

# City of Los Alamitos Administrative Regulation

**Regulation:** 4.7

**Title:** Discrimination, Harassment, and Retaliation

**Authority:** City Manager

**Date:** October 20, 2016

**Revised:** May 10, 2022

  
Chet Simmons, City Manager

**1. Purpose:** The City of Los Alamitos ("City") is strongly committed to prohibiting and preventing discrimination, harassment, and retaliation in employment. This Policy defines those terms and sets forth a procedure for investigating and resolving internal complaints.

**2. Application:** The individuals covered by this Policy are: applicants, employees regardless of rank or title, elected or appointed officials, interns, volunteers, and contractors. This Policy applies to all terms and conditions of employment, internships, and volunteer opportunities, including, but not limited to, selection, hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, compensation, and training.

**3. Regulation:** The City has zero tolerance for any conduct that violates this Policy. Conduct need not arise to the level of a violation of law to violate this Policy. A single act can violate this Policy and provide grounds for discipline or other appropriate sanctions. This Policy establishes a complaint procedure for investigating and resolving internal complaints of discrimination, harassment, and retaliation by and against covered individuals. The City encourages all covered individuals to report any conduct they believe violates this Policy as soon as possible. As described below, retaliating against an employee for filing or supporting a complaint, or for participating in the complaint resolution process is prohibited. Individuals found to have retaliated in violation of this Policy will be subject to appropriate sanction or disciplinary action, up to and including termination.

## **Definitions — Protected Classification**

This Policy prohibits harassment, discrimination or retaliation because of an individual's protected classification. "Protected Classification" includes race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age (over 40), sexual orientation, or military and veteran status, or any other basis protected by law. (Gov. Code § 12940, subd. (a).)

This Policy prohibits discrimination, harassment or retaliation for the following reasons: 1) an individual's protected classification or the individual engaged in protected activity; 2) the perception that an individual has a protected classification or engaged in a protected

activity; or 3) the individual associates with a person who has or is perceived to have a protected classification or to have engaged in protected activity.

### **Definitions - Discrimination**

This Policy prohibits treating a covered individual differently and adversely because of the individual's actual or perceived protected classification as defined in this Policy; because the individual associates with a person who is or is perceived to be a member of a protected classification; or because the individual participates in a protected activity as defined in this Policy. (Gov. Code § 12926, subd. (o).)

### **Definitions — Harassment**

This policy prohibits harassment of a covered individual because of the individual's actual or perceived protected classification. Harassment includes, but is not limited to, the following conduct:

- a. Derogatory, offensive or inappropriate speech, such as epithets, slurs or stereotypical comments, or verbal propositions made on the basis of a protected classification. This includes, but is not limited to, comments, stories, and jokes about appearance, dress, physical features, gender identification, and race.
- b. Physical acts, such as assault, impeding or blocking movement, offensive touching, or physical interference with normal work or movement. This includes, but is not limited to, pinching, grabbing, patting, or making explicit or implied job threats or promises in return for submission to physical acts.
- c. Visual acts, such as derogatory, offensive, or inappropriate gestures, posters, cartoons, emails, pictures or drawings related to a protected classification.
- d. Unwanted sexual advances, requests for sexual favors and other acts of a sexual nature, where submission is made a term or condition of employment, where submission to or rejection of the conduct is used as the basis for employment decisions, or where the conduct is intended to or actually does unreasonably interfere with an individual's work performance or create an intimidating, hostile, or offensive working environment. (Gov. Code §12940, subd. (j); 2 Cal.Code Regs § 11091, subd. (b)(1).)

### **Guideline for Identifying Harassment**

Harassment includes any conduct that another individual who is a member of the protected classification would find unwelcome or unwanted. Harassment may include the following:

1. Conduct that is not intended as to harass. Conduct may violate this policy if the conduct is directed at, or implicates a protected classification and the recipient finds the conduct to

be offensive or inappropriate, even if it is well-intentioned conduct (g., gifts, over-attention, endearing nicknames, hugs).

2. Conduct to which the recipient appears to have consented. The City does not recognize as a defense that the recipient appeared to have consented to the conduct at issue by failing to protest about the conduct. A recipient may not protest offensive or inappropriate conduct for many legitimate reasons, including, but not limited to, the need to avoid being perceived as insubordinate or to avoid being ostracized or subjected to retaliation.

3. Conduct about which no employees previously complained. The fact that no employee previously complained about the same or substantially similar conduct does not mean that the conduct is inoffensive or appropriate nor does that fact preclude an employee from complaining about such conduct if it is repeated.

4. Conduct witnessed by a third party or about which a third party learns, even if they did not witness such conduct. Visual, verbal, or physical conduct between two people who do not find such conduct to be offensive or inappropriate may constitute harassment of a third party witnesses such conduct or learns about the conduct later and finds the conduct to be offensive or inappropriate. Conduct can constitute harassment even if it is not explicitly or specifically directed at a particular individual.

5. Conduct can constitute harassment even if the individual has no intention to harass. Conduct that may be well-intentioned conduct (g., gifts, over-attention, endearing nicknames, hugs) may nevertheless constitute harassment if the conduct is directed at, or implicates a protected classification, and if the individual finds such conduct inappropriate or offensive.

### **Definitions — Retaliation**

City officials, officers, employees, or contractors are prohibited from retaliating against applicants, officers, officials, employees, or contractors because of any of the protected activity as defined herein. Disciplinary action, up to and including termination, will be taken against an employee or officer who is found to have violated this Policy. Any elected official or contractor who violates this Policy will be subject to appropriate sanctions.

Retaliation occurs when an employer takes adverse action against a covered individual because of the individual's protected activity.

"Protected activity" includes, but is not limited to, any of the following:

- Making a request for or receiving an accommodation for a disability.
- Making a request for or receiving accommodation for religious beliefs or practices.
- Making or supporting a complaint under this Policy.

- Opposing violations of this Policy;
- Participating in an investigation pursuant to this Policy.
- Associating with another employee who is engaged in any of the protected activities enumerated here.
- Filing a complaint with a federal or state enforcement or administrative agency.
- Participating in or cooperating with a federal or state enforcement agency that is conducting an investigation of the City regarding alleged unlawful activity.
- Testifying as a party, witness, or accused regarding alleged unlawful activity.
- Making or filing an internal complaint with the City regarding alleged unlawful activity or activity believed to be in violation of this Policy.
- Providing informal notice to the City regarding alleged unlawful activity.
- Calling a governmental agency's "Whistleblower hotline."
- Filing a written complaint under penalty of perjury that the agency has engaged in "gross mismanagement, a significant waste of public funds, or a substantial and specific danger to public health or safety."

"Adverse action" may include, but is not limited to, any of the following: (1) disciplinary action; (2) counseling; (3) taking sides because an individual has engaged in protected activity; (4) spreading rumors about a complainant or about someone who supports or assists the complainant or who participates in the investigation; (5) shunning or avoiding an individual who engaged in protected activity; or (6) making real or implied threats of intimidation to prevent or deter an individual from engaging in protected activity.

### **Complaint Procedure**

A covered individual who believes that he or she has been subjected to behavior that violates this policy should immediately notify his or her:

- a. immediate supervisor;
- a. any supervisor or manager within or outside of the department;
- b. department head;
- c. the Executive Assistant, Personnel and Benefits; or
- d. the Administrative Services Director.

There is no need to follow the chain of command. Notification may be made orally or in writing. The employee can use the City's Employee Complaint Form **(Attachment 1)**.

Any supervisory or management employee who receives a harassment complaint must immediately report the conduct to the Administrative Services Director and/or the Executive Assistant, Personnel and Benefits.

The Administrative Services Director is the person who will investigate or direct the investigation of complaints of behavior that violate this Policy. If the Administrative Services Director is accused of, or a witness to, the events at issue, an individual with higher authority will investigate or direct the investigation. In the event the complaint is against the City Manager, an investigator shall be appointed by the Mayor of the City or his or her designee.

The Administrative Services Director will complete and/or delegate the following steps:

- a. Authorize and supervise the investigation of the complaint and/or investigate the complaint. The person responsible for investigating a complaint shall conduct a prompt, thorough and objective investigation of the alleged prohibited behavior. The investigation will usually include interviews with: (1) the complainant; (2) the accused; and (3) other persons who have relevant knowledge concerning the allegations in the complaint.
- b. Review the factual information gathered through the investigation to determine whether it is more likely than not the alleged prohibited behavior occurred, giving consideration to all factual information and the totality of the circumstances, including the nature of the alleged behavior and the context in which the alleged behavior occurred.
- c. Prepare a summary report of the determination as to whether the conduct violated this Policy has been violated and provide such report to appropriate persons. If discipline or sanctions are imposed, the level of discipline or sanctions will not be communicated to the complainant.
- d. If conduct in violation of this Policy occurred, take or recommend to the appointing authority prompt and effective remedial action. The remedial action will be commensurate with the severity of the offense.
- e. Take reasonable steps to protect the complainant from further harassment, discrimination or retaliation.

If it is determined that the behavior in the complaint occurred and violates this Policy, the City will take prompt and appropriate remedial action consistent

with the law and/or any City policies, rules, regulations and memoranda of understanding pertaining to employee disciplinary action. Other steps may be taken to the extent necessary to prevent recurrence of the prohibited behavior and/or protect the complainant from further prohibited behavior. The remedial action will be consistent with the nature and severity of the offense.

An individual has the option to report harassment, discrimination or retaliation to the U.S. Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing (DFEH). These administrative agencies offer legal remedies and a complaint process. The nearest offices are listed on the Internet, in the government section of the telephone book or employees can check the posters that are located on City bulletin boards for office locations and telephone numbers.

### **Proactive Approach**

The City takes a proactive approach to potential Policy violations and will conduct an investigation if its supervisory or management employees become aware that harassment, discrimination, or retaliation occurred or may be occurring, regardless of whether the recipient or third party reports a potential violation.

### **Confidentiality**

Every possible effort will be made to assure the confidentiality of complaints made under this Policy. Complete confidentiality cannot occur, however, due to the need to fully investigate the complaint, the duty to take effective remedial action, and the need to provide the subject of the complaint their due process rights, which include providing the subject of the investigation a copy of the complaint after the initial investigatory interview, if requested. As a result, confidentiality will be maintained to the greatest extent allowed by law.

While the investigation is open and ongoing, employees are expressly prohibited from attempting to influence other employees, including employees who may have witnessed the underlying conduct at issue. The employer will not disclose a completed investigation report except as it deems necessary to support a disciplinary action, to take remedial action, to defend itself in adversarial proceedings, or to comply with the law or court order.

### **Responsibilities**

Managers and Supervisors are responsible for:

- a. Informing employees under their supervision of this Policy.
- b. Modeling behavior that is consistent with this policy.

- c. Taking all steps necessary to prevent harassment, discrimination, or retaliation from occurring, including, but not limited to, monitoring the work environment, reminding employees of their obligations under this policy, and taking immediate and appropriate action to stop violations (e.g., removing inappropriate pictures or correcting inappropriate language).
- d. Receiving complaints in a fair and serious manner, and documenting steps taken to resolve complaints.
- e. Following up with those who have complained to ensure that the reported behavior has stopped and that there are no reprisals or retaliation or threats of reprisals or retaliation.
- f. Informing those who complain of harassment or discrimination of his or her option to contact the EEOC or DFEH and file a complaint about such activity.
- g. Assisting, advising, or consulting with employees and the Administrative Services Director regarding this Policy and Complaint Procedure.
- h. Assisting in the investigation of complaints involving employee(s) in their departments and, if the complaint is substantiated, recommending appropriate corrective or disciplinary action in accordance with employer Personnel Rules, up to and including discharge.
- i. Implementing appropriate disciplinary and remedial actions.
- j. Reporting potential violations of this Policy of which he or she becomes aware, regardless of whether a complaint has been submitted, to the Administrative Services Director or designee.
- k. Participating in periodic training and scheduling employees for training.

All employees and contractors, including managers and supervisors, are responsible for:

- a. Treating all employees and contractors with respect and consideration.
- b. Modeling behavior that is consistent with this policy.
- c. Participating in periodic training.
- d. Fully cooperating with the employer's investigations by responding fully and truthfully to all questions posed during the investigation.
- e. Taking no actions to influence the complainant or any potential witness while the City's investigation is ongoing.

- f. Reporting any act he or she believes in good faith constitutes harassment, discrimination, or retaliation as defined in this Policy, to his or her immediate supervisor, department head, Executive Assistant, Personnel and Benefits, the Administrative Services Director or the City Manager.





# EMPLOYEE COMPLAINT FORM

If yes, was it reported  
Reported by: \_\_\_\_\_

**5. Describe your relationship (work related and/or personal) with the person in question before the incident occurred:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**6. List anyone you know of who also may have been the target of similar inappropriate conduct by the individual in question:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**7. What action to settle the incident would satisfy your complaint:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Complainants Signature: \_\_\_\_\_

Complaint Received by: \_\_\_\_\_

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

## FOR PERSONNEL USE ONLY

Date Received: \_\_\_\_\_

Investigator assigned by Administrative Services Manager: \_\_\_\_\_

Reviewed by: \_\_\_\_\_

Review date: \_\_\_\_\_

Completion Date: \_\_\_\_\_

Comments/Recommendations: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This form is to be kept as a record of any complaint or incident that may be considered inappropriate conduct. This information will be addressed in the strictest possible confidence. This report does not establish validity of a complaint. The complainant is protected by the pledge of non retaliation as long as the complaint has been made in good faith and belief; anyone making a false complaint could be subject to disciplinary action and/or legal recourse.