

A - MANAGEMENT

B - MGMT &amp; SUPERVISORY

C - ALL EMPLOYEES

# MANAGEMENT BULLETIN

SUBJECT	ADMINISTRATIVE MANUAL REFERENCE	APPROVED BY
SEXUAL HARASSMENT IN THE WORKPLACE	Chapter 07300 and 07400	CHIEF DEPUTY ATTORNEY GENERAL

## SUPERSEDES MANAGEMENT BULLETIN 99-09

### PURPOSE

The purpose of this Management Bulletin is to reiterate the Department of Justice's (Department) commitment to maintaining a work environment free from all forms of discrimination, including discrimination in the form of sexual harassment. The Department affirms its moral and legal obligation to ensure that all employees are provided a harassment-free environment to realize their goals and function effectively in the workplace.

### SEXUAL HARASSMENT POLICY

In accordance with Title VII of the Federal Civil Rights Act (42 U.S.C. § 2000 (1964)), and the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12940 et. seq.) and Government Code section 19572, the Department prohibits sexual harassment. Departmental policy requires that **all** employees assume responsibility for maintaining a work environment free from any harassing conduct.

### DEFINITION OF SEXUAL HARASSMENT

Sexual harassment is defined as unsolicited and unwelcome sexual advances, requests for sexual favors and other verbal, physical, visual or written conduct of a sexual nature directed to persons of the same or opposite sex when:

- Submission to such conduct is made either explicitly or implicitly as a term or condition of employment;
- Submission to or rejection of such conduct by an employee is used as a basis for employment decisions affecting the employee; or
- Such conduct has the purpose or effect of substantially interfering with an employee's work performance or creating an intimidating, hostile or otherwise offensive working environment.

The courts have defined two types of sexual harassment:

1. **Quid Pro Quo** (Latin for "something for something"): This form of sexual harassment occurs when a supervisor or manager:
  - demands, as an explicit or implied term or condition of employment decisions, a subordinate submit to sexual advances (this may include situations which began as reciprocal relationships, but which later ceased to be reciprocal); and/or;
  - makes requests for sexual favors or other verbal, visual or physical conduct of a sexual nature that is an explicit or implied term or condition of employment decisions.

Examples of quid pro quo harassment include:

- Requests for sexual favors in exchange for a promotion or raise;
- Express or implied statement that a person will be demoted or fired if she or he does not submit to a sexual request or actually carrying out the threat.

2. **Hostile Work Environment:** This form of sexual harassment occurs when an individual is subjected to unwelcome sexual advances or other gender-based conduct that is sufficiently severe or pervasive to interfere with the individual's work performance or creates an intimidating, hostile or offensive work environment. The work environment must be both subjectively and objectively perceived as abusive. The courts look at the totality of the circumstances surrounding the alleged incidents of harassment to determine whether unlawful conduct has occurred. Generally, there must be a pattern of unlawful conduct, although a single serious incident in some cases, such as a sexual battery, might be enough to constitute sexual harassment. The harasser can be a manager, supervisor, co-worker or in certain circumstances, possibly a non-employee, such as a supplier or customer. Examples include:

- Submission to such conduct is made either explicitly or implicitly as a term or condition of employment;
- Leering, making or sending sexual jokes or sexually suggestive remarks, or making sexual gestures;
- Making offensive, negative or demeaning remarks about a person's gender or physical appearance;
- Deliberate and unwelcome touching, hugging, and patting or blocking a person's movement;
- Displaying offensive sexual illustrations or pictures in the workplace;
- Unwelcome pressure for dates or sex (this may include situations which began as reciprocal relationships, but which later ceased to be reciprocal).

The intent of the person accused of sexual harassment is of secondary importance: the impact of the offensive behavior on the offended person is the primary factor in determining if sexual harassment has occurred.

## **ZERO TOLERANCE POLICY**

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It is the policy of the Department to provide all employees a safe work environment free from sexual harassment. Sexual harassment will not be tolerated. Such behavior will be addressed seriously and appropriate corrective action taken. A "zero tolerance" policy means working to prevent any inappropriate behavior, so corrective actions, up to and including formal discipline, will be taken when policy violations occur, even if they are not so serious as to be unlawful. For example, even though a sexual comment does not in itself rise to the level of creating a hostile work environment under the law, such a comment is unacceptable in the workplace, violates the Department's Zero Tolerance Policy and will be subject to a corrective action.

## **DEPARTMENT'S RESPONSIBILITIES**

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The Department is legally responsible for taking all reasonable steps necessary to prevent harassment from occurring. The Department's steps in this regard include, but are not limited to, training, providing counseling, investigating complaints and taking appropriate corrective actions.

## **SUPERVISORS' AND MANAGERS' RESPONSIBILITIES**

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It is the responsibility of supervisors and managers to implement the Department's policy on sexual harassment prevention. Once issues of potential sexual harassment are discovered, supervisors and

managers are obligated by law and policy to address such situations, even in circumstances where the managers and supervisors are not the direct manager or supervisor of the victim or the alleged harasser. Notification must be made to the appropriate chain of command, as determined by the division manager or supervisor addressing the matter, that reasonable steps were taken to prevent the sexually harassing conduct from occurring. In addition, supervisors and managers are obligated to:

- Document the discovery or reporting of the incident;
- Document the decision to not proceed or proceed further and the basis for that decision;
- Document the final resolution and report to the employee;
- Consult with the Equal Employment Rights & Resolution Office (EER&R) Office, if necessary, for advice and guidance.

Supervisors, managers and employees may also be held personally liable in a court of law for unlawful sexually harassing conduct perpetrated by them.

## **EMPLOYEE'S RESPONSIBILITIES**

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Employees who believe they are or have been subjected to sexual harassment in the work place have an obligation to take immediate appropriate action and report the incident(s). The options available to an employee are outlined below under Complaint Procedures.

In addition, all employees have an obligation to:

- Adhere to the Department's sexual harassment policy;
- Refrain from engaging in, condoning, tolerating or leaving uncorrected conduct that violates this policy;
- Report any violations of this policy to a supervisor, manager or the EER&R Office;
- Cooperate with any investigation regarding a violation of this policy.

It is important for all employees to understand that failure to utilize the Department's internal procedures to report violations will hinder the Department's ability to stop and correct any violations. It is the responsibility of all Department employees to ensure a discrimination free working environment.

## **DEPARTMENTAL POLICY ADHERENCE**

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To ensure that all employees, managers and supervisors are informed of the Department's "*zero tolerance*" policy against unlawful discrimination including sexual harassment, the Department requires:

1. All managers and supervisors to facilitate **annual** discussions with staff on sexual harassment and discrimination prevention.
2. Mandatory formal training for Sexual Harassment and Discrimination Prevention be provided to all employees within the next three years; and hereafter
  - a. refresher training of managers and supervisors every **two** years; and
  - b. refresher training of employees every **three** years.
3. All new supervisors, managers and employees receive formal training for Sexual Harassment and Discrimination Prevention within **six months** of their appointment.

To ensure that required discussions and training take place, a written summary of each division's adherence to

the policy must be forwarded, under the Division Chief's or Director's signature, to the EER&R Office **by January 31<sup>st</sup> of each year.**

## **COMPLAINT PROCEDURES**

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Employees who believe they are or have been discriminated against in the workplace have an obligation to immediately report the incident to:

- Their supervisor or manager; or,
- The Equal Employment Rights and Resolution Office.

If the alleged offender is also the employee's supervisor or manager, the employee may contact a manager in or out of the employee's chain of command. As an alternative, the complaining employee may report the incident to Robert Alderette, Director or Laurie Duval, Assistant Director of the EER&R Office, at (916) 324-5482 or CALNET (8) 454-5482.

In addition to the foregoing obligated reporting, employees may also:

- Directly inform the offender that the conduct is unwelcome and must stop;
- Contact an Equal Employment Opportunity (EEO) Counselor for advice or assistance;
- Utilize the grievance procedure up to the third level, for certain Collective Bargaining Units;
- Request mediation through the State Employee Mediation Program;
- Utilize the Department's Employees Assistance Program.

It is the Department's policy to resolve complaints at the lowest appropriate level. Confidentiality concerning complaints or investigations is maintained to the greatest extent possible in order to prevent embarrassment, further discrimination or harassment, or retaliation.

The Department is, however, compelled by law in certain situations to take actions that prevent the Department from honoring requests for confidentiality.

If a complaint cannot be resolved informally, then the following are processes by which an employee may file a formal complaint of discrimination or harassment:

Departmental Procedures:

- a. Contracted grievance procedures, up to the third level, for certain Collective Bargaining Units;
- b. The Department's formal investigative process, coordinated by the EER&R Office.

Outside Agencies:

- a. State Personnel Board (SPB);
- b. California Department of Fair Employment and Housing (DFEH);
- c. Federal Equal Employment Opportunity Commission (EEOC);
- d. U.S. Department of Justice, Office of Civil Rights.

The specifics of each process are explained in Administrative Bulletin 03-08, *Discrimination, Harassment, and Retaliation Complaint Procedures*. Under the informal or formal Department processes, the complaint must be filed within 365 calendar days of the most recent act related to the alleged discrimination. If the complainant did not discover facts about alleged discriminatory practices until after the expiration of the one-year filing period,

she or he has an additional 90 days to file a complaint. Specific filing periods and fixed response dates, if the grievance procedure is used, are set by each Collective Bargaining Unit's Memorandum of Understanding (MOU), i.e., contract.

## **RETALIATION**

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No person shall retaliate or threaten to retaliate against any individual who opposed a discriminatory employment practice or participated in the discrimination complaint process. Retaliation against complainants or any employee is prohibited by law and subject to disciplinary action. For further information refer to Management Bulletin 03-06, *Anti-Retaliation Policy*.

## **RELATED BULLETINS AND OTHER INFORMATION**

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1. Grievance procedures for Collective Bargaining Unit employees can be found in their specific bargaining unit contracts.
2. Management and Administrative Bulletins related to discrimination issues include:
  - Management Bulletin 03-06, *Anti-Retaliation Policy (For Protected Activity)*
  - Management Bulletin 03-05, *Non-Discrimination Policy*
  - Administrative Bulletin 03-08, *Discrimination, Harassment, and Retaliation Complaint Procedures*

Other information related to sexual harassment and discrimination complaint issues can be obtained through the Intranet at <http://dragon> , your supervisor or the following office locations:

DOJ Equal Employment Rights and Resolution Office  
1300 I Street, Room 1350  
Sacramento, CA 95814  
(916) 324-5482 or (8) 454-5482

DOJ Equal Employment Rights and Resolution Office  
4949 Broadway, Room C134  
Sacramento, CA 95820  
(916) 227-3890 or (8) 498-3890

If hearing impaired, call the California Relay Service at: 1-800-735-2929 (From TDD\* Phone)  
1-800-735-2922 (From Voice Phone)

\*TDD is a Telecommunication Device for the Deaf and is reachable only from a telephone equipped with a TDD device.