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THE CITY OF



# Human Resources

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## Policy: Harassment, Discrimination, and Retaliation Prevention Policy and Complaint Procedure

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### **Purpose**

The purpose of this Policy is to: establish a strong commitment to prohibit and prevent discrimination, harassment, and retaliation in employment; to define those terms; and to set forth a procedure for investigating and resolving internal complaints. The City of Pleasanton requires all covered individuals to immediately report any conduct that is believed to violate this Policy.

### **Policy**

The City of Pleasanton has a zero tolerance for any conduct that violates this Policy. To prevent discrimination, harassment, and retaliation, conduct need not rise 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.

Harassment or discrimination against an applicant, unpaid intern, volunteer, or employee by a supervisor, management employee, elected or appointed official, co-worker, member of the public, or contractor on the basis of race, religion, color, sex (including gender, gender identity, gender expression, transgender, pregnancy, and breastfeeding), national origin, ancestry, disability, medical condition, genetic characteristics or information, marital status, age, sexual orientation (including homosexuality, bisexuality, or heterosexuality), military or veteran status, or any other protected classification as defined below, will not be tolerated.

This Policy applies to all terms and conditions of employment, including, but not limited to, hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, compensation, and training.

Disciplinary action or other appropriate sanction up to and including termination will be instituted for prohibited behavior as defined below.

Any retaliation against a person for filing a complaint or charge of harassment, discrimination, or retaliation, or for participating in the complaint resolution process, such as a workplace or government agency investigation, is prohibited. Individuals found to be retaliating in violation of this Policy will be subject to appropriate sanction or disciplinary action up to and including termination.

## DEFINITIONS

- A. **Protected Classifications:** This Policy prohibits harassment or discrimination because of an individual's protected classification. "Protected Classification" includes race, religion, color, sex (including gender, gender identity, gender expression, transgender, pregnancy, childbirth, and breastfeeding), national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, age (40 and above), sexual orientation (including homosexuality, bisexuality, or heterosexuality), military or veteran status, and any other classification or status under applicable city, state, or federal law.
- B. **Policy Coverage:** The California Fair Employment and Housing Act ("FEHA") prohibits coworkers and third parties, as well as supervisors and managers, with whom an employee comes into contact from engaging in conduct prohibited by FEHA. This Policy therefore prohibits the City of Pleasanton, elected or appointed officials, officers, employees, or third parties including contractors from harassing or discriminating against applicants, officers, officials, employees, unpaid interns, volunteers, members of the public or contractors because of: 1) an individual's protected classification; 2) the perception that an individual has a protected classification; or 3) an individual's association with a person who has or is perceived to have a protected classification.
- C. **Discrimination:** This policy prohibits treating individuals differently in any term or condition of employment because of the individual's protected classification as defined in this Policy.
- D. **Harassment** may include, but is not limited to, the following types of behavior, if that behavior is taken because of a person's protected classification. Note that harassment is not limited to conduct by the City of Pleasanton's employees. Under certain circumstances, harassment can also include conduct taken by those who are not employees, such as elected officials, appointed officials, persons providing services under contracts, or even members of the public:
- (1) Speech, such as epithets, derogatory comments or slurs, and propositioning on the basis of a protected classification. This might include inappropriate comments on appearance, including dress or physical features, or dress consistent with gender identification, or race-oriented stories and jokes.
  - (2) Physical acts, such as assault, impeding or blocking movement, offensive touching, or any physical interference with normal work or movement. This includes pinching, grabbing, patting, propositioning, leering, or making explicit or implied job threats or promises in return for submission to physical acts.
  - (3) Visual acts, such as derogatory posters, cartoons, emails, pictures, or drawings related to a protected classification.
  - (4) 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.

- E. Guidelines for Identifying Harassment: To help clarify what constitutes harassment in violation of this Policy, use the following guidelines:
1. Harassment includes any conduct which would be "unwelcome" to an individual of the recipient's same protected classification and which is taken because of the recipient's protected classification.
  2. It is no defense that the recipient appears to have voluntarily "consented" to the conduct at issue. A recipient may not protest for many legitimate reasons, including the need to avoid being insubordinate or to avoid being ostracized.
  3. Simply because no one has complained about a joke, gesture, picture, physical contact, or comment does not mean the conduct is welcome. Harassment can evolve over time. The fact that no one is complaining now does not preclude anyone from complaining if the conduct is repeated in the future.
  4. Even visual, verbal, or physical conduct between two individuals who appear to welcome the conduct can constitute harassment of a third individual who observes the conduct or learns about the conduct later. Conduct can constitute harassment even if it is not explicitly or specifically directed at an individual.
  5. Conduct can constitute harassment in violation of this Policy even if the individual engaging in the conduct has no intention to harass. Even well-intentioned conduct can violate this Policy if the conduct is directed at, or implicates a protected classification, and if an individual of the recipient's same protected classification would find it offensive (e.g., gifts, over attention, endearing nicknames).
- F. Retaliation: Any adverse conduct taken because an applicant, employee, or contractor has reported harassment or discrimination, or has participated in the complaint and investigation process described herein, is prohibited. "Adverse conduct" includes but is not limited to: taking sides because an individual has reported harassment or discrimination, spreading rumors about a complaint or complainant, shunning and avoiding an individual who reports harassment or discrimination, or real or implied threats of intimidation to prevent an individual from reporting harassment or discrimination. The following individuals are protected from retaliation: those who make good faith reports of harassment or discrimination, those who associate with an individual who is involved in reporting harassment or discrimination, and those who participate in the complaint or investigation process.

## COMPLAINT PROCEDURE

- (A) An employee, job applicant, unpaid intern, volunteer, or contractor who believes he or she has been harassed, discriminated against, or retaliated against may make a complaint verbally or in writing with any of the following. There is no need to follow the chain of command:
- 1) Immediate supervisor;
  - 2) Any supervisor or manager within or outside of the department;
  - 3) Any department head; or
  - 4) Director of Human Resources.

- (B) Any supervisor or department head who receives a harassment, discrimination, or retaliation complaint must notify the Director of Human Resources immediately.
- (C) Upon receiving notification of a harassment, discrimination, or retaliation complaint, the Director of Human Resources will:
- 1) Provide the complainant with a timely response indicating the complaint has been received and that a fair, timely, and thorough investigation will be conducted.
  - 2) Timely authorize and supervise a fair and thorough investigation of the complaint by impartial and qualified personnel and/or investigate the complaint. The investigation will afford all parties with appropriate due process and may include interviews with: 1) the complainant; 2) the accused harasser; and 3) other persons who have relevant knowledge concerning the allegations in the complaint.
  - 3) Review the factual information gathered through the investigation to reach a reasonable conclusion as to whether the alleged conduct constitutes harassment, discrimination, or retaliation, giving consideration to all factual information, the totality of the circumstances, including the nature of the conduct, and the context in which the alleged incidents occurred.
  - 4) Timely report a summary of the determination as to whether conduct in violation of this Policy occurred to the applicable department head and/or City Manager.
  - 5) If conduct in violation of this Policy occurred, take or recommend to the appointing authority prompt and effective and appropriate remedial action. The remedial action will be commensurate with the severity of the offense.
  - 6) Take reasonable steps to protect the complainant from further harassment, discrimination, or retaliation.
  - 7) Take reasonable steps to protect the complainant from retaliation as a result of communicating the complaint.
- (D) The City of Pleasanton takes a proactive approach to potential Policy violations and will conduct an investigation if its officers, supervisors, or managers become aware that harassment, discrimination, or retaliation may be occurring, regardless of whether the recipient or third party reports a potential violation.
- (E) Option to report to outside administrative agencies: An individual has the option to report harassment, discrimination, or retaliation to the United States Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing (DFEH). Contact these agencies ([www.eeoc.gov](http://www.eeoc.gov) or [www.dfeh.ca.gov](http://www.dfeh.ca.gov)) for respective filing requirements and deadlines.

## **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 and

the duty to take effective and appropriate remedial action. As a result, confidentiality will be maintained to the extent possible. The City will determine on a case-by-case basis the extent to which it will need to require confidentiality from any individual who is interviewed during the course of an investigation. The City of Pleasanton 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:

1. Informing employees of this Policy.
2. Modeling appropriate behavior and avoiding conduct prohibited by this Policy.
3. Taking all steps necessary to prevent harassment, discrimination, and retaliation from occurring.
4. Receiving complaints in a fair and serious manner, and notifying the Director of Human Resources immediately, while documenting the complaint and actions taken in response.
5. Reporting potential violations of this Policy of which he or she becomes aware immediately, regardless of whether a complaint has been submitted, to the Human Resources Department or the department head.
6. Monitoring the work environment and taking immediate appropriate action to stop potential violations, such as removing inappropriate pictures or correcting inappropriate language, and forwarding such material to the Director of Human Resources.
7. In consultation with the Director of Human Resources, following up with those who have complained to ensure the behavior has stopped and that there are no reprisals.
8. In consultation with the Director of Human Resources, informing those who complain of harassment or discrimination of his or her option to contact the EEOC or DFEH regarding alleged Policy violations.
9. Assisting, advising, or consulting with employees and the Human Resources Director or his or her designee, regarding this Policy and Complaint Procedure.
10. Assisting, as requested by the Human Resources Director or his or her designee, in the investigation of complaints involving employee(s) in their departments and, if the complaint is substantiated, recommending appropriate corrective or disciplinary action, up to and including discharge.
11. Implementing appropriate disciplinary and remedial actions.
12. Participating in periodic training and scheduling employees for training.

Each employee and contractor is responsible for:

1. Avoiding conduct prohibited by this Policy. Treating all employees and contractors with respect and consideration, without regard to protected classification or status.
2. Modeling appropriate behavior.
3. Participating in periodic training.
4. Fully cooperating with the City of Pleasanton's investigations by responding fully and truthfully to all questions posed during the investigation.
6. 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, or department head, or Human Resources Director or his or her designee.

**DISSEMINATION OF POLICY AND TRAINING**

All employees shall receive a copy of this Policy when they are hired. The Policy may be updated and redistributed. Employees will be trained on the Policy at reasonable intervals or as necessary.

Distribution approved:



Nelson Fialho, City Manager

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