



CITY OF CLOVIS
MEMORANDUM

ADMINISTRATIVE MEMORANDUM NO. 47
Revised April 6, 2005

SUBJECT: Prohibition of Harassment in Employment

FROM: Kathy Millison, City Manager *K. Millison*

DATE ISSUED: September 19, 1988, Revised April 25, 1977

PURPOSE

The purpose of this policy is to define various types of unlawful harassment; issue to all employees the City's policy on the prohibition and zero tolerance of unlawful harassment in employment; and, to provide a procedure for submitting complaints of unlawful harassment.

POLICY

It is the intent of the City of Clovis to provide a business like work environment free from all forms of harassment that would interfere with an individual's work performance or create an intimidating, hostile or offensive working environment. To that end, an employee who believes they have been harassed on the job or who has knowledge of alleged harassment should immediately inform their respective Department Head or designee or any member of City Management of the incident so the incident can be investigated and appropriate action can be taken.

Harassment of an applicant or employee of the City by any employee or officer of the City on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, medical condition, marital status, sex, sexual orientation or age will not be tolerated. Disciplinary action, up to and including termination, will be instituted for behavior described in the following definition of harassment.

DEFINITION

As defined by this policy, harassment includes, but is not limited to:

- **Verbal Forms of Harassment:** For example, epithets, derogatory comments, jokes, or slurs on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, medical condition, marital status, sex, sexual orientation, or age.
- **Physical Forms of Harassment:** For example, assault, impeding or blocking movement, or any physical interference with normal work or movement when directed at an individual on the basis of race, religious creed, color national origin, ancestry, physical or mental disability, medical condition, marital status, sex, sexual orientation or age.

- **Visual Forms of Harassment:** For example, derogatory posters, notices, bulletins, cartoons, calendars, drawings, or publications on the basis of race, religious creed, color national origin, ancestry, physical or mental disability, medical condition, marital status, sex, sexual orientation or age.
- **Sexual Forms of Harassment:** For example, unwelcome sexual advances, unwelcome requests for sexual favors, and other unwelcome verbal or physical conduct of a sexual nature for which submission to the conduct is explicitly or implicitly made a term or condition of employment or affects benefits, services or activities available through the City, or is sufficiently severe or pervasive that it has the purpose or effect of having a negative impact upon work performance, or creating an intimidating, hostile or offensive work environment.

COMPLAINT PROCESS

An employee who believes they have been harassed on the job or who has knowledge of alleged harassment should immediately inform the Department Head or designee or any member of City Management of the incident. Such notification should include pertinent facts such as the name of the alleged harasser, the date of the alleged harassment, names of witnesses and what allegedly harassing behavior was observed. To facilitate timely completion of the process, a complaint form has been developed and is attached to this policy.

Elements of this process are:

Complaint Advisors: Managers and Supervisors (Complaint Advisors) in every City department and the Personnel/Risk Management Office will be available to receive harassment complaints. Advisors will be trained, and their function will include but not be limited to:

1. Counseling the employee and discussing the process of filing a complaint;
2. Obtaining a factual written statement of the complaint to be filed with the appropriate Department Head and the Personnel/Risk Manager;
3. Assisting in the follow-up investigation by interviewing the accused, witnesses, and supervisors as appropriate; and,
4. Recommending disposition of the complaint.

Department Head and Personnel/Risk Manager: Will authorize an investigation of the complaint to include a review of factual information collected to determine whether the alleged conduct constitutes harassment, giving consideration to the record as a whole and the totality of the circumstances including the nature of the verbal, physical, visual, or sexual favor aspect of the incident and the context in which the alleged incidents occurred. Will recommend and/or take appropriate action.

INVESTIGATION

A thorough and objective investigation will be conducted in response to each complaint of alleged harassment. Such investigations may be performed by trained City staff, or depending upon the nature and scope of the allegations, an outside investigator experienced in conducting such investigations may be utilized. Each investigation will be conducted discreetly, maintaining

confidentiality of the complainant and the alleged offender insofar as legally and practically possible while conducting the investigation. In order to determine whether or not the alleged conduct constitutes unlawful harassment, the investigator will evaluate the record as a whole. At the conclusion of the investigation, the person(s) filing the complaint will be advised of the outcome and action(s) to be taken to prevent recurrence.

If the conclusion of the investigation is that unlawful harassment has occurred, the City shall take appropriate action to ensure that such harassment ceases and will not recur. Any corrective action, such as training, reassignment or discipline, up to and including termination of employment, that is implemented will consider the totality of the circumstances.

RETALIATION PROHIBITED

Retaliation against any individual for the exercise of the right to file a harassment complaint is strictly prohibited. To avoid retaliation and the appearance of retaliation, employees and officers are directed to:

1. Refrain from taking any action which discourages any individual from exercising the right to file a sexual harassment complaint.
2. Keep confidential the facts of any complaints or investigations made pursuant to this policy, including the identity of any witnesses or any facts which disclosed the identity of the claimants or witnesses to the extent permitted by law.
3. Each person contacted during the course of an investigation will be directed not to communicate with any complainant, witness or other person involved in the complaint about the subject matter of the complaint.

QUESTIONS

Individuals who have questions about this policy or its implementation should contact the City's Personnel/Risk Manager.

ATTACHMENTS

- Harassment Complaint Form
- DFEH Sexual Harassment is Forbidden By Law Flyer

**City of Clovis
HARASSMENT COMPLAINT FORM**

PRIOR TO COMPLETING THIS FORM, PLEASE READ THE FOLLOWING:

- Accurate completion of this form will ensure the immediate and thorough investigation of the complaint.
- This form may be submitted to your Department Head, Supervisor, or to the Personnel/Risk Manager.
- An investigation will be conducted promptly and fairly and all information to the extent possible will be confidential.
- Appropriate and immediate action will be taken if the City's harassment policy has been violated. No retaliation against an employee/applicant for filing a complaint will be tolerated.
- The employee/applicant filing the complaint will be notified of the outcome of the investigation.

PLEASE COMPLETE ALL SECTIONS, SIGN AND DATE THE COMPLAINT FORM

NAME: _____

DEPARTMENT: _____

Name of the person this complaint is being filed against:

When did the harassment occur? _____

Where did the harassment occur? _____

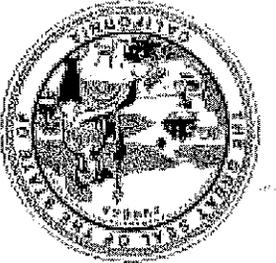
Please provide a detailed statement of the circumstances constituting the harassment.

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 supervisors 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.

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

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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(f)* 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.

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