



ADMINISTRATIVE POLICY

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Jurisdiction: Meet & Confer

HARASSMENT

I. PURPOSE

The purpose of this policy is to define harassment, to inform all employees that harassment can be illegal and is an unacceptable workplace behavior, define behaviors which could be precursors to illegal harassment, identify these precursor behaviors as unacceptable workplace conduct, to establish a reporting procedure that encourages the reporting of any harassment whether illegal harassment or precursor behavior, and to set forth the elements of an investigative process.

II. POLICY

It is the policy of the City of Capitola to provide a businesslike work environment, free from all forms of employee discrimination, including incidents of sexual harassment or other forms of harassment and the precursor behaviors and activities that can lead up to illegal forms of harassment. Sexual harassment or harassment by an employee or of an employee on the basis of race, religion, creed, color, national origin, ancestry, physical or mental disability, medical condition, marital status, gender, sexual preference, age, or opposition to unlawful harassment will not be tolerated. No employee shall be subjected to any form of harassment or precursor behaviors to harassment by anyone. No employee shall harass anyone. Violation of this policy will result in disciplinary action up to and including termination.

III. DEFINITION OF HARASSMENT

This policy applies to all levels of harassment even those that may not rise to illegal harassment. The California Department of Fair Employment and Housing definition of sexual harassment is in their brochure "Sexual Harassment is Forbidden by Law"

A. Illegal Harassment

Harassment is a violation of Title VII of the 1964 Civil Rights Act and the California Fair Employment and Housing Act, as well as other state and federal statutes some of which are criminal. In general, harassment includes, but is not limited to:

1. Verbal Harassment: include speech activities such as, epithets, derogatory comments or slurs on the basis of race, religion, creed, color, national origin, ancestry, physical or mental disability, medical condition, marital status, gender, sexual preference, or age.

2. Physical Harassment: include physical acts such as, assault, impeding or blocking movement, or any physical interference with normal work or movement when directed at an individual on the basis of race, religion, creed, color, national origin, ancestry, physical or mental disability, medical condition, marital status, gender, sexual preference, or age.
3. Visual Forms of Harassment: include activities which can be seen such as, derogatory posters, notices, bulletins, cartoons, or drawings on the basis of race, religion, creed, color, national origin, ancestry, physical or mental disability, medical condition, marital status, gender, sexual preference, or age.
4. Sexual Harassment: Unwelcome sexual advances, requests for sexual favors, and other acts of a sexual nature, where submission is made a term or condition of employment, where submission or rejection of the conduct is used as the basis for employment decisions, or where the conduct is intended to or actually does unreasonably interfere with an individual's work performance or create an intimidating, hostile, or offensive working environment.

The Federal Equal Employment Opportunity Commission's Guidelines define sexual harassment as:

"Unwelcome sexual conduct constitutes sexual harassment when:

1. Submission to 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 the basis for employment decisions affecting such individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, abusive or offensive working environment."

Sexual harassment is further defined to include continual or repeated abuse of a sexual nature including, but not limited to:

1. Graphic commentaries on a person's body;
2. Sexually suggestive objects or pictures in the workplace;
3. Sexually degrading words used to describe a person; or
4. Propositions of a sexual nature.
5. Visual conduct such as leering, making sexual gestures, displaying of sexually suggestive objects or pictures, cartoons or posters;

6. Physical conduct such as touching, assault, impeding or blocking movement.

Sexual harassment also includes the threat or insinuation that lack of sexual submission will adversely affect an employee's employment, wages, advancement, assigned duties or shifts, academic standing, or other conditions that affect an employee's livelihood or physical person.

B Precursors to Illegal Harassment.

In some cases illegal harassment is the product of repeated conduct that matures over time into illegal harassment. It is the intent of the City of Capitola to stop, when possible, harassing behavior before it becomes illegal. To this end, inappropriate conduct of a harassing nature, even though it may not rise to the level of illegal harassment, is defined by this policy as precursor behavior and subject to this policy.

C Retaliation

Retaliation against another employee for filing a harassment charge or making a harassment complaint is a form of harassment.

IV. REPORTING PROCEDURE

Anyone who believes they have been harassed is encouraged to use the following reporting procedure.

- A. Intent: It is the intent of this procedure to provide an effective means for quickly resolving individual or group problems of a similar nature and with a minimum of formal or cumbersome procedural requirements.
- B. Scope: This procedure shall only apply to allegations of sexual harassment or other harassment in regard to application, recruitment, appointment, training, promotion, retention, discipline, or other aspects of employment because of race, religion, creed, color, national origin, ancestry, physical or mental disability, medical condition, marital status, gender, sexual preference, retaliation, or age, and provides for a process to report and correct the effects of such harassment.
- C. Other Procedures: An employee who has a harassment complaint shall proceed under this section and is not entitled to utilize regular grievance procedures for any complaint grieved under this section.
- D. Reporting Procedure: All supervisors who witness acts of discrimination or harassment as defined in this policy shall report the incident or incidents the supervisor or department head of the involved employee(s), the Chief of Police, the Finance Director, or the City Manager, or take appropriate action to investigate the incident if the employee(s) involved are in the department of a witnessing supervisor

or department head. All employees are encouraged to report any observed acts of discrimination or harassment as identified in this reporting procedure.

All reported incidents of harassment and their resolution shall be recorded and retained in a confidential central file as administered by the City Manager's Secretary. When an allegation of harassment is made, the following reporting procedures shall be used.

The department head, Chief of Police, or City Manager should be informed of the allegation as soon as possible after it is received, but in any case not more than one working day. If a complaint is filed with a department head, that department head will send a copy of the complaint to the Chief of Police or City Manager. The department head may also ask the City Manager, the Finance Director or Chief of Police to process the complaint. The Police Chief, Finance Director or City Manager will decide whether the complaint is within the jurisdiction of this policy. The acceptance or rejection of the complaint will be done in writing. If the complaint is rejected, the aggrieved person may appeal this decision in writing to the City Manager or Chief of Police within five working days of the notice of rejection. In cases where the Police Chief or the City Manager is the subject of the harassment investigation, the City Attorney or any other party as determined by the Police Chief or City Manager (whomever is not under investigation) shall be on administrative leave during the investigation.

Once the complaint has been accepted, the department head, Chief of Police, or City Manager, or such responsible person as may be designated by the Chief of Police or City Manager (The Claim Investigator):

- a. Fully inform the complainant of his or her rights and any obligation to secure those rights.
- b. Shall review the claim with the City Manager or City Attorney.
- c. May assign a qualified impartial individual to conduct a prompt investigation as outlined in Attachment A. The investigation should begin promptly, if at all possible within two working days of receiving the complaint.
- d. Whether or not delegated, shall conduct a complete investigation and make a report to include, but not be limited to, a copy of the complaint or complaints and findings of the investigation. Such investigation shall be completed, if at all possible, with twenty working days from receiving the complaint.
- e. Present findings and recommendations for resolution to the City Manager or the Chief of Police.
- f. Take steps necessary to reasonably assure the harassing behavior does not happen again.

- Introduction
- Method and Persons Interviewed
- Background Facts and Chronology
- Allegations, a copy of any written complaint
- Findings of Fact
- Conclusions
- Recommendations
- Note any corrective action taken that does not breach any privacy concerns

This policy does not preclude any rights of appeal allowed by the disciplinary process, or the rights of the employee to fully petition, in court, with DFEH or EEOC. Attachment B provides contact information for these agencies in the event an employee wishes to pursue any legal remedies or complaint processes that may be available through DFEH or EEOC. Also, employees involved in this process may obtain representation.

This policy is approved and authorized by:



Richard Hill
City Manager

Attachments:

1. Harassment Investigations Procedures
2. California Dept. of Fair Employment and Housing Information
3. State of California "Sexual Harassment is Forbidden by Law" Pamphlet

ATTACHMENT 1

Harassment Investigations

A harassment investigation should proceed even when the alleged victim or other complainant does not request or consent to an investigation. Failing to investigate could place the supervisor personally at risk and the City at risk for liability to take prompt remedial action.

The investigation should be begun promptly, usually within a two working days of the receipt of the complaint or knowledge of the allegation. The investigation should be conducted in such a fashion that it is: 1) conducted with an open mind; 2) all persons have had an opportunity to present their side of the story; 3) maintain confidentiality as best as possible.

The investigator must be knowledgeable in the area of harassment; must be impartial; it is helpful if the investigator makes a good witness; and consideration should be given to the employment status of the investigator in relation to the alleged harasser. It may be necessary to contract with someone for the investigation.

When conducting a harassment investigation the investigator should consider the following as appropriate guidelines for an investigation. The investigator should use good judgment and understand the need to be sensitive and confidential when conducting an investigation.

- Read and become familiar with the City's harassment policy, and relevant documents including the complaint, evidence submitted by the complainant in support of the complaint, and any relevant information in the alleged harassers personnel file.
- Inform the complainant that the complaint is taken seriously and will work with him or her to resolve the situation.
- Describe the procedure for resolving the complaint: Investigation, determining the validity of the complaint, discipline and reporting the results back to the complainant.
- Give the complainant an estimated time for completion of the investigation.
- Ask the complainant what result he or she wants. Depending upon the seriousness of the conduct the complaint may be resolved informally.
- As soon as possible, conduct the investigation. Talk with the alleged harasser(s) and witnesses, within two or three days if possible. In general the following information should be obtained from the investigative interviews:
 - What happened?
 - Who was involved?
 - Who were the witnesses?...Did the Complainant tell anyone else about the harassment?...If so who?
 - How did it happen? How often did it occur? How did the complainant feel about it? How was the complainant's work affected?
 - When did it happen?... and how long has the harassment behavior been continuing?
 - Where did it happen?
 - Why did it happen?
 - Did the harasser harass anyone else; has anyone else complained about harassment?
 - Was the harasser ever informed that his or her behavior was unwelcome?
- Explain to all parties the importance of confidentiality.

- Report to the complainant the results of the investigation including whether discipline was recommended. Do not report the specific disciplinary action.
- Know when to disqualify yourself. If you are a department head, it may be necessary to contract with an investigator to ensure neutrality.
- Keep in touch with the complainant, especially if the investigation takes longer than anticipated.
- Get started promptly, and make continuous progress.
- Decide when to put the harasser on notice.
- Deal with safety and criminal issues up front.
- Don't start with a blank page of paper: prepare your interview introduction and questions before hand.
- Put the complainant at ease, and take everything seriously.
- Be prepared for the alleged harasser's reactions.
- Don't take sides.
- Don't lead the witness.
- Be thorough.
- Maintain confidentiality, advise all parties to maintain confidentiality and warn against retaliation.
- Keep in touch.
- Document as you go.
- Reach a conclusion; know your rationale.
- Get help when needed.
- See that corrective action is taken; follow up with complainant.

In evaluating testimony weighing credibility can become important. Here are some factors that can be used in weighing credibility:

- Plausibility:** Is the testimony believable on its face? Does it make sense? Is it based upon rational behavior?
- Demeanor:** Did the person seem to be telling the truth?
- Motive to falsify:** Did the person have a reason to lie?
- Corroboration:** Is there witness testimony or physical evidence?
- Past Record:** Did the alleged harasser have a history of similar behaviors?

In evaluating the evidence from a harassment complaint it is important to note that the legal standard is whether a reasonable person in the same protected class as the complainant would find the conduct offensive, abusive, or hostile. The following steps help to evaluate the conduct:

- What was the severity of the conduct?...Was it physical, psychological, threatening, intimidating, humiliating, or merely offensive?
- What was the pervasiveness of the conduct?...Was it frequent?...Was it isolated?...Was it sporadic?...Did it occur over a long period?
- Did the work performance of either part suffer during this period?

- Was the conduct unwelcome and was that communicated to the offending party?
- To what degree, if any, did the complainant participate in the activity?
- Was there a close connection between a discussion about job salary, benefits or advances and a request for sexual favors?
- Did the accused harasser intend to subject the complainant to harassment; was there a prior consensual relationship?

Also, it is important to remember, for an investigation of any disciplinary matter, that it may be necessary to relieve from duty or transfer the employee under investigation. The City Manager has the authority to relieve employees from duty in this manner.

ATTACHMENT 2

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

Oakland Office

Mailing Address:

Department of Fair Employment and Housing
Oakland District Office
1515 Clay Street, Suite 701
Oakland, CA 945612-2512

Contact Information:

Telephone: (800) 884-1684
TTY: (800) 700-2320

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Oakland Local Office

Mailing Address:

Equal Employment Opportunity Commission
1301 Clay Street
Suite 1170-N
Oakland, CA 94612-5217

Contact Information:

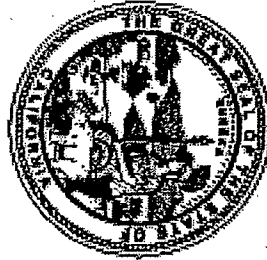
Telephone: (510) 637-3230
TTY: (510) 637-3234

How the Law is Enforced

Employees or job applicants who believe that they have been sexually harassed may, within one year of the harassment, file a complaint of discrimination with the California Department of Fair Employment and Housing.

The Department serves as a neutral fact-finder and attempts to help the parties voluntarily resolve disputes. If the Department finds evidence of sexual harassment and settlement efforts fail, the Department may file a formal accusation against the employer and the harasser. The accusation will lead to either a public hearing before the Fair Employment and Housing Commission or a lawsuit filed on the complainant's behalf by the Department.

If the Commission finds that the harassment occurred, it can order remedies, not to exceed \$150,000 in fines or damages for emotional distress from each employer or harasser charged. In addition, the Commission may order hiring or reinstatement, back pay, promotion and changes in the policies or practices of the involved employer.



State of California
Department of Fair Employment & Housing
2014 T Street, Suite 210
Sacramento, CA 95814

**Sexual Harassment
Is Forbidden By Law**

Sexual harassment in employment violates the provisions of the *Fair Employment and Housing Act*, specifically *Government Code sections 12940(a), (j), and (k)*.

Definition of Sexual Harassment

The *Fair Employment and Housing Act* defines harassment because of sex as including sexual harassment, gender harassment and harassment based on pregnancy, childbirth, or related medical conditions. The Fair Employment and Housing Commission regulations define sexual harassment as unwanted sexual advances or visual, verbal or physical conduct of a sexual nature. This definition includes many forms of offensive behavior and includes harassment of a person of the same sex as the harasser. The following is a partial list:

- ◇ Unwanted sexual advances
- ◇ Offering employment benefits in exchange for sexual favors
- ◇ Making or threatening reprisals after a negative response to sexual advances
- ◇ Visual conduct, e.g., leering, making sexual gestures, displaying of sexually suggestive objects or pictures, cartoons or posters
- ◇ Verbal conduct, e.g., making or using derogatory comments, epithets, slurs and jokes
- ◇ Verbal sexual advances or propositions
- ◇ Verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes or invitations

**For more information,
contact the Department
toll free at:
(800) 884-1684**

**Sacramento area & out-of-state
(916) 227-0551**

**TTY Number
(800) 700-2320**

**or visit our website at:
www.dfeh.ca.gov**

- ◇ Physical conduct, e.g. touching, assault, impeding or blocking movements

Employers' Obligations

All employers have certain obligations under the law. Employers must:

- ◇ Take all reasonable steps to prevent discrimination and harassment from occurring.
- ◇ Develop and implement a sexual harassment prevention policy.
- ◇ Post in the workplace a poster made available by the Department of Fair Employment and Housing.
- ◇ Distribute to all employees an information sheet on sexual harassment. An employer may either distribute this pamphlet (DFEH-185) or develop an equivalent document that meets the requirements of *Government Code section 12950(b)*. This pamphlet may be duplicated in any quantity. **However, this pamphlet is not to be used in place of a sexual harassment prevention policy which all employers are required to have.**

Employer Liability

All employers are covered by the harassment section of the *Fair Employment and Housing Act*. If harassment occurs, an employer may be liable even if management was not aware of the harassment. An employer might avoid liability if the harasser is a rank and file employee and if the employer had no knowledge of the harassment and if there was a program to prevent harassment. If the harasser is a rank and file employee and the employer was aware of the harassment, liability may be avoided if the employer took immediate and appropriate corrective action to stop the harassment.

Employers are strictly liable for harassment by their supervisors or agents. Harassers, including both supervisory and non-supervisory personnel may be held personally liable for harassing an employee or co-worker or for aiding and abetting harassment.

Additionally, *Government Code section 12940(j)* requires an entity to take "all reasonable steps to prevent harassment from occurring." If an employer has failed to take such preventive measures, that employer can be held liable for the harassment.

A victim may be entitled to damages even though no employment opportunity has been denied and there is no actual loss of pay or benefits.

Typical Sexual Harassment Cases

The three most common types of sexual harassment complaints filed with the Department are those in which:

- ◇ An employee is fired or denied a job or an employment benefit because he/she refused to grant sexual favors or because he/she complained about harassment. Retaliation for complaining about harassment is illegal, even if it cannot be demonstrated that the harassment actually occurred.
- ◇ An employee quits because he/she can no longer tolerate an offensive work environment, referred to as a "constructive discharge." If it is proven that a reasonable person in the victim's position, under like conditions, would resign to escape the harassment, the employer may be held responsible for the resignation as if the employee had been discharged.
- ◇ An employee is exposed to an offensive work environment. Exposure to various kinds of behavior or to unwanted sexual advances alone may constitute harassment.

Preventing Sexual Harassment

A program to eliminate sexual harassment from the workplace is not only required by law, but is the most practical way to avoid or limit liability if harassment should occur despite preventive efforts.

Training of All Individuals in the Workplace

All employees should be made aware of the seriousness of violations of the sexual harassment policy. Supervisory personnel should be educated about their specific responsibilities. Rank and file employees must be cautioned against using peer pressure to discourage harassment victims from using the internal grievance procedure.

Complaint Procedure

An employer should take immediate and appropriate action when he/she knows, or should have known, that sexual harassment has occurred. An employer must take effective action to stop any further harassment and to ameliorate any effects of the harassment. To those ends, the employer's policy should include provisions to:

- ◇ Fully inform the complainant of his/her rights and any obligations to secure those rights.
- ◇ Fully and effectively investigate. The investigation must be immediate, thorough, objective and complete. All persons with information regarding the matter should be interviewed. A determination must be made and the results communicated to the complainant, to the alleged harasser, and, as appropriate, to all others directly concerned.
- ◇ If proven, there must be prompt and effective remedial action. First, appropriate action must be taken against the harasser and communicated to the complainant. Second, steps must be taken to prevent any further harassment. Third, appropriate action must be taken to remedy the complainant's loss, if any.