CITY OF LONG BEACH

PERSONNEL POLICIES + PROCEDURES

Policy 2.2	Unlawful Harassment Complaints
	Effective Date: November 5, 1992 Last Revision Date: March 10, 2015

I. POLICY STATEMENT

It is the policy of the City of Long Beach to actively promote equal employment opportunity to all persons on all matters affecting City employment. The City of Long Beach reaffirms that no person shall be harassed on the basis of race, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, age, sexual orientation, genetic information, gender, gender expression, gender identity, military and veteran status or on any other basis inconsistent with Federal or State statutes, the City Charter, or City ordinances, resolutions, rules or regulations.

II. DEFINITIONS

A. Unlawful Harassment

Harassment, which creates a hostile, intimidating, or offensive work environment, and occurs because of an employee's, unpaid intern's or volunteer's protected status (i.e. race, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, age, sexual orientation, genetic information, gender, gender expression, gender identity or military and veteran status), is unlawful.

B. Sexual Harassment

Sexual harassment is a form of sex discrimination. It is conduct of a sexual nature, which is "unwelcome", not asked for, and not returned.

Sexual harassment can consist of any form or combination of verbal, non- verbal, visual, or physical conduct. It need not be explicit, or even specifically directed at an individual. Such behavior includes, but is not limited to: sexually offensive comments, offers, slurs, innuendoes, leering, ogling, posters, cartoons, or drawings; physical contact such as touching, pinching, or brushing against another body; or demands for sexual favors.

Unwelcome sexual conduct which is sufficiently severe and pervasive as to create a hostile, intimidating, or offensive work environment, or when an employment decision

or selection into a training program leading to employment is based on whether an employee, unpaid intern or volunteer submitted or refused to submit to some form of sexual conduct, is considered sexual harassment.

The following are three criteria, which shall be utilized as guidelines for determining whether or not certain conduct constitutes unlawful sexual harassment:

- Submission to the conduct is made either as an explicit or implicit condition of employment; or,

- Submission to or rejection of such conduct is the basis for employment decisions affecting an individual, such as, continued employment or decisions affecting pay, benefits, and/or advancement opportunities, or other terms and conditions of employment; or

- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

C. Retaliation

Retaliation against an individual for having initiated a complaint of harassment or discrimination is considered unlawful harassment. To discipline, transfer, shun, or deny a promotional opportunity, training, or assignment to an employee, unpaid intern or volunteer, after she/he has filed a complaint, may be viewed as retaliation.

III. COMPLAINT RESOLUTION PROCESS

The following procedures are intended to facilitate the timely resolution of complaints of unlawful harassment. They are designed to administratively resolve complaints in a timely manner, ensure that appropriate action is taken, and minimize the financial impact upon both the complainant and the City.

A City employee, unpaid intern, volunteer, job applicant, or third party, such as a member of the public, has several administrative processes available to her/him for resolution of a complaint. An individual may present a complaint to an appropriate supervisor/manager, a departmental Equal Employment Opportunity Counselor/designee, or the City's Equal Employment Opportunity Office in the Department of Human Resources.

Each Department head designates an Equal Employment Opportunity Counselor who acts as liaison between management and the department's employees. The counselor serves as the department's primary contact person on equal employment opportunity issues, and assists employees in the resolution of problems and concerns related to equal employment opportunity matters.

Upon request, employees shall be permitted to use scheduled work hours in order to meet with their Equal Employment Opportunity Counselor, appropriate supervisor/manager, or the City's Equal Employment Opportunity Office. No employee, unpaid intern or volunteer shall fear reprisal or retaliation because of reporting an alleged act of harassment.

It is important that complainants be advised of their rights to file a complaint with an external regulatory agency (see Section IV-C). They should, however, be encouraged to first utilize the City's internal procedures to seek resolution.

IV. PROCEDURES

Any employee, unpaid intern or volunteer, who believes she/he has experienced any type of unlawful harassment, should immediately notify the appropriate supervisor, manager, departmental Equal Employment Opportunity Counselor, or the City's Equal Employment Opportunity Office.

A. Departmental Investigation

1. Upon being made aware that an issue exists regarding harassment, a Department shall immediately contact the City's Equal Employment Opportunity Office for direction, prior to proceeding with any investigation, and before taking any action. The City's Equal Employment Opportunity Office will notify the City Attorney's Office. This will help verify that the policy is being correctly interpreted and the procedures are properly followed. It will also provide consistency in the City's response to allegations regarding unlawful harassment and ensure that immediate and appropriate action is taken.

   In the event a complaint is filed with the Equal Employment Opportunity Commission (EEOC) or the Department of Fair Employment and Housing (DFEH), by following this procedure, the Equal Employment Opportunity Officer will be fully informed and in agreement with all prior actions taken.

2. With the concurrence of the Equal Employment Opportunity Office, a Department shall proceed with an investigation.

During this entire process, it is critical that, to the extent possible, strict confidentiality be maintained. Any individual contacted during an investigation is to be instructed to maintain confidentiality regarding all matters related to the complaint. All records pertaining to the complaint are strictly confidential, and are to be maintained apart from any personnel file.

As part of the investigation, the complainant must advise the Department what she/he would consider as a resolution of the complaint.

3. Upon completion of an investigation and prior to drawing any conclusion, a Department shall again contact the Equal Employment Opportunity Office. In cooperation with the Equal Employment Opportunity Office, the course of action will be determined, including any corrective action, if appropriate.

4. Upon completion of the corrective action, a Department shall notify the complainant, complete records, and report the actions taken to the Equal Employment Opportunity Office.

B. Equal Employment Opportunity Office Investigation

The Equal Employment Opportunity Office acts as a neutral third party in a complaint, and is responsible for investigating, examining the facts, and determining whether unlawful harassment occurred. The role of the Equal Employment Opportunity Office is not to serve as an advocate of either the City or the complainant, but to determine the truth of the matter and protect the City against liability.

1. An employee, unpaid intern, volunteer or job applicant always has the option of filing a complaint directly with the City's Equal Employment Opportunity Office.

   An employee shall be allowed to use scheduled work hours for meeting with the Equal Employment Opportunity Officer/designee.

2. The Equal Employment Opportunity Office shall notify the City Attorney's Office of all complaints to ascertain if an investigation is warranted and/or approved. If approved, the City Attorney determines whether the Department, the Equal Employment Opportunity Office, or an outside consultant will conduct the investigation into the allegations.

3. The Equal Employment Opportunity Office shall contact and advise the Department Head that an employee/unpaid intern/ volunteer /applicant has filed

an unlawful harassment complaint. The Department Head is notified of the Attorney-directed course of action.

4. In order to seek resolution, any person(s) having knowledge of the incident(s) may be contacted directly by the Equal Employment Opportunity Officer/designee. When this occurs, and if necessary, the Equal Employment Opportunity Office will notify the appropriate Department Manager of the contact and the relevant information received from the employee/unpaid intern/volunteer /applicant (s).

   Because an investigation may ultimately be conducted by an outside regulatory agency, it is imperative that the Equal Employment Opportunity Office receive all comments uncensored, and as stated by the employee/unpaid intern/volunteer/applicant (s). Under no circumstances will information be altered or withheld. This could impede the City's ability to properly respond to the charges and ultimately result in additional liability to the City.

5. Upon completion of the investigation, the Equal Employment Opportunity Office shall contact and advise the Department of the results and the appropriate corrective action that will be recommended to the City Manager/designee.

   Following the completion of any corrective action, the Department is to advise the Equal Employment Opportunity Office of the actions taken. The Equal Employment Opportunity Office shall then inform the complainant of the resolution and closure of the complaint. The complainant shall also be advised of her/his right to file a complaint with an external regulatory agency.

C. Outside Regulatory Agencies

An individual may elect to file a complaint with an outside regulatory agency. The state agency is the California Department of Fair Employment and Housing (DFEH) and the federal agency is the U. S. Equal Employment Opportunity Commission (EEOC).

1. The City's Equal Employment Opportunity Office is responsible for handling and responding to all complaints filed with the outside regulatory agencies. Should a Department receive a complaint directly, it should immediately forward it to the Equal Employment Opportunity Office.

   Once a complaint is received from an outside agency, communication with the individual/complainant ceases and all further communication takes place between the Equal Employment Opportunity Office and the regulatory agency. It is the

responsibility of the Equal Employment Opportunity Office, on behalf of the City, to prepare a response to the complaint.

2. Upon receipt of a complaint, the Equal Employment Opportunity Office provides notification to the City Attorney's Office and the Department Head, which includes a copy of the complaint. The Department assigns an individual to respond to the allegations contained in the complaint, provides any additional information that might assist in preparing the City's response, and returns it to the Equal Employment Opportunity Office within the time specified.

3. Upon receipt of the Department's response, the Equal Employment Opportunity Office prepares the City's response to the regulatory agency. As with internal investigations, individuals who may be able to provide additional information or clarification may be contacted directly, following notification of appropriate Department management.

4. Once the City's response is complete, it is sent to the City Attorney's Office for review. When concurrence is obtained, the response is forwarded to the appropriate regulatory agency and a copy of the City's response is sent to the Department for record keeping purposes.

5. Prior to the resolution of a complaint, agencies often contact the Equal Employment Opportunity Office and request additional information and/or meetings with specific individuals. This will be coordinated through the Equal Employment Opportunity Office. There should not be any contact between a Department and the regulatory agency, without the prior knowledge by the Equal Employment Opportunity Office and the Approval of the City Attorney's Office.

   Should a Department or individual receive contact from an agency, attorney, or union representing a complainant, they are to refer them to the Equal Employment Opportunity Office.

V. RELATED INFORMATION

Personnel Policies & Procedures, Policy 2.1: Discrimination Complaints
Administrative Regulations, AR8-10: Policy Regarding Sexual Harassment

VI. REFERENCES

A. Equal Employment Opportunity Program Plan: Section - Responsibility Equal Employment Opportunity Office

B. Civil Service Rules and Regulations: Article I, Section 2 - Non-Discrimination

C. Civil Rights Act of 1964, as amended

D. Fair Employment & Housing Act