

DEPARTMENT OF PUBLIC WORKS MANAGEMENT MANUAL

Personnel Directive

Subject: PROCEDURE FOR PREVENTING
AND/OR RESOLVING PROBLEMS
RELATED TO SEXUAL
HARASSMENT

ADOPTED BY THE BOARD OF PUBLIC WORKS, CITY OF LOS ANGELES

June 20, 2007

PERSONNEL DIRECTIVE NO. 47

BACKGROUND

The City of Los Angeles is committed to providing its employees with a working environment free of sexual harassment, intimidation, and coercion. In keeping with this commitment, the Mayor's Executive Directive No. PE-1, "Equal Employment Opportunity, Non-Discrimination and Reasonable Accommodations," which references sexual harassment was issued on August 31st 2004 and in Public Works, Personnel Policy No. 13, titled "Sexual Harassment and Sexual Orientation Discrimination," was amended on June 20, 2007.

All Public Works employees - supervisory and non-supervisory - should read this Directive in detail. Clearly, in Public Works, sexual harassment is unacceptable and will not be condoned or tolerated.

GUIDELINES AND PROCEDURES RELATED TO SEXUAL HARASSMENT

I. What Sexual Harassment Is

- A. Sexual harassment is a form of sex discrimination and therefore unlawful job discrimination; it violates Federal and State law and City policy.
- B. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature when:
 1. submission to such conduct is either explicitly or implicitly made 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 the individual; or
 3. such conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

- C. Consistent with this definition, it is sexual harassment for any employee to use implicit or explicit sexual behavior of a verbal, visual or physical nature, to affect the work environment, job or performance of any other employee. Verbal harassment includes comments or jokes of a sexual nature; visual harassment includes leering, obscene letters, or any inappropriate display of sexually explicit objects, pictures, cartoons, etc.; and physical harassment includes assault, sexually suggestive touching, body contact, or blocking movements.
- D. As used in this procedure, "employee" is any individual occupying a position in the classified civil service and also includes interns, contract employees (personal services contracts), and employees exempted under provisions of the City Charter, including elected and appointed officials. Also covered are members of the public, volunteers, or employees of a business under contract with the City, who claim harassment by City employees during the conduct of their employment.
- E. Supervisory level employees who do not intervene against the sexually harassing conduct of a subordinate employee, when the supervisor was or should have been aware of such conduct, can result in the City's liability and subject the supervisor to disciplinary action. In addition, a supervisor can be found personally liable in a court of law in those cases where he/she is deemed to have passively participated in the harassment.
- F. Sexual harassment can occur in a variety of circumstances. Acts constituting sexual harassment are not necessarily limited to acts by a male toward a female, but can be committed by and against persons of both sexes. Sexual harassment includes, but is not limited to, the following considerations:
1. The harasser does not necessarily have to be the victim's supervisor. He/She may also be an employee who does not supervise the victim, a non-supervisory employee (co-worker), or, in some circumstances, even a non-City employee (e.g., a member of the public or a contractor).
 2. The victim does not have to be of the opposite sex from the harasser.
 3. The victim does not have to be a person at whom unwelcome sexual conduct is directed. He/She may also be someone who is affected by the actions of co-workers, which may create an intimidating, hostile, or offensive working environment.
 4. Sexual harassment does not depend on the victim having suffered a concrete economic injury as a result of the harasser's conduct. For example, improper sexual advances, which do not result in the loss of a promotion or affect another type of employment decision may, nonetheless, unreasonably interfere with the victim's work or create a harmful or offensive working environment.
 5. Sexual orientation harassment in the work place of a City employee on the basis of one's actual or perceived sexual orientation, including actual or perceived heterosexual, lesbian, gay, or bisexual orientation is also prohibited. Further

information is found in the Department's Personnel Directive No. 58 "Sexual Orientation Discrimination" which is based upon the Personnel Department's Sexual Orientation Compliance Procedure.

6. The Definition of "sex" includes a person's gender identity or expression. Therefore, sexual harassment is also established by discrimination based upon a person's identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with the person's sex at birth. Employees who have changed their gender or are planning to change their gender are protected by law. The City prohibits discrimination based on gender-related characteristics, including, but not limited to employees' actual or perceived transgender status.

II. Harassment of/by Non-City Employees

Protection against unlawful harassment is also extended to non-City Employees. For example, if the City contracts with a janitorial service to clean the office the City would be liable for unlawful harassment if one of the contractor's custodial workers was harassed by a City employee. Vice versa, City employees and applicants are also protected from sexual harassment by non-employees. The City may be liable for non-employee sexual harassment, where its agents or supervisors knew or should have known of the conduct and failed to take the immediate and appropriate corrective action.

III. Liability for Sexual Harassment

The City can be found liable for creating or contributing to a work environment that results in incidents of unlawful sexual harassment as defined in I., above. The same is true, if members of the public (e.g. contractors, their employees or an applicant for a building license) in the course of their business with the City are sexually harassed by a City Employee. In addition, employees who engage in unlawful harassment can be held personally liable, regardless of whether the employer is found liable. This places a personal burden on employees to ensure that their work conduct does not include behaviors that may be construed as sexual harassment.

IV. Sexual Harassment Complaint Procedure in Public Works

Sexual harassment can be so devastating - to its victims, to the work relationship, and to employee morale - that all Department employees have a stake in maintaining a work environment free from sexually harassing behavior. In addition to disrupting the workplace, lowering productivity and increasing costs for the City, sexual harassment takes a high emotional toll on the individuals involved. Because victims have often been reluctant to report their situation, the following procedure is established to prevent and/or to resolve problems related to sexual harassment in Public Works.

A. Notifying the Alleged Harasser

Any City employee who believes that in the course of conducting City business verbal, visual or physical actions of a sexual nature by another person are offensive is encouraged to immediately and clearly communicate to the alleged harasser that such sexual behavior is unwelcome. The purpose of immediately communicating to the alleged harasser that the behavior is unwelcome is to try to stop the harassment before it becomes more serious. Such notice will help support a claim that harassment did occur, although failure to notify the alleged harasser that the behavior is unwelcome does not prevent the filing of a complaint of sexual harassment.

1. Reporting the alleged Harassment

An employee may report the alleged harassment to his/her supervisor, the employee's Bureau Sexual Harassment Counselor or to the Department of Public Works Sexual Harassment Counselor in the Office of Management-Employee Services. After reporting it, the employee has the right to a confidential conference on the issue with the supervisor or Counselor. If the situation is not resolved after this meeting, the employee may file a complaint with the Bureau Sexual Harassment Counselor, who will then begin a thorough investigation. A complaint of sexual harassment must be filed within one year of the alleged act of harassment. Otherwise, the complaint may be considered untimely.

1. Conducting the Investigation

Upon receiving a sexual harassment complaint, the Counselor will meet with the complainant as soon as mutually convenient, informing the complainant that he or she may have a representative at the meeting. During the meeting, the Counselor will inform the complainant about the Department's sexual harassment policies and procedures; and about other available options for filing sexual harassment complaints (see Section IV of this Directive). In addition, the Counselor will explain that while every reasonable effort will be made to protect the confidentiality and privacy of the individuals involved, the conduct of an investigation requires that the alleged harasser be informed of the allegations, and that witnesses be interviewed. (However, all persons contacted or interviewed will be requested not to discuss the subject matter of the investigation in order to protect the privacy of those participating in the investigation.)

The Counselor will then listen to the allegations made by the complainant, the names of possible witnesses, and the proposed remedies suggested by the complainant to resolve the complaint. Afterward, the Counselor will conduct a complete and timely investigation into the complaint, including conducting interviews with the complainant's supervisor, any witnesses, and the alleged harasser(s). An employee who is alleged to have committed an act of sexual harassment will be contacted during the investigation, informed of the allegations being made, and given the opportunity to respond to the allegations and identify other witnesses. Any accused employee has the option to be represented during the investigation by an employee organization representative, attorney, or other individual of his or her choice.

All investigations will be as extensive as required, based upon the nature of the allegations. If during the investigation, the Counselor determines that the issues are related to the complainant's gender (not gender identity) rather than being sexual in nature, the investigation will continue under the procedures outlined in the Department's Discrimination Complaint Procedure (Personnel Directive No. 36).

3. Informing the Complainant About the Investigation

The complainant will be kept apprised of the status of the investigation on a regular basis by the Bureau Sexual Harassment Counselor. Upon completion of the investigation, the Counselor will prepare a report to the Bureau Director, which will include findings on whether the allegations have been substantiated. A copy of the report will be provided to the Department's Sexual Harassment Counselor in the Office of Management-Employee Services. The Counselor will discuss any findings, conclusions, and/or recommendations with the complainant. Where appropriate disciplinary actions may be taken against the harasser, the complainant will be so informed without disclosing the specific nature of the actions. If there are remedies provided to resolve the complaint, which are different than those requested by the complainant, the Counselor will provide an explanation. If the complainant is not satisfied with the way the complaint has been resolved, the Counselor shall again inform the complainant about additional options for filing a sexual harassment complaint. The Counselor should also notify a complainant if the time to file with an outside agency appears likely to run out before the original investigation is completed.

4. Disciplinary Action Resulting from an Investigation

Public Works Bureau managers have the duty and responsibility to take all necessary steps, including appropriate disciplinary action, to promote and maintain a working environment free of sexual harassment, intimidation and coercion. If, after an investigation, discipline appears to be warranted, the matter will be turned over to the appropriate Bureau Director for necessary action. The Department's disciplinary guidelines in regard to sexual harassment can be found in Personnel Policy No. 7 "Guide to Employee Discipline" in the section entitled "Discrimination/Harassment."

5. Confidentiality During the Investigation

As stated above, the complainant has the right to a confidential meeting with the person to whom the sexual harassment complaint is made. All investigations will be handled with discretion, sensitivity and due concern for the individuals involved. Calls from and conversations with the employees will be kept in strictest confidence. Every reasonable effort will be made to restrict information on the specifics of the complaint to those who are participating in the investigation: the complainant, the alleged harasser, witnesses, the investigative staff and Bureau management. All persons contacted or interviewed during the investigation will be requested not to discuss the subject matter of the investigation.

6. Documentation of Sexual Harassment Complaints

The Bureau Sexual Harassment Counselor will fully record and document the complaint and the requested remedies and maintain all documentation related to the investigation, the resolution of the complaint and whether the complainant was satisfied with that resolution. When requested, it will also be the responsibility of the Counselor to report on the disposition of substantiated complaints of sexual harassment to appropriate City, State, or Federal compliance agencies.

7. Complaint against a Non-Employee

If the complaint is against a non-employee, the Counselor shall conduct an investigation as stated above. The extent of the City's control and any other legal responsibility which the City may have with respect to the conduct of the non-employee shall be considered. If the investigation finds that sexual harassment occurred during the scope of work for a non-employee, this information must be forwarded to their employer for corrective action. If the non-employee has no employer affiliation, such as a private citizen, appropriate action should be taken to prevent a reoccurrence. Such action may include modification of assignment to ensure no future contact, provide or add security, etc. Each case for non-employees must be handled on an individual basis to determine the most effective remedy to stop the sexual harassment.

V. Responsibilities Related to Sexual Harassment

A. Management Responsibilities

According to the Mayor's Executive Directive PE-1, it will continue to be the policy and practice of the City of Los Angeles to make every effort to prevent discriminatory practices such as sexual harassment. Every Bureau Director should ensure that all employees are familiar with the Sexual Harassment Complaint Procedure and the name and telephone number of the Bureau Sexual Harassment Counselor. Each Bureau must maintain accurate and current records of reports of sexual harassment, along with supporting documentation or other investigative materials, and records of the resolution of each matter. Bureau managers and supervisors should encourage the cooperation of all employees in taking appropriate steps to eliminate sexual harassment in City government.

B. Responsibilities of the Bureau Sexual Harassment Counselor

Each Bureau Sexual Harassment Counselor will provide information to Bureau employees on sexual harassment policies and procedures; investigate complaints in a timely manner (which includes meeting with the complaining employee, listening and discussing the complaint with the employee, recording and documenting the complaint, conducting a complete investigation, preparing a report, fully informing the employee of his/her additional rights if the employee is not satisfied with the way the complaint was resolved and arrange preventative sexual harassment training for Bureau employees.

C. Employee Responsibilities and Retaliation

Any employee who observes what he or she believes to be sexually harassing verbal, visual, or physical behavior occurring should report such behavior to a supervisor and/or the Bureau Sexual Harassment Counselor, and should then cooperate in any subsequent investigation. All employees are assured that they may make reports of sexual harassment or cooperate in an investigation without fear of retaliation or reprisal. Managers, supervisors and/or employees are prohibited from retaliating in any way against any employee who has filed a complaint or who has testified, assisted or participated in any manner in an investigation, proceeding or hearing conducted by the Department of Public Works, another City Department and/or any outside agency. Examples of retaliation include discharge, suspension, demotion, refusal to hire, failure to treat impartially or denial of some employment benefit. Retaliation is considered a serious act of misconduct, with appropriate discipline to follow. Supervisors will be held to a higher standard and can expect severe disciplinary measures for proven acts of retaliation.

VI. Other Options for Filing Sexual Harassment Complaints

In addition to filing a complaint with the Bureau Sexual Harassment Counselor, an employee has several other options. The City-wide Sexual Harassment Awareness Coordinator in the Personnel Department is available to assist employees with the complaint process, to respond to questions regarding options available to employees, and to talk and listen to those with concerns regarding sexual harassment issues. An employee may also file a complaint with the Civil Service Commission or with appropriate State or Federal agencies, such as the California Department of Fair Employment and Housing (DFEH) and the Federal Equal Employment Opportunity Commission (EEOC). Employees may also seek assistance from the Department's Sexual Harassment Counselor, the Commission on the Status of Women, the Mayor's Office, the various City Equal Employment Opportunity Associations, or their unions (See Personnel Directive No. 36, "Public Works Discrimination Complaint Procedure" for addresses of agencies).

NOTE: If an employee files a grievance and a sexual harassment complaint with a City agency alleging the same or closely similar sexual harassment issues, the discrimination complaint will be administratively closed in favor of investigating the case through the appropriate grievance procedure.

Public Works employees who have questions about the rights and responsibilities set forth in this Directive should contact their Bureau Sexual Harassment Counselor or the Employee Relations Division of the Office of Management-Employee Services. All employees should become familiar with the rights and responsibilities stated in this Directive and should conduct themselves in a manner consistent with them.

References:

CITY OF LOS ANGELES DISCRIMINATION FREE WORKPLACE POLICY RESOLUTION, last revised by City Council 10/1/99 <http://www.lacity.org/per/EEO/DISCRIM.pdf>

Mayor's Executive Directives

PE-1 (Hahn Series) of 8/31/04

http://www.lacity.org/mayor/hahned/mayorhahned248333327_02082005.pdf

2001-35 (Riordan Series) of 2/8/2001

<http://www.lacity.org/PER/eeo/ED2001-35.pdf>

The Personnel Department's

Discrimination Complaint Procedure <http://www.lacity.org/PER/eeo/DISCRIME.htm>

Sexual Harassment Discrimination Complaint Procedure

<http://www.lacity.org/PER/eeo/sexharas.pdf>

Sexual Orientation Discrimination Complaint Procedure

<http://www.lacity.org/PER/eeo/sexual%20orientation%20complaint%20procedure.pdf>

List of all Departments' Sexual Harassment and Sexual Orientation Counselors

<http://www.lacity.org/PER/eeo/DeptCoord.pdf>

EEO Handbook for City Commissioners (and all other City Employees)

<http://www.lacity.org/PER/eeo/EEO%20Handbk%20CityComm.pdf>

Department of Public Works' (all revised June 20, 2007)

Personnel Policy No. 7 – “Guide to Employee Discipline”,

Personnel Policy No. 13 – “Sexual Harassment and Sexual Orientation Discrimination”,

Personnel Directive No. 36 - "Public Works Discrimination Complaint Procedure”,

Personnel Directive No. 58 – “Prohibition against Sexual Orientation Discrimination in Public Works”

Supersedes Personnel Directive No. 47 dated May 26, 1982 and most recently revised on May 18, 1994