disciplinary action taken against an individual who has been found to have violated this Policy unless the EOPD determines it is appropriate to do so.

Responsible Party

Action

**EOPD Manager
City Administrator's Office**

1. Develops, maintains, implements, and administers appropriate Equal Employment Opportunity (EEO) related policies and procedures.
2. Develops, directs and implements policies, procedures, practices, programs, and standards for implementing, monitoring and evaluating EEO related program objectives. Works to mitigate risks and potential liability through proactive EEO related measures.
3. Advises the City Administrator, Assistant City Administrator, and other Department Heads on germane EEO related issues.
4. Educates Directors and Managers regarding their EEO related responsibilities.
5. Manages the analyses, interpretation, review and implementation of plans and strategies to address and resolve program related issues involving workplace discrimination complaints, employee and applicant reasonable accommodation requests, affirmative action and related compliance requirements.
6. Provides technical assistance to City departments on EEO related issues.
7. Collaborates with Office of Personnel Resources Management, Employee Relations, and other departments to resolve EEO related issues; and when necessary, provides advice regarding remedial action.
8. Oversees EEO related compliance reviews and barrier analyses; advises the Assistant City Administrator and Department Heads of findings, and provides advice on best practices and remedial actions.
9. Maintains and distributes current information on EEO related policies, procedures and standards.
10. Oversees the preparation and filing of compliance reports to related regulatory agencies.

Department Heads, Managers and Supervisors

1. Responsible for conducting themselves appropriately and in accordance with this Policy.

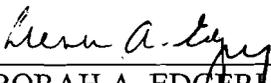
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2. Responsible for making sure a copy of this Policy is provided to current employees and newly hired employees.
 3. Responsible for monitoring the work environment to ensure that it is free from discriminatory, harassing or retaliatory behavior.
 4. Responsible for participating in the City's EEO related training programs.
 5. Responsible for making subordinates aware of the City's anti-harassment policies, and explaining the complaint procedures available to employees.
 6. Responsible for reporting all complaints and violations of which they become aware in accordance with this policy. Failure to report complaints or violations of this policy may result in disciplinary action.
 7. Responsible to take appropriate remedial actions, as required.

All Employees

1. Responsible for conducting themselves appropriately and in compliance with this policy.
2. Required to cooperate to the fullest extent possible during an EOPD complaint investigation.
3. Responsible for reporting violations of which they become aware in accordance with this policy.
4. Responsible for participating in the City's EEO related training programs.

V. ADDITIONAL INFORMATION

Please direct any questions regarding this Administrative Instruction to the Equal Opportunity Programs Division Manager, 150 Frank H. Ogawa Plaza, 2nd Floor, 510/238-3500.


DEBORAH A. EDGERLY
City Administrator