

San Diego County Sheriff's Department



Sexual Harassment Prevention County of San Diego and Sheriff's Department Policies and Procedures

Updated 5/2016

**COUNTY OF SAN DIEGO, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

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Purpose

To establish a uniform policy prohibiting sexual harassment or sex discrimination.

Background

California State and Federal laws have mandated employers to implement a policy prohibiting sexual harassment, pursuant to guidelines on sex discrimination issued by the Equal Employment Opportunity Commission and the Department of Fair Employment and Housing. The United States Supreme Court, in its decision in the Meritor Savings vs. Vinson (1986) 477 U.S. 57, and Harris vs. Forklift Systems, Inc. (1993) 114 S. Ct. 367, affirmed that sexual harassment is unlawful discrimination under Title VII. The Supreme Court has given the Equal Employment Opportunity Commission guidelines great deference because they express the will of Congress.

Policy

It is the policy of the Board of Supervisors that the County of San Diego will provide a work environment free of sexual harassment.

A. Definition of Sexual Harassment:

The Federal Equal Employment Opportunity Commission defines sexual harassment in the workplace as unwelcome sexual advances, requests for sexual favors, and other visual, verbal or physical conduct of a sexual nature 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 is unwelcome and has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

B. Examples:

Examples of sexual harassment may include, but are not limited to the following:

1. Suggestive or obscene letters, notes, or invitations.
2. Derogatory comments, such as sexual jokes, remarks, questions, teasing, leering, or gestures.
3. Touching, patting, pinching, impeding or blocking movement.

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4. Threats of physical abuse.
5. Sexually suggestive objects, such as pictures, cartoons, posters, that are offensive to other employees.
6. Re-occurring and unwelcome expressions of affection or requests for dates or any other behaviors of a sexual nature after being informed that such conducts are not welcome.
7. Requesting sexual favors accompanied by reprisal, threat of reprisal, or implied threat of reprisal following a negative response. For example, implying or actually withholding support for an appointment, promotion, or change of assignment; suggesting a poor performance report will be prepared, or suggesting probation will be failed.
8. Offering favors or employment benefits such as promotions, favorable performance evaluations or recommendations; favorable assigned duties or work shifts in exchange for sexual favors.
9. Actual or attempted rape or sexual assault.

C. Current Law:

1. Sexual harassment by a person, whether an employee, supervisor, manager or non-employee who regularly and routinely is present in the work area, may make the employer liable for the acts of such individual.
2. The law requires immediate corrective action by the employer as soon as an employee gives notice, in any form, that sexual harassment is occurring in the work area.
3. The harassment regulated by this law pertains to unwelcome behavior based on sex, within the work area. The work area may extend to non-work places and non-work hours when the harasser continues the behavior.
4. The law does not create liability with regard to mutually acceptable, voluntary reciprocal relationships.
5. Vulgar language that is repetitive and so pervasive as to poison the environment may be unlawful harassment.

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D. Liability:

When sexual harassment occurs, the potential for legal remedies and individual punitive damages are a real threat to the County and/or the harasser. Individuals who engage in harassment may be held personally liable.

The law also prohibits retaliation against a person who has complained about or objected to harassment.

E. Responsibility:

1. The Chief Administrative Officer shall be responsible for implementing and vigorously pursuing this policy to prevent sexual harassment and stop it when it occurs.

2. Department heads shall be responsible for maintaining a harassment-free work environment in all areas under their jurisdiction.

3. It is the policy of the Board of Supervisors that all complaints of sexual harassment should be initiated and resolved at the departmental level, if possible, as described in DHR Policy No. 111. If not resolved at that level, the department should advise the complainant that he/she may file a complaint as described in the County Administrative Manual or may file a complaint with the EEOC/DFEH. Employees should feel free to file a complaint using the process with which they feel most comfortable.

4. California law requires the County to provide Sexual Harassment Prevention training to all supervisory employees every two years, and within six months of an employee assuming a supervisory position.

F. Additional Information:

The Chief Administrative Officer will ensure that all County executives and other officers as necessary are available to provide information and assistance to employees who are dealing with sexual harassment issues. The action to be taken by employees of all levels is defined in DHR Policy No. 111 and in the County Administrative Manual.

Sunset Date

This policy will be reviewed for continuance by 12-31-16.

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Board Action

8-24-82 (5)
7-26-88 (43)
12-12-89 (49)
3-27-90 (47)
11-29-94 (40)
5-19-98 (28)
5-16-06 (16)
12-09-08 (33)
12-08-09 (32)

CAO Reference

1. Chief Administrative Office
2. Office of Internal Affairs

COUNTY OF SAN DIEGO
DEPARTMENT OF HUMAN RESOURCES
POLICY AND PROCEDURES MANUAL

SUBJECT: SEXUAL HARASSMENT COMPLAINT PROCEDURE **POLICY NUMBER: 111**

EFFECTIVE DATE: June 20, 2000

PAGE: 1 of 7

REVISED DATE: March 2015

POLICY

It is the policy of the Board of Supervisors that the County of San Diego will provide a work environment free of sexual harassment.

Definition of Sexual Harassment:

The Federal Equal Employment Opportunity Commission defines sexual harassment in the workplace as unwelcome sexual advances, requests for sexual favors, and other visual, verbal or physical conduct of a sexual nature 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, or offensive working environment.

EMPLOYEE RIGHTS

1. To a harassment-free work environment.
2. To present a complaint to a Departmental Human Resources Officer or manager in the employee's chain of command, who will discuss the matter only with those persons having a business need to know.
3. To an impartial and prompt investigation by a Departmental Human Resources Officer or other trained investigator. The investigator will treat the matter as confidential to the extent possible, but information will need to be communicated to those with a need to know.
4. To review the findings and conclusions from the investigation into the matter.
5. To a timely decision from the appointing authority, or designee, after full consideration of all relevant facts and circumstances.
6. To be represented by a person of the complainant's choosing at all steps of the process.
7. To be free from reprisals after filing a complaint.
8. To have the appointing authority personally receive those complaints that employees feel uncomfortable discussing with managers at lower levels of the organization.

**COUNTY OF SAN DIEGO
DEPARTMENT OF HUMAN RESOURCES
POLICY AND PROCEDURES MANUAL**

SUBJECT: SEXUAL HARASSMENT COMPLAINT PROCEDURE POLICY NUMBER: 111

EFFECTIVE DATE: **June 20, 2000**

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REVISED DATE: **March 2015**

PROCEDURE

In the interest of ensuring that all concerned be aware of their individual responsibilities in connection with sexual harassment allegations, the following information is provided.

Note: All alleged incidents of sexual harassment will be investigated, to the extent that the County deems appropriate, in a thorough, impartial and confidential manner. Every effort will be taken to complete a Departmental investigation within thirty calendar days of receiving a written complaint.

Steps To Take In The Event of Sexual Harassment:

Responsibility of Employee Who Feels Harassed:

The County strongly encourages any employee who feels that he/she has been subject to harassment or other offensive conduct to let the offending person know immediately and firmly that the conduct at issue is unwelcome, offensive, and inappropriate and must stop.

1. If an employee who feels he/she has been harassed is not satisfied with the offending person's response or prefers not to confront the offending person, the employee is encouraged to immediately report the conduct to his/her supervisor, Departmental Human Resources Officer, or manager in the individual's chain of command.

The conduct should be reported within 20 calendar days but not later than one year following a specific single incident or recognition that he/she was being subjected to sexual harassment.

Note: If the harassment is of such a nature as to dissuade an individual from reporting it within his/her Department, he/she may report it directly to the Director of the County's Office of Ethics and Compliance (OEC) or the Director of Human Resources.

2. The employee should prepare and submit a written report of the facts of the incident(s) and the name(s) of the individual(s) involved, using the report form attached to this policy.

Note: Employees who feel they have been discriminated against with regard to any personnel action(s) may file a formal complaint with the Civil Service Commission under Civil Service Rule VI.

3. The employee should cooperate in any investigation of the reported conduct, and should treat the matter as confidential.
4. If the employee is not satisfied with the Department's response, the employee may file a request with the OEC for review and conciliation.

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If the final response of the appointing authority and/or OEC is not satisfactory, the employee may file a complaint with the California Department of Fair Employment and Housing (DFEH) or the U.S. Equal Employment Opportunity Commission (EEOC).

Responsibility of Observer of an Apparent Inappropriate Action or Work Environment

1. Promptly document your observations in case of an investigation.
2. Report observations to your supervisor. If you are a supervisor, you should report your observations to the Departmental Human Resources Officer or the supervisor(s) of the employee.

Responsibility of Alleged Harasser

1. Stop the behavior alleged to be offensive.
2. Take the complaint seriously.
3. Promptly document what occurred.
4. Keep your own records.
5. Cooperate with any investigation.

Responsibility of Supervisor and/or Departmental Human Resources Officer

All supervisors should exercise reasonable care in preventing harassment by working with the appropriate officials. Any supervisory/management employee who receives a complaint or learns of a potential violation should promptly report the incident to his/her superiors and/or a Departmental Human Resources Officer, and if necessary, take immediate action to diffuse volatile circumstances.

A. Initial Action:

1. Take the complaint seriously. Do active listening.
2. Discuss with the employee. Ask the employee to document the complaint on the County's report form and ask the employee to sign the documentation. If the employee refuses to prepare and/or sign a report, note that your documentation of the information provided was read to and understood by the employee.
3. If necessary, contact County Counsel or the OEC for technical advice.
Note: If management determines a detailed, fact-finding investigation is necessary, proceed to B.
4. Discuss with the alleged harasser, advising about the County's sexual harassment policy and definition of sexual harassment.
5. Document the actions taken regarding the complaint at each step.
6. If possible, meet with the employee and the alleged harasser to achieve a closure where each has a mutual understanding of the issue and its resolution.
7. Follow up with the employee to ensure that the issue is resolved.

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8. Promptly submit written report of findings and recommendation(s) for any further remedial action to the appointing authority. All written documentation is to be kept in the Department's confidential files. Any personnel or other remedial action should also be kept in the Department personnel file of the employee(s) who received it. If this documentation includes formal discipline, then it shall also be placed in Department of Human Resource's master file.

B. If harassment is repeated and/or if management has determined that a more detailed fact-finding investigation is necessary:

1. Formally investigate or request superior to initiate a formal investigation. Continue written documentation.
2. Advise the alleged harasser of the complaint, of the County's sexual harassment policy and of the potential for disciplinary action. Document the discussion with the alleged harasser.
3. Get witness reports (do not coerce). Ask open-ended questions.
4. Establish factual evidence; make factual conclusions on whether sexual harassment policy was violated. Recommend actions in conjunction with Departmental Human Resources Officer to appointing authority.
5. Advise employee that recommended remedial actions constitute resolution of the issue. Ask employee to report any further harassment or retaliation.
6. Promptly submit written investigative report of findings and recommendation(s) for any further remedial action(s) to the appointing authority. All written documentation is to be kept in the Department's confidential files. Any personnel or other remedial action should also be kept in the Department personnel file of the employee(s) who received it. If this documentation includes formal discipline, then it shall also be placed in Department of Human Resource's master file.

Note: In all cases, the Departmental Human Resources Officer should keep the appointing authority fully informed of the status of the complaint, actions taken and progress made.

Responsibility of Appointing Authority

1. Take final action toward complaint resolution.
2. Promptly send copy of final investigative report and description of final action to OEC within 30 calendar days after final action.
3. If charging employee indicates the complaint was not resolved to his/her satisfaction, advise employee of right to file a request for review and conciliation with OEC or a complaint with the CSC (Rule VI for Discrimination Complaints), and/or a complaint with the California DFEH and/or the Federal EEOC.

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4. If, upon completion of an investigation, there is a finding that the County of San Diego's policy on sexual harassment was violated, take remedial action and/or issue discipline following consultation with the Department of Human Resources and County Counsel as appropriate to individuals who are guilty of, and supervisors and/or managers who permit such activity or offensive work environment to occur. Disciplinary action may range from a memorandum of discussion to termination, depending on the severity of the offense. In addition, the appointing authority should be alert to instances where referral for training and/or counseling may be appropriate. Victims and offenders also may be referred to the Employee Assistance Program.
5. Take any actions as necessary to protect complaining parties and witnesses against any reprisals by other County employees.

For further information regarding this policy, please contact Department of Human Resources (619) 531-5100.

REFERENCES

Administrative Manual, 0010-11, Discrimination Complaint Procedures (Internal)
Administrative Manual, 0010-13, Departmental Employee Discrimination Complaint Procedure
Board of Supervisors Policy C-22, Sexual Harassment Policy

SUPERCEDES

DHR Policy 1140, Procedures for Dealing with Alleged Sexual Harassment; and DHR Policy 111, revised July 15, 2003.

APPROVED BY:

Original document approved and signed by Susan Brazeau on 03/16/2015.

Susan Brazeau, Director
Department of Human Resources

DHR POLICY NUMBER 111 ATTACHMENT

SEXUAL HARASSMENT INCIDENT(S) REPORT

The following guidelines are intended to clearly document the incident(s) of sexual harassment (Please attach additional pages as needed):

1. Name of reporting employee/individual: _____

2. Name(s) of alleged harasser(s): _____

3. Relationship of accused to reporting employee: _____

4. When/where incident(s) occurred:

5. Describe the incident(s):

6. Describe any related history leading up to the incident(s):

7. Recount specific language of the incident(s) of alleged sexual harassment:

8. Describe any physical contact relative to the sexual harassment incident:

9. List any names of witnesses and describe any action(s) they took:

10. List names of any supervisory staff that have knowledge of the incident:

Acknowledgement:

I have read and reviewed the information contained in this report. I agree that this report accurately describes the incident(s) to the best of my understanding.

Reporting Employee / Individual

Date

San Diego County Sheriff's Department – Policy Section

2.1 Rules of Conduct

All employees shall conform to Federal, State, and Local laws, as well as to the policies of this Department. It shall be the responsibility of all employees to familiarize themselves and comply with all such policies, orders, directives, rules and regulations of this Department. (02-12-13)

San Diego County Sheriff's Department - Procedure Section

2.54 Sexual Harassment

Employees shall not participate in or allow behaviors or situations that they know or should know, constitute sexual harassment as outlined in state and federal law. Employees shall take swift action to stop the offensive behavior or correct the situation. Employees shall not retaliate in any way against a complaining party or witness involved in sexual harassment allegations. (08-18-97) (Reviewed 1-16-2011)

San Diego County Sheriff's Department – Policy Section

3.47 Discrimination and Sexual Harassment

Title VII of the U. S. Civil Rights Act of 1964 and Section 12940(h) of the California Government Code (Fair Employment and Housing Act) prohibit discrimination and sexual harassment. Discrimination and sexual harassment, whether verbal, physical, or environmental, is illegal, unacceptable and will not be tolerated within the San Diego County Sheriff's Department. This policy applies to all phases of pre-employment and employment.

Discrimination Definition

Discrimination is defined as unequal treatment of employees or applicants for employment (without adequate justification) because of their race, religious creed, color, national origin, ancestry, physical or mental disability, medical condition, pregnancy, marital status, gender, age, sexual orientation, political beliefs or other non-merit factors.

Sexual Harassment Definition

Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature, constitutes sexual harassment when:
Submission of such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals; or,

Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Note: Sexually harassing conduct need not be motivated by sexual desire.

Prohibited Discrimination and Sexual Harassment Behaviors Include

Verbal Harassment

Repeated, unsolicited, derogatory comments, epithets, slurs, jokes, rumors or continued requests for social or sexual contact after being advised such behavior is unwelcome. Generalized sexist statements and behavior not necessarily designed to elicit sexual cooperation but to convey insulting, degrading and/or sexist attitudes.

Written Harassment

Sexually suggestive or obscene letters, notes, or invitations.

Physical Harassment

Unwanted touching, physical interference or contact which impedes normal work movement when directed at an individual.

Visual Harassment

Derogatory and/or sexually oriented pictures, posters, cartoons, or drawings, staring and/or leering.

Sexual Favors

Sexual advances which condition an employment benefit in exchange for sexual favors, or which may be perceived as such. Usually known as "quid pro quo" or "this for that" involving a person in a position of power over another.

Employee Rights

Department employees are assured the following rights:

- The right to a work environment free from discrimination and sexual harassment.
- The right to a full, impartial, and prompt investigation by management or a designee of a complaint regarding discrimination and/or sexual harassment.
- The right to a timely decision on a complaint after the full investigation has been completed.

- The right to file a complaint of discrimination or sexual harassment in employment with the State Department of Fair Employment and Housing and/or Federal Equal Opportunity Commission without seeking resolution through the Department.
- The right to file a complaint or be a witness to a complaint without fear of employer or employee retaliation.
- The right to confidentiality to the extent allowable in the normal scope of conducting an investigation.

Employee's Role and Responsibility

There is no intent by this Department to regulate or control any personal, private relationships or social interactions of employees which are freely entered into by both parties.

It is this Department's expectation that employees will set an example of acceptable conduct by not participating in or condoning behavior that is offensive.

The following are suggestions for all employees to help establish and maintain a professional and healthy working environment, while at the same time preventing discrimination and sexual harassment from occurring:

- Make it absolutely clear that you are not interested in or flattered by uninvited, unwelcome discriminatory behavior, sexual advances or other inappropriate behavior.
- When appropriate, warn the harasser that the particular behavior is offensive and unwelcome. Be specific in advising the harasser about what conduct is offensive and unwelcome. Make it clear that you will take official action if the behavior continues. If you foresee a problem, document the incident.
- If the harassing behavior continues, notify your immediate supervisor or any supervisor, up to and including the Sheriff's Office, and document the notification. It is the employee's responsibility to bring discrimination and sexual harassment behavior to the attention of a supervisor to ensure proper follow-up action.

NOTE: You are not required to follow the chain of command when notifying the department of discrimination or sexual harassment behavior.

This Department prohibits any retaliation against the complaining party or witnesses supporting that individual.

Appropriate disciplinary action will be taken against all individuals found to have subjected any party involved in this process to retaliation.

Supervisor's Role and Responsibility

- It is the responsibility of all supervisors to establish and maintain a working environment which is free from discriminatory intimidation, ridicule, and insult.
- Individual supervisors are responsible to report and/or effectively resolve all known discrimination and/or sexual harassment incidents.
- Any supervisor who is informed or becomes aware of a suspected discrimination and/or sexual harassment incident shall take prompt corrective action.
- It is the supervisor's obligation to document all incidents, and action taken thereafter, involving allegations of discrimination and sexual harassment. Whether the complaining party requests formal or informal action, the supervisor must follow through, either by the formal complaint process or by admonishing the harasser and documenting the incident.

Complaint Procedure

- It is the responsibility of all Sheriff's supervisors and managers to investigate and resolve any incidents or complaints of discrimination and/or sexual harassment. Whenever possible, complainants should first be directed to the employee's immediate supervisor. If circumstances dictate other action, employees may go to ANY supervisor to report the complaint.

Alternative methods of reporting are available to employees through the following agencies:

Employee Relations Division
9621 Ridgehaven Court
San Diego, CA 92123
(858) 974-2264

San Diego Sheriff's Department Internal Affairs Unit
9621 Ridgehaven Court
San Diego, CA 92123
(858) 974-2065

San Diego County Office of Ethics and Compliance (OEC)
1600 Pacific Highway,
Room 260
San Diego, CA 92101
(619) 531-5588

California State Department of Fair Employment and Housing (DFEH)

1-800-884-1684

Federal Equal Employment Opportunity Commission (EEOC)
555 West Beech Street Suite #504
San Diego, CA 92101
(619) 557-7274

Supervisors receiving the complaint shall carefully and objectively listen to and evaluate the complaint. Supervisors will promptly and clearly inform the employee of his or her rights and how to protect them.

The supervisor shall conduct an investigation to determine whether or not wrongful conduct has been committed and take appropriate action. The investigation should include talking with the accused harasser and any witnesses.

If a formal complaint is requested, the employee and/or supervisor will fill out a citizen's complaint form and forward it to the Internal Affairs Unit for follow-up and investigation. If a formal complaint is not requested but, in the supervisor's opinion, is warranted, the same procedures apply.

If it is requested and warranted for the complaint to be handled on an informal basis, the supervisor should exercise discretion in effectively resolving the situation. The supervisor shall document the incident and all follow-up actions. The documentation shall be kept in the counseled employee's station performance file in accordance with Policy and Procedure Sections 3.3 and 3.20.

In any event, the supervisor will take action to stop the harassment and prevent any future incidents or retaliation against the complainant.

All situations which may involve discipline will be handled in accordance with the Peace Officer's Bill of Rights (Government Code 3300-3311) and Department Policy (Section 3.3 and 3.20).

During the course of the investigation, the Department may temporarily or permanently reassign an involved subject(s) pending completion of a complaint.

Additional Assistance/resources

Supervisors and employees who are unsure how to proceed with a complaint or situation of this type may contact the Sheriff's Employee Relations Manager for additional information and guidance. (06-06-14)

San Diego County Sheriff's Department – Policy Section

3.56 RETALIATORY CONDUCT BY EMPLOYEES

Federal and state laws against discrimination, harassment or retaliation protect members of this department. Retaliation against an employee for filing a claim, as well as retaliation against an employee who has assisted another in filing a claim is strictly prohibited.

DEFINITIONS

Affirmative Duty: The personal responsibility and obligation of an employee to report wrongdoing-rather than to provide such information only when requested.

False Report: A report that is not made in good faith and is based on information that is known or reasonably likely to be inaccurate; intentionally or negligently ignores exculpatory or mitigating information; or is made with the purpose of harassing or wrongly incriminating another employee.

Good Faith Report: A report that provides allegations concerning an employee who is reasonably believed to have purposely committed a serious violation of departmental policy, procedures, rules, or laws.

Public Disclosures: Statements made to the media or information entered in any forum that is available to the public-such as social media websites-that provide information that is critical of this department, its personnel, or both.

Retaliatory Conduct: Conduct or action designed to serve as retribution against an employee who, in good faith, has reported or otherwise provided information regarding misconduct against another employee. In the context of this policy, retaliatory conduct includes any deliberate, purposeful actions or failures to act directed against employees that cause or could reasonably be expected to cause physical harm, property damage, significant emotional stress, or other serious negative effect on another employee; designed to ridicule or embarrass; or could seriously impair the efficiency, safety, or effectiveness of that employee, this department, or both. Such conduct may take many forms, including but not limited to, bullying; persistent offensive comments, threats, or intimidation; false accusations; isolation; ostracism; posting of secure or personal information on the Internet; or acts that malign or disparage an individual's reputation.

Serious Acts of Misconduct: A deliberate act or failure to act that could reasonably form the basis for significant disciplinary action against an employee. Such disciplinary action includes suspension, demotion, reassignment, or termination.

Duty to Report Misconduct

All employees both sworn and non-sworn have an affirmative duty to report misconduct (See 2.6 P&P). Failure to report misconduct could result in disciplinary action. When reporting serious acts of misconduct, employees do not have to adhere to the chain of command. If the misconduct has implications of illegal activity, corruption or other serious offenses, there are alternative methods of reporting available to employees through the following agencies:

Employee Relations Division
9621 Ridgehaven Court
San Diego, CA 92123
(858) 974-2019

San Diego Sheriff's Department Internal Affairs Unit
9621 Ridgehaven Court
San Diego, CA 92123
(858) 974-2065

San Diego County Office of Ethics and Compliance (OEC)
1600 Pacific Highway Room 260
San Diego, CA 92101
(619) 531-5588

California State Department of Fair Employment and Housing (DFEH)
1-800-884-1684

Employees have an affirmative duty to cooperate fully during the course of the investigation of an allegation of employee misconduct.

Retaliatory Conduct

Any retaliatory action made by an employee against another employee who made a good faith report of misconduct, will result in disciplinary action. When reporting complaints of retaliatory action, employees do not have to adhere to the chain of command.

Public Disclosures and Legal Remedies

Employees have the right to make public disclosures, so long as they are deemed to be of public concern and in so doing, they are protected by the First Amendment. There are limitations to the protection of speech, so employees should consult with this departments Rules of Conduct policy section.

Supervisor's Responsibility

If a supervisor is made aware of a complaint of retaliatory action, they will either investigate it themselves, or notify the appropriate entity. There may be cases where internal affairs or another unit is conducting the original investigation and would be better suited to investigate the retaliatory action.

It is the supervisor's obligation to document all incidents, and action taken thereafter, involving allegations of retaliation.

Supervisors need to be aware that employees who have been subjected to retaliation may be under stress. If a supervisor believes the employee needs counseling or other services they should refer the employee to The Counseling Team. (10-31-13)

**COUNTY OF SAN DIEGO
ADMINISTRATIVE MANUAL**

SUBJECT:	DISCRIMINATION COMPLAINT PROCEDURE (INTERNAL)	ITEM NUMBER	0010-11
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EFFECTIVE DATE:	MARCH 23, 2012	PAGE	1 OF 9
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Purpose

1. To provide a written procedure to govern the orderly receipt, investigation and conciliation of employment Discrimination complaints on the basis of race, color, religious creed, sex, age, national origin, ancestry, physical or mental disability, medical condition, marital status, and/or protected activity, including, without limitation, whistleblowing as defined by California Labor Code section 1102.5 or other applicable law, filed by job Applicants or Employees of the County of San Diego, with the Office of Internal Affairs. The County has several options for filing Discrimination complaints; this policy governs the filing of written complaints with the Office of Internal Affairs.
2. To encourage the prompt resolution of employment Discrimination complaints within the County system.

Background

State and federal laws provide procedures for the filing of complaints against employers on the basis of race, color, religious creed, sex, age, national origin, ancestry, physical or mental disability, medical condition and/or marital status. It is in the interest of both the Employee and the County of San Diego that a specific procedure be established to attempt to resolve such complaints with the County to afford immediate relief to Complainants where it is warranted.

Other Internal Filing Options

1. Employees may also file Discrimination complaints with the Civil Service Commission in accordance with Civil Service Rule VI (see Discrimination Complaints Filed with The Commission, Administrative Manual Item Number 0080-04-8).
2. Employees may also file Discrimination complaints at the Department level (see Departmental Employee Discrimination Complaint Procedure, Administrative Manual Item Number 0010-13).
3. For information on improper County government activity complaint procedures see Office of Internal Affairs: Improper County Government Activity Complaint Procedure, Administrative Manual Item No. 0010-10.

External Filing

This procedure is not intended to prohibit job Applicants who are non-County Employees nor County Employees from filing complaints of Discrimination with the Department of Fair Employment and Housing (DFEH) or the Equal Employment Opportunity Commission (EEOC) (see Discrimination Complaint Procedure (External), Administrative Manual Item Number 0010-12), or the courts.

Policy

It is unlawful for any County officer or Employee to discriminate against any person on the basis of race, color, religious creed, sex, age, national origin, ancestry, physical or mental disability, medical condition, marital status, and/or protected activity, including, without limitation,

**COUNTY OF SAN DIEGO
ADMINISTRATIVE MANUAL**

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whistleblowing as defined by California Labor Code section 1102.5 or other applicable law. Employees of the County of San Diego or job Applicants believing they have been discriminated against for any of the reasons cited may file complaints alleging Discriminatory Practices with the Office of Internal Affairs. Internal Affairs Investigators will investigate and conciliate such charges when appropriate. All officers, Employees or agents of the County of San Diego will cooperate and assist the Office of Internal Affairs.

Definitions

1. "Applicant" means any person whose name, at the time of filing a complaint pursuant to this procedure, is on a current eligibility list maintained by the Department of Human Resources and is filing a complaint regarding the application process.
2. "Appointing Authority" means officers and department heads with the authority to appoint and dismiss employees.
3. "Complainant" means an Employee or an Applicant who files a complaint charging a Discriminatory Practice.
4. "Department" means any County of San Diego department, office, board, agency, or commission.
5. "Director" means the Director of the Office of Internal Affairs of the County of San Diego.
6. "Discrimination" means an act or action by which an Employee of the County of San Diego or an Applicant is denied an employment opportunity or benefit on the basis of race, color, religious creed, sex, age, national origin or ancestry, physical or mental disability, medical condition, marital status, and/or protected activity, including, without limitation, whistleblowing as defined by California Labor Code section 1102.5 or other applicable law.
7. "Discriminatory Practice" means one or more acts, practices, commissions or omissions, prohibited by the laws of the United States, State of California, or County of San Diego relating to Discrimination in employment.
8. "Employee" means any person who at the time of filing a complaint pursuant to this procedure is employed by the County of San Diego.
9. "Internal Discrimination Complaint Procedure" means a procedure designed to process those complaints which have not been filed with an external compliance agency, such as the EEOC or DFEH.
10. "Investigation" means the systematic inquiry into the allegations of the complaint by the Office of Internal Affairs. Such investigation may include, but is not limited to, visits to the Respondent's place of business, interviewing of witnesses, review of requested records and the issuance of questionnaires to the Respondent concerning the alleged discriminatory act.
11. "Investigator" means the Office of Internal Affairs staff member investigating alleged Discriminatory Practices.

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12. "Party" or "Parties" means the Complainant and/or the Respondent.
13. "Probable Cause" means a high probability that the charge of Discrimination is true.
14. "Respondent" means the Department of the County of San Diego against which a complaint has been filed or the Employee or agent against whom a complaint has been filed.

Procedure

1. Who May File Complaints
 - A. General: An Employee of the County of San Diego or an Applicant claiming to be aggrieved by a Discriminatory Practice may file a signed complaint on the prescribed form with the Office of Internal Affairs.
 - B. Any complaint alleging a Discriminatory Practice against the Office of Internal Affairs or the Chief Administrative Office will be filed with the Office of County Counsel, Room 355, 1600 Pacific Highway, San Diego, California 92101, which will determine who will perform the duties prescribed by this procedure.
 - C. Any complaint filed pursuant to Rule VI of the Civil Service Rules, by an Applicant or an Employee of the County of San Diego with the Civil Service Commission alleging Discrimination may be referred to the Office of Internal Affairs by the Commission for Investigation, pursuant to the provisions of this procedure. Complaints not within the purview of the Office of Internal Affairs will be referred back to the Commission with the reason for referral attached.
2. Office of Internal Affairs Forms
 - A. Complaints must be submitted in writing and signed by the Complainant.
 - B. All complaints must be completed on forms prescribed by the Office of Internal Affairs.
3. Contents

Complaints must contain the following:

 - A. The full name and mailing address of the Party or Parties complaining of a Discriminatory Practice (Complainant);
 - B. The full name and address of Party or Parties alleged to have committed the Discriminatory Practice (Respondent);
 - C. A short and plain statement of the facts, including particulars, which have given rise to the alleged Discriminatory Practice;
 - D. The date or dates the alleged Discriminatory Practice occurred;
 - E. A statement of whether any other action, either civil or criminal, has been instituted in any other forum or agency based upon the same facts alleged in the

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complaint, together with a statement as to the status of the action or final outcome; and

- F. A clear statement of whether the basis of Discrimination is because of race, color, religious creed, sex, age, national origin, ancestry, physical or mental disability, medical condition, marital status and/or protected activity, including, without limitation, whistleblowing as defined by California Labor Code section 1102.5 or other applicable law.

4. Place of Filing

Complaints must be filed at:

Office of Internal Affairs
County of San Diego
1600 Pacific Highway, Room 400
San Diego, California 92101-2472

5. Time Limits on Filing

Complaints must be filed within sixty (60) calendar days after the Complainant first had knowledge of the alleged Discriminatory Practice, but not later than one year after the alleged Discriminatory Practice occurred.

6. Manner of Filing

- A. Complaints must be filed with the Office of Internal Affairs either by personal delivery or ordinary mail.
- B. The complaint will be deemed filed as of the date of receipt if the complaint has been forwarded by personal delivery or by U.S. Mail.
- C. The Office of Internal Affairs will, upon receipt of the complaint, provide a copy to the Respondent by electronic mail, inter-office mail, U.S. mail or personal delivery within five (5) working days.

7. Director's Duties Once A Complaint Has Been Filed

- A. The Director may take reasonable steps to protect the rights of the Parties involved until the complaint is resolved.
- B. The Director may recommend a freeze of any disputed appointments, dismissals, or other action as appropriate. Such action is to limit any financial liability that the County may incur, should a Probable Cause finding be made following Investigation of the complaint.

8. Amendments

- A. Complainant will, upon good cause, have the right to amend the complaint within one month after the filing of the complaint or prior to a final determination by the Office of Internal Affairs, whichever occurs later; thus permitting the Complainant

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to file supplemental information which sets forth transactions, occurrences or events that have taken place since the date of the original or amended complaint.

- B. Amendments will be written, signed and filed in the same manner as provided for in the filing of the original complaint.
- C. Amendments will be sent by mail or personal delivery from the Office of Internal Affairs to the Respondent in the same manner as the original complaint as provided in the section titled "Procedure" subsection 6. (C).

9. Withdrawal

- A. Complainants may withdraw the complaint, amendments thereto, or supplemental complaints, at any time.
- B. Withdrawal requests will be submitted to the Office of Internal Affairs in writing, signed and filed in the same manner as provided for in the filing of the original complaint. Withdrawal will be effective when filed, thereby terminating the complaint. Notice of termination will be sent by electronic mail, inter-office mail, U.S. mail or personal delivery to the Respondent and the Complainant.

10. Investigation, Dismissal and Conciliation

A. Investigation

- 1) After the filing of a complaint, the assigned Investigator will conduct an appropriate investigation to determine whether Probable Cause exists for the allegation(s) in the complaint. Upon the Investigator's request, the Respondent will provide necessary information relative to the complaint within twenty-one (21) working days from request. An extension(s) of time may be granted by the Office of Internal Affairs upon Respondent's request.
- 2) The Office of Internal Affairs will determine the witnesses, if any, to be interviewed. If there is a need for witness testimony from Employees of the Respondent, the Respondent will allow the Investigator to schedule reasonable Employee interviews. The Investigator will exercise sole authority as to who will be present during the interview. Interviews will be conducted in private and will be deemed confidential, in accord with the Disclosure provisions in subsection 10. (E). All Employees are expected to cooperate with the Office of Internal Affairs during the investigative process.
- 3) The Investigation will be completed within 60 days after the complaint has been filed unless the Office of Internal Affairs grants an extension due to extenuating circumstances

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B. No Probable Cause Determination

- 1) If the Office of Internal Affairs concludes, based on the contents of the reports, that there is no Probable Cause to believe that Discrimination occurred, the following actions may be taken:
 - a) Schedule debrief with the Department to discuss recommendations regarding other findings outside of the complaint.
 - b) Send a letter to the Complainant and Department indicating the findings of the Investigation.
- 2) Dismissal
 - a) If the Office of Internal Affairs determines, either upon the face of the complaint or upon the investigative findings, that Probable Cause supporting the allegation(s) in a complaint does not exist, the complaint will be dismissed. The Complainant and Respondent named in the complaint will be notified of such action, with a copy of such notice being sent by certified mail or personal delivery to Complainant and by electronic mail, U.S. mail or personal delivery to Respondent.
 - b) Under Rule VI of the Civil Service Rules; where the Office of Internal Affairs has made a "no Probable Cause" determination, the Commission may proceed with a hearing or may receive and file the report. The Office of Internal Affairs will send by electronic mail, U.S. mail or personal delivery to the Civil Service Commission a copy of the investigative report, as well as a summary of the investigative findings for any further action the Civil Service Commission may deem appropriate. It is emphasized that a "no Probable Cause" determination by the Office of Internal Affairs or by the Civil Service Commission does not cancel a Complainant's legal rights under state or federal law.

C. Probable Cause Determination

- 1) If the Office of Internal Affairs, upon submission of the investigative findings, determines that Probable Cause supporting the allegation(s) of the Complainant does exist, the following actions may be taken:
 - a) Notify the Complainant and Respondent named in the complaint of such determination.
 - b) The Office of Internal Affairs may confer with the Department to discuss conciliation of the complaint.

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- 2) Under Rule VI of the Civil Service Rules, where the Office of Internal Affairs has found probable cause of a violation of Charter Section 901, and a remedy is requested which is not within the jurisdiction of the Office of Internal Affairs or the Chief Administrative Office, the Civil Service Commission shall conduct a hearing, according to Rule VI procedures.

D. Conciliation

- 1) The Respondent and the Office of Internal Affairs may endeavor to resolve the complaint by conciliation at any time. If conciliation endeavors succeed, a conciliation agreement will be written, stating the particulars of the settlement terms, executed by all Parties and a copy mailed to the Complainant either by personal delivery or certified mail. A copy of such conciliation agreement will be provided by personal delivery or mail to the Respondent named in the complaint. All Parties to the agreement will be under a duty to comply with the terms or conditions of any such conciliation agreement.
- 2) When the Office of Internal Affairs is satisfied that further endeavors to settle a complaint by conference, conciliation would be futile, and determines that further action outside the Office of Internal Affairs' authority is required, a report describing the case and giving all facts and recommendations, will be forwarded for review to the Chief Administrative Officer or the Civil Service Commission based on their respective areas of jurisdiction.

The Chief Administrative Officer and/or Civil Service Commission, after any required hearing, may take any or all the following actions:

- a) Issue its findings and conclusions regarding the allegation(s) in the complaint;
- b) Order a remedy within their respective jurisdictions;
- c) Require the Respondent to provide a remedy within the jurisdiction of the Respondent;
- d) Recommend actions which the Respondent may take to correct Discriminatory Practices and/or prevent potentially Discriminatory Practices.

E. Disclosure

The Office of Internal Affairs will not disclose any matter that transpires during the course of an Investigation nor any related matter that transpires during the course of conciliation negotiations, except such disclosures as deemed by the Office of Internal Affairs to be essential to said Investigations or as required by

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court order, administrative agency proceedings or otherwise required by law.

Every effort will be made to treat the Complainant's identity with appropriate regard for confidentiality.

11. Prohibition Against Reprisals

- A. Pursuant to the provisions of Government Code section 53298, no County officer or Employee shall take a reprisal action against any County officer or Employee, or Applicant for County employment, who files a complaint pursuant to this procedure. Additionally, no such reprisal action shall be taken against any County officer or Employee who participates as a witness during the course of an Investigation conducted under this procedure.
- B. This procedure is not intended to prevent any County Appointing Authority (or designee) from taking, directing others to take, recommending or approving any adverse personnel action with respect to any Employee or Applicant for employment if the appointing authority reasonably believes that the action or inaction is justified on the basis of separate evidence which shows any of the following:
 - 1) The Complainant has made allegations that he or she knows to be false or has made allegations without regard for the truth or falsity thereof.
 - 2) The Complainant has disclosed information from records which are closed to public inspection pursuant to law.
 - 3) The Complainant has disclosed information which is confidential under any other provision of law.
 - 4) The Complainant was the subject of an ongoing or existing disciplinary action prior to the filing of the complaint under the procedure.
 - 5) The Complainant has violated any other provision of the County's ordinances, policies or rules, has failed to perform assigned duties, or has committed any other act unrelated to the allegations that would otherwise be subject to personnel or disciplinary action.
- C. It is not a violation of this procedure for an appointing authority (or designee) to take disciplinary action against an Employee if the appointing authority (or designee) had no prior knowledge that a complaint had been filed by the Complainant.
- D. Any County officer or Employee who violates this provision prohibiting reprisals may be subject to disciplinary action up to and including removal in accordance

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with the applicable provisions of the San Diego County Charter, Civil Service Rules for the Classified Service, and the Rules for the Unclassified Service.

- E. Nothing in this Section is intended to interfere with the San Diego County Charter-designated powers of County officers of the Civil Service Commission.
- F. As specified in Government Code section 53298.5, any officer, manager, or supervisor who violates Government Code section 53298 with malicious intent may be punished by a fine not to exceed \$10,000 and imprisonment in the County jail for up to a period of one year, and in addition, may be subject to other actions, including but not limited to, discipline and individual civil liability for damages.

Approved:



Walter F. Ekard
Chief Administrative Officer

Responsible Department(s)
Office of Internal Affairs
Chief Administrative Office



WHO TO CALL FOR MORE INFORMATION

- Jennifer Lawson, Employee Relation Manager
858-974-2019
- Melissa Martinez, DHRO - Employee Relations
858-974-2041
- Sheriff's Internal Affairs
858-974-2065
- Sheriff's Legal Affairs
858-974-2255
- County of San Diego, Office of Ethics & Compliance (OEC)
619-531-5174
- Equal Employment Opportunity Commission (EEOC)
1-800-669-4000
- Department of Fair Employment & Housing (DFEH)
1-800-884-1684



COUNTY OF SAN DIEGO

INTER-DEPARTMENTAL CORRESPONDENCE

SHERIFF'S DEPARTMENT

SEXUAL HARASSMENT PREVENTION TRAINING

This form must be completed by each employee who attends Sexual Harassment Prevention training and returned to the facilitator or the employee's Departmental Personnel Officer.

My signature below acknowledges that I,

_____, _____,
PLEASE PRINT LEGAL NAME PLEASE PRINT JOB TITLE

Attended the County of San Diego's Sexual Harassment Prevention training and received handbook(s), specified polices, and compliant procedure on _____.
DATE

I am a supervisor or manager and have received information outlining my supervisory responsibilities as well as the policies listed below. (Check Box IF APPLICABLE)

I understand it is my responsibility to read the specified polices, complaint procedures and handbook(s) information, which include:

- Board of Supervisors Policy, Sexual Harassment Policy, C-22
- Human Resources Policy, Procedure for Dealing with Alleged Sexual Harassment, Policy No. 111
- San Diego Sheriff's Dept. P & P 2.1, 2.54, and 3.47

I further understand that any questions regarding the specified policies, complaint procedures and handbook(s) can be addressed to Sheriff's Employee Relations, Sheriff's Internal Affairs, or a Departmental Human Resource Officer.

Signature: _____

Date: _____

Department: _____

Work Location: _____ Empl ID: _____