

**CITY OF MERCED
ADMINISTRATIVE POLICY AND PROCEDURE**

**SUBJECT: EQUAL EMPLOYMENT OPPORTUNITY (EEO) –
DISCRIMINATION, HARASSMENT AND
RETALIATION PREVENTION POLICY,
COMPLAINT PROCEDURE, AND COMPLAINT
FORM**

**EFFECTIVE: MARCH 1, 2021 (Original Issue Date: 9/1/94;
Revised: 3/1/99; 3/10/14)**

I. PURPOSE

The City of Merced (“City”) is committed to providing a workplace environment that is free of discrimination and harassment, including discrimination and harassment based on a protected category, and an environment free from retaliation for participating in any protected activity covered by this policy.

This Policy establishes and shall be known as the City’s Discrimination, Harassment and Retaliation Prevention Policy (“Policy”). This Policy also sets forth procedures for reporting and investigating complaints of discrimination, harassment and/or retaliation. The purpose of this Policy is to prevent, prohibit and eliminate unlawful discrimination, harassment and retaliation in the workplace.

II. POLICY STATEMENTS

**A. STATEMENT OF EQUAL OPPORTUNITY AND NON-
DISCRIMINATION**

It is the policy of the City that discrimination, harassment, and retaliation are unacceptable and will not be tolerated. In accordance with Title VII of the Federal Civil Rights Act and the California Fair Employment and Housing Act (“FEHA”), the City is committed to providing equal employment opportunities to all employees and applicants for employment. Accordingly, the City has adopted and maintained this

anti-discrimination policy to encourage professional and respectful behavior and prevent discriminatory and harassing conduct in our workplace.

To that end, the City prohibits discrimination or harassment based on the following: age (40 years or over), ancestry, citizenship, color, race, sex (including pregnancy, childbirth, breastfeeding, or related medical conditions), religion, religious creed (including religious dress or grooming practices), national origin, physical or mental disability¹, veteran and/or military status, , marital status, medical condition (including cancer and genetic characteristics), genetic information, political affiliation, gender, gender identity, gender expression, sexual orientation, protected medical leaves (requesting or approved for leave under the Family and Medical Leave Act or the California Family Rights Act), domestic violence victim status, and any other status protected by state or federal law.

In addition, the City prohibits retaliation against a person who engages in activities protected under this policy. Reporting, or assisting in reporting, suspected violations of this policy and cooperating with investigations or proceedings arising in violation of this policy are protected activities under this policy.

B. APPLICATION

This Policy applies to all employees (co-workers, supervisors, and managers), elected and appointed officials, officers, applicants for employment, officials, agents, service or professional providers, contractors, vendors and volunteers as well as all non-employees who have contact with City employees during working hours. This policy also extends to conduct with a connection to an employee's work, even when the conduct takes place away from City's premises, such as a business trip or business-related function. Additionally, 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.

¹ The City of Merced recognizes and supports the obligation to reasonably accommodate employees with disabilities or religious beliefs or practices in order to allow those employees to perform the essential functions of their jobs. If an employee believes they need a reasonable accommodation based on disability or a religious belief or practice, the employee should discuss the matter with their supervisor or the Human Resources Department.

This Policy requires that all employees assume responsibility for maintaining a work environment that is free from any discrimination, harassment, and/or retaliation. The City has zero tolerance for any conduct that violates this anti-discrimination Policy and the City will implement appropriate preventative, corrective and/or take formal disciplinary action, up to and including termination of employment or provider/vendor contracts, in response to misconduct, including violations of this anti-discrimination policy even if the violation does not rise to the level of unlawful conduct.

Employees are encouraged to promptly report conduct they believe violates this policy so that the City has an opportunity to address and resolve any concerns. Charter Officers, Department Heads, Directors, managers and supervisors are required to promptly report conduct they believe violates this policy. The City is committed to responding to alleged violations.

Applicants and employees have the right to:

- A discrimination, harassment, and retaliation free work environment.
- The right to file a complaint of discrimination, harassment, or retaliation.
- The right to a full, impartial, and prompt investigation by the City into allegations of conduct that would violate this anti-discrimination policy.
- The right to be timely informed of appropriate information related to the outcome of the investigation either as a complainant or a respondent in the investigation.
- The right to be represented by a person of the complainant's choosing at each and all steps of the complaint process (excluding material witnesses).
- The right to be free from retaliation or reprisal after filing a complaint or participating in the complaint process.

- The right to file a complaint directly with the California Department of Fair Employment and Housing, the federal Equal Employment Opportunity Commission or other appropriate state or federal agencies, or to file a civil action in the appropriate court.

This Policy should not be read or construed to preclude the City from dealing with issues relating to an employee's poor work performance, work deficiencies, or violations of City Policies, Rules and Regulations, and Ordinances in a good faith, nondiscriminatory and non-retaliatory manner in accordance with existing City Policies and Personnel Rules and Regulations.

C. DEFINITIONS

Discrimination: As used in this policy, discrimination is defined as the unequal treatment of an employee or applicant in any aspect of employment, including discrimination based solely or in part on the employee's, or applicant's, protected category. Protected categories include: race, color, religion, religious creed (including religious dress and grooming practices), national origin, ancestry, citizenship, physical or mental disability, medical condition (including cancer and genetic characteristics), genetic information, marital status, sex (including pregnancy, childbirth, breastfeeding, or related medical conditions), gender, gender identity, gender expression, age (40 years and over), sexual orientation, veteran and/or military status, protected medical leaves (requesting or approved for leave under the Family and Medical Leave Act or the California Family Rights Act), domestic violence victim status, political affiliation, and any other status protected by state or federal law. Discrimination includes unequal treatment based upon the employee or applicant's association with a member of these protected classes.

Discrimination may include, but is not necessarily limited to: hostile or demeaning behavior towards applicants or employees because of their protected category; allowing the applicant's or employee's protected category to be a factor in hiring, promotion, compensation or other employment related decisions unless otherwise permitted by applicable law², and providing unwarranted assistance or withholding work-related assistance, cooperation,

² For example veterans preference as permitted under Government Code 18973.1.

and/or information to applicants or employees because of their protected category.

Harassment: As used in this policy, harassment is defined as disrespectful or unprofessional conduct based on any of the protected categories listed above. Harassment can be verbal, visual, or physical conduct. Examples of harassment include, but are not limited to the following:

Verbal Harassment:

- Jokes, insults, epithets, gestures, slurs, teasing based upon a protected class or characteristic.

Physical Conduct:

- Physically threatening another person, physical violence, assault, impeding or blocking someone's way or movement, making physical contact in an unwelcome manner, leering, or physical interference with normal work or movement that is based upon a protected class or characteristic.

Visual Harassment:

- Derogatory, prejudicial, stereotypical or otherwise offensive computer images (i.e., computer displays, emails or websites), posting or distributing offensive posters, photographs, cartoons, symbols, drawings, notes, notices or bulletins.

Sexual Harassment: As used in this policy sexual harassment is defined as harassment based on sex or conduct of a sexual nature, and includes harassment based on sex (including pregnancy, childbirth, breastfeeding, or related medical conditions), gender, gender identity or gender expression. It may include all of the actions described above as harassment, as well as other unwelcome sex-based conduct, such as unwelcome or unsolicited sexual advances, requests for sexual favors, conversations regarding sexual activities, or other verbal or physical conduct of a sexual nature. Sexually harassing conduct need not be motivated by sexual desire and may include situations that began as reciprocal relationships, but that later cease to be

reciprocal. Sex harassment is a form of sex discrimination that is illegal under both state and federal law. It is generally defined as unsolicited or 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 individual is used as the basis for employment decisions affecting the employee; 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.

In addition, California law defines sexual harassment as harassment based on sex or of a sexual nature; gender harassment; and harassment based on pregnancy, childbirth, or related medical conditions. The definition includes harassment based on sexual orientation, and also protects an individual's actual or perceived gender identity.

Sexual harassment is generally categorized into two types:

1. **Quid Pro Quo** (Latin for "something for something"): This type of sexual harassment occurs when a supervisor or manager:
 - Demands, as an explicit or implied term or condition of employment decisions, that a subordinate submit to sexual advances; 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, but are not limited to:

- Direct or implied requests by a supervisor for sexual favors in exchange for actual or promised job benefits such as favorable reviews, salary increases, promotions, increased benefits, or continued employment;
- Express or implied statements or carrying out a threat that a person will be demoted or fired if he or she does not submit to a sexual request.

2. **Hostile Work Environment Sexual Harassment:** This type of sexual harassment occurs when an individual is subjected to unwelcomed gender-based conduct or sexual advances that is sufficiently severe or pervasive to interfere with the individual's work performance or such that creates a hostile or offensive work environment. The source of the harassment can be a manager, supervisor, co-worker or under certain circumstances, a non-employee such as a supplier or contractor.

Examples of actions that may create a hostile work environment include, but are not limited to:

- Unwelcome sexual advances, flirtation, teasing, sexually suggestive or obscene letters, invitations, notes, emails, voicemails or gifts;
- Sex, gender or sexual orientation-related comments, slurs, jokes, remarks or epithets;
- Leering, obscene or vulgar gestures or making sexual gestures;
- Displaying or distributing sexually suggestive or derogatory objects, pictures, cartoons, or posters or any such items;

- Impeding or blocking movement, unwelcome touching (such as patting, pinching or intentional brushing against another's body), or assaulting others;
- Any sexual advances that are unwelcome as well as reprisals or threats after a negative response to sexual advances;
- Conduct or comments consistently targeting one gender, even if the content is not sexual;
- Leering, making offensive, negative or derogatory remarks about looks, clothing, body parts, discussing sexual activities; and/or,
- Telling sexual or lewd jokes, sending, forwarding or soliciting sexually suggestive letters, notes, emails, or images, unwelcomed pressure for dates or sex (this may include situations which began as reciprocal relationships, but later ceased to be reciprocal).

Retaliation: As used in this policy retaliation is defined as any adverse employment action taken against an employee because the employee engaged in activity protected under this policy. Protected activities may include, but are not limited to, reporting or assisting in reporting suspected violations of this policy and/or cooperating in investigations or proceedings arising out of a violation of this policy.

Adverse employment action is conduct or an action that materially affects the terms and conditions of the employee's employment status or is reasonably likely to deter the employee from engaging in protected activity. Even actions that do not result in a direct loss of compensation may be regarded as an adverse employment action when considered in the totality of the circumstances.

Examples of retaliation under this policy include but are not limited to: demotion; suspension; reduction in pay; denial of a merit salary increase; failure to hire or consider for hire; refusing to promote or consider for promotion because of reporting a violation of this policy; harassing another

employee for filing a complaint; denying employment opportunities because of making a complaint or for cooperating in an investigation; changing someone's work assignments for identifying harassment or other forms of discrimination in the workplace; treating people differently such as denying an accommodation; or not talking to an employee when otherwise required by job duties, or otherwise excluding the employee from job-related activities because of engagement in activities protected under this policy.

Zero Tolerance: The City endorses a zero tolerance policy toward discrimination, harassment and retaliation, which means that it may take corrective actions up to and including formal discipline when policy violations occur, even if they are not so serious as to be unlawful. Although a violation of this Policy may lead to formal disciplinary action, up to and including termination, as used in this Policy, the term "Zero Tolerance" does not mean that anyone who is found to have violated this Policy will be automatically subject to termination from employment.

III. ANTI-RETALIATION POLICY

It is a violation of this Policy to retaliate or threaten to retaliate against any individuals who have or are believed to have filed a discrimination complaint, opposed a discriminatory act, or participated in a discrimination, harassment, sexual harassment or retaliation complaint process, investigation or proceeding regarding the same conducted by the City, or a state or federal agency. Engaging in unlawful retaliation can result in disciplinary action, up to and including termination from employment. Even if a complaint is not sustained, no individual should be subject to any adverse employment action so long as the filing of the complaint and/or the testimony in support of the complaint were made in good faith.

Any individual who believes that the provisions of this Policy prohibiting retaliation have been violated should report the perceived violation by using the complaint process outlined in this Policy.

IV. ADDRESSING AND REPORTING VIOLATIONS OF THIS POLICY

A. Formal Complaint Procedure

1. Reporting the Conduct

An employee or applicant who experiences or witnesses behavior that s/he believe violates this policy is encouraged to immediately tell the offending individual that the behavior is inappropriate and, if they feel comfortable doing so, to tell the offending individual to stop the behavior. The applicant or employee should also immediately report the alleged violation either verbally or in writing, using the EEO complaint form attached as Attachment 1, to any of the following, as appropriate:

- Immediate supervisor
- Any supervisor or manager within or outside their department
- Any Division or Department Head
- The Director of Human Resources (EEO Officer)
- The City Manager
- The Finance Officer
- The City Attorney

There is no chain of command when contacting the EEO Officer or Charter Officer; an individual does not need supervisor, manager, or Director approval to make a report to the EEO Officer or Charter Officer.

2. Responsibility of Managers and Supervisors to Report Complaints and Conduct

Duty To Report Complaints Received

Any supervisor, manager, Division or Department Head or Charter Officer who receives a complaint shall immediately notify the Director of Human Resources of the complaint. If the

subject of the complaint is the Director of Human Resources, or if the complaint arises in, or involves an employee of the Human Resources Department, the City Manager shall immediately be notified of the complaint.

Duty to Report Conduct Known About or Observed

Any supervisor, manager, Division or Department Head, or Charter Officer who observes or becomes aware of possible discriminatory, harassing, or retaliatory behavior shall immediately report the conduct to the Director of Human Resources. If the conduct involves the Director of Human Resources or an employee of the Human Resources Department, the City Manager shall be immediately notified of the conduct.

3. Timing and Contents of the Complaint

Complainants should come forward with their complaints as soon as possible after an incident of discrimination, harassment, or retaliation. Generally, a complaint, issue or concern should be raised no later than 30 days from the date the complainant knew or should have known about the incident. This will allow the City to address issues at an early stage and prevent them from impacting others.

To the extent possible, oral and written complaints made under this Policy should include details about the conduct or incident(s), the names of the individuals involved and the names of any witnesses. All complaints are to be made in good faith with a reasonable belief in their accuracy and a reasonable and good faith belief that prohibited discrimination, harassment or retaliation has occurred. Written complaints can be made using the EEO Complaint Form (Attachment 1).

4. Limitations

The utilization of this Policy and/or the complaint procedure set forth herein is limited to complaints related to discrimination, harassment or retaliation in the workplace on the basis of a

protected class or characteristic in violation of state or federal law or this Policy. All other complaints shall be handled through the processes established by the City's Personnel Rules, applicable Memorandums of Understandings and/or City Ordinances.

The procedure for filing and resolving complaints of discrimination, harassment and/or retaliation is not intended to replace or prevent employees or job applicants from filing complaints with other appropriate state or federal agencies. Refer to Attachment 2, of this Policy for contact information for the City and other governmental agencies.

B. Complaint Processes

Upon receipt of the complaint, the Director of Human Resources or Charter Officer shall promptly review the complaint to determine if it alleges a violation of this Policy. If so, an investigation of the complaint shall be promptly initiated or authorized. The City Attorney is responsible for ensuring that all complaints of discrimination, harassment, and retaliation are investigated thoroughly and promptly, including presentation of recommendations for any necessary action to the City Manager, Department Director, or Supervisor. Depending on the circumstances, the City Attorney shall have the authority to hire an outside consultant to conduct the investigation. In the event that the complaint is investigated in-house, the following shall occur during the investigation process:

1. The investigation will be conducted under the direction of the City Attorney and include interviews with the complainant, the alleged violator, and any other person who is believed to have relevant knowledge concerning the complaint. This may include potential victims of similar conduct.
2. The City Attorney's Office³ will review factual information gathered through the investigation to determine whether the

³ In the event that the complaint is made against the Director of Human Resources, a Charter Officer or the complaint originates from the Human Resources Department and a Charter Officer elects to conduct or supervise an in-house investigation of the complaint, then the same procedures set forth in this Policy shall apply. In that case, all further references to the Director of Human Resources shall read "Charter Officer or designee."

alleged conduct constitutes discrimination, harassment or retaliation as defined in this Policy. In making this determination, due consideration shall be given to all factual information, credibility determinations, and the totality of the circumstances, including the nature of the verbal, physical, visual or sexual conduct and the context in which the alleged incidents occurred.

3. Information relating to the results of the investigation, including the determination of whether or not discrimination, harassment and/or retaliation occurred shall be made to the appropriate persons including to the complainant(s), the alleged violator, supervisors, and/or Department Head within sixty (60) working days from the commencement of the investigation. An extension of the time requirements set forth in this procedure may only be made if the City Attorney in consultation with the Director of Human Resources and concurrence of the City Manager determines it is in the best interests of fairness and justice to the parties involved.
4. If, at any time after a complaint has been made, the City Attorney in consultation with the Director of Human Resources determines that immediate action should be taken to separate the involved employees, or relieve a volatile situation, the City Manager, or designee or any other Charter Officer shall be notified immediately. Immediate efforts and all appropriate actions should take place in this circumstance, including, but not limited to, placing employees on administrative leave.
5. Reasonable steps shall be taken during the complaint and investigation process to protect the complainant(s) from further discrimination, harassment, or retaliation. If, during the course of the investigation, the complainant alleges adverse actions as a result of filing the original complaint, the new allegation(s) shall be investigated. Reasonable steps shall also be taken to protect witnesses from retaliation as a result of their participation in the complaint making and/or investigation process.

6. If during the course of the investigation, the complainant wishes to withdraw the complaint, a written notation to that effect will be made on any written copy of the complaint. To assure that the withdrawal from the complaint process or investigation is solely based upon the complainant's volition, the investigator shall conduct a brief interview, the results of which shall be written and signed by the employee. The Human Resources City may proceed with the investigation if it chooses.

V. REMEDIAL OR DISCIPLINARY ACTION

If a violation of this Policy has occurred, prompt and effective remedial or disciplinary action against the violator will be taken. If discipline is imposed, the discipline will not be communicated to the complainant(s). Remedial or disciplinary action may also be taken against any supervisor or manager who fails to report potential violations of this Policy in accordance with Section IV, subdivision (A)(2) of this Policy.

Any action taken will be commensurate with the severity of the offense, up to and including termination of employment. The Director of Human Resources can be a resource to rely upon for remedial action and/or to ensure that discipline is consistently applied throughout the Organization. The Human Resources Department may also meet with the affected parties to facilitate the return of a professional working environment to the workplace.

Discipline for violation of this policy does not necessarily mean that any laws were violated. Such conduct will be reviewed in terms of the objective offensiveness rather than in terms of the level of severity or pervasiveness that might create liability under state or federal law.

VI. CONFIDENTIALITY

The City recognizes that confidentiality is important to all parties involved in an investigation. Due to the City's need to fully investigate and take effective remedial action, complete confidentiality cannot occur. Confidentiality will be maintained, to the fullest extent possible, in accordance with applicable City Policies, Rules and Regulations as well as state and federal law.

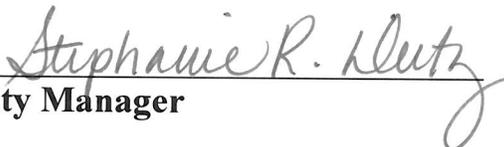
VII. DISSEMINATION OF POLICY

All employees, supervisors and managers shall be sent copies of this Policy, and all new employees will be provided with a copy and required to acknowledge receipt thereof. An electronic copy of this Policy shall also be available on the City's employee intranet. Any questions, concerns, or comments related to this policy should be directed to the Director of Human Resources or designee.

VIII. TRAINING REQUIREMENTS

Every two years, all supervisory employees, appointed and elected officials must attend Sexual Harassment Prevention and Workplace Civility training aimed at increasing their understanding of and preventing workplace sexual harassment (including harassment on the basis of sexual orientation, gender identity, and gender expression) and their role in creating an underlying culture of mutual respect in our workplace. Specific components of the training will include how to promptly and effectively respond to sexual harassment when it occurs, the effects of abusive conduct in the workplace, and ways to appropriately intervene if one witnesses behavior that is not in keeping with this policy. The training must be provided by trainers who, in addition to the other requirements set forth in 2 CCR 11024, have the ability through training or experience to train supervisors on how to identify, investigate, report, and respond to unlawful harassment, discrimination, and retaliation in the workplace.

APPROVED:



City Manager

CITY OF MERCED ACKNOWLEDGEMENT OF RECEIPT AND UNDERSTANDING OF THE EQUAL EMPLOYMENT OPPORTUNITY (EEO) –DISCRIMINATION, HARASSMENT AND RETALIATION PREVENTION POLICY

I acknowledge receipt of a copy of the City’s Equal Employment Opportunity (EEO) – Discrimination, Harassment and Retaliation Prevention Policy (“Policy”).

Print Name _____

Signature _____

Date _____

**CITY OF MERCED
DISCRIMINATION, HARASSMENT, AND
RETALIATION PREVENTION POLICY
COMPLAINT FORM**

COMPLAINANT INFORMATION:

NAME:

WORK PHONE:

DIVISION / UNIT:

OFFICE LOCATION:

IMMEDIATE SUPERVISOR:

Please describe the conduct that you believe violates the Discrimination, Harassment or Retaliation Prevention Policy. In your narrative, describe: (1) What happened to you; (2) Why you believe you are being discriminated, harassed, or retaliated against, including the reason or evidence you have to support your belief, and; (3) When the acts of discrimination, harassment, or retaliation occur (attach additional pages if needed). If you require assistance with completing this form as a reasonable accommodation, please contact the EEO officer.

ATTACHMENT 1

Contact information for City of Merced's EEO and Charter Officer is:

EEO Officer
Director of Human Resources
678 West 18th Street
Merced, CA 95340
Phone – (209) 385-4780
Email – proctord@cityofmerced.org

Charter Officer
City Manager
678 West 18th Street
Merced, CA 95340
Phone – (209) 388-8670
Email – dietzs@cityofmerced.org

Charter Officer
City Attorney
678 West 18th Street
Merced, CA 95340
Phone – (209) 385-6868
Email – nortonp@cityofmerced.org

Charter Officer
Finance Officer
678 West 18th Street
Merced, CA 95340
Phone – (209) 385-8547
Email – rodriguezv@cityofmerced.org

FILING OF COMPLAINTS OUTSIDE OUR COMPANY

Employees and applicants may file formal complaints of discrimination, harassment, or retaliation with the agencies listed below. Individuals who wish to pursue filing with these agencies should contact them directly to obtain further information about their processes and time limits.

California Department of Fair Employment and Housing
2218 Kausen Drive, Suite 100
Elk Grove, CA 95758
800-884-1684 (voice), 800-700-2320 (TTY) or California's
Relay Service at 711 contact.center@dfeh.ca.gov
<https://www.dfeh.ca.gov>

U.S. Equal Employment Opportunity Commission
450 Golden Gate Avenue 5 West,
P.O Box 36025
San Francisco, CA 94102-3661
1-800-669-4000 or 510-735-8909 (Deaf/hard-of-hearing
callers only) <http://www.eeoc.gov/employees>

ATTACHMENT 2