



# TRAINING BULLETIN

Los Angeles Police Department

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## ANTI-DISCRIMINATION, HARASSMENT, AND RETALIATION PREVENTION, IDENTIFICATION, AND REPORTING

Every employee has the right to work in an environment that is nondiscriminatory. State and Federal laws and our Department policies serve to guide our conduct and provide protections and reassurance of equitable treatment.

### Early Prevention

Prevention through policy, training, supervision and discipline are ways to manage unlawful discrimination, harassment and retaliation. The Department and the City have policies that clearly state and reinforce the principles of nondiscrimination. The Department's training programs provide a context for applying policy guidelines and discussing repercussions of such behavior to improve employee knowledge, skills, and awareness. Progressive discipline, up to and including termination, is also one remedy to stop unlawful discriminatory actions. Most importantly, supervisory and management teams should enforce and maintain a professional work environment by monitoring the workplace, taking prompt action to investigate complaints, and keeping involved parties informed. It is equally important for employees to be honest and forthright, using the resources at their disposal, to address concerns in a timely manner.

### Accurate Identification

Having a working knowledge of common equal employment opportunity (EEO) definitions and monitoring the work environment for early warning signs and symptoms are essential tools to identify potential problems accurately and efficiently, such as interpersonal conflicts, biases, and/or prejudices which may escalate into unlawful discriminatory conduct. Understanding the difference between conflict within a work team and unlawful discrimination should assist all personnel in the accurate identification of circumstances leading to potential incidents of unlawful discrimination, harassment, and/or retaliation.

**Unlawful discrimination** is any employment practice or decision which intentionally or unintentionally results in the unequal treatment of an individual or group based on their membership in one of the protected classes for other than job related (bona fide occupational qualification) reasons. The three primary types of unlawful discrimination are (1) disparate treatment, (2) adverse impact and (3) failure to provide reasonable

accommodations.

Disparate treatment is when an individual is treated differently than others on the basis of race, color, ancestry, national origin, religion, creed, age, physical or mental disability, marital status, sex, gender (including pregnancy, childbirth, breastfeeding or related medical conditions), sexual orientation, gender identity, gender expression, medical condition, genetic information, marital status, and military or veteran status. Adverse impact is a personnel system or practice that appears neutral, but adversely affects individuals of a certain class or group on a disproportionate basis. Lack of reasonable accommodation occurs when an employer does not make a reasonable modification to the workplace to allow equal employment opportunities for an individual with a known physical or mental limitation/disability.

**Sexual harassment** is one of the most common forms of unlawful sex discrimination in the work environment. It is characterized by unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature. It typically occurs under three conditions. The first two are often referred to as quid pro quo and include: (1) submission to sexual advances, requests and/or conduct as either explicitly or implicitly made a term or condition of employment or (2) when submission to or rejection of such conduct is used as the basis for employment decisions. The third is referred to as hostile work environment and described as: (3) conduct that has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, and/or offensive working environment.

**Retaliation** is defined as an adverse employment action taken against an employee for engaging in protected activity. An adverse employment action includes an action that would cause a reasonable employee to be deterred from engaging in a protected activity or an action in direct response to an employee engaging in a protected activity. Adverse employment actions may include, but are not limited to, negative performance evaluations, negative Employee Comment Sheets, the imposition of discipline or denial of: paygrade advancement, coveted assignment or promotional opportunity, or change of assignment.

**Protected activities include:**

- a) Opposing, reporting, or participating in any claim, lawsuit, or investigation concerning unlawful discrimination or sexual harassment;
- b) Filing a grievance or participating in any unfair labor complaint;
- c) Taking advantage of any labor right or benefit such as using sick or family leave, seeking compensation for overtime worked, or filing an objectively valid work-related claim for damages;
- d) Reporting misconduct of another Department or City employee to the Office of the Inspector General, or any Department or government entity; or
- e) Supporting, assisting or cooperating in a misconduct investigation.

The Department also prohibits adverse acts against another employee when the

employee steps forward to identify any form of misconduct or wrongdoing. This too is considered serious misconduct.

**Other forms of unlawful hostile work environment** include situations when an employee is subjected to unwelcome, and/or intimidating, and/or demeaning conduct which is severe or pervasive enough that it interferes with and disrupts work performance. Therefore, monitoring for early warning signs of behavior that are not conducive to a professional work environment is paramount to preventing unlawful discrimination. This monitoring is the responsibility of all Department managers and supervisors. Any and all such incidents shall be handled swiftly, and misconduct reported without delay.

### **Reporting Avenues**

Employees have a right to complain and take action when they believe they are the target of discrimination, harassment or retaliation. Every employee is encouraged to inform or ask the offending party to cease the unwelcome behavior. However, they are not required to do so. An employee who does not want to confront the offender must immediately notify a supervisor or a Department manager so the offender can be advised to stop the unwanted acts. If somebody requests these behaviors stop, the conduct shall be terminated immediately. Failure to stop the acts may result in formal allegations of misconduct.

Individuals who experience unwanted behavior at work can often quickly stop the behaviors by communicating personal boundaries with co-workers. Tolerance with coworkers is important in reducing misunderstandings, increasing awareness and promoting mutual respect. Tolerance does not mean compromising professionalism and respect.

There are times in which approaching the offender is not feasible. In those circumstances, employees are strongly encouraged to seek immediate assistance through their chain of command, and/or using the resources listed at the end of this training bulletin. When unwanted behavior continues after a coworker or supervisor has asked for it to stop, it likely would be perceived as harassment and/or retaliation. Repeated conduct is more likely to be considered offensive, threatening, and intrusive rather than something which is a one time, single or isolated occurrence.

### **Employee Responsibility**

Every employee has the responsibility to stop unprofessional behavior in the workplace. We must all be respectful of coworkers and strive toward maintaining a work environment free of any form of discrimination. Any employee who reasonably believes that he or she has been the subject of or is aware of retaliation, discrimination or sexual harassment as defined by the parameters outlined in this training bulletin, shall report it without delay. Employees may contact any Department supervisor, the Work Environment Liaison Section, Internal Affairs Group, Risk Analysis Section, or the Office of the Inspector General.

In almost every instance, immediate reporting will enable prompt action, generally in a positive and progressive manner, which will be the least disruptive to the involved individuals and the Department. Delayed reporting, while not uncommon, most often results in a continuation and an increase in the severity of the behavior, disruption of the workplace, along with increased adverse personal impact, as well as fiduciary liability to the Department and the City.

Additionally, employees who are unsure if the behavior meets the definitions outlined in this bulletin, questions whether the offending party was fully aware of the impact of their actions or is hesitant to conclude there is in fact retaliation, discrimination and/or harassment as opposed to a miscommunication or misunderstanding; are encouraged to reach out to the Ombuds Section or Workplace Investigation Section (PSB) for assistance and advice.

### **Department Management, Command, and Supervisory Responsibility**

All levels of management and supervision have a legal responsibility to follow the Department's reporting procedures. As an agent of the employer (the City), managers and supervisors must have a thorough understanding of the law and the various policies and procedures affecting employment discrimination to protect the interest of the victim(s), other employees, and the Department. Failure to take a claim seriously or to properly document an incident may result in personal liability for punitive damages.

Management and supervisor's responsibility upon notification of an incident is to:

- Intervene to stop the problem and/or behavior(s);
- Conduct an initial investigation of the situation;
- Seek the advice of legal counsel (contact the Police Employment Law Section, City Attorney's Office) if necessary;
- Reassure concerned individuals that the behavior will cease, and if it does not, to seek assistance immediately; and,
- Monitor the situation to ensure no reprisals, overtly or covertly, are taken against the person who complained. This should be done whether the complainant is a direct victim or only a reporting witness.

Managers and supervisors must engage in continuous monitoring of the workplace. Conducting a preliminary investigation in these situations often means making early inquiries to assess the severity of the problematic behavior(s), as well as assess reporting options. If in doubt, contact your Department resources for advice. Discriminatory actions and behaviors are misconduct, and these complaints shall be investigated in accordance with Department policy. It is the duty of Department managers, commanding officers, and supervisors to monitor the workplace to prevent retaliation from occurring; to identify and stop retaliation when it occurs; to take allegations of retaliation seriously; and to encourage employees to come forward without delay to report retaliation.

## **Understanding Employment Law**

Laws are generally created to outline principles and provide equal protections to everyone. This section describes key Federal and State laws governing equal employment opportunity and employment-based discrimination and documents the development of our country's anti-discrimination efforts.

### Title VII or California Government Code Section 12940

It is illegal to block or impede an employee's right to be hired, retained, compensated or granted the various privileges and conditions of employment because he/she is a member of any protected class as outlined in Title VII or the CA Government Code.

Title VII describes certain forms of unlawful discrimination. The U.S. Supreme Court stated, "Title VII affords employees the right to work in an environment free from discriminatory intimidation, ridicule and insult" based on race, color, religion, sex, or national origin. Employers shall afford equal access and enjoyment of the privileges and benefits of employment to all members of these protected classes. "Equal access" under these federal provisions applies to recruiting, screening, interviewing and hiring employees, as well as promoting and providing employee benefits.

In judging whether an unlawful discrimination or harassment complaint is justified, the courts will generally use a legal interpretation called "the reasonable person" standard in determining if the conduct interferes with the claimant's work performance. This "interference" means that the offensive conduct made it more difficult for the complainant to do his/her job and that if another reasonable person under similar circumstances stepped into the complainant's shoes, he/she would agree that the conditions were impeding job performance and productivity.

### Civil Rights Act of 1964

This Act was passed under President Johnson's administration. It established the Equal Employment Opportunity Commission (EEOC) as the agency that advises and assists persons and/or agencies with alleged violations of discrimination in employment. Enforcement of the federal regulation is assigned to the EEOC and the Department of Justice.

### Age Discrimination in Employment Act of 1967

This Act prohibits employment discrimination against persons aged 40 and above. It was expanded in 1991 to include U.S. citizens working abroad for U.S. companies.

### Rehabilitation Act of 1973

This Act, the precursor to the Americans with Disabilities Act of 1990, bans discrimination on the basis of disability by federal agencies or by programs receiving federal funds. This act helped persons with disabilities receive rehabilitation, obtain access to public buildings and enjoy equal employment opportunities.

#### Americans with Disabilities Act of 1990

This Act, commonly referred to as the ADA, makes it illegal to discriminate against qualified individuals with disabilities. The purpose of the law was to provide the estimated 43 million persons with disabilities equal access to (a) employment opportunities, (b) programs, services, and activities provided by government entities and (c) reasonable accommodations to facilities open to the general public such as restaurants, hotels, shopping centers, police stations and businesses. The EEOC regulations provide employers with guidelines regarding how accommodations can be made, provides definitions and examples of covered disability descriptions, and delineates appropriate types of pre-employment inquiries.

#### Family and Medical Leave Act of 1993

This Act, commonly referred to as the FMLA, requires employers with 50 or more employees to provide eligible employees with up to 12 weeks of unpaid, job-protected leave for family and medical reasons. Examples include birth, adoption, or foster care needs of a child, providing care for a spouse, child, or parent with a serious health condition. Separate but related, the **Pregnancy Discrimination Act** extends the prohibition against sex discrimination and amends the Civil Rights Act of 1964 to add pregnancy, childbirth, and pregnancy-related medical conditions as protected against employment discrimination.

#### California Government Code Section 12940(a) and (g)

This Section outlines employment discrimination prohibitions. The state includes all of the protected classes listed in Title VII and extends protections based on ancestry, physical or mental disability, medical condition, and marital status.

Within the state of California, the 1959 **Fair Employment and Housing Act (FEHA)**, formerly called the Fair Employment Practice Act until 1980, prohibits all forms of employment discrimination as listed in the previous paragraph. In January 2000, sexual orientation was added to this statute. Sexual orientation is defined as meaning heterosexuality, homosexuality, and bisexuality. The FEHA's protections extend to actual, as well as perceived sexual orientation, and include persons who are discriminated against because of their association with a person who is of a particular sexual orientation or who is perceived to be of a particular sexual orientation. The Department of Fair Employment and Housing (DFEH) receives and investigates discrimination complaints filed with the State.

#### California Civil Rights Initiative

This Initiative, referred to as Proposition 209, now prohibits the use of race, sex, color, ethnicity, or national origin as criterion for either discriminating against or granting preferential treatment to any individual or group. Prop 209 does not invalidate any court order or consent decree in place.

Workplace conduct for **all** City employees is primarily governed by three documents, one from the City Council and the other two from the Office of the Mayor. **The Equal Employment Opportunity Policy**, adopted on November 26, 1975, and amended on

January 15, 1991, as well as the **Discrimination Free Workplace Policy**, adopted on February 12, 1992, and **Executive Directive No. 12**, issued on June 6, 2008, provide the guiding principles, policies and procedures for nondiscriminatory conduct by any City employee.

Additionally, there are separate discrimination prohibitions for a person suffering from AIDS (**LAMC 45.80**) or on the basis of sexual orientation (**LAMC 49.70**). Standards of conduct and proposed penalties for discriminatory violations are set out in the **Civil Service Commission's Disciplinary Guidelines Policy Section 33.2**. General information regarding employee protections, City policies and procedures for filing a complaint and recommended penalties for violations are available upon request from the EEO Section of the City's Personnel Department (see attached Resources and Referrals).

## **CONCLUSION**

Departmental policies have evolved as EEO laws become more refined. Each policy statement serves as a directive regarding expectations and standards for the conduct of all Los Angeles Police Department employees to ensure the maintenance of a professional and discrimination free work environment.

**This Bulletin cancels and supersedes Volume XLII, Issue 2, Anti-Discrimination and Retaliation, May 2012**

Field Training Services Unit  
Police Training and Education

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Attachments: Resources and Referrals  
References

## Resources and Referrals

Federal	Contact Information
Equal Employment Opportunity Commission (EEOC)  Office of Special Counsel Reporting Prohibited Personnel Practices	<a href="http://www.eeoc.gov">www.eeoc.gov</a> (800) 669-4000  <a href="http://www.osc.gov">www.osc.gov</a>
State	
Department of Fair Employment and Housing (DFEH)	<a href="http://www.dfeh.ca.gov">www.dfeh.ca.gov</a> (800) 884-1684 (213) 439-6799
City of Los Angeles	
Office of Discrimination Complaint Resolution  Equal Opportunity Programs and EEO Compliance  Ethics Commission Whistleblower Hotline  Office of the City Attorney Dispute Resolution Program	(213) 473-9123  <a href="http://myvoicela.org">myvoicela.org</a> (213) 473-9100  <a href="http://www.ethics.lacity.org">www.ethics.lacity.org</a> (800) 824-4825  <a href="http://www.lacityattorney.org">www.lacityattorney.org</a> (213) 978-1880
Los Angeles Police Department	
Behavioral Science Services  Department Risk Manager (OCPP)  Diversity, Equity, and Inclusion Officer, OCPP  Risk Management Division Ombuds Section  Office of the Chief of Police  Office of the Inspector General  Professional Standards Bureau Internal Affairs Group	(213) 486-0790  (213) 486-8730  <a href="http://www.lapdei.com">www.lapdei.com</a> (213) 486-5386  (213) 486-8730 (213) 486-8127  (213) 486-0150  (213) 893-6400  (213) 996-2772



## References

29 U.S.C.	Equal Pay Act of 1963	§206(d)
	Age Discrimination Act of 1967	§621-34
	Rehabilitation Act of 1973	§791,793,794
	The Family & Medical Leave Act of 1993	§2601 et seq.
42 U.S.C.	Civil Rights Act of 1964	§2000e et seq.
	The Americans with Disabilities Act of 1990	§12101
	The Pregnancy Discrimination Act of 1978	§2000e(k)
	The Civil Rights Act of 1991	§1981 et seq.

California Peace Officers Association. (1998). Training Bulletin Service: Commonly Asked Questions about the Americans with Disability Act and Law Enforcement. Sacramento, CA: CPOA, Bulletin No. 5.

Rubin, P.N. (1995). Civil Rights and Criminal Justice: Employment Discrimination Overview. Research in Action. Washington DC: National Institute of Justice, Office of Justice Programs, NCJ 154278.

State of California. (1993). Discrimination is Against the Law. Sacramento, CA: Department of Fair and Equal Housing, DFEH-151 (12/93).

### Los Angeles Police Department Policies

Below is a listing of the pertinent Department policies and procedures in alphabetical order by topic heading.

Anti-discrimination Efforts Plan	Administrative Order No. 2, Jan 1999
Core Values	Department Manual
Discrimination Complaint Criteria;	
Reporting/Filing	Special Order No. 6, 2012
Employee Conduct	Department Manual
Equal Employment Opportunity	
Representatives	Department Manual
Grievance Procedure	Department Manual
Hazing and Initiation Activities	Department Manual
Motto of the Department	Department Manual
Mission Statement	Department Manual
Management Principles	Department Manual
Nondiscrimination Policy	Memorandum No. 5, May 1991
Policy Prohibiting Retaliation	Special Order No. 6, 2012
Prohibited Acts that Contribute to Retaliation	Department Manual
Relationship Between Department Employees	Department Manual
Sexual Harassment	Department Manual
Sexual Orientation Discrimination Policy	Department Manual