



**THE CITY OF SAN DIEGO
MAYOR JERRY SANDERS**

M E M O R A N D U M

DATE: July 1, 2012

TO: All City Employees, Contract Workers and Volunteers

FROM: Jerry Sanders, Mayor
Jan Goldsmith, City Attorney
Scott Chadwick, Human Resources Director
Hadi Deghani, Personnel Director
Elizabeth Maland, City Clerk

SUBJECT: Equal Employment Opportunity (EEO) Policy – Annual Statement

It is important to reaffirm our commitment to the principles of Equal Employment Opportunity (EEO) and to work in an environment free of discrimination, harassment, and retaliation. The City does not tolerate harassment, discrimination or retaliation in any form. EEO allegations will be taken seriously, and investigated in a prompt, thorough, and objective manner. Violations of this Policy may result in disciplinary action, up to and including termination, even if it is the first time such behavior occurs.

We are committed to ensuring that the principles of fair and equal treatment are understood, respected, and practiced throughout the organization. Federal and State laws make it unlawful to discriminate on the basis of any protected class or category, such as: race, color, creed, sex, age, national origin or ancestry, religion, pregnancy, physical or mental disability, veteran status, genetic information, marital status, medical condition, gender identity, sexual orientation, as well as any other category protected by federal, state, or local laws. Our EEO policy builds upon this foundation and extends to every employee the City's commitment to provide a workplace that is consistent with the law and actively supports behaviors of a high performing work environment. All City employees, contract workers, and volunteers are expected to adhere to the standard of conduct that this Policy defines. Although actions may not rise to the level of a violation of the law, they may still violate the City's EEO Policy.

It is our expectation that every person subject to this Policy support the principles of EEO as stated in this Policy. Managers and supervisors are responsible for enforcing these principles and for providing every City employee with a work environment free of discrimination, harassment and retaliation. Supervisors must understand how important this issue is, and that

they will be held accountable for ensuring that EEO practices are adhered to in their work units.

1. **EQUAL TREATMENT**

The City is committed to ensuring fair and equal treatment in all employment decisions (e.g., promotions, transfers, job rotations, training, work assignments, hiring and firing, merit increases, overtime, rewards and discipline) and other terms, conditions and privileges of employment without regard to an individual's race, color, creed, sex, age, national origin or ancestry, religion, pregnancy, physical or mental disability, veteran status, genetic information, marital status, medical condition, gender identity, sexual orientation, as well as any other categories protected by federal, state, or local laws. These classes and/or categories are the "protected classes" covered under this Policy.

2. **DISCRIMINATION-FREE, HARASSMENT-FREE AND RETALIATION-FREE WORK ENVIRONMENT**

All employees are entitled to a work environment free from discrimination, harassment, and retaliation. The City's Policy strictly prohibits discrimination and harassment on the basis of a protected class. In addition, retaliation against an employee who complains or reports an act of discrimination or harassment in violation of this Policy is prohibited and will not be tolerated.

Discrimination occurs when an individual uses a protected class as a basis for an adverse employment action or decision. Examples of adverse employment actions or decisions include: termination, demotion, transfer, unfavorable job assignment, denying a promotion, or a reduction in pay.

Harassment includes any unwelcome, unsolicited and/or unwanted behavior which may offend, humiliate, embarrass, intimidate, or otherwise causes distress because of a person's protected class. Harassment creates a negative atmosphere that reduces work productivity and morale, undermines the integrity of the workplace, and destroys professionalism. Examples of harassment include: the use of derogatory comments, slurs, jokes, pictures, cartoons, or posters. Additionally, sexual favoritism (i.e. preferential treatment to employee(s) who have/had a sexual relationship with any level supervisor) could create a hostile work environment under certain circumstances.

Retaliation includes threats, intimidation, and/or adverse employment actions because a person reports an alleged violation of this Policy, files or assists another with a complaint under this Policy, participates in the investigation of a complaint under this Policy, or otherwise opposes discrimination, harassment and retaliation under this Policy. Supervisors and managers should be reminded that employees have a right to report what they believe is a violation of this Policy. In addition, subtleties of retaliation (for example, a change in work assignments or location, uncharacteristically denying leave requests, uncooperativeness, unsupported discipline or poor performance reports) will not be tolerated.

Good faith employment actions do not constitute unlawful discrimination, harassment or retaliation. Good faith employment actions taken by a supervisor or manager, such as: offering constructive feedback or criticism, holding employees accountable, and providing discipline, where appropriate, do not constitute, and should not be mistaken for, harassment, discrimination or retaliation. These employment actions are aimed at enhancing workplace productivity and/or addressing work performance, and are within the responsibilities and obligations of City supervisors and managers.

The City has a **100% Response Policy** on claims of discrimination, harassment, and retaliation. This means the City will respond and, if necessary, investigate reports of discrimination, harassment, or retaliation made in the workplace and will take appropriate action. The result of that action may range from informal counseling to disciplinary action, up to and including termination, even if it is the first time such behavior occurs. Prior incidents of harassment may be considered when assessing the facts and circumstances of a later complaint.

Every City employee, contract worker, and volunteer is expected to support and enforce this Policy. Supervisors who observe or know of a harassing situation, and fail to take corrective action, may be disciplined even if the harassment is not taking place in their work unit.

3. **SEXUAL HARASSMENT**

Sexual harassment is a form of harassment that creates an intimidating, hostile, or offensive working environment. Sexual harassment is unprofessional and not supportive of a high performing work environment. With regard to sexual harassment, as with other forms of harassment, the City has a 100% Response Policy.

Federal law defines sexual harassment as:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: 1) submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of an individual's employment; 2) submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting that individual; or 3) such conduct has a purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Although actions may not rise to the level of a violation of law, they may still violate the City's EEO Policy.

Sexually harassing conduct can be physical, verbal, visual, or written, and can occur between people of the same or opposite sex. Sexual harassment can occur between peers, supervisor to subordinate, subordinate to supervisor, member of the public to employee, and within or across departments.

Written examples of sexual harassment include letters, e-mails, text messages, blogs, electronic messaging, notes, or invitations which may be perceived as sexually suggestive or obscene. Verbal examples of sexual harassment include derogatory comments, insults, slurs or jokes; recounting one's sexual exploits; or starting and spreading rumors about the sex life of an employee. Other examples of sexual harassment include:

- Sexually suggestive or explicit leering or gestures
- Derogatory, sexually suggestive or explicit objects or pictures, including cartoons, posters, or computer graphics
- Unwelcome touching, hugging, or massaging
- Blocking or cornering an individual
- Revealing parts of the body when such exposure violates common decency
- Graphic comments about a person's physique
- Job actions taken to pressure an individual into accepting sexual advances
- Remarks or jokes made that a person cannot do the job because the person is a male or female
- In some circumstances, repeatedly asking someone for a date after being turned down

Sexual harassment by supervisors and managers can include a statement or insinuation that a refusal to provide sexual favors or a rejection of sexual favors will result in reprisal, withholding support for appointments, promotions or transfers, failure of probation, change of assignments, a poor performance rating, or other adverse employment action.

Whether or not an alleged action constitutes sexual harassment will be determined on a case-by-case basis by assessing the entire situation and the totality of the circumstances. Factors such as the nature of the sexual advances and the context in which the alleged incident(s) occurred will be considered in assessing the allegations and in determining the appropriate resolution.

Whether or not harassment occurred depends *not* on whether the act was intended to cause harm, ***but rather on the impact of the act on the individual's employment or work environment.*** For example, a person who teases in a sexual manner or tells sexual jokes may create an offensive work environment for another worker even though the person intended such actions merely to be in "good fun." This applies to all types of jobs such as field, office, safety, etc. If one's behavior is harassing to an individual or group of individuals, it does not matter that the harasser failed to recognize the behavior as harassing.

This Policy does not prohibit mutually welcome social relationships between employees. (Reference: AR 95.60, Conflict of Interest and Employee Conduct, which does prohibit employees from supervising or influencing employment decisions associated with members of their immediate family or any other person with whom the supervisor has a close personal relationship.) Persons involved in consensual relationships must exercise

caution to prevent the development of harassing behavior or use of authority inappropriately. However, if the consensual relationship changes and is no longer mutual, conduct once welcome by both individuals may become offensive to one.

4. **PERSONS WITH DISABILITIES**

The Americans with Disabilities Act (ADA) and Fair Employment and Housing Act (FEHA) are the Federal and State laws which provide protection to employees with disabilities. Pursuant to these Acts, the City will provide reasonable accommodation to a qualified applicant or employee with a disability, unless doing so would cause undue hardship. The City does this by having a supervisor and/or HR Liaison engage in a timely, good faith interactive process with employees in need of a reasonable accommodation (Reference: AR 96.21 – City Policy for People with Disabilities: Employment consultation provided by the Human Resources Department (619-236-6313) in conjunction with the City’s Disability Services Program).

5. **CALIFORNIA FAMILY RIGHTS ACT (CFRA) / FAMILY AND MEDICAL LEAVE ACT (FMLA) / PREGNANCY DISABILITY LEAVE**

The *California Family Rights Act of 1993 (CFRA)* and the Federal *Family and Medical Leave Act of 1993 (FMLA)* provide that employees who worked at least half time during the previous 12 months and have more than one year of service, shall be allowed to request up to a total of 12 weeks of unpaid, job-protected leave per year to care for themselves or an immediate family member because of a serious health condition, or to care for the employee’s child after birth, or placement for adoption or foster care. For pregnancy, California law allows up to four months of unpaid, job-protected leave to an employee disabled by pregnancy, childbirth, or related medical conditions.

The FMLA also provides leave rights related to military service. Eligible employees are entitled to up to 12 weeks of unpaid, job-protected leave during the normal 12-month period established for FMLA leave, because of any qualifying exigency arising out of the fact that a covered family member is on, or has been notified of, an impending call to active duty in support of a contingency operation. The FMLA also provides leave rights of up to 26 weeks of unpaid, job-protected leave in a single 12-month period to an eligible employee for the care of a covered family member recovering from a serious illness or injury sustained in the line of duty on active duty.

It is unlawful, and a violation of this Policy, to interfere with, restrain, or deny the exercise of any right provided under these Acts. An employee who exercises his or her rights under any of these Acts shall not be subjected to discrimination, harassment or retaliation.

6. **APPOINTING AUTHORITY INTERVIEWS**

All appointing authority interviews shall be job related and conducted in a non-discriminatory manner. Interview questions and selection materials should be based on job-relevant criteria and should be carefully designed so as to not have an adverse impact on applicants based on their race, color, creed, sex, age, national origin or ancestry, religion, pregnancy, physical or mental disability, veteran status, genetic information, marital status, medical condition, gender identity, sexual orientation, as well as any other category protected by federal, state, or local laws. (Reference: Personnel Regulations, Index Code F-1.)

7. **ALL CITY RECRUITMENTS**

The Mayor, through the Human Resources Director, will approve the recruitment method and strategy for all Mayoral Unclassified City Recruitments and Appointments in a manner which is consistent with this Policy.

The Civil Service Commission, through the Personnel Director, will approve the recruitment method and strategy for all Classified City Recruitments in a manner which is consistent with this Policy.

8. **PERFORMANCE EVALUATIONS**

Job performance evaluations for supervisors and managers should include a review of their support of the EEO Policy.

9. **ENFORCEMENT OF EEO POLICY**

The City's EEO Policy and Complaint Resolution Procedures are described in detail in Administrative Regulation 96.50, which applies to all employees in the City of San Diego, including contract workers and volunteers.

In order to rise to the level of an EEO violation, the violation must be based on an individual's protected status, or must be in retaliation or response to an individual's filing of an EEO complaint.

10. **REPORTING A VIOLATION**

Any employee who feels this Policy is being violated should immediately bring the matter to the attention of any of the individuals or offices listed below:

- Department Director, Deputy Director or other department Appointing Authority
- Any supervisor (**It is not necessary to follow the chain of command**)
- Departmental Human Resources staff
- Human Resources Department, Labor Relations Division (619-236-6313)

- Personnel Department, Equal Employment Investigations Office (EEIO)
619-236-7133)

In addition, employees may file a complaint directly with the following external agencies (as there are time limits, to protect legal rights it is always best to contact external agencies promptly when discrimination is suspected):

- State of California Department of Fair Employment and Housing (DFEH)
(800-884-1684)
- Federal Equal Employment Opportunity Commission (EEOC) (1-800-669-4000)

City employees may also seek confidential personal counseling from the Employee Assistance Program (EAP) at (619) 236-6373. EAP counseling is intended for the personal benefit of the individual and offers a setting where various courses of action can be explored.

Confidentiality

When responding to a report of an EEO Policy violation, the City will make every effort to protect the privacy of all individuals involved. However, anonymity and complete confidentiality cannot be guaranteed once a complaint is made, or when inappropriate behavior is made known. While an individual's expressed desire regarding confidentiality will be seriously considered, those requests must be weighed against the responsibility of the City to investigate possible violations of this Policy and to take corrective and preventive action where appropriate. Information pertaining to complaints will be maintained in confidence to the fullest extent of the law.

Equal Employment Opportunity Report Form (EDP 100)

Employees can use the Equal Employment Investigations Office (EEIO) or the AR 96.50 process to report any and all violations of this Policy. A reference tracking number must be assigned to the report form in order to proceed with the fact finding investigation, and can be obtained by calling the City's EEIO at (619) 236-7133. Departments can order these forms through Central Stores, and should maintain them with their respective EEO Liaison (Deputy Director, Human Resources, etc.) and Payroll Specialist.

This EEO Policy has been established to ensure that *all* City employees, contract workers, and volunteers are aware of their rights and responsibilities, and that the workplace is free from discrimination, harassment, and/or retaliation in any form. It is our expectation that every employee will support the principles of Equal Employment Opportunity as stated in this Policy in order to create and maintain a high performing work environment.

(Signature on file, available upon request)

Jerry Sanders
Mayor

(Signature on file, available upon request)

Jan Goldsmith
City Attorney

(Signature on file, available upon request)

Scott Chadwick
Human Resources Director

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Hadi Dehghani
Personnel Director

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City Clerk