

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: MAY 9, 2017

NUMBER: 5.03 – HUMAN RESOURCES

SUBJECT: EQUAL EMPLOYMENT OPPORTUNITY

RELATED POLICY: NA

ORIGINATING DIVISION: INTERNAL AFFAIRS

NEW PROCEDURE:

PROCEDURAL CHANGE:

SUPERSEDES: DP 5.03 – 11/08/2013

I. PURPOSE

This Department procedure establishes guidelines for reporting and handling potential violations of the Equal Employment Opportunity (EEO) policy within the San Diego Police Department. The procedure also reaffirms and communicates the Department's commitment to the principles of Equal Employment Opportunity and a work environment free of discrimination and harassment.

II. SCOPE

This procedure applies to all members of the Department.

III. BACKGROUND

This procedure complies with the City of San Diego's Equal Employment Opportunity Policy and Administrative Regulation 96.50. It defines specific procedures for reports of EEO policy violations filed within the San Diego Police Department.

Reports of EEO policy violations filed with the City of San Diego's Equal Employment Opportunity Program will be handled pursuant to City of San Diego Administrative Regulation 96.50.

Reports of EEO policy violations filed with the City Personnel Department's Equal Employment Investigative Office will be handled pursuant to Personnel Manual Index Code K-2.

IV. **DEFINITIONS**

- A. EEO Unit- the San Diego Police Department's EEO Unit is responsible for Equal Employment Opportunity training for all Department personnel, informal consultation, counseling, mediation, and the formal investigation of incidents of suspected discrimination or harassment.
- B. EEO Manager - the EEO Manager is responsible for the continued development, implementation, and monitoring of the Department's Equal Employment Opportunity Program. The Manager coordinates the activity of all area Equal Employment Liaison Officers and serves as a liaison with the City's Equal Employment Investigative Officer and Equal Employment Opportunity Program Manager.
- C. Equal Employment Liaison Officer (EEO) - all commanding officers are designated as an EEO. Equal Employment Liaison Officers serve as liaisons with the command and EEO Manager regarding the resolution of reported or observed EEO violations.
- D. Supervisor - all Department members who have the authority to undertake or recommend employment decisions, including authority to direct the daily work activities, review work performance, and recommend or implement disciplinary actions affecting Department members. This includes first level supervisors and above.
- E. Complaint - an allegation (or report) of potential violation(s) of EEO policy and procedure.
- F. Complainant - an individual reporting potential violation(s) of EEO policy and procedure.
- G. Subject - an individual who has allegedly violated EEO policy and procedure.
- H. Discrimination/Harassment Control Form - a form to be used by supervisors and the EEO Unit when taking complaints of, and/or, documenting observed violations of EEO policy and procedure. This form is available on the LAN at F:\Templates\EEO.
- I. Equal Employment Investigative Office (EEIO) - located within the City's Personnel Department, this office is responsible for the administration of the City's internal program for the investigation and resolution of complaints or charges of unlawful discrimination based upon Title VII of the Civil Rights Act of 1964. The EEIO acts as the City's liaison and primary contact with all federal and state compliance agencies. It is the duty of the EEIO to officially receive and process formal complaints lodged by the agencies; investigate and respond to such complaints; arrange and schedule employee interviews; provide access to

relevant records when requested by the state or federal agent or officer; and, receive and respond to any findings of fact presented by the compliance agencies as a result of their investigation.

- J. In addition, the EEIO receives and investigates internal complaints directly or indirectly from applicants for City employment, employees, former employees, and employee representatives.
- K. Mayor's Office Equal Employment Opportunity Program - a program administered by the City's Labor and Employment Relations Unit of the Human Resources Department. This office is responsible for the administration of the Mayor's Office Equal Employment Opportunity Program. It coordinates City-wide EEO training, as well as complaint tracking and resolution issues, in conjunction with the Personnel Department and the City Attorney's Office.

V. **POLICY STATEMENT**

- A. Members shall be permitted a work atmosphere free from discrimination and harassment of any form. Members shall not discriminate against, nor harass other members. It shall be the responsibility of all supervisors to ensure a non-discriminatory work environment exists.
 - 1. San Diego Police Department Policy 5.03, Equal Employment Policy, is incorporated into this procedure by reference.
 - 2. The San Diego Police Department is committed to ensuring the principles of equal treatment in all aspects of employment are understood, respected, and practiced throughout the organization. The Department's policy is to hire, train, compensate, assign, and promote all persons on the basis of merit.
 - 3. Discrimination is unlawful. It creates a negative atmosphere that reduces work productivity and morale, undermines the integrity of the workplace, and destroys professionalism. The Department does not tolerate discrimination or harassment in any form.
 - 4. Federal and state law makes it illegal to discriminate on the basis of race, color, gender, creed, religion, national origin, age, marital status, ancestry, medical condition (history of cancer), pregnancy, disability, transgender status, or sexual orientation. The Department's EEO policy builds upon this foundation and extends to every employee our commitment to provide a workplace that is consistent with the law and actively supports and implements behavior that reflects our Vision, Values and Mission Statement.

5. Employees are expected to adhere to a higher standard of conduct than defined by law, as further defined in this procedure. While some types of behavior may not rise to the level of a federal or state violation, they may nevertheless violate the Department's EEO policy.

VI. DISCRIMINATION AND HARASSMENT

A. Equal Treatment

All employees shall be treated equally without regard to race, color, gender, creed, religion, national origin, age, marital status, ancestry, medical condition (history of cancer), pregnancy, disability, transgender status, or sexual orientation in all employment matters, including, but not limited to, promotions, transfers, job rotation, training, work assignments, hiring, merit increases, overtime, awards, and discipline.

B. Harassment-free Work Environment

1. All employees shall be provided a work environment free from harassment. Behavior constitutes harassment, as defined by this policy, when it is unwelcome and unsolicited, offends or otherwise causes distress, and is undertaken because of a person's race, color, gender, creed, religion, national origin, age, marital status, ancestry, medical condition, disability, pregnancy, transgender status or sexual orientation. Examples include the use of derogatory comments, slurs, jokes, or derogatory pictures, cartoons, or posters.
2. The City of San Diego and the Police Department have a 100% Response Policy regarding harassment. The Department prohibits any harassment of employees, as defined above, and actively responds to all allegations of violations of this procedure. Such inappropriate conduct may be in violation of this policy and result in discipline the first time such behavior occurs. Prior incidents of harassment can be considered when assessing the facts and circumstances of a later complaint.
3. Whether an alleged action constitutes harassment, as defined above, will be determined on a case-by-case basis by assessing the entire record and the totality of the circumstances. Factors, such as the nature of the behavior and the context in which the alleged incidents occurred, will be considered in assessing the allegations and in determining the appropriate resolution.

C. Impact vs. Intent

1. Whether or not harassment occurred depends not on whether the act was intended to cause harm, but the impact of the act on the individual's employment or work environment. For example, a person who teases in a sexual or racial manner, or tells sexual or racial jokes, may create an offensive work environment for another worker even though the person intended such action merely to be "good fun." This applies to the field, as well as office positions. If one's behavior is harassing to an individual or a group of individuals, it will not suffice that the harasser failed to recognize the behavior as harassing.
2. It is not a requirement that the complainant be the intended target of the offensive conduct. Witnessing offensive behavior between other employees may be grounds for complaint.

D. Sexual Harassment

1. Sexual harassment is a form of illegal gender discrimination. It is defined by law as unwelcome sexual advances, requests for sexual favors, and other verbal, visual or physical conduct of a sexual nature when:
 - a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
 - b. Submission to, or rejection of, such conduct is used as the basis for employment decisions affecting that employee; or,
 - c. Such conduct has the effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
2. Unwelcome is used in the sense that the offended employee did not solicit or incite the conduct and regarded it as undesirable or offensive.
3. The following are examples of sexual harassment. Behavior that constitutes sexual harassment as defined by this policy is not limited to these examples:
 - a. Verbal harassment - sexual innuendo, sexually suggestive comments, jokes, teasing of a sexual nature, discussing sexual exploits, spreading rumors of a sexual connotation, or continued requests for social or sexual contact.
 - b. Physical harassment - unwelcome contact, touching, or impeding movement.

- c. Visual harassment - sexually suggestive or derogatory posters, videos, cartoons, drawings, documents, writings, electronic mail, texting, staring, or leering.
 - d. Sexual favors - unwanted sexual advances or conditioning an employment benefit on an exchange of sexual favors.
4. This policy does not prohibit mutually welcome social relationships between employees. Persons involved in consensual relationships must exercise caution to prevent harassing behavior from developing, or use of authority inappropriately. However, if the consensual relationship changes and is no longer mutual, conduct once welcome by both individuals may become offensive to one. (City policy does prohibit employees from supervising or influencing employment decisions associated with members of their immediate family or any person with whom the supervisor has a close personal relationship. See Administrative Regulation 95.60 for further details.)

E. Racial Discrimination

- 1. Discrimination based on race, color or national origin is illegal based upon Title VII of the Civil Rights Act of 1964.
- 2. Racial discrimination can create an offensive and hostile environment. The following are examples of racial discrimination or harassment. The following are examples of behavior that constitutes racial discrimination or harassment as defined by this policy:
 - a. Verbal harassment – racial innuendo, racially suggestive comments, jokes, and teasing of a racial nature.
 - b. Visual harassment – racially suggestive or derogatory posters, videos, cartoons, drawings, documents, writing, electronic mail, or texting.

F. Age Discrimination

Derogatory comments regarding a person's age, including asking when a person will retire, may be considered unlawful harassment on the basis of age. According to the 1996 amendment to the Age Discrimination in Employment Act, compulsory retirement is no longer required for City employees. This legislative change does not include sworn officers. Mandatory retirement is, however, still a permissible option if an employee can no longer perform the duties of his or her job classification.

G. Disability Discrimination

1. Derogatory comments regarding a person's disability or medical condition will not be tolerated. Under the Americans with Disabilities Act (ADA), the Department is required to make reasonable accommodations to a qualified individual with a disability as defined by the ADA, who can perform the essential functions of the job.
2. An employee may not be subjected to discrimination, harassment, or retaliation for exercising his or her rights under the ADA.
3. Employees seeking accommodation under the ADA should contact the Medical Assistance Unit or City Personnel for further information. See Administrative Regulation 96.21, City Policy for People with Disabilities (Employment) for further information.

H. Discrimination Based on Religion

Derogatory comments regarding a person's religious beliefs, or lack thereof, will not be tolerated. The Department is required to reasonably accommodate an employee's religious practices, provided it does not create an undue hardship in light of the public health, safety and welfare considerations associated with police work.

I. Family/Medical/Pregnancy Leave

Employees have specific rights under the Pregnancy Disability Act (PDA), the California Family Rights Act (CFRA) and the Family and Medical Leave Act (FMLA). These Acts may interact with the ADA and the Fair Employment and Housing Act (FEHA). An employee may not be subjected to discrimination, harassment, or retaliation for exercising his or her rights under any of these Acts. Employees seeking family care leave are advised to contact the Medical Assistance Unit, Police Human Resources, or City Personnel for further explanation of this Act and how it applies to their individual situation.

J. Retaliation

1. Retaliation is defined as an adverse employment action taken against an employee because that employee complained of discrimination or participated in an EEO investigation.
2. An adverse employment action can include, but is not limited to, unwanted transfers, change in work assignment or location, denial of leave requests, demotions, negative performance evaluations, unsupported discipline, ostracism, harassment, or other actions that adversely affect the work environment.

3. Retaliation is illegal and should be reported immediately. The Department will not tolerate retaliation. Any employee found to have retaliated against another Department member would be subject to discipline.

VII. PROCEDURAL RESPONSIBILITIES

- A. Employee responsibility - the following suggestions are intended to aid all employees in establishing and maintaining a professional and healthy working environment, while preventing discrimination, which includes harassment of any form:
 1. Employees must set an example of acceptable conduct by not participating in or provoking behavior that is discriminatory, harassing, or retaliatory;
 2. Make it absolutely clear you are not interested in uninvited sexual advances, and find discriminatory behavior offensive;
 3. Warn the offender the particular behavior is offensive and unwelcome. Be specific in advising that person what conduct is offensive and unwelcome. Make it clear you will take official action if the conduct continues;
 4. If the discriminatory or harassing behavior continues, notify any supervisor immediately; and,
 5. Maintain confidentiality when participating in an investigation as a witness, subject, or complainant.
- B. Supervisory responsibility - it is the responsibility of all supervisors to establish and maintain a non-hostile, non-discriminatory work environment free from intimidation, ridicule, or insult. Specifically, supervisors shall:
 1. Educate and train employees on EEO policy and ensure they are aware of the procedures for reporting potential violations;
 2. Monitor the workplace for actual or potential violations of EEO policy and procedure;
 3. Stop behavior in violation of this policy when directly observed or upon obtaining direct knowledge thereof;
 4. Notify their Equal Employment Liaison Officer (EEO) of suspected cases of discrimination or sexual harassment, unless circumstances exist which necessitate reporting the conduct directly to the Department's EEO Office;

5. Manage the effect of an EEO complaint in the workplace by protecting confidentiality, discouraging rumors, and ensuring participants are not subjected to retaliation; and,
 6. Follow through with all complaints of discrimination and harassment by taking immediate, documented, and corrective action. The complaint will be handled in accordance with the "Informal Reporting Process" or the "Formal Investigative Process" as set forth in this procedure.
- C. Equal Employment Opportunity Liaison Responsibility
1. All EEO liaison officers shall act immediately to prevent discrimination and sexual harassment.
 2. EEO liaison officers shall consult with the EEO Manager when making the determination as to the appropriate handling of an EEO issue.
 3. EEO liaison officers shall immediately notify the EEO Unit of any cases of discrimination or harassment and ensure the report is documented on a Discrimination/Harassment Control Form.
- D. Equal Employment Opportunity Unit Responsibilities
1. It is the responsibility of the San Diego Police Department's EEO unit to accept and investigate all EEO inquiries and complaints appropriately.
 2. The EEO Unit is responsible for assisting Department members with EEO related discrimination or harassment questions or concerns.
 3. The EEO Unit will be responsible for tracking and maintaining an accurate record of inquiries and investigations for a period of five years. Once five years has elapsed, the unit will archive the files in a separate area at the City Records Retention Center for 20 years.
 4. The EEO Unit will ensure that appropriate training regarding Equal Employment Opportunity is provided and made available to all Department members as required by law and policy.

VIII. COMPLAINT PROCEDURE

- A. Report Origination - if an employee believes that a violation of EEO policy has occurred, he or she is encouraged to report these instances immediately to any of the following (the employee does not have to follow the Department or divisional chain of command):

1. The employee's supervisor.
2. Another supervisor within or outside the employee's chain of command.
3. The Equal Employment Liaison Officer (EELO).
4. The Department's Equal Employment Opportunity Unit (EEO Unit):

1401 Broadway, MS 709
San Diego, CA 92101
(619) 531-2801
5. The Mayor's Office Equal Employment Opportunity Program of the Labor and Employment Relations Office:

1200 Third Avenue, Suite 1350
San Diego, CA 92101
(619) 235-5802
6. The Personnel Department's Equal Employment Investigations Office (EEIO):

1200 Third Avenue
15th Floor
San Diego, CA 92101
(619) 236-7133
7. The State of California Department of Fair Employment and Housing (DFEH):

350 West Ash Street, Suite 950
San Diego, CA 92101
(800) 884-1684
8. U.S. Equal Employment Opportunity Commission (EEOC):

401 B Street, Suite 1550
San Diego, CA 92101
(619) 557-7235
9. If an employee files a discrimination complaint within the Department, the complaint procedures listed in this section shall apply.
10. Complaints filed with the Mayor's Equal Employment Opportunity Program will be subject to the procedures as outlined in City Administrative Regulation 96.50.

11. Employees who report violations utilizing any of the reporting options outlined in the Complaint Procedure, sections A, 1 through 8, are strongly encouraged to do so within sixty days of the most recent alleged act.
 12. Complaints filed with the Personnel Department's Equal Employment Investigative Office (EEIO) will be subject to the procedures detailed in Personnel Manual Index Code K-2. The time frame for filing a complaint with EEIO is one year from the most recent incident.
 13. Complaints filed with the DFEH or EEOC will be subject to the procedures of the respective agencies. The time frame for filing DFEH complaints is one year from the date of the most recent alleged act. The time frame for filing US EEOC complaints is generally 300 days from the date of the most recent alleged act.
- B. Complaint Intake – supervisors shall complete and forward (to their commanding officer) a Discrimination/Harassment Control form in any of the following instances:
1. When a Department member expresses a desire to file a complaint of a potential EEO policy violation;
 2. Discussions with the member leads the supervisor to believe that an EEO policy violation has occurred, whether or not the employee wishes to file a complaint; or,
 3. A supervisor determines that observed employee behavior is contrary to EEO policies and procedures.
 4. When completing the control form, the supervisor shall:
 - a. Inform the complainant of the alternate reporting avenues listed in this procedure and also on the last page of the EEO control form;
 - b. Have the complainant print, sign, and date the last page of the EEO control form.
 - c. Advise the employee that confidentiality will be maintained to the highest degree possible, but cannot be guaranteed;
 - d. Advise the employee that she or he will be officially notified of complaint results; and,

e. Emphasize that if the employee feels she or he is being retaliated against, they should immediately notify any of the individuals listed in the complaint origination section of this procedure.

5. These points are summarized on the EEO Control Form Receipt, which can be found in the LAN system at F:\Templates\EEO. The Receipt is the third page of the Discrimination/Harassment Control Form. The supervisor and employee shall sign the EEO Control Form Receipt and send it to the EEO Unit with the control form. The EEO Unit will send a copy of the EEO Control Form Receipt to the complainant.

C. Control Form Review and Delegation for Action

1. The commanding officer shall review the control form with the EEO Manager and determine whether the complaint should be handled through the informal reporting process, or if a formal investigation (described in this procedure) is warranted, and whether the command or the EEO Unit will handle the case.
2. If the complaint is handled by the command, the commanding officer shall route the Control Form to the EEO Manager through confidential transmittal, and refer, if appropriate, the reported issue(s) to the delegated staff member for resolution via the informal reporting process and/or formal investigation.
3. If the EEO Unit handles the complaint, the assigned investigator will complete the Control Form. The EEO Manager will ensure resolution via the informal reporting process or ensure a formal investigation is completed.

D. Informal Reporting Process

1. The emphasis of the informal reporting process is on mediation and resolution of the problem. The intent is to prevent or stop harassment or discrimination without entering into the formal investigative process. Through the informal reporting process, the Department accepts complaints and concerns about harassment and discrimination from Department members and takes prompt action in response, without engaging in the formal investigative process.
2. Department supervisors receiving complaints of harassment or discrimination via the informal reporting process will ensure the following guidelines are followed:
 - a. The supervisor receiving the complaint will discuss the situation with the complainant and determine the nature of the complaint. If

the complainant requests the matter be handled informally, the request will be reviewed by the commanding officer and EEO Manager to determine whether informal handling is appropriate.

- b. Complaints of a criminal nature, allegations of serious misconduct, or repeated violations must be investigated using the formal investigative process.
 - c. If the commanding officer and EEO Manager concur on informal resolution, and if the subject Department member agrees, the complaint may be handled using the informal reporting process.
3. If the complainant requests confidential handling of the complaint via the informal reporting process, all parties involved in the process will maintain this confidentiality to the extent possible. Only those individuals who have a need to know about the incident for purposes of resolving the issues will be informed of the complaint.
 4. The complainant will be encouraged to suggest a course of action to remedy the problem or complaint.
 5. Immediate corrective action to ensure cessation of the offensive behavior will be initiated. The Department member attempting to resolve the complaint will utilize the San Diego Police Department's EEO Discrimination/Harassment Control Form to document the complaint, corrective action taken, and proposed additional corrective action, if appropriate.
 6. The unit handling the complaint (command or EEO) will ensure that the complainant is notified that corrective action has occurred and/or that the complainant is satisfied with the informal resolution (e.g., mediation) of the complaint. This notification shall be documented on the EEO Discrimination/Harassment Control Form. The completed Control Form will be approved by the EEO and then delivered to the Department's EEO Office, for EEO use only.
 7. The Control Form shall not be duplicated, nor shall it be placed in any divisional or personnel files.
 8. If by use of the informal reporting process the complaint cannot be properly resolved, the complaint will be referred for investigation in accordance with the formal investigative process.
 9. Within thirty to sixty days of the final resolution of a complaint resolved through the informal reporting process, the supervisor shall follow-up with

the complainant/and or subject, when appropriate, in order to ensure the behavior has ceased and that there has been no retaliation.

E. Formal Investigative Process

Any Department supervisor receiving a complaint of sexual harassment or discrimination via the "formal investigative process" will ensure the following guidelines are followed:

1. Once a determination is made that a case should be formally investigated, the commanding officer and EEO Manager will determine whether the command, EEO Unit, or an outside agency shall conduct the investigation. Factors to be considered include the complainant's preference, the nature and complexity of the allegations, command morale, and any potential conflicts of interest between the investigator and the employees involved in the case.
 - a. An employee may report a formal complaint of harassment or discrimination to the EEO Office either directly, or through his or her chain of command.
 - b. An employee may meet with the investigator during regular working hours. Requests for time to meet with EEO personnel shall be submitted to the employee's supervisor unless extenuating circumstances exist.
 - c. Employees are entitled to representation, consistent with the Memorandum of Understanding, during the investigation.
 - d. When a formal investigation is handled at the command level, the command shall immediately deliver the completed investigation to the EEO Office.
 - e. Absent extenuating circumstances, formal investigations shall be completed within ninety days.
2. The findings of formal EEO investigations will be classified as follows:
 - a. Sustained - the Department member committed all or part of the alleged acts of misconduct;
 - b. Not Sustained - the investigation produced insufficient information to prove clearly or to disprove the allegations;

- c. Exonerated - the alleged act occurred but was justified, legal, and proper;
 - d. Unfounded - the alleged act did not occur; or,
 - e. Other Findings - the alleged act(s) occurred, and some or all violate Department or City non-EEO policies.
3. Report Determination and Close-out
- a. All completed formal EEO investigations shall be reviewed by the EEO Manager, Assistant Chief of the subject member's command, Executive Assistant Chief, the Chief of Police, and EEO Police Legal Advisor.
 - b. The unit investigating the complaint shall notify the complainant of the results of the investigation. The subject member's commanding officer shall notify the subject of the results of the investigation. The notification dates shall be recorded on the Control Form.
 - c. If the possibility of disciplinary action exists, the completed investigation shall be forwarded to the appropriate commanding officer. The command will have sixty calendar days from the date the command receives the completed investigation to determine the appropriate corrective action and serve the advance notice of adverse action or discipline. The command shall provide documentation to the EEO Office of the disciplinary action taken, which will be maintained in the EEO investigative file and logged in the discrimination complaint file.
4. The EEO Office shall be the central repository for all discrimination complaint investigations.

F. Discipline

The Department will take appropriate disciplinary measures against any member who violates this procedure or retaliates against another member because they reported perceived discrimination. Discipline resulting from violations of this policy will be considered, consistent with the Department's Discipline Manual and the subject member's applicable Memorandum of Understanding, during administrative clearances for promotions, transfers, or special assignments. More serious disciplinary action, up to and including termination, may result from violations of this policy. Appropriate disciplinary action will also be taken against any employee who knowingly files a false complaint of discrimination or

harassment. The final determination of disciplinary action rests with the Chief of Police.

G. EEO Records Maintenance

The EEO Unit will keep a record of report form filings on informal reports and formal investigations, including corrective action taken. The discrimination complaint file will be retained in the EEO Office and may be reviewed at any time by the subject member.