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Administrative Bulletin

SUBJECT	REFERENCE	APPROVED BY
Policy Prohibiting Discrimination, Harassment, and Retaliation	Department of Justice Administrative Manual, Chapter 7	 Director, Division of Administrative Support

SUPERSEDES Management Bulletins 03-05, 03-06, 03-07

PURPOSE

This administrative bulletin sets forth the commitment of the Department of Justice (DOJ) to federal and state equal employment opportunity (EEO) laws prohibiting discrimination, harassment, and EEO retaliation.

STATUTORY AUTHORITY

The following authorities are collectively referred to as “EEO laws” in this bulletin:

- California Fair Employment and Housing Act (FEHA) of 1959 (including amendments)
- Title VII of the Civil Rights Act of 1964 (including amendments)
- Age Discrimination in Employment Act (ADEA) of 1967
- Rehabilitation Act of 1973
- Americans with Disabilities Act (ADA) of 1990 (including amendments)
- California Genetic Information Non-discrimination Act (GINA) of 2008

POLICY

DOJ ensures equal employment opportunities to all employees, applicants, students, retired annuitants, and volunteers based on qualifications, merit, efficiency, and fitness for duty. This policy applies to recruitment, hiring, promotion, training, corrective and/or disciplinary action, formal adverse action, and other terms, conditions, and benefits of employment. DOJ affirms its ethical and legal obligations to provide a work environment where all individuals are treated with respect and professionalism. DOJ prohibits workplace discrimination and harassment based on the protected characteristics listed below:

- Age (40 or older)
- Ancestry
- Color
- Religion (includes religious dress and grooming practices)
- Disability (physical or mental and including HIV and AIDS)
- Marital Status
- Medical Condition (genetic characteristics, cancer or history of cancer)
- Genetic Information
- Military and Veteran Status
- National Origin

- Race
- Sex (includes pregnancy, childbirth, breastfeeding, medical conditions relating to pregnancy, childbirth or breastfeeding and sexual harassment)
- Gender, Gender Identity, and Gender Expression
- Sexual Orientation
- Political Affiliation or Opinion

People are also protected from harassment or discrimination because they are perceived as having a protected characteristic, or because they are associated with a person who has a protected characteristic.

WORKPLACE IS BROADLY DEFINED

This policy applies to conduct that occurs in any location operated by DOJ, considered a DOJ workplace, or that is reasonably regarded as an extension of a DOJ workplace, such as at a third-party's business location where DOJ employees are assigned to work or at a work-authorized social function. This policy may apply to conduct which occurs off-duty when such conduct affects a DOJ workplace in a manner otherwise prohibited by this policy.

PROTECTION AGAINST EEO RETALIATION

DOJ prohibits any attempted or actual retaliation against an employee or job applicant because such person has opposed any practice forbidden under this policy or because the person has filed a complaint, testified, or assisted in any proceeding covered by this policy, or Administrative Bulletin 15-xx (Equal Employment Opportunity (EEO) Internal Resolution Policies and Procedures). Any suspected violation of this prohibition should be brought to the DOJ's Equal Employment Rights & Resolution (EER&R) Office.

ZERO TOLERANCE

As California's chief legal office and law enforcement agency, DOJ is committed to providing equal employment opportunities to all employees and applicants for employment on the basis of qualifications and merit, and a safe work environment free from discrimination, harassment and EEO retaliation. DOJ maintains a zero tolerance policy that prohibits workplace behavior that a reasonable person, knowing the facts, would perceive as discrimination, harassment, or EEO retaliation. In furtherance of this commitment, all DOJ employees and job applicants must adhere to a standard of conduct that is courteous, professional and respectful of all persons in the workplace. DOJ will take appropriate corrective action, up to or including formal discipline, when the zero tolerance policy has been violated, even if the violation is not so serious as to be unlawful.

DEFINITIONS

The meaning of the terms used in this bulletin and Administrative Bulletin No. 15-03, are as follows:

1. **Discrimination** means any adverse employment action taken against an employee or applicant because of his or her protected characteristic listed under the policy section above. An adverse employment action is a personnel action that materially affects the terms or conditions of employment, including hiring, firing, promotion, and pay decisions.
2. **Harassment** means unwelcome comments, intimidation, ridicule, insult, or physical conduct based on a protected characteristic listed above, where such conduct is sufficiently severe or

pervasive so as to materially alter the terms, conditions, or privileges of the employee's employment or creates an abusive or hostile work environment.

In determining whether conduct has created a hostile work environment, the impact of the offensive behavior on the offended person is the primary consideration, not the intent of the actor. The objective severity of the harassment is judged from the perspective of a reasonable person in the complaining employee's position, considering all the circumstances.

3. **Sexual harassment** refers to a form of harassment that includes repeated unwelcome romantic or sexual advances, requests for sexual favors, or other unwelcome verbal, visual, written or physical conduct of a sexual or gender-based nature that has the purpose or effect of creating an offensive or hostile working environment. Sexually harassing conduct need not be motivated by sexual desire. Sexual harassment exists when such conduct alters the conditions of employment in a way that interferes with another's work performance. Whether certain conduct rises to the level of sexual harassment may depend on the circumstances. However, sexual harassment likely exists in all of the following circumstances:
- a. Submission to the sexual conduct or communication is made either explicitly or implicitly a term or condition of employment for an individual.
 - b. Submission to or rejection of sexual conduct or communication is used as a basis for employment or personnel decisions.
 - c. Sexual conduct or communications are severe or pervasive enough to create an intimidating, hostile, or offensive work environment.

Federal and state laws recognize two types of sexual harassment:

Quid pro quo sexual harassment (which uses a Latin term meaning "this for that"):

This form of sexual harassment occurs when a supervisor or manager:

- Makes requests or demands for sexual contact or requires that a subordinate submit to sexual advances as an explicit or implicit condition of employment, contracting, or hiring decisions.
- Requires sexual favors from a subordinate employee in exchange for taking a favorable employment action or not taking a negative employment action.

Hostile work environment sexual harassment:

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, offensive, or hostile work environment.

The work environment is hostile when it is both subjectively and objectively perceived as offensive. The totality of the circumstances must be examined to determine whether harassment has occurred.

This form of sexual harassment can take the form of a series of inappropriate interactions or can be a single serious incident, such as sexual battery.

This form of sexual harassment can be committed by a manager, supervisor, coworker or, in certain circumstances, a non-employee, such as a supplier or customer.

This form of sexual harassment may arise based on employee interactions that followed a formerly consensual sexual relationship, when sexual advances are no longer welcome.

In the case of alleged same-sex sexual harassment, careful consideration is given to the social context in which the behavior occurred.

4. **EEO retaliation** means taking an adverse employment action against an employee or applicant for employment because that individual engaged in EEO activity (defined below). To show a case of EEO retaliation, an employee or job applicant must show that:
 - a. He or she engaged in EEO activity;
 - b. The decision-maker then took an adverse employment action against the employee or applicant, meaning the action had a materially negative impact on their employment; and
 - c. The adverse employment action was taken because the employee or applicant engaged in the EEO activity; i.e., there must be a causal connection between the EEO activity and the subsequent adverse employment action.

5. **EEO activity** means taking actions to assert rights guaranteed by the EEO laws. Examples of EEO activity include the following:
 - a. Filing a complaint with DOJ or another agency asserting rights protected under the EEO laws;
 - b. Testifying, assisting, or participating in a discrimination, harassment or EEO retaliation complaint process or DOJ's EEO internal resolution processes;
 - c. Openly opposing an action or practice by DOJ which the employee reasonably believes is discriminatory, harassing or constitutes EEO retaliation; or
 - d. Submitting a request for disability or religious accommodation, or asserting rights under the Family Medical Leave Act (FMLA) or the California Family Rights Act (CFRA).

MANDATORY TRAINING

To ensure that all employees are informed of DOJ's EEO policy and in an effort to prevent discrimination, harassment (including sexual harassment), and EEO retaliation from occurring, the EER&R Office shall provide mandatory Discrimination, Harassment, and Retaliation Prevention Training (DHRPT)* to all DOJ employees as follows:

	Supervisory DHRPT (Minimum two hours)	DHRPT	Annual EEO Discussion
Supervisors/Managers	Attend within the first six months of his/her appointment to a supervisory/managerial position	Attend every two years	Facilitator and/or Participant
Rank and File	Not applicable to rank and file employees	Attend every three years	Participant

* The Department of Fair Employment and Housing periodically offers training regarding sexual harassment prevention via webinar. Supervisors and employees may participate in this webinar. Please contact the EER&R Office for more information.

Where appropriate, on a discretionary, as-needed basis, division directors, bureau chiefs, supervisors, managers, or the EER&R Office may recommend or require that an employee attend a refresher DHRPT course, even when the employee is not currently due for DHRPT.

Supervisors and managers are mandated to conduct annual (calendar year) discussions with their staff regarding the prevention of discrimination, harassment (including sexual harassment), and EEO retaliation. To ensure that required discussions and training take place, a written summary of each division's adherence to policy must be forwarded, under the division head's signature, to the EER&R Office by March 31st of each year.

COMPLAINT RESOLUTION/FILING

An employee or job applicant who believes that he or she has suffered discrimination, harassment, or EEO retaliation has rights to pursue various resolution options. Please refer to Administrative Bulletin 15-03, EEO Internal Resolution Policies and Procedures for more information.

REFERENCE

For more information regarding the Department's policy regarding the prohibition of discrimination, harassment, and retaliation, please see Chapter 7 of the DOJ Administrative Manual.

CONTACT

Questions regarding this bulletin should be directed to the EER&R Office at 916-324-5482.