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# Administrative Bulletin

SUBJECT	REFERENCE	APPROVED BY
Policy Prohibiting Discrimination, Harassment, and Retaliation	Department of Justice Administrative Manual, Chapter 7	 <b>CHIEF, DIVISION OF OPERATIONS</b>

## SUPERSEDES Administrative Bulletin 17-07

### PURPOSE

The Department of Justice (DOJ) is committed to providing a workplace in which all individuals are treated professionally and with respect. It is the policy of the DOJ to provide equal employment opportunities to all employees, applicants, students, retired annuitants, and volunteers based on qualifications, merit, efficiency, and fitness for duty. The DOJ is committed to preventing discrimination, harassment, and retaliation in the workplace. Consistent with this commitment, the DOJ complies with all state and federal laws prohibiting discrimination, harassment, and retaliation.

### ZERO TOLERANCE ANTI-DISCRIMINATION, HARASSMENT, AND RETALIATION POLICY

DOJ prohibits workplace discrimination and harassment based on protected characteristics as defined by California and federal law including those listed below:

- Age (40 or older)
- Ancestry
- Color
- Religion (includes religious dress and grooming practices)
- Disability (physical or mental and including HIV and AIDS)
- Marital Status
- Medical Condition
- Genetic Information
- Military and Veteran Status
- National Origin
- Race (includes traits historically associated with race, including but not limited to, hair texture and protective hairstyles, such as braids, locks, and twists)
- Sex (includes pregnancy, childbirth, breastfeeding, and medical conditions relating to pregnancy, childbirth or breastfeeding)
- Gender, Gender Identity, and Gender Expression
- Sexual Orientation
- Political Affiliation or Opinion

- Victims of Domestic Violence, Sexual Assault, or Stalking

This anti-discrimination policy applies to all aspects of the employment relationship including recruitment, hiring, promotion, training, corrective and/or disciplinary action, formal adverse action, and other terms, conditions, and benefits of employment.

The DOJ also forbids workplace discrimination or harassment because an individual is perceived as having a protected characteristic, or because he or she is associated with a person who has a protected characteristic.

DOJ further prohibits retaliation against anyone who opposes or reports discrimination or harassment or who participates or assists in any way in any investigation or proceeding covered by this policy.

DOJ has a zero tolerance policy towards discrimination, harassment, and retaliation. This means that DOJ may take appropriate corrective action, up to or including formal discipline when policy violations occur, even if the violations are not so serious as to be unlawful. This policy prohibits all workplace behavior that a reasonable person, knowing the facts, would perceive as discrimination, harassment, or EEO retaliation. All DOJ employees must adhere to a standard of conduct that is courteous, professional, and respectful of all persons in the workplace.

## DEFINITIONS

The terms used in this bulletin have the following meanings:

1. **Employee** means any employee regardless of classification; retired annuitants, unpaid interns, volunteers, and persons providing services under contract.
2. **Discrimination** means treating any person less favorably than others based on any protected characteristic, including, but not limited to, any personnel action such as hiring, termination, promotion, and pay decisions.
3. **Harassment** of a person based upon that person's protected characteristic is a form of discrimination. Workplace harassment includes, but is not limited to, the following types of unwelcome conduct:
  - Making derogatory comments, slurs, jokes, remarks, or epithets;
  - Displaying cartoons, pictures, posters, drawings, or other objects of a derogatory or offensive nature;
  - Displaying, transmitting, or forwarding Internet material that is of a derogatory or offensive nature;
  - Threats or intimidation;
  - Physical harassment such as assault, unwelcome touching, or blocking another person's movement;

In determining whether harassment has occurred the primary consideration is the impact of the offensive behavior on the recipient of the conduct, not the intent of the actor.

4. **Sexual harassment** refers to a form of harassment that includes repeated unwelcome

romantic or sexual advances, requests for sexual favors, or other unwelcome verbal, visual, written, or physical conduct of a sexual or gender-based nature. Sexually harassing conduct need not be motivated by sexual desire.

Federal and state laws recognize two types of sexual harassment:

Quid pro quo sexual harassment (which uses a Latin term meaning “this for that”):

This form of sexual harassment occurs when a supervisor or manager:

- Makes requests or demands for sexual contact or requires that a subordinate submit to sexual advances as an explicit or implicit condition of employment, contracting, or hiring decisions.
- Requires sexual favors from a subordinate employee in exchange for taking a favorable employment action or not taking a negative employment action.

Hostile work environment sexual harassment:

This form of sexual harassment:

- Occurs when an individual is subjected to unwelcome sexual advances or other gender-based conduct that is sufficiently severe or pervasive to interfere with the individual’s work performance or creates an intimidating, offensive, or hostile work environment.
- Can take the form of a series of inappropriate interactions or can be a single serious incident, such as sexual battery.
- Can be committed by a manager, supervisor, coworker or, in certain circumstances, a non-employee, such as a supplier or customer.
- May arise based on employee interactions that followed a formerly consensual sexual relationship, when sexual advances are no longer welcome.

**5. Retaliation** means taking an adverse employment action against an employee or applicant for employment because that individual engaged in a protected activity. A protected activity includes opposing, in good faith, any practices prohibited by the Fair Employment and Housing Act by making a formal or informal good faith complaint about or reporting discriminatory, harassing, or retaliatory activity, testifying, assisting, or participating in any manner in an investigation, proceeding or hearing relating to discrimination, harassment, retaliation, or any other practice prohibited by FEHA whether before the DOJ, the State Department of Fair Employment and Housing (DFEH), the State Personnel Board, or other tribunal or entity. The DOJ also prohibits taking an employment action against an employee for submitting in good faith, a request for disability or religious accommodation, or asserting rights under the Family Medical Leave Act (FMLA) or the California Family Rights Act (CFRA).

## **RESPONSIBILITIES OF SUPERVISORS AND MANAGERS**

DOJ supervisors and managers must set an example by their own behavior. All supervisors and managers are prohibited from engaging in any behavior made unlawful by the FEHA. They must also adhere to this zero tolerance policy and not engage in any form of discrimination, harassment, or

retaliation. Further, they should take proactive steps to communicate to subordinates that discrimination, harassment, and retaliation in the workplace will not be tolerated. They should ensure that all of their subordinate employees are informed of the DOJ's policy against discrimination, harassment, and retaliation and its complaint policy, and that all their employees receive appropriate training on the policy.

DOJ supervisors and managers are required to take immediate and appropriate action to correct any discriminatory, harassing, or retaliatory conduct occurring in the workplace. A supervisor or manager who becomes aware of any complaint of discriminatory, harassing, or retaliatory conduct must immediately report the complaint both to the EER&R Office and through his or her chain of command.

Once a supervisor or manager is aware that an employee under his or her direct supervision has complained of discriminatory, harassing, or retaliatory conduct, the supervisor or manager will protect the complaining employee from any form of reprisal or retaliation. The supervisor or manager will also promptly initiate appropriate action, as directed by executive level management, to remedy a discriminatory situation and prevent further acts of discrimination, harassment, or retaliation from occurring.

## **RESPONSIBILITIES OF EMPLOYEES AND APPLICANTS**

All employees and job applicants have an obligation to adhere to this zero tolerance policy and not engage in any form of discrimination, harassment, or retaliation. They must also refrain from condoning, tolerating, or merely ignoring conduct by others that violates this policy. Employees or applicants have a responsibility to promptly report any violations of this policy to a supervisor, manager or the EER&R Office.

All employees and third-parties present in the workplace are prohibited from engaging in any behavior made unlawful by the FEHA.

All employees and applicants must also cooperate with any investigation into allegations that the DOJ's policy against discrimination, harassment, or retaliation has been violated.

An employee or job applicant who, in good faith, believes he or she has been subjected to discrimination, harassment (including sexual harassment) or retaliation has an obligation to report the incident or conduct. The employee or applicant may report the discriminatory, harassing, or retaliatory conduct to their supervisor, another DOJ supervisor or manager, or the EER&R Office.

If the person engaging in the discriminatory, harassing, or retaliatory conduct is the employee's direct supervisor, the employee should contact another supervisory employee or DOJ manager, or the EER&R Office.

## **COMPLAINT PROCEDURE**

A complaint that an employee or job applicant has been subjected to discriminatory, harassing (including sexually harassing), or retaliatory conduct may be made verbally or in writing. The DOJ strongly urges any employee or job applicant who believes he or she has been subjected to inappropriate workplace conduct in violation of this policy to reduce his or her concerns to writing. However, it is not required. All complaints, whether verbal or written, will be addressed in the same manner as described in this policy.

Any employee or job applicant that believes his or her rights under this zero tolerance anti-discrimination policy or under federal or state law have been violated may file an informal or formal discrimination complaint with the DOJ's EER&R Office. An employee or applicant may also file directly with the State DFEH or the Federal Equal Employment Opportunity Commission (EEOC).

All complaints filed internally with the DOJ will be handled in an impartial manner in compliance with federal and state laws and DOJ policy. Complaints that describe discriminatory, harassing, or retaliatory conduct prohibited by this policy will be followed by a fair, complete, and timely investigation. No employee or job applicant will be retaliated against for filing a complaint regarding incidents of discrimination, harassment, or retaliation or participating in an investigation of such a complaint. Complaints will be kept confidential to the extent possible.

### **INTERNAL RESOLUTION OPTIONS**

The DOJ provides various internal resolution options for DOJ employees and job applicants who believe they have been subjected to discriminatory, harassing (including sexually harassing), or retaliatory conduct. These options are described below. Whichever internal resolution option an employee chooses, the EER&R Office will attempt to facilitate a practical resolution that is acceptable to the employee and also remedies any discrimination, harassment, or retaliation. The EER&R Office may determine that not all of DOJ's internal resolution options described below are appropriate, depending upon the circumstances.

Employees or job applicants seeking additional information may contact an EER&R analyst to explain their situation and explore the options that may be appropriate to address their complaint. An EER&R analyst can be reached by calling the EER&R Office at 916-210-7580.

DOJ will take whatever appropriate actions are necessary depending on the particular circumstances and the information known, to fulfill its obligations to prevent and remedy any incidents of discrimination, harassment, or retaliation.

### **INFORMAL RESOLUTION PROCESS**

To facilitate early resolution of a complaint, employees who believe they have experienced conduct that is prohibited by this anti-discrimination policy are encouraged to first inform their supervisor. The supervisor will consult with the EER&R Office who will assist in fashioning a resolution of the complaint.

If an employee's supervisor is the person who has engaged in conduct that the employee believes is discriminatory, harassing, or retaliatory, the employee should report the conduct to the second level supervisor or other DOJ supervisor or manager. In all cases, the employee may also contact the EER&R Office directly. If the employee is interested in an informal resolution, the appropriate DOJ second level supervisor or manager will, together with the EER&R Office, attempt to fashion an informal resolution of the complaint that is appropriate to address the employee's concerns.

The goal of the informal resolution process is to reach a practical resolution to an employee's workplace concerns that is mutually acceptable to the employee and other involved parties. The EER&R Office will work with the employee and his or her supervisor or manager to resolve the issues informally through mutually agreeable solutions and at the lowest organizational level, as appropriate. The EER&R Office will decide with the employee whether a mutually agreeable resolution can be

reached. If such a resolution cannot be reached or if the employee is otherwise unsatisfied with any informal resolution, the employee has the option of filing a formal complaint.

The complaint will be kept confidential to the extent possible. If an informal process is explored, it will be completed within a reasonably prompt period of time.

Notwithstanding an employee's desire to use the informal resolution process, the DOJ may determine that the informal resolution process is not suitable to address the allegations of the complaint and so proceed directly to the formal complaint process described below.

### **FORMAL COMPLAINT PROCESS**

A DOJ employee or job applicant who believes in good faith that he or she has been subjected to discriminatory harassing (including sexually harassing), or retaliatory conduct also has the option of filing a formal complaint with the DOJ's EER&R Office. The EER&R Office provides a written complaint form (JUS 8866) that requests all relevant information for purposes of analyzing the complaint. Effective January 1, 2020, a formal complaint must be filed with the EER&R Office within three years of the alleged discriminatory, harassing, or retaliatory act. Notwithstanding this time period, it is imperative for the employee or job applicant to submit a formal complaint as soon as possible after the alleged conduct has occurred, to give the DOJ the opportunity to take prompt and appropriate action to stop the conduct and prevent future conduct.

The written complaint should provide details of the alleged discriminatory, harassing, or retaliatory act(s), the person(s) involved, and how the complainant has been harmed. The complainant should provide specific facts that support their belief that the conduct or employment action occurred because of the complainant's protected characteristic or protected activity. Providing this information will assist the DOJ to take appropriate action to address the allegations.

If a DOJ employee or job applicant submits a written complaint to the EER&R Office that describes facts which, if true, indicate that discrimination, harassment (including sexual harassment), or retaliation in violation of this policy occurred, then the EER&R Office will accept the complaint, which becomes filed on the date of acceptance.

If the EER&R Office receives a written complaint that it determines does not sufficiently describe discriminatory, harassing or retaliatory conduct prohibited by this policy, the EER&R Office will notify the complainant in writing. This notice will inform the employee of the basis for the determination and the employee's right to provide additional information showing discrimination, harassment or retaliation occurred.

After a formal complaint is accepted, the EER&R Office will promptly initiate an impartial investigation by a qualified investigator. The investigation will fully and fairly investigate the alleged discriminatory, harassing or retaliatory conduct. The investigation will also be timely. The investigation will include notice to both the complainant and the subject of the investigation and provide both an opportunity to provide relevant information to the investigator. The DOJ will use all reasonable efforts to complete the investigation within 90 days after the complaint is accepted. After the investigation is completed, the DOJ will issue a written decision by the Chief Deputy to the Attorney General or his or her designee. The decision will be based on the evidence collected as to whether or not the preponderance of the evidence supports a finding that there was a violation of this anti-discrimination policy.

The complaint will be kept confidential to the extent possible.

The complaining employee or job applicant and all other DOJ employees, supervisors and managers are expected to cooperate fully with any investigation. No employees will be retaliated against for complaining or participating in an investigation.

If the DOJ determines that this anti-discrimination policy has been violated, the DOJ will take appropriate corrective action.

### **OPTIONAL MEDIATION**

Depending on the nature of the allegations of the complaint and if all involved parties agree, the DOJ may attempt to resolve the allegations through mediation. Mediation is a confidential process that is completely voluntary. Through mediation, employees, supervisors, and managers work with a professionally-trained, non-DOJ mediator in one or more sessions to attempt to reach mutually-agreeable solutions to workplace disputes.

Notwithstanding an employee's desire to use the mediation process, the DOJ may determine that such a process is not suitable to address the allegations of the complaint.

### **GRIEVANCE PROCESS**

The Memorandum of Understanding (MOU) for a collective bargaining unit may include provisions whereby discrimination, harassment (including sexual harassment), and retaliation complaints may also be addressed through the grievance process. In certain cases, this process can provide an alternative resolution option. Employees considering a grievance should refer to their specific MOU and contact their union representative.

Notwithstanding an employee's filing of a grievance, the DOJ will take whatever appropriate actions are necessary depending on the particular circumstances and the information known, to fulfill its obligations to prevent and remedy any incidents of discrimination, harassment or retaliation.

### **FILING COMPLAINTS WITH THE STATE PERSONNEL BOARD (SPB)**

Any employee or job applicant who reasonably believes that he or she has been subjected to discrimination, harassment (including sexual harassment), retaliation, or denied reasonable accommodation based on a known physical or mental disability may file a complaint with the SPB. As a prerequisite to the filing of a complaint with the SPB, the employee or applicant shall first file a written complaint with the EER&R Office to give the DOJ the first opportunity to address the complaint. Per SPB guidelines, the complaint should be filed with the SPB within 30 days of the date the DOJ served its decision or, if the decision is not provided within 90 days, within 150 days of the date the complainant filed the complaint of discrimination. Further information can be obtained at [www.spb.ca.gov](http://www.spb.ca.gov).

## **OTHER EXTERNAL COMPLAINT FILING OPTIONS**

An employee or job applicant may also choose to file a complaint for discrimination, harassment, or retaliation with a state or federal agency. Regardless of whether an employee or applicant uses one or more of DOJ's internal resolution options, an employee or applicant may file a complaint concurrently or alternatively with the following external agencies:

### **California Department of Fair Employment and Housing (DFEH)**

The DFEH has authority to investigate complaints of employment discrimination, harassment and retaliation. Effective January 1, 2020, complaints generally must be filed with the DFEH within three years of the alleged occurrence of a discriminatory, harassing, or retaliatory action, with an additional 90 day extension of time possible if the complainant first obtained knowledge of the facts which show the alleged unlawful action after the expiration of the applicable filing deadline. For assistance with this process, an employee or applicant can contact the DFEH at (800) 884-1684 [TTY (800) 700-2320] or obtain information at [www.dfeh.ca.gov](http://www.dfeh.ca.gov).

### **United States Equal Employment Opportunity Commission (EEOC)**

The federal EEOC investigates charges of employment discrimination, harassment, and EEO retaliation. The EEOC has jurisdiction over claims asserted under various federal EEO laws, including under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act (ADEA) of 1967, the Equal Pay Act of 1963, Section 501 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA) of 1990. Generally, employees and applicants have 300 days after the alleged discriminatory action, or within 30 days of termination of any state proceeding, whichever comes first, to file a complaint with the EEOC. Other EEOC requirements may also apply. For assistance with this process, an employee can contact the EEOC at (800) 669-4000 or obtain information at [www.eeoc.gov](http://www.eeoc.gov).

### **United States Department of Justice (U.S. DOJ)**

Title VI of the Federal Civil Rights Act and the Omnibus Crime Control and Safe Streets Act of 1968, as amended, prohibits specified discrimination by agencies that receive federal financial assistance. Because DOJ is a grant recipient agency, DOJ employees or job applicants may seek to file complaints of discrimination with their nearest U.S. DOJ Office of Civil Rights or the Civil Rights Division in Washington D. C. Generally, discrimination complaints must be filed with the U.S. DOJ within 180 to 365 days of the most recent unlawful act, depending on applicable statutes. For assistance with this process, an employee can contact the U.S. DOJ at (202) 514-2000 or obtain information at [www.justice.gov](http://www.justice.gov).

## **CONFIDENTIALITY**

The DOJ will maintain confidentiality concerning complaints and investigation to the greatest extent possible. Confidentiality facilitates DOJ's ability to consider, investigate and respond to allegations of discrimination, harassment and EEO retaliation. Confidentiality also prevents embarrassment and further discrimination, harassment or retaliation. Concerns of individuals regarding confidentiality of information provided by them will be handled as sensitively as possible. Therefore, the EER&R Office files (including communication, informal resolution efforts, formal investigation reports, and other

information) are kept as confidential as possible and will not be disclosed to any person except as reasonably necessary and in compliance with the law.

Employees should be aware, however, that complete confidentiality cannot be guaranteed. The DOJ is required in certain circumstances to take preventative or corrective actions that may be inconsistent with an employee's desire that a report of certain behavior be kept confidential. In addition, in the event of an administrative or other legal proceeding, investigative materials may legally be required to be disclosed to others involved in such proceedings.

The circumstances under which information and materials may be disclosed from EER&R Office files will depend on the information sought, whether and to what extent the material is privileged, and the legal rights and privacy interests of all persons who would be affected by the disclosure.

Effective January 1, 2020, the DOJ is mandated to report formal complaints of discrimination, harassment and retaliation using the California Department of Human Resources' Discrimination Complaint Tracking System in accordance with California Government Code Sections 18573 and 19792(k)(1).

### **MANDATORY TRAINING**

To ensure that all employees are informed of DOJ's EEO policy and in an effort to prevent discrimination, harassment (including sexual harassment), and EEO retaliation from occurring, the EER&R Office shall provide mandatory Discrimination, Harassment, and Retaliation Prevention Training (DHRPT)\* to all DOJ employees as follows:

	DHRPT	DHRPT Frequency	Annual EEO Discussion
Supervisors/Managers	Attend within the first six months of their appointment to a supervisory/managerial position	Attend every two years	Facilitator and/or Participant
Rank and File	Attend within the first six months of their appointment to a position at DOJ	Attend every two years	Participant
Temporary, seasonal and any employee hired to work for less than six months	Attend within 30 calendar days after their date of hire or within 100 hours worked, whichever occurs first	Attend every two years	Participant

Where appropriate, on a discretionary, as-needed basis, division directors, bureau chiefs, supervisors, managers, or the EER&R Office may recommend or require that an employee attend a refresher DHRPT course, even when the employee is not currently due for DHRPT.

Supervisors and managers are mandated to conduct annual (calendar year) discussions with their staff regarding the prevention of discrimination, harassment (including sexual harassment), and EEO retaliation. To ensure that required discussions and training take place, a written summary of each division's adherence to policy must be forwarded, under the division head's signature, to the EER&R Office by January 31st of each year.

### **CONSEQUENCES**

The DOJ will take appropriate corrective action to prevent and remedy conduct in violation of the policy. All employees will be held accountable for their conduct. An employee who is found to have engaged in discriminatory, harassing, or retaliatory conduct in violation of this zero tolerance policy will be subject to appropriate action regardless of classification. Such action could include oral or written counseling, letters of reprimand, suspension, demotion, or termination.

### **CONTACT INFORMATION**

Questions regarding this bulletin should be directed to the EER&R Office at 916-210-7580.