

CITY OF EUREKA

Category: PERSONNEL

POLICIES & PROCEDURES

Subject: ZERO TOLERANCE POLICY
AGAINST HARASSMENT

Date Adopted: January 21, 1992

File 3.80
Number

I. POLICY OBJECTIVE

The purpose of this policy is to restate and reaffirm that, according to federal and state law and City policy, the City will take all reasonable steps to prevent, prohibit, and take appropriate action against harassment in the workplace. The policy also clarifies what constitutes harassment, and explains the procedures involved in investigating and resolving harassment complaints. This policy applies to all terms and conditions of employment, including but not limited to, hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, compensation, and training.

II. STATEMENT OF INTENT

The City of Eureka recognizes that our success depends upon our employees. All employees deserve to perform their jobs in a workplace that is free from harassment, where each individual is a respected member of the team and is allowed to function at their highest potential. When one employee harasses another, he or she violates the rights of that person to perform their job under safe and secure conditions. Harassment undermines individual and team achievement, and damages employee morale. It is unacceptable behavior for any City employee, and will not be tolerated in any form.

III. ZERO TOLERANCE

The City is committed to providing a workplace free of all types of harassment, including but not limited to, those based on:

- sex (including harassment based on gender, pregnancy, childbirth, or related medical conditions)
- race
- color
- religion
- national origin
- ancestry
- age
- physical disability
- mental disability
- medical condition
- marital status

- sexual orientation
- family care or medical leave status
- veteran status.

As the legal standards and consequences of harassment are constantly evolving, the City's policy is one of "zero tolerance." This means that our policy prohibits all harassment, even if it may not be considered illegal. This is because the City strongly believes that all employees deserve to be treated with respect, dignity, and professionalism. It does not matter whether or not an accused employee intended to offend another employee, or whether they believed their comments or actions were welcomed by another employee. The City's policy is violated whenever an employee, either as a recipient or as an observer, is offended by comments, behavior, or material which is based on those protected harassment categories outlined above.

Male and female workers may be victims of sexual and other forms of harassment by harassers of either gender. Harassment can occur between a supervisor and subordinate, between co-workers, or between an employee and an outside vendor or citizen. Under this "zero tolerance" policy, the City will not tolerate any harassment of its employees by any person encountered in the workplace, including co-workers, supervisors, managers, City Council members, Board or Commission members, vendors, or citizens. Any employee engaging in harassing behavior which is found to be in violation of this policy will be subject to disciplinary action, up to and including termination.

In addition, any retaliation against an employee for making a harassment charge, filing a harassment complaint, or participating in a harassment investigation will not be tolerated and will be taken as seriously as harassment itself. Any employee engaging in retaliatory behavior which is found to be in violation of this policy will be subject to disciplinary action, up to and including termination.

IV. DEFINITION OF HARASSMENT

Both federal and state law recognize two kinds of sexual harassment, the second of which encompasses other types of harassment as well. They are:

- "Quid Pro Quo" Harassment – This type of harassment occurs when submission to some form of unwelcome sexual advance is used either as a condition of employment, or as the basis for employment decisions affecting an employee. This could range from receiving a poor performance evaluation after refusing to date the reviewer, to sexual favors being requested in exchange for a promotion. Quid Pro Quo harassment can only be engaged in by an employee in a position of authority over the complainant.
- "Hostile Environment" Harassment – This type of harassment occurs when unwelcome verbal, physical, and/or visual conduct based on any of the protected harassment categories has the purpose or effect of unreasonably interfering with an individual's work performance, or when such conduct creates an intimidating, hostile, or offensive work environment. The prohibited conduct need not be directed specifically at an employee in order for a hostile environment to exist, and typically involves more than a single incident or event. This is a much broader category, and examples of this type of harassment include, but are not limited to, the following:

- repeated requests for dates, by either the same or the opposite gender;
- making derogatory comments or telling jokes or stories about minority groups, ethnicities, or nationalities, such as “Black, Irish, Polish, or Arab,” etc.;
- making ‘limp hand’ gestures or walking in a mincing way in reference to a person’s sexual orientation;
- belittling religious beliefs, such as telling Catholic jokes regarding birth control; or advancing religious stereotypes, such as that Jews are stingy;
- making references to an employee’s age, such as that they are too young and inexperienced to do their job, or too old to understand a new concept;
- mimicking an accent or a physical condition, such as a limp;
- ridiculing cultural clothing, such as a turban; or hairstyles, such as corn rows or dreadlocks.

It is important to note that these types of behavior are not only harassing, but are also simply discourteous. Employees are individuals, and their individuality is expressed in a variety of ways. Feeling comfortable with that expression leads to better job performance for all employees.

V. EXAMPLES OF PROHIBITED HARASSING CONDUCT

- Verbal Harassment – Consists of such things as making or using unsolicited and unwelcome derogatory epithets (“name-calling”), comments, slurs, or jokes on the basis of any of the protected harassment categories. Conduct includes inappropriate sexually-oriented comments on appearance, including dress or physical features; sexually-oriented noises; questions about an employee’s sexual practices; telling racially-oriented stories or using ethnic slurs; verbal sexual advances or propositions; verbal abuse; or making threats of reprisal after a negative response to sexual advances.
- Physical Harassment – Consists of such things as unwelcome touching, impeding or blocking movement and/or physical interference with normal work or movement, when directed at an individual on the basis of any of the protected harassment categories. Conduct includes pinching, hitting, pushing, poking with finger, brushing against another’s body, grabbing, patting, physical propositioning, leering, making sexual gestures, or making explicit or implied job threats or promises in return for submission to physical and/or sexual acts.
- Visual Harassment – Consists of such things as sexually suggestive or obscene letters, notes, greeting cards, or invitations; displaying of sexually suggestive or derogatory objects, posters, notices, bulletins, cartoons, or drawings based on any of the protected harassment categories; staring at an employee’s anatomy; mooning; unwanted love letters or notes.
- Sexual Favors – Consists of such things as unwanted sexual advances; requests for sexual favors; repeated requests for dates after refusals; and other verbal or physical conduct of a

sexual nature which is conditioned upon an employment benefit, unreasonably interferes with an individual's work performance, or creates an offensive work environment.

In California, whether or not a particular behavior is offensive is decided from the perspective of a "reasonable person." In other words, if a reasonable person would consider the conduct to be harassing, then it is. If an employee has any doubt as to whether any of their conduct might be considered harassment under this standard, they should stop the conduct immediately.

VI. COMPLAINT AND INVESTIGATION PROCEDURE

Employees are encouraged, whenever possible, to let a person know if he or she has said or done something which the employee finds offensive or unwelcome. Many potential complaints can be resolved in this way.

However, if an employee does not want to speak directly to the alleged harasser, or if he or she has done so and the harassment has continued, the employee may initially report the alleged harassing conduct to any of the following, either orally or in writing:

- Employee's immediate supervisor (an employee is not required to make a complaint to his or her immediate supervisor if that person is the individual about whom the employee is making the complaint)
- Any supervisor within the employee's department
- Employee's department head
- Human Resources staff
- City Manager

Employees may also, if desired, consult with an employee association representative, if applicable.

Employees should promptly report harassment complaints so that a timely and effective investigation can be conducted, and a resolution can be quickly reached. Any supervisor or department head who receives a harassment complaint shall notify the Director of Human Resources and/or the City Manager immediately. It is important to note that, once notified of a potential sexual harassment complaint, the City has a legal obligation to investigate the circumstances, regardless of whether the harassed employee has filed a complaint.

Upon notification of a harassment complaint, the Director of Human Resources or his/her designee shall:

- *Provide a copy of this policy to the complainant, the accused harasser, and any other applicable persons;*
- *Authorize and implement an immediate, effective, thorough, and objective investigation of the complaint.*

Although the City will make every reasonable effort to maintain confidentiality for the benefit of both the complainant and the accused, complete confidentiality cannot be guaranteed. In order to conduct a full and fair investigation, the accused harasser will be informed of the identity of the complainant, and each employee interviewed will be admonished to maintain confidentiality regarding the investigation or be subject to disciplinary action. To the greatest extent possible, the City will limit access to information contained in the complaint and obtained during the investigation process to those persons who need it to complete the investigation or to take appropriate disciplinary action or other forms of resolution.

Interviews will be held with (1) the complainant; (2) the accused harasser; and (3) any other persons the Director of Human Resources has reason to believe may have relevant knowledge concerning the complaint, which may include employees who have experienced similar conduct. During his or her interview, the complainant may specify the type of relief they feel is warranted from the alleged harasser, and this will be considered in evaluating the complaint and in determining the appropriate disciplinary action, if the charge is confirmed.

- *Review factual information gathered through the investigation process; determine whether a violation of this policy has occurred, giving consideration to all the factual information, and the totality of circumstances, including the nature of the verbal, physical, visual, or sexual conduct, and the context in which the alleged conduct occurred;*
- *Promptly report the results of the investigation and the determination as to whether this policy has been violated to appropriate persons, including the complainant, the alleged harasser, the supervisor, the department head, and as appropriate, to all others directly concerned;*
- *If a violation of this policy has been established, recommend to the City Manager prompt and effective discipline against the harasser, in keeping with the severity of the offense.*
- *If discipline is imposed, this will be communicated to the complainant; however, to protect the privacy rights of the accused, the complainant will not be told what the specific disciplinary action was. The nature and severity of the discipline will vary depending upon the nature and severity of the harassment, whether or not the employee was in a supervisory or management position, any past history of misconduct, and the City's Standards of Employee Conduct (Policy and Procedure Memorandum 3.50).*
- *If the harassment charge is confirmed, take reasonable steps to protect the complainant and/or other employees from any further harassment; and*
- *Take reasonable steps to protect the complainant and/or other employees from any retaliation as a result of the complaint or the investigation.*

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VII. MANAGER AND SUPERVISOR RESPONSIBILITIES

Management and supervisory employees are responsible for ensuring that the work environment is free from harassment by:

- X Informing all employees under their direction of the City policy and complaint procedure;
- X Reporting any incidences of harassment to their department head and to the Human Resources Department;
- X Based on the findings of the investigation, implementing, or assisting in the implementation of, any actions necessary to prevent further harassment from occurring.

Management and supervisory employees may be held personally liable if they do not take corrective action to resolve harassment situations, when they *knew* or *should have known* that a harassing condition existed.

Examples of situations where it will be assumed a management or supervisory employee *knew* of harassment include, but are not limited to:

- X If a complaint is reported to them, but they do not take it seriously;
- X If they discourage an employee from filing a complaint;
- X If a complaint is made and they refuse to accept it; or
- X If they do not notify Human Resources and their department head when a complaint is made.

Examples of situations where it will be assumed a management or supervisory employee *should have known* of harassment include, but are not limited to:

- X If they did not take action on a questionable situation to determine if sexual harassment was or is occurring, or when found to be occurring, did not stop it.

VIII. RETALIATION

City employees have the right to complain about harassment without fear of retaliation. Any retaliation against an employee for making a harassment charge, filing a harassment complaint, or participating in a harassment investigation will not be tolerated and will be taken as seriously as harassment itself. Any employee found to be retaliating against another employee will be subject to disciplinary action, up to and including termination.

Examples of retaliation include: A supervisor gives a poor performance evaluation to a complainant after he files a harassment charge against her.

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- I. A complainant finds notes on her car's windshield with the word "Snitch" on them.
- II. An employee who participated in a harassment investigation is shunned by the co-worker friends of the accused harasser.

An employee who believes that he or she is being, or has been, retaliated against for complaining about harassment or participating in a harassment investigation should promptly notify the Director of Human Resources or his or her immediate supervisor. (Again, if the employee engaging in the retaliation is the immediate supervisor, the complainant should notify another supervisor or management employee, or go directly to Human Resources.)

Complaints of retaliation will be investigated in the same manner as harassment complaints. Any employee engaging in retaliatory behavior which is found to be in violation of this policy will be subject to disciplinary action, up to and including termination.

Conversely, an employee who knowingly files a false claim of harassment against another employee or against another person contacted in the course of employment, or who knowingly supports or participates in the furtherance of a false claim, will be subject to disciplinary action, up to and including termination.

IX. DUTY TO COOPERATE IN THE INVESTIGATION PROCESS

In order to promptly and fairly resolve harassment complaints, every City employee has an obligation to cooperate in the City's investigation of alleged harassment or retaliation. Failure to cooperate, deliberately providing false information, or withholding information during an investigation shall be grounds for disciplinary action, up to and including termination.

X. DISTRIBUTION OF POLICY

All current employees, newly hired employees, volunteers, City Council members, and Board and Commission members shall be provided with a copy of this policy.

Any questions regarding harassment and/or this complaint procedure should be directed to the Human Resources Department at (707) 441-4124.