

City of Anaheim

Administrative Regulation

CHAPTER 2 - EMPLOYMENT PROCEDURES

Subject:	Harassment, Discrimination, and Retaliation	A.R. 243
		Issue Date: Dec. 6, 1993
		Revised: August 3, 2016
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Purpose:

The purpose of this regulation is to prohibit and prevent harassment, discrimination, and retaliation in all employment related matters based on a protected class as well as whistleblowing and /or union activities. Supervisors, co-workers, and third-parties with whom employees interact are prohibited from engaging in the proscribed conduct in this Policy.

Applicants, officers, officials, employees and contractors are protected from all forms of harassment or intimidation because of a protected class; perceived class; or, for associating with someone who is perceived to have a protected class under federal and/or state law.

Protected classes include the following: race, age, color, religion, sex (including pregnancy, childbirth, breastfeeding and related medical conditions), gender, gender identity, gender expression, transgender, sexual orientation (including heterosexuality, homosexuality, and bisexuality), marital status, national origin, ancestry, citizenship status, familial status, source of income, disability (including mental and physical, HIV/AIDS, and cancer), medical condition, genetic characteristics or information, and military or veteran status.

The City of Anaheim has a zero tolerance policy for any conduct that violates this Policy or the spirit thereof. Conduct need not rise to the level of a violation of law to violate this Policy. An isolated derogatory comment, joke, racial slur, sexual innuendo etc. may constitute conduct that violates this Policy. In addition, the conduct need not be unwelcome and a person may violate this Policy even if he/she did not intend to harass, discriminate, or retaliate. It is not one's intentions but one's actual behavior and the suitability thereof that is analyzed in a complaint. If the conduct reasonably would be considered inappropriate for the workplace by the City, it may violate this Policy and provide grounds for discipline.

Terms:**Prohibited Behavior**

1.) Harassment refers to behavior which is not welcome; objectively offensive; debilitates morale; and/or, has the purpose or effect of interfering with an employee's work performance or creating an intimidating, hostile, or offensive work environment.

Harassment may take on many forms, including, but not limited to:

- A. Verbal - epithets, derogatory comments, jokes, slurs, rumors, innuendos, suggestive sounds, stories or remarks about a person's clothing, body or activities
- B. Visual - posters, cartoons, gestures, written and electronic materials which depict or discuss people based on a protected status
- C. Physical - pinching, grabbing, patting, leering, staring, touching, blocking movement, or interfering with a person's normal work

Sexual Harassment is a specific type of gender harassment, which may take on any of the forms described above and may include a conditional element as follows:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an employee's employment, or
- Submission to or rejection of such conduct by an employee is used as the basis for employment decisions affecting the employee.

It is not a defense to a complaint of harassment based on sex that the alleged harassing conduct was not motivated by sexual desire. In addition, an individual alleging sexual harassment is not required to sustain a loss of tangible job benefits in order to establish harassment.

2.) Discrimination is the practice of prejudicial treatment because of one's actual or perceived protected class or for associating with someone of an actual or perceived protected classification.

3.) Retaliation is an adverse action taken by an employer or employee against a reporting party; someone who associates with a reporting party; an individual who participates in the complaint or investigation process; and/or an employee who has exercised a right or attempted to exercise a right provided by law.

Protected Activities

1.) Whistleblowing is when an employee discloses information to a government or law enforcement agency where the employee has reasonable cause to believe that the information discloses:

- A violation of a federal or state statute;
- A violation or noncompliance with a federal or state rule or regulation; or
- With reference to employee safety or health, unsafe working conditions, or work practices in the employee's employment or place of employment.

2.) Union Activities are the forming, joining/refusing to join, and participation in employee organizations.

The City of Anaheim and employee organizations shall not interfere with, intimidate, restrain, coerce, harass, or discriminate against an employee because of the exercise of his/her rights under the Meyers-Milias Brown Act (MMBA). In addition, the City of Anaheim shall not impose or threaten to impose reprisals on employees because of their exercise of rights under the MMBA.

Procedures:

The City will take preventative, corrective, and disciplinary action for any behavior that violates this Policy or the rights and privileges it is designed to protect. Accordingly, all parties who believe they are experiencing harassment, discrimination, and/or retaliation are encouraged to report the behavior, either verbally or in writing, to their immediate supervisor; any supervisor or manager within or outside of his/her department; any department head; the City of Anaheim's Equal Employment Opportunity ("EEO") Administrator; or, Employee Relations Manager. Attached is an EEO Complaint Form that may be used for reporting such conduct in writing. This document is also available on the Anaheim Insider, Human Resources Department webpage. It is not necessary to follow the chain of command when reporting a violation of this Policy.

Any supervisor, manager, or department head who receives a complaint must immediately report it to the City of Anaheim's EEO Administrator or Employee Relations Manager. Failure to do so may, in and of itself, be grounds for disciplinary action up to and including discharge.

At the onset of any such behavior, although not required, employees are also encouraged to inform the offender that the conduct is unwelcome and request that it be discontinued immediately. Sometimes an individual is unaware that his/her conduct is offensive. In these situations, the offensive behavior may be eliminated by informing the offender.

When the City receives allegations of misconduct under this Policy, confidentiality will be maintained to the extent possible. Complete confidentiality cannot occur, however, due to the need to fully investigate and the duty to take effective remedial action. Therefore, the City shall not disclose the results of the investigation except as necessary to support a disciplinary action; take remedial or corrective action; defend itself in adversarial proceedings; or, comply with the law or a court order.

Upon receiving notification of a harassment, discrimination, and/or retaliation complaint, the EEO Administrator and/or Employee Relations Manager shall:

- 1.) Determine if the complaint falls within the parameters of this Policy;
- 2.) Take reasonable steps to protect the complainant/victim(s) from further harassment, discrimination, and/or retaliation as a result of communicating the complaint;
- 3.) Authorize, investigate, and/or supervise a fair, timely and thorough investigation of any applicable complaint;
- 4.) Document and track the investigation for reasonable progress;
- 5.) Review the factual findings of any investigation;
- 6.) Assess whether or not the conduct is in violation of City Policy;
- 7.) If appropriate, recommend options for remedial action(s) and resolution(s).
The remedial action(s) will be commensurate with the severity of the offense;
and
- 8.) Provide a timely response and closure.

Investigators will be impartial, qualified, and have full authority to investigate all aspects of the complaint including details of the specific incident(s), frequency, date(s) of occurrence(s), and name(s) of witness(es). This authority subsumes access to records and the cooperation of any employees involved. During this process, all parties will be accorded appropriate due process and conclusions will be based on the evidence collected.

Employees, including the alleged complainant/victim, are required to fully cooperate in the investigation by responding truthfully and fully to all questions posed. In addition, an individual who is interviewed during the course of an investigation is prohibited from discussing the substance of the interview, except as otherwise directed by a supervisor or the investigator, due to legitimate business reasons such as preserving the integrity of the investigation. Any individual who discusses the content of an investigatory interview in violation of a direct order will be subject to discipline up to and including discharge.

No influence will be used to suppress any complaint and no employee will be subject to retaliation for filing a complaint and/or for cooperating as a witness. Individuals who file false accusations that are proven to be deliberate, malicious, and/or intentional will be subject to disciplinary action up to and including discharge.

If a complaint is not sustained, the alleged offending party(ies) will be provided with a Notice of Determination exonerating him/her/them.

Responsibility:

This Policy applies to all City personnel including supervisory and non-supervisory employees. Each executive manager is responsible for ensuring that the work environment is free from all types of unlawful harassment, discrimination, and/or retaliation. Managers and supervisors are also responsible for taking prompt, appropriate action within their work units to avoid and minimize such incidents. The words harassment, discrimination, and retaliation need not be used to trigger the duty to act. It is the involved behavior as described above that triggers the duty to act.

Attachment: **EEO Complaint Form**



City of Anaheim HUMAN RESOURCES DEPARTMENT

EEO COMPLAINT FORM

Today's Date: _____

Reporting Party: _____ Work #: _____

Job Title: _____ Cell #: _____

Department: _____ Email: _____

Immediate Supervisor: _____

Did you, complainant and/or alleged victim notify a supervisor/manager prior to today?

Yes _____ No _____ Unknown _____

If yes, who was informed: _____

When: _____ Time: _____

How: _____

Date(s) and time(s) on which incident(s) occurred:

Alleged Victim(s) (if not the same as Reporting Party)

Victim: _____ Title: _____

Work #: _____ Home #: _____ Email: _____

Victim: _____ Title: _____

Work #: _____ Home #: _____ Email: _____

Alleged Offender(s)

Offending Party: _____ Title: _____

Work #: _____ Home #: _____ Email: _____

Offending Party: _____ Title: _____

Work #: _____ Home #: _____ Email: _____

EEO Complaint Form**Page (2) of (2)****Alleged Witnesses (if identifiable)**

Witness:		Title:	
Work #:	Home #:	Email:	
Witness:		Title:	
Work #:	Home #:	Email:	
Witness:		Title:	
Work #:	Home #:	Email:	

Incident(s) (Describe in detail the nature of the incident(s) including who, when, where and what specific actions took place. You may attach additional notes if needed.)

Signature

Date