

## **Fair Political Practices Commission**

### **MEMORANDUM**

**To:** ALL STAFF

**From:** Loressa Hon, Acting Executive Director

**Subject:** FPPC Policy Prohibiting Discrimination, Harassment, and Retaliation

**Date:** November 1, 2018

---

This memorandum reaffirms the Fair Political Practices Commission's commitment to eliminate all forms of harassment, discrimination and retaliation in the office. The FPPC must be diligent in discouraging prohibited conduct by educating all employees. Please read the following policy, sign the attached acknowledgement form and return the form to the Equal Employment Opportunity Officer (EEO officer) or the Administration Division Chief. A complaint form is also attached for your convenience. Also, please note that in addition to filing an internal complaint, employees may also file complaints with the California Department of Fair Employment and Housing (DFEH) or the Equal Employment Opportunity Commission (EEOC). The filing deadlines imposed by these agencies are not affected by the FPPC internal complaint process.

#### **GENERAL POLICY**

It is the responsibility of the FPPC to ensure that all employees, including employees of all classifications, FPPC Commissioners, retired annuitants, unpaid interns, volunteers, and persons providing services under contract, comply with state and federal laws that mandate equal employment opportunity. Equal employment opportunity encompasses the protection against discrimination, which includes sexual harassment. Any form of harassment, discrimination or retaliation by employees, will not be tolerated. FPPC employees have a responsibility to document and report all situations where actions employees constitute harassment, discrimination or retaliation toward employees, or visitors. Employees who violate these standards will be subject to disciplinary action.

The primary purpose of the FPPC's harassment, discrimination and retaliation prevention policy is to prevent inappropriate conduct and to provide a work environment free of harassment, discrimination and retaliation. Employees are expected to adhere to a standard of conduct that is respectful of all persons within the work environment. The FPPC is committed to preventing discrimination, harassment, and retaliation in the workplace. Consistent with this commitment, the FPPC complies with all state and federal laws prohibiting discrimination, harassment, and retaliation.

## **ZERO-TOLERANCE ANTI-DISCRIMINATION, HARASSMENT, AND RETALIATION POLICY**

The FPPC 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)
- Gender, Gender Identity, and Gender Expression
- Sexual Orientation
- Political Affiliation or Opinion

This anti-discrimination policy applies to all aspects of the employment relationship including recruitment, hiring, promotion, training, corrective and/or disciplinary action, formal adverse action, and other terms, conditions, and benefits of employment.

The FPPC also forbids workplace discrimination or harassment because an individual is perceived as having a protected characteristic, or because he or she is associated with a person who has a protected characteristic.

FPPC further prohibits retaliation against anyone who opposes or reports discrimination or harassment or who participates or assists in any way in any investigation or proceeding covered by this policy.

FPPC has a zero-tolerance policy towards discrimination, harassment, and retaliation. This means that FPPC may take appropriate corrective action, up to and including formal discipline when policy violations occur, even if the violations are not unlawful. This policy prohibits all workplace behavior that a reasonable person, knowing the facts, would perceive as discrimination, harassment, or EEO retaliation. All FPPC employees must adhere to a standard of conduct that is courteous, professional, and respectful of all persons in the workplace.

## DEFINITIONS

The terms used in this policy have the following meanings:

1. **Employee** means any employee regardless of classification, FPPC Commissioners, retired annuitants, unpaid interns, volunteers, and persons providing services under contract.
2. **Discrimination** means treating any person less favorably than others based on any protected characteristic, including, but not limited to, any personnel action such as hiring, termination, promotion, and pay decisions.
3. **Harassment** of a person based upon that person's protected characteristic is a form of discrimination. Workplace harassment includes, but is not limited to, the following types of unwelcome conduct:
  - Making derogatory comments, slurs, jokes, remarks, or epithets;
  - Displaying cartoons, pictures, posters, drawings, or other objects of a derogatory or offensive nature;
  - Displaying, transmitting, or forwarding Internet material that is of a derogatory or offensive nature;
  - Threats or intimidation;
  - Physical harassment such as assault, unwelcome touching, or blocking another person's movement;
  - "Abusive conduct" defined in Government Code section 12950.1, subdivision (h)(2) as "conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests. Abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance. A single act shall not constitute abusive conduct, unless especially severe and egregious."

In determining whether harassment has occurred, the primary consideration is the impact of the offensive behavior on the recipient of the conduct, not the intent of the actor.

4. **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. Sexually harassing conduct need not be motivated by sexual desire.

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.
  - Can take the form of a series of inappropriate interactions or can be a single serious incident, such as sexual battery.
  - Can be committed by a manager, supervisor, coworker or, in certain circumstances, a non-employee, such as a supplier or customer.
  - May arise based on employee interactions that followed a formerly consensual sexual relationship, when sexual advances are no longer welcome.
5. **Retaliation** means taking an adverse employment action against an employee or applicant for employment because that individual engaged in a protected activity. A protected activity includes opposing, in good faith, any practices prohibited by the Fair Employment and Housing Act by making a formal or informal good faith complaint about or reporting discriminatory, harassing, or retaliatory activity, testifying, assisting, or participating in any manner in an investigation, proceeding or hearing relating to discrimination, harassment, retaliation, or any other practice prohibited by FEHA whether before the FPPC, the State Department of Fair Employment and Housing (DFEH), the State Personnel Board, or other tribunal or entity. The FPPC also prohibits taking an employment action against an employee for submitting in good faith, a request for disability or religious accommodation, or asserting rights under the Family Medical Leave Act (FMLA) or the California Family Rights Act (CFRA).

**THIRD PARTY FILING**

Harassment, discrimination and retaliation often occur when only the two persons involved are present. However, if another person is present when the activity takes place, even though he or she is not the object of harassment, discrimination or retaliation, then he or she may file a complaint as a third party.

**EMPLOYER'S RESPONSIBILITIES**

The agency has a legal obligation to ensure the work environment is free from all forms of discrimination, harassment, and retaliation. Employers are responsible for all actions of supervisors and, in addition, the acts of other employees but only if the employer knows, or should have known, of the acts and fails to take timely and appropriate action. Complaints of discrimination, harassment, and retaliation must be investigated in a **timely, thorough, and**

**confidential manner**, even if the complaint is withdrawn or the complainant requests that no action be taken. Once a complaint has been filed (formally or informally), the agency is **legally obligated to ensure that the work environment is free of discrimination**. If substantiated through the complaint process, the conduct or behavior is subject to immediate disciplinary action, up to and including discharge from employment. **Prompt, appropriate action** will help to avoid or minimize the incidents of discrimination, harassment, and retaliation and potential agency liability. A poster from the DFEH informing employees of their rights about sexual harassment is posted in each employee break room.

FPPC supervisors and managers must set an example by their own behavior. All supervisors and managers are prohibited from engaging in any behavior made unlawful by the FEHA. They must also adhere to this zero-tolerance policy and not engage in any form of discrimination, harassment, or retaliation. Further, they should take proactive steps to communicate to subordinates that discrimination, harassment, and retaliation in the workplace will not be tolerated. They should ensure that all their subordinate employees are informed of the FPPC's policy against discrimination, harassment, and retaliation and its complaint policy, and that all their employees receive appropriate training on the policy.

FPPC supervisors and managers are required to take immediate and appropriate action to correct any discriminatory, harassing, or retaliatory conduct occurring in the workplace. A supervisor or manager who becomes aware of any complaint of discriminatory, harassing, or retaliatory conduct must immediately report the complaint both to the EEO Officer (the Administration Division) and through his or her chain of command.

Once a supervisor or manager is aware that an employee under his or her direct supervision has complained of discriminatory, harassing, or retaliatory conduct, the supervisor or manager will protect the complaining employee from any form of reprisal or retaliation. The supervisor or manager will also promptly initiate appropriate action, as directed by executive level management, to remedy a discriminatory situation and prevent further acts of discrimination, harassment, or retaliation from occurring.

## **RESPONSIBILITIES OF EMPLOYEES AND APPLICANTS**

All employees and job applicants have an obligation to adhere to this zero-tolerance policy and not engage in any form of discrimination, harassment, or retaliation. They must also refrain from condoning, tolerating, or merely ignoring conduct by others that violates this policy. Employees or applicants have a responsibility to promptly report any violations of this policy to the EEO officer or the Administration Division Chief.

All employees and third-parties present in the workplace are prohibited from engaging in any behavior made unlawful by the FEHA.

All employees and applicants must also cooperate with any investigation into allegations that the FPPC's policy against discrimination, harassment, or retaliation has been violated.

An employee or job applicant who, in good faith, believes he or she has been subjected to discrimination, harassment or retaliation has an obligation to report the incident or conduct. The

employee or applicant may report the discriminatory, harassing, or retaliatory conduct to the EEO officer or the Administration Division Chief.

## **COMPLAINT PROCEDURE**

A complaint that an employee or job applicant has been subjected to discriminatory, harassing, or retaliatory conduct may be made verbally or in writing. The FPPC strongly urges any employee or job applicant who believes he or she has been subjected to inappropriate workplace conduct in violation of this policy to reduce his or her concerns to writing. However, it is not required. All complaints, whether verbal or written, will be addressed in the same manner as described in this policy.

Any employee or job applicant that believes his or her rights under this zero tolerance anti-discrimination policy or under the federal or state law have been violated may file an informal or formal discrimination complaint with the EEO Officer or the Administration Division Chief. If the employee or job applicant is in the Administrative Division, or is bringing the complaint against the EEO officer or Administration Division Chief, then he or she should make either a formal or informal complaint to the Executive Director. An employee or applicant may also file directly with the California DFEH or the Federal Equal Employment Opportunity Commission (EEOC).

All complaints filed internally with the FPPC will be handled in an impartial manner in compliance with federal and state laws and FPPC policy. Complaints that describe discriminatory, harassing, or retaliatory conduct prohibited by this policy will be followed by a fair, complete, and timely investigation. No employee or job applicant will be retaliated against for filing a complaint regarding incidents of discrimination, harassment, or retaliation or participating in an investigation of such a complaint. Complaints will be kept confidential to the extent possible.

## **INTERNAL RESOLUTION OPTIONS**

The FPPC provides various internal resolution options for FPPC employees and job applicants who believe they have been subjected to discriminatory, harassing, or retaliatory conduct. These options are described below. Whichever internal resolution option an employee chooses, the EEO Officer or the Administration Division Chief will attempt to facilitate a practical resolution that is acceptable to the employee and remedies any discrimination, harassment, or retaliation. The EEO Officer or the Administration Division Chief may determine that not all FPPC's internal resolution options described below are appropriate, depending upon the circumstances.

Employees or job applicants seeking additional information may contact the EEO officer or the Administration Division Chief to explain their situation and explore the options that may be appropriate to address their complaint.

The FPPC will take whatever appropriate actions are necessary depending on the circumstances and the information known, to fulfill its obligations to prevent and remedy any incidents of discrimination, harassment, or retaliation.

## **INFORMAL RESOLUTION PROCESS**

To facilitate early resolution of a complaint, employees who believe they have experienced conduct that is prohibited by this policy are encouraged to first inform the EEO officer or the Administration Division Chief, who will attempt to fashion an informal resolution of the complaint that is appropriate to address the employee's concerns.

The goal of the informal resolution process is to reach a practical resolution to an employee's workplace concerns that is mutually acceptable to the employee and other involved parties. The EEO Officer or the Administration Division Chief will work with the employee to resolve the issues informally through mutually agreeable solutions and at the lowest organizational level, as appropriate. The EEO Officer or the Administration Division Chief will decide with the employee whether a mutually agreeable resolution can be reached. If such a resolution cannot be reached or if the employee is otherwise unsatisfied with any informal resolution, the employee may file a formal complaint.

The complaint will be kept confidential to the extent possible. If an informal process is explored, it will be completed within a reasonably prompt period of time.

Notwithstanding an employee's desire to use the informal resolution process, the FPPC may determine that the informal resolution process is not suitable to address the allegations of the complaint and may proceed directly to the formal complaint process described below. At any point in the process, the employee may request that the complaint be referred to EEO officer or the Administration Division Chief (or the Executive Director if the Administration Division is involved) as a formal complaint.

## **FORMAL COMPLAINT PROCESS**

An FPPC employee or job applicant who believes in good faith that he or she has been subjected to discriminatory, harassing, or retaliatory conduct, also has the option of filing a formal complaint with the EEO officer or the Administration Division Chief.

A formal complaint must be filed with the EEO officer or Administration Division Chief within 365 days of the alleged discriminatory, harassing, or retaliatory act. Notwithstanding this limitation, it is imperative for the employee or job applicant to submit a formal complaint as soon as possible after the alleged conduct has occurred, to give the FPPC the opportunity to take prompt and appropriate action to stop the conduct and prevent future conduct.

The written complaint should provide details of the alleged discriminatory, harassing, or retaliatory act(s), the person(s) involved, and how the complainant has been harmed. The complainant should provide specific facts that support their belief that the conduct or employment action occurred because of the complainant's protected characteristic or protected activity. Providing this information will assist the FPPC to take appropriate action to address the allegations.

If an FPPC employee or job applicant submits a written complaint to the EEO Officer or the Administration Division Chief that describes facts which, if true, indicate that discrimination, harassment, or retaliation in violation of this policy occurred, then the Administration Division will accept the complaint, which becomes filed on the date of acceptance.

If the EEO Officer or the Administration Division Chief receives a written complaint that it determines does not sufficiently describe discriminatory, harassing or retaliatory conduct prohibited by this policy, then the EEO Officer or the Administration Division Chief will notify the complainant in writing. This notice will inform the employee of the basis for the determination and the employee's right to provide additional information showing discrimination, harassment or retaliation occurred.

After a formal complaint is accepted, the EEO Officer or the Administration Division Chief will promptly initiate an impartial investigation by a qualified investigator. The investigation will fully and fairly investigate the alleged discriminatory, harassing or retaliatory conduct. The investigation will also be timely. The investigation will include notice to both the complainant and the subject(s) of the investigation and provide both an opportunity to provide relevant information to the investigator. The FPPC will use all reasonable efforts to complete the investigation within 90 days after the complaint is accepted. After the investigation is completed, the FPPC will issue a written decision by the Executive Director or his or her designee. The decision will be based on the evidence collected as to whether the preponderance of the evidence supports a finding that there was a violation of this anti-discrimination policy.

The complaint will be kept confidential to the extent possible.

The complaining employee or job applicant and all other FPPC employees, supervisors and managers are expected to cooperate fully with any investigation. No employees will be retaliated against for complaining or participating in an investigation.

If the FPPC determines that this anti-discrimination policy has been violated, the FPPC will take appropriate corrective action.

### **OPTIONAL MEDIATION**

Depending on the nature of the allegations of the complaint and if all involved parties agree, the FPPC may attempt to resolve the allegations through mediation. Mediation is a confidential process that is completely voluntary. Through mediation, employees, supervisors, and managers work with a professionally-trained, non-FPPC mediator in one or more sessions to attempt to reach mutually-agreeable solutions to workplace disputes.

Notwithstanding an employee's desire to use the mediation process, the FPPC may determine that such a process is not suitable to address the allegations of the complaint.



## **GRIEVANCE PROCESS**

The Memorandum of Understanding (MOU) for a collective bargaining unit may include provisions whereby discrimination, harassment, and retaliation complaints may also be addressed through the grievance process. In certain cases, this process can provide an alternative resolution option. Employees considering a grievance should refer to their specific MOU and contact their union representative.

Notwithstanding an employee's filing of a grievance, the FPPC will take whatever appropriate actions are necessary depending on the circumstances and the information known, to fulfill its obligations to prevent and remedy any incidents of discrimination, harassment or retaliation.

## **FILING COMPLAINTS WITH THE STATE PERSONNEL BOARD (SPB)**

Any employee or job applicant who reasonably believes that he or she has been subjected to discrimination, harassment, retaliation, or denied reasonable accommodation based on a known physical or mental disability may file a complaint with the SPB. As a prerequisite to the filing of a complaint with the SPB, the employee or applicant shall first file a written complaint with the EEO Officer or the Administration Division Chief to give the FPPC the first opportunity to address the complaint. The complained of act(s) or omission(s) must have occurred no more than one year prior to the date that the complaint was filed with the EEO Officer or the Administration Division Chief. Further information can be obtained at [www.spb.ca.gov](http://www.spb.ca.gov).

## **OTHER EXTERNAL COMPLAINT FILING OPTIONS**

An employee or job applicant may also choose to file a complaint for discrimination, harassment, or retaliation with a state or federal agency. Regardless of whether an employee or applicant uses one or more of FPPC's internal resolution options, an employee or applicant may file a complaint concurrently or alternatively with the following external agencies:

### **California Department of Fair Employment and Housing (DFEH)**

The DFEH has authority to investigate complaints of employment discrimination, harassment and retaliation. Generally, complaints must be filed with the DFEH within 365 days of the alleged occurrence of a discriminatory, harassing, or retaliatory action, with an additional 90-day extension of time possible if the complainant first obtained knowledge of the facts which show the alleged unlawful action after the 365 days have passed. For assistance with this process, an employee or applicant may contact the DFEH at (800) 884-1684 [TTY (800) 700-2320] to obtain information at [www.dfeh.ca.gov](http://www.dfeh.ca.gov).

### **United States Equal Employment Opportunity Commission (EEOC)**

The federal EEOC investigates charges of employment discrimination, harassment, and EEO retaliation. The EEOC has jurisdiction over claims asserted under various federal EEO laws, including under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act (ADEA) of 1967, the Equal Pay Act of 1963, Section 501 of the Rehabilitation

Act of 1973, and the Americans with Disabilities Act (ADA) of 1990. Generally, employees and applicants have 300 days after the alleged discriminatory action, or within 30 days of termination of any state proceeding, whichever comes first, to file a complaint with the EEOC. Other EEOC requirements may also apply. For assistance with this process, an employee may contact the EEOC at (800) 669-4000 or obtain information at [www.eeoc.gov](http://www.eeoc.gov).

## **CONFIDENTIALITY**

The FPPC will maintain confidentiality concerning complaints and investigations to the greatest extent possible. Confidentiality facilitates FPPC's ability to consider, investigate and respond to allegations of discrimination, harassment and retaliation. Confidentiality also prevents embarrassment and further discrimination, harassment or retaliation. Concerns of individuals regarding confidentiality of information provided by them will be handled as sensitively as possible. Therefore, the EEO Officer or the Administration Division Chief files (including communication, informal resolution efforts, formal investigation reports, and other information) are kept as confidential as possible and will not be disclosed to any person except as reasonably necessary and in compliance with the law.

Employees should be aware, however, that complete confidentiality cannot be guaranteed. The FPPC is required in certain circumstances to take preventative or corrective actions that may be inconsistent with an employee's desire that a report of certain behavior be kept confidential. In addition, in the event of an administrative or other legal proceeding, investigative materials may legally be required to be disclosed to others involved in such proceedings.

The circumstances under which information and materials may be disclosed from the EEO Officer or the Administration Division Chief files will depend on the information sought, whether and to what extent the material is privileged, and the legal rights and privacy interests of all persons who would be affected by the disclosure.

## **MANDATORY TRAINING**

The FPPC will provide education and training for the EEO officer, the Administration Division Chief, the investigating officers, the Executive Director, and managers and supervisors. The FPPC will also make training available to all staff on sexual harassment prevention.

## **CONSEQUENCES**

The FPPC will take appropriate corrective action to prevent and remedy conduct in violation of the policy. All employees will be held accountable for their conduct. An employee who is found to have engaged in discriminatory, harassing, or retaliatory conduct in violation of this zero-tolerance policy will be subject to appropriate action regardless of classification. Such action could include oral or written counseling, letters of reprimand, suspension, demotion, or termination.

## **CONTACT INFORMATION**

Questions regarding this policy should be directed to the EEO Officer at 916-323-2937.

## Fair Political Practices Commission Harassment, Discrimination and Retaliation Complaint Form

<b>Name:</b>
<b>Job Title:</b>
<b>Division:</b>
<b>Phone Number:</b>
<b>Email Address:</b>
<b>Date:</b>
<b>Person(s) Against Whom Complaint is Made:</b>

Please answer the following questions to the best of your ability. If you need additional space, then please continue on another sheet of paper and attach.

1. **Date of the most recent or continuing harassment, discrimination or retaliation took place (month, day & year):**
  
2. **Describe the nature of your complaint.**

3. Identify all employees or others with knowledge of the conduct about which you are reporting.
  
4. To the best of your knowledge, did the employees/others listed above personally observe or overhear the conduct? If yes, please list who and when.
  
5. Are there any documents which contain information supporting the occurrence(s) described? If so, please attach.
  
6. Is there any physical evidence that supports your complaint? If so, please describe or attach.
  
7. Have you previously complained or reported this or related acts to an agency supervisor or official? If so, please identify the individual to whom you complained/reported, the date(s) of the complaint, and the resolution of the complaint.
  
8. Is there anyone specifically that the agency should talk to when investigating your complaint?
  
9. What is your requested remedy in this complaint? (What would you like to see happen?)