

Equal Employment Opportunity Handbook for City Commissioners



**City of Los Angeles Personnel Department
EEO & Employee Development Division
December 2013**

INTRODUCTION

Welcome to the City of Los Angeles in your role as a new City Commissioner. The City has over 50 Commissions and over 300 Commissioners, overseeing a myriad of City services. Each Commission serves a vital role to ensure that the citizens of Los Angeles and public receive quality services. While each Commission relies on the Commissioners' expertise for their particular field, the City has certain policies that affect all Commissions and Commissioners. One such policy is the City's commitment to maintaining a discrimination free work environment and equal employment opportunity.

The documents contained in this handbook are a compilation of information regarding federal and state anti-discrimination laws, City policies and procedures. It is important that you review this material so you become familiar with the City's commitment to zero tolerance and the procedures that are in place to address any violation of the laws or policies.

We hope you find this information to be a useful resource while serving as a City Commissioner.

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Terms and Definitions

Accommodation/Reasonable Accommodation

Arises as a category of discrimination in cases where the charges stem from discrimination on the bases of religion or disability. Laws, regulations, and court decisions indicate what employers are required to consider when making reasonable changes (accommodations) in some aspect of the work in order to allow for equal employment opportunity of the disabled and those with religious beliefs that might conflict with normal working hours, locations, or duties.

The key regarding discrimination against the disabled is for employers to ensure that their personnel and selection practices consider each individual's limitations in connection with the job or position for which the person is being considered, and to make a very careful assessment of possible accommodations to allow that person to be employed in that position. Accommodations can take the form of restructuring jobs through the reassignment of nonessential duties; making changes in the physical work environment, such as raising a desk a few inches to facilitate employment of a person in a wheelchair; and considering adaptive devices.

Accommodations for individuals with religious beliefs might include arranging for special work hours so that the employee can observe religious practices, not requiring the employee to work on a day during the week that would be contrary to his or her religious belief, and/or allowing the employee time off either with vacation or without pay to observe religious holidays.

ADA defines an "individual with a disability" as a person who has:

- A physical or mental impairment that **substantially limits** one or more major life activities or major bodily functions
- A record of such an impairment; or
- Is regarded as having such an impairment
- Determination of disability is made without regard to mitigating measures

Substantially Limits (ADA) – When an individual is unable to perform, or is significantly limited in the ability to perform, an activity compared to an average person in the general population. Consider:

- Nature and severity of the impairment
- How long it will last or is expected to last
- Its permanent or long-term impact, or expected impact

Adverse or Disparate Impact

Where a personnel system or practice that appears neutral, has the effect of discriminating against race, sex, national origin, age, etc. For example, a high school diploma requirement for assignment to a preferred work unit, where the diploma is not job-related and where the diploma requirement tends to “screen” out proportionately more of one group than another group, could constitute unlawful discrimination on the basis of the disparate impact. It is in this category where we use statistics in order to show whether or not there has been adverse impact against a particular group.

The Americans with Disabilities Act (ADA) 1990

Prohibits discrimination against qualified disabled persons in employment (15 or more employees) and requires employers to make reasonable accommodations (engage in the interactive process).

Artificial Barriers

An employment policy, practice, or requirement that has the effect of denying or limiting employment opportunities for a particular group or groups, and which cannot be justified on the basis that it is job-related. For example, a requirement that one must be a citizen of the United States in order to work for the City of Los Angeles would be considered an artificial barrier for most City jobs, especially since it may have an adverse impact against groups such as Hispanics and Asians.

Bases for Discrimination

- Race
- Color
- Religion
- National Origin
- Age
- Medical Condition (cancer, genetic characteristics)
- HIV/Acquired Immune Deficiency Syndrome (AIDS) – acquired or perceived
- Sex (including sexual harassment and gender identity or expression, which includes actual or perceived transgender status)
- Retaliation for having filed a discrimination complaint or participating in a protected activity.
- Marital Status
- Sexual Orientation
- Creed
- Ancestry
- Disability

BFOQ (Bonafide Occupational Qualification) – A requirement that can be proven to be necessary even though it is discriminatory

- Permitted on the basis of sex, religion, or national origin when sex, religion, or national origin is a BFOQ for a particular job
- There is no BFOQ for race or color
- Employer must prove only individuals of one sex, national origin, or religion can perform the duties of the job in a safe and efficient manner, and that the essence of the business would be undermined by not hiring exclusively members of a given class
- Customer preferences and stereotypic notions concerning the capabilities of persons of a particular sex, religion, or national origin do not warrant application of this exception

Disability

Any physical or mental impairment that substantially limits one or more major life functions (such as caring for one's self, performing manual tasks, walking, breathing, seeing, hearing, learning, or working), or a major bodily functions (such as bowel, bladder, respiratory and reproductive functions). This term includes but is not limited to such diseases or conditions as visual and orthopedic impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, Acquired Immune Deficiency Syndrome (AIDS), diabetes, heart disease, mental retardation, and specific learning disabilities such as perceptual handicaps, dyslexia, minimal brain dysfunction and developmental aphasia.

Discrimination

Any employment practice or decision which intentionally or unintentionally results in the unequal treatment of an individual or group in a protected class on a basis other than job-related reasons.

Discrimination-Free Workplace – Free of any discriminatory activities including:

- Racial, ethnic, or sexual jokes
- Cartoons or other derogatory images associated with gender, religion, nationality, sexual orientation, or disability
- Use of derogatory language or slang describing ethnic groups, sexes, sexual orientation, or race
- Imitation of accents associated with ethnic groups or nationalities
- Labeling employees with racial, ethnic, sexual, disability, religious, or sexual orientation characteristics

Disparate Treatment – Intentional discrimination. Treating individuals differently without a valid job-related reason or without using job-related criteria to make decisions that affect a person’s employment options.

Equal Employment Opportunity – Opportunity to compete and to be hired, based on individual merit and ability to perform a job, without regard to any of the bases protected by law.

Family and Medical Leave Act (FMLA)

- To qualify, an employee must work for the City for 1040 hours in a year
- Enforced by the Department of Labor
- Requires employers to grant up to 12 workweeks of leave during any 12-month period for one or more of the following reasons:
 - Birth of a child, and to care for the child
 - Placement of a child with the employee through adoption or foster care, and to care for the child
 - To care for the employee’s spouse, son, daughter, or parent with a serious health condition
 - Because a serious health condition makes the employee unable to perform one or more of the essential functions of his or her job
- Requires employer to maintain the employee’s existing level of coverage under a group health plan
- Requires employer to take an employee back into the same or an equivalent job
- Must designate FMLA leave as early as possible or may have to provide additional time

Note: Although, FMLA provides for 12 workweeks of leave, the City and the employee organizations (unions) currently have negotiated agreements which provide City employees with up to nine pay periods of leave during any 12-month period. Supervisors should regularly check Memoranda of Understanding (MOUs) for changes affecting family leave and other terms and conditions of employment.

FEHA (Fair Employment and Housing Act) – Prohibits discrimination on the basis of ancestry, race, color, national origin, religion, age, sex, sexual orientation, disability, medical condition (cancer and genetic characteristics), genetic information, pregnancy, marital status, gender, gender identity and gender expression.

FEHA’s definition of “disability” – Different from the ADA definition and includes:

- Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that affects one or more of the following body systems:

neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine and limits a major life activity.

- Having any mental or psychological disorder or condition that limits a major life activity.
- Having a record or history of the above.
- Being regarded as having or having had the above.

FEHA also has as a protective basis "medical condition" which refers to any health impairment related to or associated with a diagnosis of cancer or a record or history of cancer; or having its genetic characteristics.

Harassment

- The deliberate, repeated, and hurtful mistreatment of a target by a harasser.
- Includes emotional abuse, bullying, abuse of power, unfair penalties, hostile communication, and offensive behavior.

Hostile Work Environment – Created when offensive conduct sufficiently humiliates, distresses, or intrudes upon its victim so as to disrupt tranquility in the workplace, affect ability to perform the job as usual, or otherwise interfere with and undermine one's sense of well-being. Consider:

- Frequency of conduct
- Severity of conduct
- Physically threatening or humiliating vs. verbally abusive or mere offensive utterance
- Cumulative effect
- Context in which conduct took place

Interactive Process – An on-going dialogue between a disabled applicant or employee and the employer for the purpose of identifying and providing a reasonable accommodation. This process must be timely and conducted in good faith. The interactive process is triggered either by a request for an accommodation by a disabled applicant or employee or by the employer's recognition of the need for an accommodation.

The four steps critical to the interactive process are as follows:

1. Analyze the particular job involved and determine its purpose and essential functions;
2. Consult with the individual with the disability to ascertain the precise job-related limitations imposed by the individual's disability and how those limitations could be overcome with a reasonable accommodation;
3. In consultation with the individual to be accommodated, identify potential accommodations and assess the effectiveness each would have in enabling

the individual to perform the essential functions of the position; and

4. Consider the preference of the individual to be accommodated and select and implement the accommodation that is most appropriate for both the employee and the employer.

Major Life Activity – An activity that an average person can perform with little or no difficulty, such as walking, speaking, breathing, performing manual tasks, seeing, hearing, learning, caring for oneself, concentrating, thinking, sitting, standing, lifting, reading, and working.

Major Bodily Function – A major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

Merit System – A system in which the selection, assignment, evaluation, training, promotion, discharge, and other personnel transactions are based on uniformly applied criteria of relative fitness to perform the duties of the position held or sought.

Occupational Category – This term applies to job classifications that have been grouped together according to criteria established by the EEOS, which standardize the City's method of determining and reporting the representation levels of employee groups within departments. The City's job classifications are placed within eight such categories:

1. **Officials/Administrators:** Occupations in which employees set broad policies, exercise overall responsibility for execution of these policies, or direct individual departments or special phases of the agency's operations.
2. **Professionals:** Occupations which require specialized and theoretical knowledge which is usually acquired through college training or through work experience and other training which provides comparable knowledge.
3. **Technicians:** Occupations which require a combination of basic scientific or technical knowledge and manual skill which can be obtained through specialized post-secondary school education or through equivalent on-the-job training.
4. **Protective Service Workers:** Occupations in which employees are entrusted with public safety, security and protection from destructive forces.
5. **Paraprofessionals:** Occupations in which employees perform some of the duties of a professional or technician in a supportive role, which usually require less formal training and/or less experience than normally required for professional or technical status.
6. **Administrative Support:** Occupations in which employees are responsible for internal and external communication, recording and retrieval of data and/or information, and other paperwork required in an office.

7. **Skilled Craft:** Occupations in which employees perform jobs which require special manual skill and a thorough and comprehensive knowledge of the processes involved in the work which is acquired through on-the-job training and experience or through apprenticeship or other formal training programs.
8. **Service/Maintenance:** Occupations in which employees perform duties which result in or contribute to the comfort, convenience, hygiene or safety of the general public or which contribute to the upkeep and care of buildings, facilities, or grounds of public property.

Outreach Recruitment – A concerted effort by an employer to attract applicants in those groups which have sub-parity representation in a given job class.

Qualified Individual with a Disability – A person with a disability who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

Reasonable Accommodation – Any change made in the work environment or in the way things are usually done that results in a disabled applicant/employee being able to perform the essential functions of a job.

Retaliation – Action against an employee for:

- Opposing an unlawful employment practice
- Making a charge, testifying, assisting or participating in a discrimination investigation, proceeding, or hearing.

Sexual Harassment – Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when

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

Examples:

- Visual forms such as cartoons, drawings, gestures
- Physical interference with normal work or movement such as blocking, following, touching
- Verbal harassment such as jokes, slurs, derogatory comments

Note: Sexual harassment does not necessarily involve sexual conduct. It need not

have anything to do with lewd acts or sexual advances. Sexual harassment may involve conduct, whether blatant or subtle, that discriminates against a person solely because of that person's sex.

Supervisor (FEHA)

- Any individual with authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees
- Any individual with responsibility to direct employees or to adjust their grievances or effectively to recommend that action
- Under FEHA a employer may be liable for harassment committed by a non-supervisory employee if a supervisor knew or should have known of the harassment and failed to take immediate and appropriate corrective action
- Supervisors may be held personally liable if they commit harassment in violation of FEHA
- Employers are strictly liable for the supervisor's behavior

Test – Any well-defined instrument, process, or procedure that is formal, scored, or qualified, when used as a basis for any selection decision. The term “test” is not restricted to a paper and pencil test.

Undue Hardship – An action that is excessively costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the employer's business.

Validation – A process through which a test is evaluated to assure that it measures skills, knowledges, and/or abilities which are required to effectively perform the job. The Uniform Guidelines on Employee Selection Procedures recognize three types of validation in supporting the job-relatedness (or business necessity) of selection procedures. The three validation methods are:

1. **Content Validation** – Data showing whether or not the “content” of a selection procedure is representative of important aspects of performance on the job for which applicants are being considered. For example, a typing test would be considered content valid for a Clerk Typist examination.
2. **Construct Validation** – Data showing whether or not the psychological trait (the “construct”) that is shown by the selection procedure accurately measures the presence and degree of study to be necessary in order to successfully perform the job. An example of a construct would be “leadership ability.”
3. **Criteria-Related Validation** – Data showing whether or not the selection procedure can be justified by a statistical relationship between scores on the test and measures of actual job performance. If a selection procedure is criterion valid, it would have been determined that success in the selection procedure (test) would likely lead to success on the job.

OVERVIEW OF DISCRIMINATION LAWS

Following are the major discrimination laws with which the City of Los Angeles as an employer must comply. The chart on the following page depicts the bases of discrimination covered:

I. **FEDERAL**

- A. Civil Rights Act of 1964
- B. Age Discrimination in Employment Act (ADEA) – 1967
- C. Equal Employment Opportunity Act – 1972
- D. Rehabilitation Act – 1973
- E. Age Discrimination in Employment Act of 1975
- F. Pregnancy Discrimination Act of 1978
- G. Civil Rights Act of 1991
- H. Americans with Disabilities Act (ADA) – 1990

II. **State**

- A. Fair Employment and Housing Act – 1959, 1980
(California government Code Section 12940)
- B. California Family Rights Act – 1993

III. **City**

- A. LAMC 45.80 (Prohibition Against Discrimination Based on a Person having AIDS....)
- B. LAMC 49.70 (Discrimination on the Basis of Sexual Orientation)
- C. LAAC, Division 4, Chapter 7, Article 9 (Non-discrimination in Employment)

Brief Description of Discrimination Laws

- 1963 Equal Pay Act – Requires equal pay for equal work in the same establishment for both sexes. Prohibits employers from paying employees of one sex less than employees of the opposite sex for equal work on jobs, the performance of which requires “equal skill, effort and responsibility, and which are performed under similar working conditions.
- 1964 Title VII of the Civil Rights Act of 1964 – Prohibits discrimination in all employment practices because of RACE, COLOR, SEX, RELIGION, OR NATIONAL ORIGIN. This Act established the Equal Employment Opportunity Commission, an agency that advises and assists persons and other agencies with alleged violations of the Title VII. Title VII prohibits not only overt discrimination, but also practices that are fair in form but discriminatory in operation.
- 1967 The Age Discrimination in Employment Act – Prohibits discrimination against candidates and employees age 40 and above, in terms of hiring, compensation, discharge and other major aspects of employment.
- 1972 Equal Employment Opportunity Act – This Act amended the 1964 Civil Rights Act and expanded the investigative power of the Equal Employment Opportunity Commission to cover State and Local governments. The 1972 Amendments gave the EEOC the power to go directly to court to enforce the law. This Act specifies that an employer may not, because of a person’s RACE, COLOR, NATIONAL ORIGIN, RELIGION, or SEX:
- A. Refuse to hire
 - B. Discharge
 - C. Harass
 - D. Otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment
 - E. Limit, segregate, or classify employees in a discriminatory manner
 - F. Retaliate against an employee because he/she has filed a complaint, testified under the Act, or opposed any practices forbidden under the act.
- 1973 The Rehabilitation Act – Prohibits employment discrimination against otherwise qualified physically or mentally handicapped persons.
- 1978 Pregnancy Discrimination Act – This Act prohibits employment discrimination against women on the bases of pregnancy or pregnancy-related medical conditions. Such discrimination is considered an aspect of sex discrimination.
- 1990 Americans with Disabilities Act – Provides civil rights protections to individuals with disabilities. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, state and local governments services, and telecommunications.

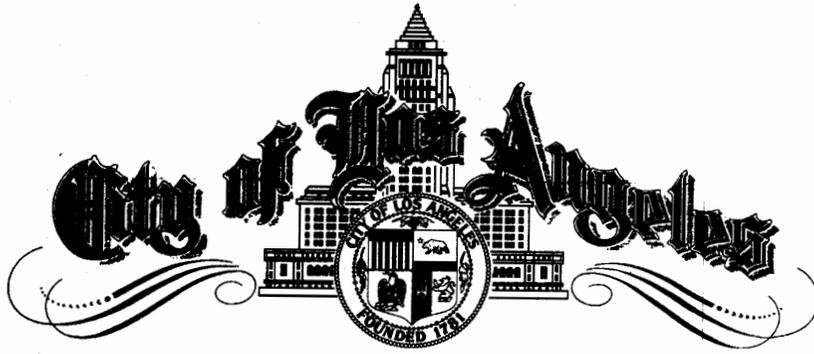
- 1991 Civil Rights Act of 1991 – Amends the Civil Rights Act of 1964 to strengthen and improve Federal civil rights laws, to provide for damages in cases of intentional employment discrimination, to clarify provisions regarding disparate impact actions, and for other purposes.
- 1993 Family Medical Leave Act – Enforced by the Department of Labor, this Act requires employers to grant up to 12 workweeks of leave during any 12-month period for the birth of a child, and to care for the child; placement of a child with the employee through adoption or foster care, and to care for the child; to care for the employee's, spouse, son, daughter, or parent with a serious health condition; a serious health condition which makes the employee unable to perform one or more of the essential functions of his or her job. This Act requires an employer to maintain the employee's existing level of coverage under a group health plan during the twelve workweeks and it requires the employer to take an employee back into the same or equivalent job upon his/her return.

STATE OF CALIFORNIA LEGISLATION

- 1959 Fair Employment and Housing Act – The California Fair Employment and Housing Act (changed from Fair Employment Practice Act in 1980) prohibits all forms of employment discrimination based on Age (40 and over), Ancestry, Color, Creed, Denial of Family and Medical Care Leave, Disability (mental and physical) including HIV and AIDS, Marital Status, Medical Condition (cancer and genetic characteristics), National Origin, Race, Religion, Sex or Sexual Orientation. It establishes the Fair Employment and Housing Commission to adjudicate complaints of discrimination.
- 1993 California Family Rights Act (CFRA) – The California Family Rights Act was established to ensure secure leave rights for the birth, adoption, or foster-care placement of a child; the serious health condition of the employee's child, parent or spouse; or the employee's own serious health condition. Leave under this Act may total up to 12 work weeks in a 12-month period. It does not need to be taken in one continuous period of time. Upon granting a leave under CFRA, the employer must guarantee reinstatement to the same or comparable position.

**BASES FOR DISCRIMINATION COMPLAINTS AND
APPLICABLE LAWS**

| BASIS | FEDERAL | | | | STATE |
|---|-----------|------|-----------|-----|-------|
| | TITLE VII | ADEA | REHAB ACT | ADA | FEHA |
| Age | | X | | | X |
| Ancestry | X | | | | X |
| Color | X | | | | X |
| Creed | X | | | | X |
| Religion | X | | | | X |
| Marital Status | | | | | X |
| Medical Condition (Cancer/Genetic Characteristics) | | | X | X | X |
| Disability | | | X | X | X |
| National Origin | X | | | | X |
| Race | X | | | | X |
| Retaliation | X | | | | X |
| Sex (including sexual harassment, gender identity or expression, which includes actual or perceived transgender status) | X | | | | X |
| Sexual Orientation | | | | | X |
| HIV/Acquired Immune Deficiency Syndrome (AIDS) – acquired or perceived | | | X | X | X |



CITY HALL
LOS ANGELES, CALIFORNIA 90012

JAMES K. HAHN
MAYOR

TO: Heads of all City Departments and Bureaus

FROM: James K. Hahn, Mayor *James K. Hahn*

DATE: August 31, 2004

SUBJECT: Revision to Executive Directive No. PE-1 to include expanded definition of discrimination based on sex

As you are aware, the City is committed to promoting and maintaining a work environment free of any form of discrimination based on sex. Assembly Bill 196 signed into law in August 2003 expands the definition of "sex" in the California Fair Employment and Housing Act (FEHA) to include a person's gender identity or expression. Effective January 1, 2004, FEHA prohibits discrimination based on gender or perceived gender, whether or not the person's appearance, identity or behavior conforms to what is traditionally associated with that person's sex at birth, including, but not limited to, their actual or perceived transgender status.

Attached is Executive Directive No. PE-1 (Revised). Please make all necessary updates to your personnel policies and procedures.

Should you have any questions regarding this matter, please contact Ms. Jurutha Brown, Chief of the Equal Opportunity and Employment Development Division, Personnel Department, at (213) 847-9771.

JKH:jl

Attachment



AN EQUAL EMPLOYMENT OPPORTUNITY - AFFIRMATIVE ACTION EMPLOYER

Recyclable and made from recycled waste.





JAMES K. HAHN
MAYOR

EXECUTIVE DIRECTIVE NO. PE-1 (REVISED)

Subject: **EQUAL EMPLOYMENT OPPORTUNITY, NON-DISCRIMINATION AND REASONABLE ACCOMMODATIONS**

For more than 30 years, our City has been a leader in promoting equal employment opportunity. Consequently, our City employees comprise one of the most diverse workforces in the world. We must continue our efforts to enhance the level of inclusion and diversity this City has come to appreciate, even as we reaffirm support for merit-based human resource management decisions, which value high performance, public service and inclusion, to ensure our continued competitiveness in this 21st Century.

The City of Los Angeles is committed to maintaining a discrimination free workplace for all employees and candidates for employment. City policies and personnel practices, including but not limited to, recruitment, selection, advancements, work assignments, compensation, benefits, training, discipline and terminations, will continue to be established and administered without regard to race, national origin, ancestry, sex, sexual orientation, age, religion, creed, marital status, disability, medical condition, including having or being perceived as having AIDS or the HIV virus, or retaliation for engaging in any protected equal employment opportunity activity.

Sexual harassment is a form of sex discrimination. It includes unwelcome exposure to visual, verbal, or physical conduct of a sexual nature, by either males or females, which may cause an individual's workplace to be intimidating, offensive, or hostile. Unwanted sexual advances, or the offering of employment or related benefits in exchange for sexual favors, or the withholding of such employment or benefits conditioned upon an exchange of sexual favors, is unlawful and will not be tolerated.

The definition of "sex" includes a person's gender identity or expression. This includes a person's identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with the person's sex at birth. Employees who have changed their gender or are planning to change their gender are protected by law. The City prohibits discrimination based on gender-related characteristics, including, but not limited to, their actual or perceived transgender status.



AN EQUAL EMPLOYMENT OPPORTUNITY – AFFIRMATIVE ACTION EMPLOYER

Recyclable and made from recycled waste.



A discrimination free workplace includes providing reasonable accommodation to individuals with disabilities. The City has been proactive in this effort, having created a Department on Disability, a reasonable accommodation fund, special employment programs and a Placement Officer position in the Personnel Department. The City of Los Angeles is one employer for purposes of reasonable accommodation, and it is imperative that we have a consistent, credible process for reviewing and acting on requests for reasonable accommodation.

The City has zero tolerance for discrimination, harassment and retaliation; therefore, I expect the City's leadership and all employees to comply with all Federal, State and local equal employment opportunity laws and policies.

All General Managers, Heads of Departments/Offices and Commissions of City Government are directed to ensure that workplaces throughout the City are committed to equal employment opportunity and the maintenance of environments free of discrimination.

The Personnel Department shall monitor compliance of City departments with this Executive Directive.

Each Department Head shall immediately carry out the responsibilities listed on the Attachment of this Executive Directive.

Executed this *20th* day of *August*, 2004


JAMES K. HAHN
Mayor

JKH:wtf:39200

Attachment

Supercedes Executive Directive Nos. 1, dated October 15, 1980; 27, dated October 15, 1980; 1-D, dated December 10, 1990; 1-A, dated September 22, 1992 (Bradley Series); and 2001-34, dated February 8, 2001 (Riordan Series); and PE-1 dated May 14, 2002.

**ATTACHMENT EXECUTIVE DIRECTIVE NO. PE-1
EQUAL EMPLOYMENT OPPORTUNITY, NON-DISCRIMINATION AND
REASONABLE ACCOMMODATIONS**

I. BACKGROUND

A. Equal Employment Opportunity

The Mayor is ultimately responsible for the management and administrative control of departmental activities and will vigorously enforce all Federal, State and City equal employment opportunity laws, policies and directives. The Personnel Department will be the lead agency for equal employment opportunity policy development, implementation and monitoring and complaint resolution, specifically as it relates to investigating and resolving complaints of discrimination. Further, the Personnel Department will periodically review operating department activities and report equal employment opportunity compliance and diversity management innovations, as well as patterns and trends that indicate areas of concern. Department management is expected to fully support these monitoring activities.

B. Non-Discrimination

Any City employee or employment candidate who believes the City's policy of equal employment opportunity and non-discrimination has been violated is strongly encouraged, and must not be prohibited from reporting the alleged policy violation. Further, employees and employment candidates can be assured that the necessary steps will be taken promptly to address all reported violations.

City employees and employment candidates who believe they have experienced illegal discrimination are strongly encouraged to file discrimination complaints under the City discrimination complaint procedure entitled, "Citywide Discrimination Complaint Procedure" or the "Sexual Orientation Discrimination Complaint Procedure". Said procedures shall be issued by the Personnel Department. Complaint investigations will be handled in accordance with these procedures; and departments must cooperate with complaint investigators to ensure prompt and appropriate action is taken to address the complaint. This includes accommodating investigators' requests to meet with complainants and witnesses during working hours. Further, departments are to ensure individuals filing complaints of discrimination are advised of all of their legal options to file with applicable Federal and State enforcement agencies and are not retaliated against.

Sexual harassment is a form of sex discrimination. It includes unwelcome exposure to visual, verbal, or physical conduct of a sexual nature, by either males or females, which may cause an individual's workplace to be intimidating, offensive, or hostile. Verbal harassment may include derogatory comments, epithets, jokes, or slurs of a sexual

nature. Visual harassment may include sexual gestures, inappropriate display of sexually explicit objects or pictures, cartoons or posters. Physical harassment may include any unwelcome touching or bodily contact. Finally, unwanted sexual advances, or the offering of employment or related benefits in exchange for sexual favors, or the withholding of such employment or benefits conditioned upon an exchange of sexual favors, is unlawful and will not be tolerated.

In January 2004, the definition of "sex" in the California Fair and Employment and Housing Act (FEHA), was expanded to include a person's gender identity or expression. The City also prohibits discrimination based on gender-related characteristics, or identity, appearance or behavior different from that traditionally associated with the person's sex at birth, including, but not limited to, their actual or perceived transgender status. Transgender status includes employees who have changed or plan to change their gender. An applicant's or employee's gender identity is a protected class like any other protected class under FEHA. City employees are required to comply with reasonable workplace appearance, grooming, and dress standards consistent with department policies and procedures, but employees have the right to dress consistent with their gender identity.

C. Reasonable Accommodations of Persons with Disabilities

In January, 2001, the California Fair Employment and Housing Act was amended to expand both the definition of a disability and the types of physical and mental conditions that can be considered disabilities. The amendment also clarified the requirement that employers engage in timely, interactive and good faith efforts to respond to requests for reasonable accommodations from individuals. Reasonable accommodation takes varied forms. It may be modification or adjustment of non-essential job functions or the way duties usually are performed. Most accommodations can be accomplished with little or no cost.

The City of Los Angeles is one employer for purposes of reasonable accommodation, and it is imperative that we have a credible process for reviewing and acting on requests for reasonable accommodation. Ideally, each department will be able to accommodate its own employees. However, if a department has made an exhaustive effort to accommodate an employee and has documented that a reasonable accommodation is not feasible, the department may refer the individual to the Personnel Department's Citywide Placement Officer. The Placement Officer will continue to work with the department to identify other options within the department, and may also begin a Citywide search for suitable vacancies in other departments. The Personnel Department will be responsible for reporting to the Mayor and City Council on departmental efforts of providing reasonable accommodations. Departments will be required to report to the Personnel Department the status of each request for reasonable accommodation on a monthly basis. This information will be due on the tenth working day of each month.

II. RESPONSIBILITIES OF DEPARTMENT HEADS

A. Each Department Head shall be responsible for carrying out the following actions within 90 days of issuance of this directive:

1. Designate a departmental Equal Employment Opportunity Counselor/Coordinator and Reasonable Accommodations Counselor/Coordinator to counsel employees, investigate, resolve and/or address complaints of discrimination, serve as a resource and provide internal expertise to management and disabled individuals regarding the reasonable accommodation process. Such designation and any subsequent change in designation shall be made in writing and a copy provided to the Personnel Department's Equal Employment Opportunity Section.
2. Distribute this Executive Directive to all departmental employees and executive officers for each currently executed personal services contract and letter of agreement.
3. Include this Executive Directive and all revised equal employment opportunity, reasonable accommodation and non-discrimination policies and procedures in the appropriate department operating and training manuals.
4. Post the City's Equal Employment Opportunity poster and this Executive Directive on employment-related bulletin boards.
5. Ensure that workplaces throughout the City are committed to equal employment opportunity and the maintenance of environments free of discrimination by:
 - Disseminating to all employees a statement of your commitment to equal employment opportunity and providing them with the most current copies of the City's equal employment opportunity policies and the City's discrimination complaint procedures;
 - Informing employees of the name and telephone number of the departmental Equal Employment Opportunity Counselor/Coordinator and the Reasonable Accommodations Counselor/Coordinator;
 - Providing easy access to the department, City, State and Federal compliance agency discrimination complaint investigation processes without fear of retaliation;
 - Taking all steps necessary to prevent any and all forms of illegal discrimination, harassment and retaliation.
6. Evaluate equal employment opportunity policies annually to ensure they are up to date.

7. Review departmental operations and actions to implement appropriate equal employment opportunity policies and eliminate barriers to effective equal employment opportunities on a regular basis.
8. Ensure departmental staff assigned as the Equal Employment Opportunity Counselor/Coordinator and Reasonable Accommodations Counselor/Coordinator have been sufficiently trained to effectively perform their duties and responsibilities.
9. Take immediate action to address, remedy and resolve complaints alleging discrimination, including but not limited to prompt, objective and thorough investigations of complaints. Ensure departmental personnel responding to complaints adhere to the City's discrimination complaint procedures and sound personnel practices.
10. Take prompt and appropriate action in response to acts of illegal discrimination and/or violations of the Federal, State and City equal employment opportunity laws, policies and regulations, including disciplinary actions to address violations and inappropriate behaviors.
11. Ensure employees who file discrimination complaints, participate in investigations, and/or oppose real or perceived discriminatory acts are not retaliated against by management or co-workers.
12. Ensure that the Personnel Department is notified, as instructed, of discrimination complaints filed and resolved within the Department.
13. Inform employees of the procedure for requesting a reasonable accommodation.
14. Require department staff to engage in a timely, interactive and good faith effort when presented with a request for an accommodation by an employee or job applicant. This process must be fully documented using the "Reasonable Accommodation Assessment Form" provided by the Personnel Department.
15. Submit a monthly report to the Personnel Department on the status of each request for reasonable accommodation received during the preceding month. This report will be due on the tenth working day of each month.
16. Instruct all department human resources personnel and line managers to fully cooperate with the Personnel Department in identifying vacant positions.
17. Fully cooperate with the Personnel Department and other Department heads in accepting transfers of employees with disabilities into positions which will afford them a reasonable accommodation.

III. RESPONSIBILITIES OF THE PERSONNEL DEPARTMENT

A. The Personnel Department will be responsible for administering the City's equal employment opportunity programs including, but not limited to:

1. Develop, revise and disseminate policies, protocols and guidelines as necessary to comply with equal employment opportunity law, disability related laws and City policies and diversity strategies.
2. Assign adequate staff resources within the Personnel Department to assist departments with compliance with equal employment opportunity laws, disability related laws and City policies and procedures.
3. Initiate programs to achieve equal employment opportunity standards and goals.
4. Provide technical assistance, information and training to departmental human resource management personnel.
5. Monitor City hiring activities and turnover rates to identify and investigate any patterns that indicate areas of concern.
6. Review, investigate, resolve and respond to complaints of discrimination filed against the City with the Civil Service Commission and/or enforcement compliance agencies.
7. Review ethnic, gender and disabled representation to determine progress toward achieving parity with the labor force.
8. Monitor and report to the Mayor on the effectiveness of the City's program of equal employment opportunity.
9. Review discrimination complaints filed Citywide to identify trends, issues and training needs and provide information to the Mayor's Office on appropriate alternatives to address disputed discrimination complaints.
10. Monitor compliance of City departments in providing reasonable accommodations.
11. Report to the Mayor and City Council on a quarterly basis by the twentieth working day following the end of the quarter on the status of reasonable accommodations of disabled employees and job applicants.
12. Provide the Placement Officer with sufficient resources to effectively work with City departments to place disabled employees.

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CITY OF LOS ANGELES

DISCRIMINATION COMPLAINT PROCEDURE

I. Employee and Candidate Rights

Employees of the City and candidates for City employment have the right to file a complaint in writing on any action, procedure, or practice in selection or employment they believe to be discriminatory on the basis of race, color, religion, national origin, sex, age, disability, marital status, sexual orientation, gender identity, gender expression, creed, ancestry, medical condition (cancer), Acquired Immune Deficiency Syndrome (AIDS) – acquired or perceived, or retaliation for having filed a discrimination complaint. An employee making a discrimination complaint can choose to file the complaint with the employee's department EEO Counselor, the City's Office of Discrimination and Complaint Resolution, and/or with an external non-discrimination enforcement agency.

Complaints filed internal to the City must be filed within one (1) year from the date of the last alleged act of discrimination. Otherwise, the complaint may be considered untimely.

A person filing a complaint shall have the right of representation by any designated person or organization.

Although complaints must be prepared and filed on an employee's own time, department managers and supervisors should make an effort to allow the complainant and all other employees who are interviewed as part of the investigation, to be interviewed while on City time when requested by staff conducting the discrimination investigation.

Nothing in this procedure shall restrict the right to file a complaint with any State or Federal agency responsible for the enforcement of anti-discrimination legislation.

II. Departmental Complaint Procedure

Each department shall make an effort to acquaint department employees with its own procedure for reviewing and responding to complaints by its employees in which there are allegations of discrimination. City employees who contact the Personnel Department regarding alleged discrimination shall be encouraged to first request a review of their complaints under their department's complaint procedure.

III. Board of Civil Service Commissioners' Complaint Procedure

If the complainant does not receive what he or she believes to be satisfactory resolution of the complaint or he or she does not believe it can be adequately

handled at the department level, he or she may submit the complaint, in writing, to the:

Office of Discrimination Complaint Resolution (ODCR)
700 E. Temple Street, Room 380
Los Angeles, CA 90012
(213) 473-9123

If the complainant wishes to file the complaint in person and receive assistance, he or she should call the ODCR at (213) 473-9123 to arrange for an appointment to meet with a member the investigating staff.

A written complaint should include:

1. The name, address, and telephone number of the complainant.
2. The basis of the alleged discrimination: race, color, religion, national origin, sex, age, disability, marital status, sexual orientation, gender identity, gender expression, creed, ancestry, medical condition (cancer), Acquired Immune Deficiency Syndrome (AIDS) – acquired or perceived, or retaliation for having filed a discrimination complaint.
3. The discriminatory practice(s), procedure(s), or incident(s) which has occurred.
4. The names of any persons thought to be responsible for the discrimination.
5. The name, address, and telephone number of the complainant's representative, if any.
6. A statement of what remedy the complainant is seeking as a result of the complaint.

The following procedure will guide staff in investigating and attempting to resolve discrimination complaints.

1. If the complainant is a probationary employee whose termination is being considered but has not been filed with the Board of Civil Service Commissioners, investigating staff will request the appointing authority to place the complainant on a personal leave of absence until the discrimination complaint is resolved, withdrawn, or considered by the Board of Civil Service Commissioners.
2. Investigating staff will discuss the complaint with the complainant and concerned department(s) and will initially attempt to resolve the complaint informally.
3. If the complaint is not resolved following the above discussion, an investigation will be conducted and a report of findings and recommendations prepared for

the Board of Civil Service Commissioners within one hundred and twenty (120) days of the termination of informal efforts.

4. The time limit in this subsection may be extended with the mutual consent of the concerned parties or on the approval of the Board of Civil Service Commissioners upon receipt of a status report from staff.
5. The Executive Director of the ODCR shall have the authority to administratively close a complaint, thereby precluding further consideration of the complaint, for any of the following reasons:
 - a. failure by the complainant to cooperate with staff conducting the investigation;
 - b. inability to reach the complainant after repeated efforts by the staff conducting the investigation;
 - c. no assertion that the alleged acts occurred based on one or more of the seventeen discriminatory bases;
 - d. failure by the complainant to respond within 15 calendar days to a written offer by the concerned department which would afford relief for the harm alleged by the complainant;
 - e. lack of jurisdiction by the Board of Civil Service Commissioners over the complaint;
 - f. the complainant has filed a grievance or appeal under another City procedure regarding the same or similar issues;
 - g. the complainant has filed a complaint with an outside agency (e.g., EEOC, DOL, DOJ, DFEH) or has filed a lawsuit against the City (or City Department) regarding the same or similar issues;
 - h. a reasonable remedy has been provided, or has been offered and rejected;
 - i. there is a conflict of interest on the part of the Personnel Department and investigating division;
 - j. failure to establish a nexus between the alleged act and discrimination based upon one of the fourteen categories.
6. The administrative closure of a complaint by the Executive Director of the ODCR may be appealed to the Board of Civil Service Commissioners only where the complainant can provide evidence refuting the reason for closure.
7. Complaints that are not resolved informally, are not withdrawn, or are not closed administratively, will be heard by the Board of Civil Service Commissioners. The basis for the hearing will be the report and recommendations of the General Manager and the Executive Director of the ODCR.

IV. Consideration of Complaints by the Board

The Board of Civil Service Commissioners will review the written complaint and the report and recommendations prepared by investigating staff. The complainant shall be given a copy of that report at least five (5) days prior to its scheduled consideration by the Board. If the complainant has designated a representative in the complaint, a copy of the report will also be given to that representative.

The Board may take any or all of the following actions:

1. Request additional information;
2. Make a finding on the charge(s) of discrimination;
3. Order a remedy within the Board's jurisdiction; or
4. Recommend actions which the Personnel Department or concerned department(s) may take to correct discriminatory practices, prevent the occurrence of potentially discriminatory practices, change or eliminate other personnel practices related to the complaint, or enhance equal employment opportunity efforts.

In those instances in which the Board believes that it is not in the public interest for it to review a discrimination complaint because of a conflict of interest or the appearance of a conflict of interest, the Board shall take the following action(s):

1. Request the City Attorney to review the matter and render a written opinion on the questions of the Board's possible conflict of interest in the matter in an expeditious manner.
2. Determine that a conflict of interest or the appearance of a conflict of interest does exist and submit the matter to the Board of Referred Powers, which shall have the authority to act on behalf of the Board of Civil Service Commissioners on that particular discrimination complaint.

V. Discrimination Complaints Against Elected Officials

There is a special procedure for filing a complaint of discrimination against elected officials outlined in the Los Angeles Administrative Code Sections 4.405 through 4.411. Contact the Personnel Department Equal Employment Opportunity Section at (213) 473-9100 should you need detailed information on this procedure.

VI. To file with the State and/or Federal compliance agencies, contact:

| <i>STATE</i> | <i>FEDERAL</i> |
|--|--|
| <p><i>Department of Fair Employment and Housing 1055 W. Seventh St., Suite 1400 Los Angeles, CA 90017 1-800-884-1684 TTY (800) 700-2320</i></p> | <p><i>Equal Employment Opportunity Commission 255 East Temple Street, Fourth Floor Los Angeles, CA 90012 (213) 669-4000</i></p> |

Revised 09/2013

SEXUAL HARASSMENT DISCRIMINATION COMPLAINT PROCEDURE

The policy of the City of Los Angeles is to promote and maintain a working environment free of sexual harassment, intimidation, and coercion. Sexual harassment is a form of sex discrimination and is a violation of official City policy and Federal and State law. Acts constituting sexual harassment are not necessarily limited to acts by a male toward a female but can be committed by and against persons of both sexes.

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature when:

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

As used in this procedure, "employee" is any individual occupying a position in the classified civil service, and also includes interns, contract employees (personal services contracts), and employees exempted under provisions of the City Charter, including elected and appointed officials. Also covered by this procedure are members of the public, volunteers, or employees of a business under contract with the City, who claim harassment by City employees during the conduct of their employment.

Employees and applicants are also protected from sexual harassment by non-employees. The City may be liable for non-employee sexual harassment, where the employer, or its agents or supervisors, knows or should have been known of the conduct and fails to take immediate and appropriate corrective action.

Consistent with this definition, it is sexual harassment for any employee or non-employee to use implicit or explicit sexual behavior, of a verbal, visual or physical nature, to affect the work environment, job or performance of any employee. Further, supervisory level employees who condone the sexually harassing conduct of another employee or applicant, when the supervisor is aware or should have been aware of such conduct and does not take appropriate steps to eliminate it, will be held liable and subject to disciplinary action.

City policy and State and Federal law require that prompt and appropriate action be taken to deter and punish sexual harassment.

Department managers have been instructed to take all necessary steps, including appropriate disciplinary action, to ensure and maintain a working environment free of sexual harassment, intimidation, and coercion. Appropriate disciplinary action for substantiated allegations of sexual harassment will be administered in accordance with Policy 33 (Disciplinary Action) of the Policies of the Personnel Department. For

example, the severest disciplinary action, up to and including discharge, will be taken in the case of proven instances of implicit and/or explicit, coercive pressure for sexual favors committed by supervisory employees, which affect the terms and conditions of a subordinate's employment. Contractors and subcontractors are also fully liable for compliance with this Procedure and substantiated claims of sexual harassment could result in termination of a contract and/or subcontract.

Each Department manager has designated a Sexual Harassment Counselor for his or her Department and will disseminate, and post in prominent locations, the name and phone number of the designated Counselor to all employees. A complaint of sexual harassment must be filed within one year of the alleged act of harassment. Otherwise, the complaint may be considered untimely. In all cases, allegations of sexual harassment will be fully and completely investigated. The employee or applicant making a sexual harassment complaint can choose whether the complaint will be investigated by the employee's Department Sexual Harassment Counselor, by the Personnel Department's Sexual Harassment Counselor, or by the State and/or Federal compliance agencies. If during a City administrative investigation the investigator determines, based upon discussions with the complainant, that the issues are related to the complainant's "sex" rather than being "sexual" in nature, the investigation will continue under the procedures outlined in the City's Discrimination Complaint Procedure.

Employee Rights and Responsibilities

Every employee is entitled to work in an environment free from sexual harassment or coercion. An employee who perceives comments, gestures, visual displays, or physical actions of a sexual nature by another employee, non-employee or supervisor be offensive is encouraged to immediately and clearly communicate to that person that such sexual behavior is unwelcome. The purpose of immediately communicating to a harasser that the behavior is unwelcome is to stop the harassment before it becomes more serious. Such notice will also go to support a claim that the harassment did occur. Failure to notify the harasser that the behavior is unwelcome does not prevent the filing of a complaint of sexual harassment.

The following Sexual Harassment Complaint Procedure has been developed specifically for use by employees and applicants who believe that they have been sexually harassed, and who wish their complaint to be investigated by their individual department or the Personnel Department.

Under City policy and procedures, any employee or applicant who believes he or she has been sexually harassed has the following rights and responsibilities:

1. The complainant is encouraged to report the sexual harassment to any or all of the following individuals; a supervisor, the Department's Sexual Harassment Counselor, or the Personnel Department's Sexual harassment Counselor. The complainant may also seek assistance from the Commission on the Status of Women. Such immediate reporting is important because the sooner the allegations can be investigated, the sooner appropriate steps can be taken to

end the harassment. ALL EMPLOYEES AND APPLICANTS ARE ASSURED THAT THEY MAY MAKE SUCH REPORTS WITHOUT FEAR OF RETALIATION BY THE CITY, DEPARTMENT MANAGEMENT, THEIR IMMEDIATE SUPERVISOR, OR ANY OTHER EMPLOYEE.

2. The complainant has the right to a confidential conference with the person whom the sexual harassment complaint is made. The complainant has the option to be represented during the conference and any subsequent investigation by a union representative, an attorney, or another individual of the complainant's choice.
3. Each complaint of sexual harassment will be fully and completely investigated by the Department's Sexual Harassment Counselor or by the Personnel Department's Sexual Harassment Counselor, unless it is determined that the complainant has also filed a grievance or utilized another internal City administrative procedure, raising the same or similar sexual harassment issues, in which case the complaint will be administratively closed.
4. All investigations will be handled with discretion, sensitivity and due concern for the dignity of those involved. Every reasonable effort will be made to restrict information on the specifics of the complaint to those who are participating in the investigation; the complainant, the alleged harasser, witnesses, and department management, unless and until complaint findings are presented in a public hearing, such as before the Board of Civil Service Commissioners. All persons contacted or interviewed during the investigation will be requested not to discuss the subject matter of the investigation in order to protect the privacy of all those participating in the investigation.
5. All investigations will be as extensive as required, based upon the nature of the allegations. All persons named as potential witnesses by the complainant will be contacted during the course of the investigation, and those witnesses who have information relevant to the issues of the complaint will be interviewed. Any employee or non-employee who is alleged to have committed acts of sexual harassment will be contacted during the investigation, be informed of the allegations being made against him or her, be given the opportunity to respond to the allegations, and be given the opportunity to identify witnesses. Any accused employee has the option to be represented during the investigation by a union representative, attorney, or other individual of his or her choice.
6. Any employee who observes what he or she believes to be sexually harassing verbal, visual, or physical behavior occurring should report such behavior to a supervisor, and/or a Sexual Harassment Counselor. ALL EMPLOYEES ARE ASSURED THAT THEY MAY MAKE SUCH REPORTS WITHOUT FEAR OF RETALIATION BY THE CITY, DEPARTMENT MANAGEMENT, THEIR IMMEDIATE SUPERVISOR, OR ANY OTHER EMPLOYEE. ANY ACTION BELIEVED TO BE RETALIATORY SHOULD BE IMMEDIATELY REPORTED.
7. Any employee who observes an incident of sexual harassment should cooperate in any investigation. ALL EMPLOYEES ARE ASSURED THAT THEY MAY COOPERATE IN SUCH INVESTIGATION WITHOUT FEAR OF RETALIATION

BY THE CITY, DEPARTMENT MANAGEMENT, THEIR IMMEDIATE SUPERVISOR, OR ANY OTHER EMPLOYEE. ANY ACTION BELIEVED TO BE RETALIATORY SHOULD BE IMMEDIATELY REPORTED TO THE PERSON COONDUCTING THE INVESTIGATION.

8. All employees who initiate or participate in the investigation of a complaint are protected from retaliation by the City, Department management, supervisors or any other employee. Employees found to have committed acts of retaliation will be subject to disciplinary action in accordance with the provisions of Policy 33 (Disciplinary Action). Retaliation will be considered a serious act of misconduct, with appropriate discipline indicated in the Policy up to and including discharge. Because of their increased responsibility for enforcing the City's policies against sexual harassment, supervisors will be held to a higher standard and can expect the most severe disciplinary measures for proven acts of retaliation.
9. The complainant may expect a timely resolution of complaints. Complainants will be kept apprised of the status of their complaints on a regular basis by the individual investigating the complaint. Complainants may also request information of the status of their complaint from the City Sexual Harassment Coordinator. Additionally, complainants will be notified if the time to file with outside agency appears likely to run out before the internal investigation is completed.

Responsibilities of the Department Sexual Harassment Counselor

Each City department manager must designate a Sexual Harassment Counselor and ensure that all department employees are made aware of the name and phone number of the designated Counselor. An employee or applicant who believes he or she has been sexually harassed may choose to file a complaint with the Department Sexual Harassment Counselor. Each Department Sexual Harassment Counselor has the following responsibilities:

1. Upon receipt of a sexual harassment complaint, the Counselor shall meet with the complainant as soon as mutually convenient. The Counselor shall inform the complainant that he or she may have a representative at the meeting. The Counselor shall fully inform the complainant about the City's sexual harassment policies and complaint procedures, and shall answer any questions that the complainant may have regarding the City policy. The Counselor shall also inform the complainant about the other available options, such as filing with the Personnel Department's Sexual Harassment Counselor, and State and Federal compliance agencies. The complainant shall also be informed that under the City Procedure, complaints may be considered untimely if the action(s) occurred more than one year prior to the filing of the complaint; allegations brought to State or Federal compliance agencies may have different filing time limitations which should be confirmed by the complainant with the agencies. The complainant will be notified if the time to file with outside agency appears likely to run out before the internal investigation is completed.

2. The Counselor shall listen to the complainant's allegations and discuss the complained actions with the discretion, sensitivity and due concern for the dignity of those involved. The complainant shall be asked what remedies he or she feels would resolve the complaint. The Counselor shall inform the complainant that while every reasonable effort will be made to protect the confidentiality and privacy of the individuals involved, the conduct of an investigation requires that the alleged harasser be informed of the allegations, and that witnesses be interviewed.
3. The Counselor shall fully record and document the complaint and the requested remedies.
4. The Counselor shall conduct a complete and timely investigation into the complaint, including conducting interviews with witnesses and the alleged harasser(s). If the alleged harasser is the General Manager of the complainant's department, the advice of the City Attorney may be requested.
5. If the complaint is against a non-employee, the Counselor shall conduct an investigation as indicated above. The extent of the City's control and any other legal responsibility which the City may have with respect to the conduct of the non-employee shall be considered.

If the investigation finds that sexual harassment occurred during the scope of work for a non-employee, this information must be forwarded to their employer for corrective action. If the non-employee has no employer affiliation, such as a private citizen, appropriate action should be taken to prevent a reoccurrence. Such action may include modification of assignments to ensure no future contact, provide or add security, etc.

Each case for non-employees must be handled on an individual basis to determine the most effective remedy to stop the sexual harassment.

6. Upon completion of the investigation, the Counselor shall draft a report on the investigation, which shall include findings on whether the allegations have been substantiated. Copies of the report shall be provided to the management of the Department and the complainant. Where appropriate disciplinary actions have been taken, the complainant may be so informed without disclosing the specific nature of the actions. If the alleged harasser is the General Manager of the complainant's department, the advice of the City Attorney may be requested.
7. If the complainant is not satisfied with the way the sexual harassment complaint has been resolved, the Counselor shall again fully inform the complainant of his or her additional rights under the law, including filing under the City's Discrimination Complainant Procedure or with State or Federal compliance agencies.

8. The Counselor shall maintain all documentation of the complaint and the investigation, information concerning the resolution of the complaint, and whether the complainant was satisfied with the department's efforts, in accordance with the City's Records Retention Program. The documentation shall be made available to the Personnel Department, if requested, for further investigative or auditing purposes.

Responsibilities of the Personnel Department's Sexual Harassment Counselor

An employee who has been sexually harassed may choose to file a complaint with the Personnel Department's Sexual Harassment Counselor. The Personnel Department's Sexual Harassment Counselor has the following responsibilities:

1. The Counselor will be available at (213) 473-9123 to discuss sexual harassment issues with complainants, shall fully inform employees about the City's sexual harassment policies and complaint procedures, and shall answer any questions that the complainant may have regarding the City's policy, or the other options available to them. Complainants will be notified if the time to file with an outside agency appears likely to run out before the internal investigation is completed.
2. The Counselor shall listen to the complainant's allegations and discuss the complained of actions with discretion, sensitivity and due concern for the dignity of those involved. The complainant will be asked if the department has been informed of the allegations, if an investigation was conducted by the department and the result of that investigation. The complainant will be asked if he or she wishes the Counselor to:
 - a. pursue an informal investigation and, where appropriate, seek a resolution to the complaint without a formal investigative report; or,
 - b. open a formal investigation into the allegations.
3. If the complainant requests an informal attempt at a resolution, the Counselor shall, where appropriate, make preliminary efforts to resolve the complaint with the assistance of the department's Sexual Harassment Counselor. The actions taken by the Counselor and the department will be documented, and the complainant will be informed of the outcome of the informal investigation.
4. If the complainant is not satisfied with the results of the informal investigation he or she may file a formal complaint utilizing the City's Discrimination Complaint Procedure. At the time of the filing of a formal complaint, the complainant shall also be informed of the other options available, including filing the complaint with the State or Federal compliance agencies.
5. Investigative procedures and protections for the complainant, the alleged harasser, and witnesses previously noted in this Procedure under Employee Rights and Responsibilities and Responsibilities of the Department Sexual Harassment Counselor shall apply to the conduct of the investigation by the

Personnel Department's Sexual Harassment Counselor or other staff analysts. The report of the investigation of the complainant's allegations(s), including the investigator's findings and recommendations shall be presented to the Board of Civil Service Commissioners in accordance with the City's Discrimination Complaint Procedure, unless the Counselor is able to resolve the complaint to the complainant's satisfaction prior to the scheduled hearing before the Commission.

The City's Discrimination Complaint Procedure

The City's Discrimination Complaint Procedure gives employees and applicants the right to file a written complaint with the City's Civil Service Commission. The complaint must deal with a City action, procedure or practice in hiring or employment which the employee or applicant believes to be discriminatory. Sexual harassment is a form of sex discrimination. Complaints filed in accordance with the City's Discrimination Complaint Procedure must be filed within one year of the alleged act of discrimination.

State and Federal Compliance Agencies

Employees or applicants who believe they have been sexually harassed have the right to file a complaint with State and/or Federal compliance agencies and/or in State or Federal court. However, time limits for filing complaints with compliance agencies vary and complainants should check directly with those agencies for specific information.

The State and Federal compliance agencies may be contacted at the following addresses:

| STATE | FEDERAL |
|--|--|
| Department of Fair Employment and Housing 1055 W. Seventh St., Suite 1400 Los Angeles, CA 90017 (800) 884-1684 TTY (800) 700-2320 | Equal Employment Opportunity Commission 255 E. Temple Street, Fourth Floor Los Angeles, CA 90012 (800) 669-4000 |

Revised 08/2010

SUPERVISORS' RESPONSIBILITIES

The success of the City's Equal Employment Opportunity Program depends on the support of every employee, and supervisors have the key responsibility in gaining that support.

All City supervisors shall be responsible for:

1. Communicating the City's Equal Employment Opportunity (EEO) Program by:
 - a. Conducting periodic meetings to discuss the department's EEO program with all employees under their supervision; inviting questions, comments, and suggestions for the program; and outlining each employee's responsibilities under the program.
 - b. Being sure that information on the department's EEO program is readily available in the work unit.
 - c. Reviewing EEO directives and regulations and informing employees under their supervision regarding these directives.
 - d. Requiring all employees to demonstrate in their work behavior an awareness of and respect for individual differences when working with other employees and the public; and including in performance evaluation reports an evaluation of each employee's ability to demonstrate this awareness and respect.
 - e. Informing employees of their rights to file complaints of discrimination based on race, color, religion, national origin, sex, age, disability, marital status, sexual orientation, creed, ancestry, medical condition (cancer), Acquired Immune Deficiency Syndrome (AIDS)-acquired or perceived, or retaliation for having filed a discrimination complaint; and resolving discrimination complaints in the unit as quickly as possible, with the assistance of the department's EEO Coordinator.
 - f. Interviewing employees who are leaving the unit to obtain information on the supervisory practices and possible discrimination within the unit and considering such information in improving personnel practices within the unit.
 - g. Requiring all employees to maintain a work environment that is free from harassment of any kind, including sexual harassment, and taking corrective action when necessary.
 - h. Informing employees of their rights to file sexual harassment complaints under the provisions of the department's sexual harassment complaint procedure.

2. Justifying Personnel Actions by:
 - a. Analyzing the duties and skills, knowledges, and abilities required in subordinate positions.
 - b. Asking similar questions of all candidates whom they interview for jobs; asking questions which will measure their abilities to perform the jobs being filled; and avoiding questions which are not job-related.

- c. Recording information on the qualifications of all persons interviewed for civil service positions, pay grade or bid advancements, and emergency and exempt appointments, and considering, in making an appointment, only information which relates to the individual's relevant ability(ies), education, and experience to perform the duties of the position.
 - d. Being sure that disciplinary actions are documented in writing and are based on specific job-related reasons.
3. Assisting Employees in Preparing for Promotion by:
- a. Informing employees of their job responsibilities and the basis on which their performance will be evaluated.
 - b. Advising employees on their lines of promotion within and outside the department.
 - c. Making information on upcoming examinations and training opportunities available to all employees and encouraging them to review this information.
 - d. Encouraging all employees to aspire to and prepare for jobs for which they might qualify outside their normal line of promotion.
 - e. Assisting employees who are preparing for examinations by answering their questions and giving them mock oral interviews.
4. Providing Employee Development and Training by:
- a. Familiarizing themselves with the abilities, education, experience, and goals of each of their subordinates, and making every effort to use these abilities fully and to consider employee requests when making assignments and giving training.
 - b. Analyzing training needs of employees.
 - c. Identifying employees with promotional potential and recommending that they receive additional training to prepare them for advancement.
 - d. Giving employees on-the-job training when practical.
 - e. Giving employees an opportunity, when practical, to rotate to different positions within their classification to prepare them for advancement.
 - f. Encouraging employees to take courses during their off-duty hours.

REASONABLE ACCOMMODATION GUIDELINES

I. OVERVIEW

Federal and California State Law prohibit discrimination in all employment practices on the basis of disability. The purpose of this document is to provide an overview of legal obligations under the law and to provide general guidelines for conducting reasonable accommodation assessments for job applicants and current City employees with disabilities.

These guidelines include some of the basic analytical tools used in reasonable accommodation assessments. However, these guidelines should not be considered a comprehensive or finite methodology for consideration of reasonable accommodation requests. Accommodation requests require that evaluations be made on a case-by-case basis with attention to the unique features of each case. Links to the [sample accommodation assessment form](#) are included throughout these guidelines. Departments are encouraged to use or customize the form to meet the needs of the department.

**Please visit http://per.ci.la.ca.us/EEOD/acc_guidelines.pdf for the
REASONABLE ACCOMMODATION ASSESSMENT FORM**

II. POLICY

The City of Los Angeles is committed to maintaining a discrimination free workplace. It is our intent to provide equal employment opportunity to individuals with disabilities by ensuring that selection and employment practices include efforts to reasonably accommodate disabled employees and candidates for employment by fully complying with federal and California state laws.

A. DEPARTMENT DUTIES AND RESPONSIBILITIES

The Mayor's Executive Directive PE-1 addresses not only the City's policy but also the roles and responsibilities of Department Heads and Disability Coordinators. City departments are responsible for the following:

- Designating a Reasonable Accommodations Counselor/Coordinator (Disability Coordinator) to provide internal expertise to management and disabled individuals regarding the reasonable accommodation process;
- Informing employees of the procedure for requesting a reasonable accommodation;
- Requiring staff to engage in a timely, interactive process, conducted in good faith when presented with an oral or written request for accommodation by an employee or job applicant. This process must be fully documented using the

"Reasonable Accommodation Assessment Form" (RAAF) provided by the City's Personnel Department; and

- Fully cooperating with the Personnel Department and other Department heads in accepting transfers of employees with disabilities into positions that will afford them a reasonable accommodation. This includes communicating all work restrictions (industrial and non industrial) to the Personnel Department and receiving Department to ensure the accommodation is consistent with all the employee's work restrictions to prevent further injury.
- Executive Directive PE-1 may be found on the Personnel Department's website under the EEO Tab at: http://www.lacity.org/per/eeo/exec_pe1.pdf or on the Mayor's Home Page under Executive Directives, Hahn Series, at: http://www.lacity.org/mayor/hahned/mayorhahned248358517_02082005.pdf

III. REASONABLE ACCOMMODATIONS – LEGAL OBLIGATIONS

Many individuals with disabilities are qualified to perform the essential functions of jobs without any accommodations. However, if an individual with a disability who is otherwise qualified cannot perform one or more essential job functions because of the disability, departments must consider whether there are reasonable accommodations that would enable the person to perform these functions.

Reasonable accommodation is a means of overcoming unnecessary barriers in the workplace and the work environment that might exclude qualified individuals with disabilities from certain jobs and employment opportunities. City departments should consider reasonable accommodation of work restrictions of job candidates and employees with disabilities on a case-by-case basis.

The following is an overview of the reasonable accommodation legal obligations required by the federal ADA and state FEHA laws.

- An employer must provide a reasonable accommodation to the known physical or mental limitations of a qualified applicant or employee with a disability unless it can show that the accommodation would impose an undue hardship on business operations.
- The obligation to provide a reasonable accommodation applies to **all aspects** of employment. This duty is **ongoing** and may arise anytime a person's disability or job changes.
- An employer cannot deny an employment opportunity to a qualified applicant or employee because of the need to provide reasonable accommodations, unless it would cause undue hardship (a high standard).

- An employer does not have to make an accommodation for an individual who is not otherwise qualified for a position.
- Generally, it is the obligation of the prospective employee or employee with a disability to inform the employer that an accommodation is needed to participate in an application process, to perform essential functions, or to receive equal benefits and privileges of employment. The individual does not have to specifically request a reasonable accommodation but merely has to let the employer know that some adjustment or change is needed to perform a job because of the limitations caused by a disability.
- An employer **must engage** in a good faith, timely and interactive process with a disabled prospective employee or employee who requests an accommodation. The department should **document** these efforts.
- If an employee or applicant requests an accommodation, he/she must provide documentation of their functional limitations to support the request. Departments may request documentation in the form of a letter from the individual's private physician and/or refer the individual to the Personnel Department's Medical Services Division (MSD) for a medical evaluation to determine work limitations if the individual has been given an offer of employment or is a current employee. Departments are advised not to inquire as to the nature of the disability.
- A qualified individual with a disability has the right to refuse an accommodation, however, if the individual cannot perform the essential job functions without an accommodation, the individual may not be qualified for the position.
- If the cost of an accommodation would impose an undue hardship on the employer, the employee/applicant with a disability should be given the option of providing the accommodation or paying that portion of the costs which would constitute an undue hardship. If a department believes that an accommodation would impose an undue hardship, the Personnel Department's Citywide Disability Coordinator and the ADA Compliance Officer in the Department on Disability are available to discuss those findings and conclusions.
- Reasonable accommodation **does not** have to be the exact accommodation requested by the applicant or employee as long as what is offered as a reasonable accommodation will allow the individual to perform the essential functions of the job.

IV. IMPORTANT REMINDER REGARDING ON-THE-JOB INJURED WORKERS

Departments are responsible for returning injured workers to work without exceeding work restrictions following a work injury. If that employee is deemed permanent and stationary by his/her treating physician or City approved physician, with work

restrictions, it is the department's job to determine whether they are able to accommodate those restrictions and return the employee to work.

Once an injured employee's condition is deemed to be permanent and stationary, employers have **60 days** to offer a job consistent with work restrictions. The offer will cause the employee's remaining permanent disability payments to be reduced by 15%. **If no job is offered, these payments will be increased by 15%. In order to take the reduction, the job offered must be at least 85% of their pre-injury salary and must last for at least one year.**

V. REASONABLE ACCOMMODATION ASSESSMENT PROCESS

A. NOTICE OF A DISABILITY

The employee/applicant is responsible for notifying the supervisor or interviewer that he/she has a disability or medical condition, which requires reasonable accommodation. Notice of a disability may come in the form of (1) the employee/applicant's direct statement to a supervisor/interviewer that he/she is unable to perform a duty that is part of the job because of a disability; (2) the employee/applicant's direct request for an accommodation to the supervisor/interviewer or (3) the supervisor's/interviewer's receipt of information regarding an employee/applicant's disability or need for accommodation.

B. REQUESTING A REASONABLE ACCOMMODATION DURING RECRUITMENT OR SELECTION PROCESS

When a qualified disabled applicant requests an accommodation, the Human Resources staff will confer with the applicant on the type of accommodation(s) he/she needs. When the applicant's disability is not obvious or known, or when additional medical clarification is needed, appropriate documentation of the disability, limitations and the needed accommodation will be sought from the applicant. Given the time sensitivity of the recruitment process, Human Resources staff will move as quickly as possible to make a decision, and if appropriate, provide an accommodation. Please refer to Section VIII A for information about pre-employment medical inquiries.

C. REQUESTING A REASONABLE ACCOMMODATION DURING EMPLOYMENT

Usually, the employer considers reasonable accommodation **when the employee requests it**. An employee may request an accommodation in many different ways. A request may be formal or informal, in writing or made verbally. The employee does not need to use the magic words "*reasonable accommodation*." An employee simply may express: "I'm having trouble with performing my job," or "I need to see a doctor because I'm having problems at work." As long as the employee's request is submitted to a supervisor or manager, the request must be evaluated.

There will be rare occasions **when an employee does not make a request**, but the employee's supervisor or coworker knows that the employee has a disability and knows

or has reason to believe that the employee is having work performance problems because of the disability. For example, there may be a situation when the employer is aware that the employee has a disability such as a mental illness that prevents the employee from requesting a reasonable accommodation. Under these scenarios, **the employer initiates the accommodation process and must inquire whether the employee needs an accommodation.** Simply ask the employee “what can I do to help” or “do you need an accommodation” If the employee denies having a disability or denies the need for accommodation, the department will have fulfilled its obligation under the law. If the employee’s work performance or work behavior is at issue, then the department should proceed with the disciplinary process as usual. For general guidance on how to handle performance and conduct issues when an employee requests an accommodation, refer to the EEOC web page: <http://www.eeoc.gov/facts/performance-conduct.html>

An employee’s request for a reasonable accommodation always triggers an evaluation of whether (1) the employee has a disability and (2) whether his or her disability can be reasonably accommodated.

Practical Tip:

If the need for an accommodation is temporary and due to a work related injury, the Department should consider whether the accommodation is appropriate based on the Citywide Temporary Modified Duty Program for IOD (visit the Personnel Department intranet at <http://per.ci.la.ca.us/WorkCmp/CTMDPMenu.htm>). If the need for an accommodation is permanent, the parties will discuss a permanent accommodation.

QUESTION: CAN PROBATIONARY EMPLOYEES, HIRING HALL EMPLOYEES OR EXEMPT EMPLOYEES REQUEST A REASONABLE ACCOMMODATION?

Yes. Although the Rules of the Board of Civil Service Commissioners have different definitions for these “temporary” employees, they are nonetheless employees under ADA and FEHA, and may request a reasonable accommodation. Thus, the interactive dialogue and reasonable accommodation process will be triggered upon a request for accommodation by a probationary employee, hiring hall employee, or exempt employee.

A “temporary” employee’s civil service classification becomes important when the employee seeks an accommodation by reassignment to a different position without complying with the civil service requirements. The City cannot violate its civil service rules for the purpose of accommodating a disabled employee.

D. ESSENTIAL FUNCTIONS OF THE JOB

The employer determines the essential functions of the job and must conduct an **individualized assessment** to determine if the employee can perform the essential functions of the job with or without a reasonable accommodation. Essential functions are the fundamental job duties of the position a person holds or desires. These duties must be performed by the person in the position with or without an accommodation. The absence of these duties creates an **undue hardship** on business operations and may change the proper classification for the position. In cases where employees are assigned to a work crew or frequently move from position to position within a certain unit, the essential functions of the crew or unit must be determined as opposed to the essential functions of a single position.

Practical Tip:

Departments should include a comprehensive list of essential job functions in their job descriptions. Each time a job description is updated, the essential functions should also be reviewed and updated accordingly.

When identifying an essential function, it is important to focus on the purpose of the task and the result to be accomplished rather than the manner in which the duty is presently performed. If a disabled individual has a physical or mental limitation that presents one or more conflicts with the essential duties of the job, the mere fact that a conflict exists does not establish that the individual cannot be accommodated. The disabled worker may be qualified to perform essential functions if an accommodation enables this person to perform the job in a different way. The law does not require employers to change or reassign essential functions, alter the quality or quantity of work that must be performed or set lower standards for the job. ADA and FEHA require only that the qualifications of an individual with a disability be evaluated in relation to the essential functions of the job and that a reasonable accommodation be considered when a known limitation prevents a qualified individual from performing one or more essential job functions.

The most effective method of determining the essential functions of a job is to obtain information from employees who are currently performing the job and their immediate supervisors. Conducting a job analysis can also determine essential functions. Other helpful sources are current position descriptions, prior job analyses, or any other material that details the duties of the relevant position.

The following are factors for determining essential job functions:

- The position exists to perform the function.
- Only a limited number of employees are available to perform the function.

- A function is highly specialized and the person in the position is hired for special expertise or ability to perform the job.
- A significant amount of time is spent performing the function. Generally, job duties frequently performed tend to be essential. (Some exceptions are frequently performed duties that may be easily shared with other employees or infrequently performed duties that may be essential if no one else is available or capable of performing the duties.)

E. WORK RESTRICTIONS

Written verification of the limitations from the employee's physician must be provided by the employee. Generally, unless the need for an accommodation is obvious, documentation from an appropriate medical provider will be required which identifies:

- 1) The physical or mental limitation imposed by the disability or medical condition; and
- 2) For each limitation, the expected duration and whether it is permanent or temporary.

Information regarding the employee's specific medical condition cannot be required as that information is confidential.

The medical provider must be provided with the individualized assessment prepared by the Department containing the specific information about the employee's job duties and what physical activities are involved in order to outline the employee's limitations. However, it is the employing department that ultimately bears the responsibility for deciding whether or not a disabled individual is qualified for a position and if a reasonable accommodation can be provided to that individual.

For employees injured on duty, the Workers' Compensation Division of the Personnel Department will advise Departments of an employee's work restrictions once their work related condition becomes permanent and stationary. Departments must respond back to Workers' Compensation Division regarding their ability to accommodate the employee's work restrictions. Please be aware that an employee may receive a finding of a disability by Workers' Compensation, however, that employee may not meet the criteria under ADA or FEHA to be considered disabled.

F. THE INTERACTIVE DIALOGUE

After an accommodation has been requested, the employer has determined the essential functions and the employee has provided documentation of his/her limitations (through his/her health care provider), both employer and employee are required to discuss the limitations and proposed accommodation. The law provides that the discussion must be **timely** in relation to the request, **interactive** in that it is between both parties, and accomplished in **good faith**. The interactive dialogue facilitates the

employer's understanding of the employee's limitations and the alternative accommodations available.

It is important to note that the failure of an employer to engage in a timely interactive process with an employee or applicant is a violation of the FEHA and ADA, regardless of whether it is ultimately determined that the employer is legally excused from providing the employee a reasonable accommodation. This obligation to engage in the interactive process also extends to persons whom the employer perceives to have a physical or mental disability.

1. WHAT IS AN INTERACTIVE DIALOGUE?

The interactive dialogue is a two-way communication between management and the employee to discuss the employee's work restrictions and proposed reasonable accommodation. The division or department coordinator must do the following to successfully engage in the interactive dialogue:

- The Department must meet with the employee who requested an accommodation;
- Request information about his/her condition and what limitations the employee has;
- Ask the employee what he or she specifically wants;
- Offer and discuss available alternatives when an employee's request is too burdensome.

2. HOW IS THE INTERACTIVE DIALOGUE STARTED?

The responsibility to initiate the interactive dialogue lies primarily with the employee. An employee whose disability is not apparent is obligated to specifically request an accommodation.

If, however, an employee with a known disability is having difficulty performing his or her job, an employer may inquire whether the employee needs an accommodation. If the employee denies a disability, or declines the need for an accommodation, the employer's duty to engage in the interactive dialogue ceases.

G. JOB ANALYSIS AND COMMON EXAMPLES OF ACCOMMODATIONS

Consideration of reasonable accommodation involves analysis of the essential functions of a particular job and how those functions can be performed in a different manner. Each assessment must be made on a case-by-case basis and in light of the duties of the proposed job, not the classification. **Accommodation is a stair-step process** starting within the employee's current division then expanding to the employee's department and, if needed, Citywide.

First, the division must examine whether an employee can remain in his or her current position with a reasonable accommodation. If a division cannot accommodate an employee within his or her current position, it should determine whether it could accommodate an employee in another position within the division and in the same job class.

Second, the department's Placement Coordinator must do the same examination but department-wide. After reviewing all vacancies in the employee's current job class, the Coordinator and the employee should consider all vacancies in other job classes that match the employee's skills and education. If the employee cannot be accommodated in their current classification, then, the Placement Coordinator should consider the options listed below for transferring the employee to a different class. Keep in mind that when considering an individual for transfer to a new class the employee must meet the minimum qualifications required for the class and have the capability to perform the essential functions with or without a reasonable accommodation. The employee must also give their written consent to the reassignment. You must document the reassignment on the Reasonable Accommodations Assessment Form and Form 41.

Finally, after an exhaustive search for an accommodation within the department, the department's Placement Coordinator may refer the employee to the Citywide Placement Officer who will work to find a position with a different department either in the same class or in a different class. Citywide placement is the method of last resort.

The following are examples of workplace modifications that may be provided as an accommodation. Other accommodation strategies may be necessary depending on the particular circumstances of the case.

Job Restructuring – Departments are not required to reallocate essential job functions, but a reasonable accommodation **includes** modifications of essential functions by changing when, where, and how they are done. For example, a person who has a disability that makes it difficult to write may be allowed to use a computer. Another example is removal of non-essential duties where removal does not alter the purpose of the job.

Modified Work Schedules – Many people with disabilities are fully qualified to perform jobs with the accommodation of an adjustment to their work hours or week. For example, a flexible work schedule may reasonably accommodate an individual who requires special medical treatment or needs rest periods. Similarly, a modified work schedule may accommodate an individual with a mobility impairment who experiences problems using public transportation during peak hours or who depends on special Para-transit schedules.

Flexible Leave Policies – People with disabilities may require special leave for a number of reasons, such as medical treatment related to the disability, training in the use of an assistive device, repair of a prosthesis/equipment or temporary adverse

conditions of the work environment. The law does not require an employer to provide additional paid leave as an accommodation.

Intermittent Leave (paid or unpaid) – Under FEHA, holding a job open for a disabled employee who needs time to recuperate is, in itself, a form of reasonable accommodation.

Reassignment to a Vacant Position – Consideration of reassignment is only required for current employees, not job applicants. Reassignment may be appropriate if an employee becomes disabled, a disability becomes more severe, or changes in the work process or work equipment affects the employee’s job performance. ADA and FEHA do not require an employer to create a new job, nor promote an individual with a disability as a reasonable accommodation. Reassignment should be considered first to a position equivalent to the one presently held by the individual in terms of pay and job status, if the employee is qualified and if such position is vacant or will be vacant in a reasonable amount of time.

Make Facilities More Readily Accessible – Making an existing facility readily accessible to and usable by individuals with disabilities is another form of reasonable accommodation.

Acquisition or Modification of Equipment/Devices and Personal Services – Many devices exist which make it possible for people with disabilities to overcome existing barriers to performing the essential functions of a job. There are many ways standard equipment can be modified to enable people with different functional limitations to perform jobs effectively and safely. Further, applicants and employees with disabilities, who have experience in accommodating their disabilities, can suggest effective low cost devices or equipment. Some examples of accommodation through acquisition or modification of equipment are:

- Light weight tools and hand trucks to allow people with lifting or pulling limitations to perform their job with minimal strain;
- Telecommunication Devices for the Deaf (TDDs) make it possible for hearing and/or speech impaired individuals to communicate over the telephone;
- Special software for standard computers to enlarge print or convert print documents to spoken words for people with vision or reading disabilities; and
- Rearrangement of office furniture and equipment to provide accessibility for people with vision or mobility impairments.

Where economically feasible, personal assistants may also be utilized to provide such services as reading for the vision-impaired or sign language interpreters for the hearing impaired. However, it should be noted that employers are not required to hire personal assistants to perform the essential functions of a position for a disabled employee.

The Department on Disability administers an ADA/504 Accommodations Fund, which may be utilized to provide financial assistance for worksite modifications, special

equipment or personal services contracts. This department should be contacted directly for further information.

Adjusting and Modifying Examinations – Reasonable accommodation for a test must be provided only if requested by the individual with a disability. Departments have an obligation to inform job applicants in advance that a test will be given and that an individual who needs an accommodation may make such a request. Accommodations may be needed to assure that tests or examinations measure the actual ability of an individual to perform job functions rather than reflecting limitations caused by the disability. Tests must be given in a format that does not require the use of the impaired skill, unless that is the job-related skill the test is designed to measure. For example an individual with a visual or learning disability might be allowed more time to take a test, unless that test is designed to measure speed required on the job. An applicant who has difficulty reading because of dyslexia should be given an oral rather than a written test, unless reading is an essential function.

Adjusting or Modifying Training – Providing accessible training sites, supplying training materials in alternate formats and modifying the manner in which training is provided are all examples of training accommodations. It may be a reasonable accommodation to allow more time for training or to provide extra assistance to people with learning disabilities, provide materials on tape, large print or via a computer to assist employees with various limitations.

Charter Section 1014 Special Reassignment – Civil service employees may have an opportunity for a Charter Section 1014 Special Reassignment. This provides for status and seniority for civil service employees in classes other than those for which they were examined where an employee is incapable of performing satisfactorily the duties of his/her position because of injury, sickness or disability. The employee must agree to the reassignment, must meet the minimum qualifications for the class, and be capable of performing the required duties and the change of class status may not result in a promotion. Charter Section 1014 Special Reassignment requests must be approved by the Personnel Department.

Reversion – Reversion to a former class held by an employee that can accommodate their work restrictions is also possible. However, this typically will be considered as one of the last options since it usually results in decreased wages.

Transitional Worker Temporary Trainee Class - In cases where an employee has an interest in a particular class, but does not meet the minimum requirements, that employee may become a transitional worker whereby he or she obtains training while receiving salary corresponding to his or her prior class. The employee has three years to pass the Civil Service examination and get appointed to the new class. While the employee is in the Transitional Worker class he/she is not entitled to civil service status, accrue of seniority credits, and is subject to a probationary period for the new class and must successfully transition (receive an appointment) to the new class within three (3) years.

Light Duty – A light duty assignment can be a form of reasonable accommodation. However, a temporary assignment is insufficient to constitute a reasonable accommodation if what the employee truly needs is a permanent reassignment. For on-the-job injuries please refer to Section VII on Temporary Light Duty as well as <http://per.ci.la.ca.us/WorkCmp/CTMDPMenu.htm>.

QUESTION: IS THE DISABLED EMPLOYEE ENTITLED TO PREFERENTIAL CONSIDERATION IF THE ACCOMMODATION INVOLVES REASSIGNMENT?

Yes. A disabled employee is entitled to preferential consideration for job reassignments. An employer must give a disabled employee preference over nondisabled candidates for vacant positions, ***even if the other candidates are more qualified or have more seniority.*** However, preferential consideration of disabled employees must still comply with the City’s Charter and the Rules of the Board of Civil Service Commissioners.

H. DOCUMENT THE EVALUATION

It is important that the key elements of the accommodation evaluation be effectively documented. Documentation is necessary to show that a reasonable accommodation was discussed and considered and to justify the outcome of the assessment. This documentation will become critical should a subsequent discrimination complaint be filed. Documentation should include all requests for accommodations, work restrictions, determination of essential functions, efforts to accommodate, placement offers, response to placement offers, all correspondence, reasons for non-accommodation and a method to track employees with restrictions to ensure that the accommodation needs continue to be met and/or make changes as necessary.

It is also helpful to maintain the results of an evaluation for future reference in the event that a person with similar limitations is considered for reasonable accommodation in the same or similar position.

I. NON-ACCOMMODATION

If the findings of an evaluation indicate that an employee cannot perform the essential functions of a job due to a non-industrial disability and the department is unable to provide a reasonable accommodation following an exhaustive internal search, the department should notify the employee in writing that his/her work limitations cannot be reasonably accommodated.

If an employee has work restrictions as a result of an industrial injury, the Workers’ Compensation Division will ask the employee’s department if they can provide a reasonable accommodation. If the department cannot provide an accommodation, the

Workers' Compensation Division will advise the employee in writing of the non-accommodation.

In either of the above situations, the department should refer the case to the Personnel Department's Citywide Placement Officer for further assistance.

VI. CITYWIDE PLACEMENT POLICY & PROCEDURE

If, after a thorough assessment, it is determined that a reasonable accommodation cannot be made, the department's Placement Coordinator should refer the case to the Personnel Department's Citywide Placement Officer. Once the department's documentation has been reviewed to verify that the department cannot make a reasonable accommodation, the Placement Officer will conduct a Citywide search to try to place the employee in another City department. **While this Citywide search is active, departments should continue their own internal efforts to accommodate the employee as positions become available.** The employee may use their accumulated paid leave (vacation or overtime) or be placed on an unpaid leave of absence.

A. REFERRALS FOR CITYWIDE PLACEMENT

An employee should be referred to the Citywide Placement Officer when his or her department has determined that the employee's disability or permanent work restrictions cannot be reasonably accommodated within the department. As noted above, once an employee is accepted into the Citywide Placement program, the departments have a continuing obligation to review new and vacant positions to determine if they can accommodate the employee.

With respect to employees with industrial illnesses or injuries (IOD), the Department's Placement Coordinator should forward all documentation to the assigned Workers' Compensation Analyst and City-wide Placement Officer. For employees with non-occupational injuries or illnesses, all documentation should be directed to the City-wide Placement Officer. **All departments are required to submit all paperwork that documents their placement efforts, communications with the disabled employee, and any job offers with the employee's response to each offer. ALL EFFORTS MUST BE DOCUMENTED IN WRITING, INCLUDING JOB OFFERS.**

1. PREREQUISITES FOR REFERRAL TO CITY-WIDE PLACEMENT OFFICER

A completed referral packet should include the following:

- A Workers' Compensation or Department Referral form;
- A copy of the completed Reasonable Accommodation Assessment Form (RAAF) from the department;
- A letter from the appointing authority explaining its inability to accommodate the employee;

- A copy of permanent work restrictions and any other pertinent documentation; and
- A copy of the Department's file on its accommodation efforts.

All completed forms and files should be submitted to the Personnel Department, EEO Section, Room 380, Stop 391, for review and referral.

VII. TEMPORARY LIGHT DUTY

Light duty assignments originated from workers' compensation law. The intent was to return an employee back to work as soon as possible following a work-related injury. Although light duty assignments started within the context of workers' compensation, the concept has expanded to the reasonable accommodation process. A light duty assignment can be a form of reasonable accommodation. However, a temporary assignment is insufficient to constitute a reasonable accommodation if what the employee truly needs is a permanent reassignment. An employer will not meet its obligations under the ADA and FEHA by allowing an employee to compete for a vacant position.

Within the context of FEHA, it is important to review all City and Departmental policies on light duty assignments for Injury-on-Duty cases. The Personnel Department issued a policy on *Citywide Temporary Modified Duty Program for IOD Cases* on January 19, 2005, which may be found on the Department's intranet at <http://per.ci.la.ca.us/WorkCmp/CTMDPMenu.htm>. This policy controls how the City should manage light duty assignments for work-related injuries only. ***Currently, the Personnel Department has not issued a light duty assignment policy on non-industrial cases.*** Therefore, your department should review its internal policies and directives on this subject. **If, and only if, no departmental policy exists,** it need not create light duty assignments for employees without work-related disabilities.

As a rule of practice, a department should engage in the interactive dialogue with the disabled employee if it (1) receives continual requests for light duty even though the employee has been serving in a light duty assignment for several months; or (2) receives notification from the Workers' Compensation Division (if a work-related injury) or the employee's treating physician (if non-occupational injury or disability) that the employee's work restrictions are permanent.

QUESTION: Do Light Duty Assignments become permanent once the employee's disability becomes permanent? No. Once an employer receives notification that an employee's disability has become permanent, it does not have a duty to transform the temporary light duty assignment into a permanent position. Transforming a light duty assignment into a permanent position is, in essence, creating a new position. The ADA and FEHA do not require the employer to create a new position to accommodate an

employee, if the employer does not regularly offer such assistance to disabled employees.

QUESTION: **Once the department has notice about an employee's permanent disability, can the department immediately remove the employee from his or her light duty assignment? Generally No.** But departments must ensure permanent work restrictions are consistent with the assignment. The length of the light duty assignment depends upon the policies issued by the City's Personnel Department as well as the department's internal policies. Currently, for industrial injuries, the City Personnel Department advises departments that after an employee reaches 150 days on a light duty assignment, "a determination needs to be made to continue with the light-duty assignment or a permanent accommodation." So, each situation must be evaluated on an individual, case-by-case basis. If additional guidance is needed, contact the Personnel Department or the Labor Relations Division of the City Attorney's Office.

VIII. MEDICAL EXAMINATIONS – LEGAL OBLIGATIONS

Medical examinations and inquiries may be necessary in order to evaluate the ability of applicants and employees to perform essential job functions or to promote health and safety on the job. The following is an overview of the medical examination legal obligations required under ADA and FEHA:

A. PRE-OFFER EXAMINATIONS & INQUIRIES

Generally, pre-employment medical inquiries and exams are unlawful. An employer may not require a job applicant to take a medical or psychological examination, respond to medical, psychological or disability related inquiries or to provide information about worker's compensation claims **before** a job offer is made. However, employers may inquire about an applicant's ability to perform job-related essential functions and may respond to an applicant's request for accommodation. **In such case, if the need for accommodation is not obvious**, the employer may request information necessary to assess the applicant's disability, and it should tell the applicant why this information is needed.

B. POST-OFFER EXAMINATIONS & INQUIRIES

If a conditional employment offer was made, an employer may require a medical examination or ask questions about an applicant's medical history **if and only if** such medical questions or examinations are related to the performance of the job and the employer subjects all entering applicants/employees in the civil service classification to the same inquiries and/or examinations.

If a pre-examination job offer is withdrawn based upon the results of a medical or psychological examination, the employer bears the burden of demonstrating that the criteria used to disqualify the applicant was **job-related** and consistent with **business necessity**. The employer must also show that no reasonable accommodation was available that would enable this individual to perform the essential job functions, or that accommodation would impose an undue hardship.

- **Job-Related** = criteria used to measure the candidate's ability to perform the specific job to which the criterion is being applied, not a general class of jobs. May relate to the essential or marginal functions of the position.
- **Business Necessity** = an overriding legitimate business purpose such that the practice is necessary to the safe and efficient operation of the business and that the challenged practice effectively fulfills the business purpose it is supposed to serve. There should be no alternative practice that would accomplish the business purpose with a lesser discriminatory impact.

After a person starts work, a medical examination or inquiry of an employee must be job-related and consistent with business necessity. During employment, an employer may ask an employee disability-related questions or request a medical examination **if and only if** the employer has a reasonable belief, *based upon objective evidence*, that (1) an employee does not have the ability to perform the essential functions of his job due to a medical condition or disability, or (2) an employee is a danger to himself or the public due to a medical condition or disability.

- Objective evidence of an employee's medical condition or disability includes, but is not limited to, the following:
 - Follow up on an employee's request for reasonable accommodation;
 - Visual observations of an employee's difficulty with the performance of essential job functions; **or**
 - The unsolicited receipt of medical information from a professional about the employee's condition.

Reasons for medical examinations also include situations where examinations are required by other State or Federal laws, and voluntary examinations that are part of employee health programs.

An employer may conduct a medical examination of an employee who has an **on-the-job-injury** that appears to affect the individual's ability to perform the essential functions, provided that the examination is job-related and consistent with business necessity. A job related medical examination (not a general physical examination) may also be required when a worker wishes to return to work after an extended absence due to an accident or illness.

Tests for illegal drugs are **not** medical examinations under the law and are **not** subject to the restrictions of such examinations. Persons who are no longer using drugs illegally and are receiving treatment for drug addiction or who have been rehabilitated

successfully are protected by FEHA and ADA from discrimination on the basis of past drug addiction.

Unlike a current illegal drug user, a person who currently uses alcohol is not automatically denied protection simply because of the alcohol use. An alcoholic is a person with a disability under the law and may be entitled to consideration of a reasonable accommodation, if the individual is qualified to perform the essential duties of the job and is in a treatment program (i.e. AA). An employer may discipline, discharge or refuse employment to an alcoholic whose use of alcohol adversely affects job performance or conduct to the extent that the individual is not qualified.

It is important to note that all information concerning an employee's medical history, condition or disability, and limitations must be kept confidential. There are limited exceptions to this confidentiality requirement:

- Supervisors and managers must be informed about necessary work restrictions and any accommodations;
- First aid and safety personnel may be **told known information in the event of an emergency requiring treatment and the employee is unable to speak on his or her behalf** or if any specific procedures are needed in case of fire or other evacuations;
- Government officials investigating compliance with ADA or FEHA should be provided the information upon request;
- Relevant information may be provided to state workers' compensation offices or "second injury" funds in accordance with state workers' compensation laws;
- Relevant information may be provided to insurance companies where the company requires a medical examination to provide health or life insurance.

An employer should never release information about an employee's medical history, condition or disability to coworkers.

Question: CAN THE CITY RESCIND A CONDITIONAL JOB OFFER BASED UPON AN APPLICANT'S MEDICAL RESTRICTIONS?

This question cannot be answered with a "yes" or "no" answer. Under some state health and safety laws, employers are permitted to exclude disabled persons from employment. However, the ADA may not permit such exclusion. Even if an employer has no liability for refusal to hire a disabled employee under the FEHA, it may be subject to liability under the ADA.

The ADA requires an employer to demonstrate that a disabled person poses a "direct threat" upon refusing to hire the disabled person. "**Direct threat**" means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or decreased by reasonable accommodation.

The employer must show that if it hires the applicant, then it will cause substantial harm to the applicant and/or others as a result of the applicant's disability. This is a considerable burden for the employer to overcome.

IX. KEY TERMS DEFINED

DISABILITY

Federal:

On January 1, 2009 the Americans with Disabilities Act Amendments of 2008 ("ADA Amendments Act" or "Act") took effect. The Act makes important changes to the definition of the term "disability" by rejecting the holdings in several Supreme Court decisions and portions of EEOC's ADA regulations. The Act retains the ADA's basic definition of "disability" as **an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment**. However, it changes the way these statutory terms are interpreted giving them a broader interpretation.

Among the most significant changes are:

- "Substantially limits" no longer will be defined to mean either "significantly restricted" or "severely restricted;"
- Major life activities now include "major bodily functions" such as normal cell growth;
- The ameliorative effects of mitigating measures, other than ordinary eyeglasses or contact lenses, cannot be considered in assessing whether an individual has a disability;
- Impairments that are episodic or in remission may be disabilities if they are substantially limiting when active; and,
- An individual will meet the "regarded as" prong of the definition if she can show that an employment decision (e.g., hiring, promotion, termination, discipline) was made because of an actual or perceived physical or mental impairment, regardless of whether the impairment limits or is perceived to limit a major life activity. The new definition of "regarded as" does not cover an impairment that is the basis of an employment decision if it is transitory (meaning that it will last six months or less) and minor.

California:

The California Fair Employment and Housing Act (FEHA) extends protection to **an individual with an actual or perceived physical or mental disability (precise definitions below) that limits a major life activity**.

Physical Disability

"Physical disability" includes, but is not limited to, all of the following:

(1) Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following:

(A) Affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.

(B) Limits a major life activity. For purposes of this section:

(i) "Limits" shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.

(ii) A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult.

(iii) "Major life activities" shall be broadly construed and includes physical, mental, and social activities and working (regardless of whether the actual or perceived working limitation implicates a single job or a broad class of jobs).

(2) Any other health impairment not described in paragraph (1) that requires special education or related services.

(3) Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (1) or (2), which is known to the employer.

(4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any physical condition that makes achievement of a major life activity difficult.

(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (1) or (2).

Mental Disability

"Mental disability" includes, but is not limited to, all of the following:

(1) Having any mental or psychological disorder or condition, such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities that limits a major life activity. For purposes of this section:

(A) "Limits" shall be determined without regard to mitigating measures, such as medications, assistive devices, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.

(B) A mental or psychological disorder or condition limits a major life activity if it makes the achievement of the major life activity difficult.

(C) "Major life activities" shall be broadly construed and shall include physical, mental, and social activities and working.

(2) Any other mental or psychological disorder or condition not described in paragraph (1) that requires special education or related services.

(3) Having a record or history of a mental or psychological disorder or condition described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.

(4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any mental condition that makes achievement of a major life activity difficult.

(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a mental or psychological disorder or condition that has no present disabling effect, but that may become a mental disability as described in paragraph (1) or (2).

Conditions not protected by the FEHA

The categories of physical disability and mental disability do not include (1) sexual behavior disorders, (2) compulsive gambling, (3) kleptomania, (4) pyromania, or (5) psychoactive substance use disorders resulting from the unlawful use of controlled substances or drugs.

When determining whether impairment constitutes a disability under the law, it is important to consider:

1. The nature and severity of the impairment; how long is it expected to last?
2. What is the permanent, long term, or expected impact on the individual?

Temporary, non-chronic impairments that do not last for a long time or have little impact on a major life activity usually are not disabilities. For example, medical limitations arising from a sprain, infection, or flu would not meet the requirements of a bona fide disability. Similarly, a physical condition that is not the result of a physiological disorder, such as pregnancy, or a predisposition to a certain disease would not be an impairment.

ESSENTIAL FUNCTIONS

Essential functions are the fundamental job duties of the position. This does not include marginal functions of the position. For example, driving is an essential function for the class of Delivery Driver, while answering telephones in the office when not making deliveries might be a marginal function.

QUALIFIED INDIVIDUAL WITH A DISABILITY

A person with a disability who meets legitimate skill, experience, education and other job related requirements of a position held or sought and who can perform the essential functions of the position with or without an accommodation.

REASONABLE ACCOMMODATION

Any modification or adjustment to a job, employment practice or the work environment that enables an individual with a disability to participate in an application process, to perform the essential functions of a position, or to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without disabilities. Such modifications may include: making existing facilities accessible and usable; job restructuring; part-time or modified work schedule; reassignment to a vacant position (for current employees); acquisition or modification of examinations, training materials, or policies; and providing qualified readers or interpreters.

UNDUE HARDSHIP

An undue hardship is a requested accommodation that requires significant difficulty or expense in relation to the size of the employer, the resources available and the nature of the operation. It may include any action that is unduly costly, extensive, substantial, disruptive or would fundamentally alter the nature or operations of the business. Undue hardship is determined on a case-by-case basis.

X. REASONABLE ACCOMMODATION RESOURCES

Remember: When an accommodation has been requested, the Department is required to discuss the work restriction(s) and proposed accommodation with the disabled

employee. The law provides that the discussions must be **timely** in relation to the request, interactive in regards to **continual** communication between both parties, and accomplished in **good faith**.

The Personnel Department, the Labor Relations Division of the City Attorney's Office, and the Department on Disability provide guidance on the reasonable accommodation assessment process through various sources.

CITY OF LOS ANGELES

- This guide can be found on the Personnel Department intranet website, <http://per.ci.la.ca.us/> under the EEO tab.
- The Citywide Placement Coordinator is available for consultation at any point in the process. Joe O'Toole is currently serving in that capacity and may be reached at (213) 473-0178 or joe.otoole@lacity.org.
- Inquiries and medical examinations may be necessary in order to evaluate the ability of applicants and employees to perform essential job functions. The **Medical Services Division** (MSD) of the Personnel Department can provide the department with assistance by working with the person's doctor to clarify work restrictions. MSD also performs work fitness medical and psychological examinations of City employees and candidates for employment.
- **Note:** For current City employees, if the work restrictions are from an industrial injury or illness that occurred within five years, the **Workers' Compensation Division** of the Personnel Department is available to assist departments and individual supervisors with interpreting, clarifying, or accommodating an employee's work restrictions. For all others or if you are uncertain or do not have this information, contact MSD.
- The City Attorney's Office designed an Interactive Process Questionnaire, which offers departments a method for obtaining the appropriate work-related information while documenting the efforts of both parties to engage in the interactive process. Additionally, the City Attorney's Office provided correspondence templates to send to employees who fail to submit the questionnaire. Departments should use letterhead and add department contact information when formalizing these documents. Examples of these letters are **attached hereto as Exhibit 1 of this reference guide**.
- The Labor Relations Division prepared a dialogue checklist to assist departments with engaging in the interactive process. You may use this form at your discretion, **attached hereto as Exhibit 2 of this reference guide**.
- Department on Disability maintains helpful information on their website at <http://www.lacity.org/dod>.

The state and federal agencies that investigate disability discrimination also provide considerable guidance on reasonable accommodations through their countless publications. Knowing what state and federal investigators review and consider can help the employer fulfill their obligations and avoid unlawful practices.

STATE

- The California Department of Fair Employment and Housing (DFEH) has many great resources on their website, namely their Disability Case Analysis Manual. <http://www.dfeh.ca.gov/publications/caseAnalysisManual.aspx>

FEDERAL

- The Equal Employment Opportunity Commission (EEOC), the federal agency, provides useful guidance as well, but be aware of the differences between federal and state law. Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disability Act (ADA) may be found at: <http://www.eeoc.gov/policy/docs/accommodation.html>

CITY OF LOS ANGELES HIV AND AIDS DISCRIMINATION IN CITY EMPLOYMENT POLICY

INTRODUCTION

This City HIV and AIDS Discrimination in City Employment Policy (“this Policy”) supplements the City AIDS Policy adopted by the Los Angeles City Council October 16, 1990 (Council File No. 85-0869-S19) (“1990 City AIDS Policy”) to address the serious issue of HIV or AIDS discrimination in City employment. This Policy reaffirms the City’s commitment to take seriously complaints made regarding HIV or AIDS discrimination in City employment, to investigate those complaints promptly and thoroughly, to prohibit retaliation against anyone filing such a complaint or cooperating in its investigation, and to deter, punish and remedy HIV and AIDS discrimination in City employment. This Policy begins with a brief discussion of medical information regarding HIV and AIDS to provide a context for the City’s policies, followed by a reaffirmation of existing City AIDS policy. This Policy then discusses what HIV or AIDS discrimination is, the reasons why it is prohibited, and what this prohibition means for City applicants and employees. This Policy then discusses the City’s policy on testing, its policy on the handling of discrimination complaints, its policy prohibiting retaliation, and its commitment to confidentiality. This Policy concludes with information on where to file a complaint.

MEDICAL INFORMATION REGARDING HIV AND AIDS

AIDS (“Acquired Immune Deficiency Syndrome”) is the end stage of HIV (“Human Immunodeficiency Virus”) infection. A person can become infected with HIV (and, as a result, potentially later develop AIDS) only as a result of exposure to HIV-infected blood, semen, vaginal fluids or breast milk through an entryway such as a fresh break in the skin or a mucous membrane (like the eyes). Since HIV is not casually transmitted, there is no medical basis to discriminate against those living with HIV or AIDS because of any concern that they might pose a risk to others. For those such as police, fire, and healthcare workers who are likely to encounter blood in the workplace, the proper response is universal precautions, NOT discrimination against people living with HIV or AIDS. Universal precautions require (a) that *all* blood and other potentially infectious body fluids, at *all* times, from *all* sources be treated *as if* they are infectious, (b) the use of barriers such as latex and splatter shields when medically appropriate, and (c) proper cleaning or disposal of all contaminated items.

HIV AND AIDS DISCRIMINATION IN CITY EMPLOYMENT

The City enacted the nation’s first AIDS discrimination law (Los Angeles Municipal Code Sections 45.80 – 45.93) in 1985. HIV and AIDS discrimination in City employment also is prohibited by state and federal law. The policy of the City of Los

Angeles has been and continues to be the promotion and maintenance of a work environment free from HIV and AIDS discrimination.

It is the policy of the City of Los Angeles that no applicant or employee, (1) living with, (2) suspected of having, or (3) associated with HIV or AIDS shall be discriminated against in any City employment practice, including hiring, promotion, referral for employment, job training, assignment, discipline, discharge, compensation, employment status or any other term or condition of employment by any department or agency of the City. Being “associated with HIV or AIDS” refers to the applicant’s or employee’s association with (a) another person living with HIV or AIDS, such as a family member or person with whom the applicant or employee lives, is friends with, or assists in caring for, (b) an HIV or AIDS organization, and/or (c) charitable, memorial, educational or political activities relating to HIV or AIDS, such as lobbying or participating in or supporting an AIDS walk, bicycle ride, training or forum.

It also is the policy of the City of Los Angeles that no applicant or employee shall be classified or treated differently than any other applicant or employee because of HIV or AIDS, except as otherwise described in this Policy, the 1990 City AIDS Policy or as required by controlling law.

Furthermore, it is the policy of the City of Los Angeles not to consider an applicant's or employee's known or suspected HIV or AIDS status, or the applicant’s or employee’s association with HIV or AIDS, in any pre-employment, employment, or post-employment action or decision, including but not limited to background checks, interviews or investigations, testing, hiring, classifying, assigning, training, transferring, upgrading, promoting, compensating, disciplining and discharging except as required to provide a reasonable accommodation or as otherwise required by controlling law.

For example, the City’s policy means that all City employees, officials, and entities are strictly prohibited from engaging in any of the following types of acts:

- Conducting an employment interview or investigation in a manner that is different than for other applicants because of the applicant’s known or suspected HIV or AIDS status.

Example: An employment interview cannot be recorded as a result of an applicant disclosing that he has HIV, when it otherwise would not be recorded.

- Failing or refusing to hire an applicant or disciplining or terminating an employee because he or she has, or is suspected of having, HIV or AIDS.

Example: A City hiring authority cannot decline to hire men believed to be gay or bisexual based on a belief that this would reduce insurance costs for coverage of HIV-related medical expenses.

Example: Even if a department has to engage in layoffs, an employee's HIV or AIDS status cannot be any part of the reason that a particular employee is terminated.

- Making assignments, relocating or physically segregating the workplace of an individual based on the employee's HIV or AIDS status, either unilaterally or at the request of co-workers;

Example: An employee cannot be assigned to a desk or office away from other employees because the employee is suspected of having HIV or AIDS, even if this is done to minimize fears expressed by other employees. Such conduct would violate the law and City policy and deprive the employee of the benefits of interacting with coworkers on work-related projects and the learning opportunities such experiences provide, and could stigmatize the employee by singling her or him out.

Example: A manager, charged with selecting employees to recruit college students, cannot exclude an employee from consideration on the grounds that he would represent the City poorly if it was thought that he had HIV or AIDS. Such conduct would be an inappropriate job assignment because it was based solely upon the employee's HIV or AIDS status, which is prohibited. The rationale for prohibiting such differential job assignments is: (1) this decision violates state and federal laws and City policy, (2) the employee would lose an opportunity to gain experiences that might enhance his career, (3) the discrimination could leave him feeling stigmatized, and (4) the exclusion of such employees diminishes the diversity of the City's workforce, which is detrimental to the City, its employees and members of the public, and (5) such discrimination undermines public health's efforts to halt the spread of HIV because the fear of stigma and discrimination is a major reason people are reluctant to be tested for HIV.

- Failing to provide training to an employee who has, or is suspected of having, HIV or AIDS;

Example: An employee who has HIV or AIDS cannot be denied training for a position that involves interacting with children based on a view that the employee's HIV or AIDS status makes the employee inappropriate for the position.

- Discriminating against any individual with respect to compensation, terms, conditions or privileges of employment because of HIV or AIDS;

Example: A manager cannot require more or different documentation for sick leave usage from an employee who is rumored to have AIDS than is required of other employees with similar attendance records. This is unacceptable because the employee rumored to have HIV or AIDS is being treated differently than employees thought to have other medical conditions.

Example: A supervisor cannot state, in an employee's evaluation, that she has difficulty getting along with others in the workplace if the reason for the disharmony is that her co-workers know her HIV status and they discriminate against her and treat her in a stigmatizing way. Such an evaluation would be unfair because it would be penalizing the employee for the bigotry of others.

HARASSMENT

Harassment is a form of discrimination and is also prohibited by City policy.

HIV or AIDS harassment includes the creation of, or contribution to, a hostile, intimidating, threatening, offensive or abusive work environment because of an employee's or applicant's known or suspected HIV or AIDS status, or the employee or applicant being associated with HIV or AIDS. Harassment includes written, spoken, graphic or other expression or communication of derogatory terms, slurs, comments, gestures, ridicule, threats, rumors or jokes related to HIV or AIDS. Examples of what is prohibited include:

- Using a sexually derogatory nickname for a co-worker or making fun of the co-worker's known or suspected HIV or AIDS status;
- An employee telling a co-worker that, unless the co-worker dates him or her, a rumor will be spread that the co-worker has HIV or AIDS;
- Writing messages on documents that are displayed in the workplace that are derogatory toward those living with HIV or AIDS;
- Selectively sending an "AIDS prevention kit" or a condom to a gay employee, or an employee known to have or suspected of having HIV or AIDS. (By contrast, sending HIV information or prevention supplies to an employee who requests them, or to a group of employees not selected because of their known or suspected sexual orientation, or HIV or AIDS status, is permissible.); and

- Wearing or telling employees that they should wear latex gloves, if doing so is based not on universal precautions but on the possibility of contact with people who are gay or who are suspected of having HIV or AIDS.

THE REASONS FOR THIS POLICY

HIV and AIDS discrimination is prohibited for many reasons.

Discrimination based on HIV or AIDS is illegal. It interferes with the City's ability to serve the public. It wrongly causes people serious harm. And, it perpetuates the further spread of the epidemic by discouraging people from agreeing to be tested because of their fear of stigma and discrimination. Discrimination based on HIV or AIDS can:

- Keep qualified individuals from applying for jobs with the City;
- Prevent employees from reaching their full potential, making the workforce less productive and effective;
- Cause talented employees to seek employment elsewhere;
- Lead members of the public to feel alienated and to have less confidence that they will be treated fairly by City agencies and employees;
- Deprive young people of valuable role models;
- Harm the City's reputation and cause other government bodies, businesses, and individuals not to want to deal with the City;
- Cause serious physical and emotional pain and illness to those discriminated against, their families, and those who witness the discrimination; and
- Lead to lawsuits and workers' compensation and pension cases, resulting in financial liability for the City, as well as personal liability for all employees (including supervisors and managers) who participate in or are responsible for it.

TESTING

It is the policy of the City of Los Angeles that an HIV antibody test, or any other test intended to assess directly or indirectly a person's infection with HIV, may not be used, under any circumstances, to screen employees or applicants in hiring, job placement, or promotion. Unless specifically required by controlling law, employees shall not be forced to take such a test.

PREVENTION, HANDLING OF COMPLAINTS, AND REMEDIAL MEASURES

It is the policy of the City of Los Angeles that prompt and appropriate action **shall** be taken to deter, punish, and otherwise appropriately respond to HIV or AIDS discrimination or harassment. Thus, it is the responsibility of all appointing authorities and department managers to take all reasonably necessary steps, including appropriate disciplinary action, to remedy violations and prevent further violations of this policy, and to maintain a work environment free from discrimination and harassment.

- The City strongly encourages the reporting of violations of this policy, and requires cooperation in the investigation of complaints by all who have relevant information.
- Complaints regarding HIV or AIDS discrimination may not be discouraged or refused to be taken for any reason.
- Complaints regarding HIV or AIDS discrimination must be reported to management in a manner consistent with the confidentiality provisions of this policy.
- All reported allegations of HIV or AIDS discrimination shall be fully documented and completely and promptly investigated in accordance with the City's discrimination complaint procedures.
- HIV and AIDS discrimination complaints must be evaluated from the perspective of a reasonable person in the complainant's position.

If discrimination is found to have occurred:

- Department managers shall take all steps necessary to address the needs of, and provide counseling to, applicants or employees who have experienced such discrimination;
- Those who are determined to be responsible for such discrimination must be disciplined in a manner that not only will help remedy their acts of discrimination but also will prevent similar violations in the future;
- All steps necessary shall be taken to ensure that there will be no recurrence of the discrimination and that no retaliation shall be directed against the applicant or employee who was discriminated against; and
- If such discrimination nonetheless recurs in a Department, all managers shall take steps beyond those taken in response to the earlier instances of discrimination in order to ensure that such violations do not recur again.

Employees (including supervisors and managers) will be held accountable for any failure to follow the requirements set forth above.

RETALIATION

It is the policy of the City of Los Angeles to prohibit retaliation by the City or any department or employee against any applicant or employee who has made a claim of HIV or AIDS discrimination, or against any employee who has provided information in conjunction with or otherwise supported the investigation of any such complaint. Such retaliation may violate the law and create liability for those who engage in it as well as for the City. No City employee may intimidate, penalize or take any action against an individual for filing an HIV or AIDS discrimination complaint, or for supporting such a complaint as a witness or otherwise, or for opposing such discrimination.

Retaliation can take many forms. Some retaliatory acts are direct and open; others are more indirect. Although the following is not a comprehensive list, all managers, supervisors and employees are prohibited from taking any of the following actions against an applicant or employee because he or she has reported an HIV or AIDS discrimination complaint, or is cooperating in an investigation of one:

- Excluding the employee from work-related activities;
- Refusing to work with or provide normal assistance, cooperation or backup to the employee;
- "Warning" others that the employee is "a troublemaker;"
- Assigning the employee to a work site far from his or her home;
- Giving the employee less desirable shifts or work assignments;
- Evaluating an employee using different standards than those used to evaluate his or her peers;
- Initiating meritless complaints against the employee;
- Withholding raises, promotional opportunities, desirable assignments, or the ability to earn overtime pay;
- Vandalizing the employee's property; and
- Giving the employee "the silent treatment."

The City has zero tolerance for discrimination based on HIV or AIDS and will treat such discrimination as serious misconduct. Retaliation against an applicant or

employee for filing a complaint about such discrimination, for supporting such a complaint, or for opposing this form of discrimination is also considered serious misconduct. Employees who engage in any of these acts will be disciplined, up to and including termination. In addition, supervisors and managers have a responsibility to prevent these forms of misconduct and will be held accountable if they permit such misconduct to continue or to go unremedied.

CONFIDENTIALITY

It is the policy of the City of Los Angeles to provide the maximum confidentiality permitted by law and departmental disciplinary regulations regarding the filing and investigation of HIV or AIDS discrimination complaints. No one other than the complaining applicant or employee may discuss the following matters with anyone other than those investigating the complaint: (1) the fact that a complaint has been filed and that an investigation is underway, (2) the identities of the parties and witnesses involved, (3) what is being investigated and the results of the investigation. This duty to maintain confidentiality shall not diminish the duty to conduct a thorough investigation, and supervisors and managers shall ensure that the complaining applicant or employee is kept informed of the progress of the investigation. When the investigation is concluded, the applicant or employee shall to the extent permitted by law receive written notice of all remedial and disciplinary actions to be taken, and subsequent written notice confirming that such actions have occurred.

CITY RESOURCES FOR FILING A COMPLAINT

Applicants or employees who believe that their rights have been violated are encouraged to contact the EEO Coordinator or Disability Coordinator of his/her Department, the Disability Department's Office of the City AIDS Coordinator, or the Personnel Department's Office of Discrimination Complaint Resolution (ODCR). The ODCR may be contacted for information or to file a complaint. Investigations will be conducted in accordance with the Citywide Discrimination Complaint Procedure.

**Office of Discrimination Complaint Resolution
700 E. Temple Street, Room 380
Los Angeles, CA 90012
(213) 473-9123**

STATE AND FEDERAL RIGHTS

Applicants or employees who believe they have been discriminated against because of HIV or AIDS, or who believe they were retaliated against for making or supporting such

a claim have the right to file a complaint under both state and federal law in addition to filing a complaint with the City:

Under the California Fair Employment and Housing Act, an applicant or employee may file a complaint with the California Department of Fair Employment and Housing, and under the Americans with Disabilities Act, an applicant or employee may file a complaint with the U.S. Equal Employment Opportunities Commission:

| STATE | FEDERAL |
|--|---|
| Department of Fair Employment and Housing 1055 W. Seventh St., Suite 1400 Los Angeles, CA 90017 1-800-884-1684 TTY (800) 700-2320 | Equal Employment Opportunity Commission 255 East Temple Street, Fourth Floor Los Angeles, CA 90012 (213) 894-1000 or (213) 894-1111 |

Rev. 03/2010

**CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE**

Date: November 19, 1993
To: All City Employees
From: Personnel Department
Subject: MAINTAINING A DRUG-FREE WORKPLACE

On November 18, 1988, the Federal Government signed into law the Drug-Free Workplace Act of 1988. The Act requires direct contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace as a precondition of receiving a Federal contract or grant. In order to ensure that the City of Los Angeles is in compliance with the provisions of the Drug-Free Workplace Act, this memorandum serves to advise all City employees of the City's policy with respect to maintaining a drug-free workplace.

The City of Los Angeles acknowledges that the use of controlled substances in the workplace negatively affects employee health, work performance, and productivity. It is, therefore, the policy of the City to prohibit the manufacture, distribution, dispensing, possession, or use of any controlled substance in the workplace.

Citing a recent Federal government report, the Institute for a Drug-Free Workplace reports that those who illicitly use drugs are

- z two and one-half times more likely to have absences of eight days or more.
- z nearly four times more likely to injure themselves or another person in a workplace accident,
- z and five times more likely to be injured in an accident off the job which, in turn, affects attendance or performance on the job.

Drug abuse can result in a wide spectrum of extremely serious health problems, including disruption of normal heart rhythm, small lesions of the hear, high blood pressure, leaks in blood vessels in the brain, permanent memory loss, kidney failure, pulmonary damage, and, in the most serious instances, heart attack, stroke and death.

It is the responsibility of every City employee to adhere to the City's policies, to report to work unimpaired by drugs, and to seek assistance prior to drug abuse affecting work performance or endangering lives and property. Moreover, City policies provide standards and disciplinary guidelines which address the issue of drugs in the workplace.

In accordance with the Drug-Free Workplace Act, it is the responsibility of City employees working in City departments that receive Federal grant funds to notify their supervisor within five days of a judicial conviction for drug-related activities which occurred in the workplace. In turn, the City is required under this Act to notify the Federal agency of that conviction within ten days of receiving notice of the conviction. Within 30 days of the conviction, the City is required to take disciplinary action against the employee in accordance with the City's disciplinary guidelines or refer the employee to an approved drug abuse assistance or rehabilitation program.

City employees are encouraged to seek counseling and rehabilitation for drug abuse before such problems affect their performance. Assistance is available through the City's health plans and civilian Employee Assistance Program (EAP) and departmental and/or union-sponsored EAP's.

GUIDE TO EMPLOYMENT-RELATED INQUIRIES

JANUARY 2003

The Guidelines outlined in the following pages should be applied to all employment-related inquiries or processes, including, but not limited to, application forms, interview questionnaires and other selection processes used in connection with appointment, promotion, assignment and other employment related processes.

In order to be considered a lawful inquiry, an inquiry or request for information must be job-related. Therefore an inquiry shown as lawful below could be deemed unlawful if it is not job related and serves no job-related purpose.

Prepared by:
EEO/ED Programs Division
Personnel Department

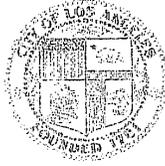
**LEGAL AND ILLEGAL PRE-EMPLOYMENT INQUIRIES GUIDELINE
NOVEMBER 2002**

| SUBJECT | LAWFUL PRE-EMPLOYMENT INQUIRIES | UNLAWFUL PRE-EMPLOYMENT INQUIRIES |
|----------------------------------|--|--|
| Address or Duration of Residence | Applicant's place of residence. How long applicant has been a resident of this state or city. | Inquiries that are not job-related or serve no job related purpose. |
| Age | Inquiries as to whether applicant is 18 years old or older, for the purpose of determining whether he/she is of legal age for employment. Inquiry as to whether applicant meets any designated age requirement specified for the classification he/she is applying for. | Requirement that an applicant produce proof in the form of a birth certificate or Baptismal record. Any inquiry which implies a preference for persons under 40 years of age. |
| Arrests | Whether applicant has ever been convicted of a crime. Whether applicant has any felony charges pending against him/her. | Inquiry regarding arrests which did not result in conviction. |
| Birthplace | None. | Birthplace of applicant. Birthplace of applicant's parents, spouse or other close relatives. |
| Citizenship | Whether applicant is prevented from lawfully becoming employed in this country because of visa or immigration status. | Whether an applicant is naturalized or a native born citizen; the date when the applicant acquired citizenship. Requirement that applicant produce his/her naturalization papers or first papers. Whether applicant's parents or spouse are naturalized or native born citizens of the United States; the date when such parents or spouse acquired citizenship. |

| SUBJECT | LAWFUL PRE-EMPLOYMENT INQUIRIES | UNLAWFUL PRE-EMPLOYMENT INQUIRIES |
|---------------------|--|---|
| Disability/Health | Whether applicant is able to perform the essential functions of the job for which the applicant is applying, with or without reasonable accommodation. | <p>Inquiries about the nature, severity or extent of a disability or whether the applicant requires reasonable accommodation.</p> <p>Whether applicant has applied for or received workers' compensation.</p> <p>Any inquiry that is not job related or consistent with business necessity.</p> |
| Education | Inquiry into the academic, vocational or professional education of an applicant and the public and private schools he/she has attended. | Inquiry as to how applicant acquired ability to read, write or speak a foreign language. |
| Experience | Inquiry into work experience. | Inquiries that are not job-related or serve no job related purpose. |
| Family | Whether applicant can meet specified work schedules or has activities, commitments or responsibilities that may prevent him/her from meeting work attendance requirements. | Specific inquiries concerning spouse, spouse's employment or salary, children, child care arrangements, or dependents. |
| Height and Weight | Being of a certain height or weight will not be considered to be a job requirement unless the employer can show that all or substantially all employees who fail to meet the requirement would be unable to perform the job in question with reasonable safety and efficiency. | Any inquiry which is not based on actual job requirements and not consistent with business necessity. |
| Marital Status | None. | Requirement that an applicant provide any information regarding marital status or children. |
| Medical History | None. | All inquiries into an applicant's medical history are prohibited. |
| Military Experience | Inquiries concerning education, training, or work experience in the armed forces of the United States. | <p>Type or condition of military discharge.</p> <p>Inquiry into applicant's military service not in the Armed Forces of the United States, in the State Militia or National Guard.</p> <p>Request for discharge papers.</p> |

| SUBJECT | LAWFUL PRE-EMPLOYMENT INQUIRIES | UNLAWFUL PRE-EMPLOYMENT INQUIRIES |
|-----------------|--|---|
| Name | <p>Whether applicant has worked for the City or another employer under a different name and, if so, what name.</p> <p>Name under which applicant is known to references if different from present name.</p> | <p>Original name of an applicant whose name has been changed by court order or otherwise.</p> <p>Inquiries about a name which would divulge marital status, lineage, ancestry, national origin or descent.</p> <p>Applicant's maiden name.</p> |
| National Origin | <p>Inquiry into languages applicant speaks, reads or writes fluently, when such inquiries are based on job requirements.</p> | <p>Inquiry into language commonly used by applicant.</p> <p>Inquiry into how applicant acquired ability to read, speak or write a foreign language.</p> <p>Inquiry into applicant's:</p> <ul style="list-style-type: none"> • Lineage • Ancestry • National origin • Descent • Parentage • Nationality <p>Nationality of applicant's parents or spouse.</p> |
| Organizations | <p>Inquiry into organizations to which an applicant has membership, excluding any organization the name or character of which indicates the race, color, creed, sex, marital status, religion, or national origin/ancestry of its members.</p> | <p>Requirement that applicant list all organizations, clubs, societies, and lodges to which he/she belongs.</p> |
| Photograph | <p>May be requested after hiring, for identification purposes.</p> | <p>Request that applicant submit a photograph, mandatory or optionally, at any time before hiring.</p> <p>Requirement for photograph after interview but before hiring.</p> |
| Pregnancy | <p>Inquiries as to duration of stay on job or anticipated absences which are made to males and females alike.</p> | <p>All questions relating to pregnancy, medical history concerning pregnancy, and related matters.</p> |
| Race | <p>None.</p> | <p>Any inquiry concerning race or color of skin, hair, eyes, etc.</p> |

| SUBJECT | LAWFUL PRE-EMPLOYMENT INQUIRIES | UNLAWFUL PRE-EMPLOYMENT INQUIRIES |
|--------------------|---|--|
| References | Identification of person(s) who referred applicant to position for which he/she is applying. Names of former/current supervisor(s). Names of personal references. | Requirement of the submission of a religious reference. |
| Relatives | Names of applicant's relatives already employed by the City. | All inquiries concerning names or addresses of any relatives. |
| Religion or Creed | None. | Inquiry into an applicant's religious denomination, religious affiliations, church, parish, pastor, or religious holidays observed. Inquiry as to whether applicant regularly attends a house of worship. |
| Sex | None. | Any inquiry concerning gender is prohibited. |
| Sexual Orientation | None. | All inquiries into an applicant's sexual orientation are prohibited. |



ANTONIO R. VILLARAIGOSA
MAYOR

EXECUTIVE DIRECTIVE NO. 12

Issue Date: June 6, 2008

To: All Departments, Commissions, Appointed Officers and Employees of City Government

Subject: Policy against Discrimination in Employment based on Sexual Orientation, Gender Identity or Gender Expression

The policy of the City of Los Angeles has been, and will continue to be, to promote and maintain an environment free from discrimination based on known or perceived sexual orientation,¹ gender identity or gender expression. Discrimination and harassment on these bases are illegal, as well as harmful to those in work environments affected by offensive, intolerant and hostile behaviors. Discrimination based on known or perceived sexual orientation, gender identity or gender expression inhibits optimal performance, demeans esteem, creates contention and diminishes productivity. The City is committed to ensuring merit-based human resource management decisions that value high performance, public service excellence and inclusion; and therefore reiterates its policy of equal employment opportunity and non-discrimination.

In 1979, the City of Los Angeles adopted Ordinance No. 152,458 (Municipal Code 49.70) which established and defined the City's intent to promote and maintain a working environment free from discrimination on the basis of sexual orientation, gender identity or gender expression. Specifically, the ordinance protects gay men, lesbians,

¹ Sexual orientation refers to whether a person is romantically or sexually attracted to other adults of a different sex (as is true for those who are heterosexual), the same sex (as is true for those who are lesbian or gay) or both (as is true for those who are bisexual). Discrimination is prohibited on the basis of one's actual or perceived sexual orientation, so that even if one's actual sexual orientation is misperceived by a wrongdoer, the wrongdoer can still be liable for sexual orientation discrimination.

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bisexuals, and heterosexuals, as well as those "having or projecting a self-image not associated with one's biological maleness or one's biological femaleness" from discrimination in employment, housing, business establishments, City facilities and services, and education. Additionally, effective January 1, 2000, sexual orientation was included in the State Fair Employment and Housing Act as one of the bases on which complaints of employment discrimination can be filed. Effective January 1, 2004, a prohibition on discrimination or harassment on the basis of gender identity was added to the same act.

Discrimination by any City employee in any City employment practice on the basis of an individual's sexual orientation, gender identity or gender expression (or perceived sexual orientation, gender identity or gender expression) is unacceptable and will not be tolerated. No City officer or employee shall consider an applicant's or employee's known or perceived sexual orientation, gender identity or gender expression in any pre-employment or employment action or decision, including but not limited to background checking, testing, hiring, assigning, training, transferring, upgrading, promoting, compensating, disciplining and discharging. Nor shall any City officer or employee classify or otherwise treat a City employee differently because of the employee's known or perceived sexual orientation, gender identity or gender expression. City policy shall prohibit, as a form of discrimination, the creation of or contribution to a hostile, intimidating, threatening, offensive or abusive work environment on the basis of an individual's known or perceived sexual orientation, gender identity or gender expression. This includes written, spoken, graphic or demonstrative derogatory terms, slurs, comments, gestures, ridicule, threats, rumors, or jokes with respect to an individual's known or perceived sexual orientation, gender identity or gender expression. The following are examples of discrimination that are prohibited:

1. Inquiring into a job applicant's relationship with a roommate;
2. Denying training to a gay, lesbian, bisexual, or transgender employee for a position that involves working with children based on the view that the employee's sexual orientation, gender identity or gender expression makes him or her inappropriate for the position; and
3. Imposing greater supervision or discipline on an employee based on the employee's known or perceived sexual orientation, gender identity or gender expression.

It is against City policy to discriminate against or harass an individual because of his or her known or perceived gender identity or gender expression. This policy prohibits discrimination based on a perception that the employee's or applicant's gender, identity, appearance, behavior, or expression is different from that traditionally associated with the person's "biological sex."

Further, it is City policy that prompt and appropriate action be taken to deter and punish discrimination and harassment based on an employee's known or perceived sexual orientation, gender identity or gender expression. Therefore, it shall be the responsibility of each Department manager to take all steps reasonably necessary to remedy violations, including providing counseling to employees who are found to have suffered harassment or discrimination, and to prevent future violations of this policy, including taking appropriate disciplinary action, to ensure and maintain a working environment free from discrimination and harassment based on known or perceived sexual orientation, gender identity or gender expression. If discrimination recurs in a Department, the Department manager may take steps that are additional to those that were taken in response to earlier instances of such violations and should do so if it appears necessary to ensure that there is no further recurrence of such violations.

Additionally, all reported allegations of discrimination based on known or perceived sexual orientation, gender identity or gender expression will promptly be fully documented and promptly, adequately and completely investigated. City policy prohibits retaliation by the City or any department or employee based on reporting a claim of discrimination on the basis of known or perceived sexual orientation, gender identity or gender expression or for supporting such a complaint (as a witness or otherwise) or for opposing such discrimination. Therefore, no City employee may intimidate, penalize, or take action against an individual for filing a complaint of discrimination on the basis of known or perceived sexual orientation, gender identity or gender expression nor engaging in any other protected activity. Nor may any employee take any action to discourage the making of a complaint of discrimination or harassment on the basis of known or perceived sexual orientation, gender identity or gender expression.

Employees who believe that this policy has been violated may and are strongly encouraged to report policy violation(s) by contacting either: the EEO Counselor of his/her Department; the City's Sexual Orientation Counselor in the Personnel Department; or, the Personnel Department's Office of Discrimination Complaint Resolution. For information or to file a complaint of discrimination on the basis of sexual orientation, the Personnel Department may be contacted at (213) 847-9800. Investigations will be conducted in accordance with the Sexual Orientation Discrimination Complaint Procedure and/or Citywide Discrimination Complaint Procedure. To the maximum extent allowed by law, but limited by its duty to conduct a prompt and thorough investigation and the practical consequences thereof, the City will provide confidentiality with respect to the filing and investigation of complaints of discrimination based upon known or perceived sexual orientation, gender identity or gender expression.

The Mayor is ultimately responsible for the management and administrative control of departmental activities and will continue to foster a positive and productive working environment for all employees and vigorously enforce all Federal, State and City equal employment opportunity and non-discrimination laws, directives and policies. The

Personnel Department shall continue to be the lead agency for equal employment opportunity policy and complaint resolution, specifically as it relates to monitoring policy compliance and investigating and resolving complaints of discrimination. The Personnel Department will also provide additional guidance to departments for compliance with this directive and other non-discrimination laws, policies and procedures and recommended training.

It shall continue to be the City's policy and practice that every good faith effort be made to eliminate any discriminatory practice. To this end, all heads of departments are directed to cooperate with the Personnel Department in complying with the responsibilities included herein.

Further, the Policy Against Employment Discrimination Based on Sexual Orientation, Gender Identity or Gender Expression, the Sexual Orientation Discrimination Complaint Procedure and the Citywide Discrimination Complaint Procedure (to be issued by the Personnel Department) must be disseminated to all employees and included in departmental personnel manuals and training materials. The Personnel Department may revise and update this policy on an as-needed basis.

Responsibilities of General Managers and Executive Directors Relating to the City's Policy on Employment Discrimination Based on Sexual Orientation, Gender Identity or Gender Expression

Each General Manager and Executive Director shall be responsible for carrying out the following actions within 90 days of the issuance of this Directive unless otherwise indicated:

1. Designate a departmental Equal Employment Opportunity Counselor to counsel employees with regard to discrimination based on known or perceived sexual orientation, gender identity or gender expression and to investigate, resolve and/or address complaints of discrimination based on known or perceived sexual orientation, gender identity or gender expression. Such designation and any subsequent change in designation shall be made in writing and a copy provided to the Personnel Department's Equal Employment Opportunity Section and to the Office of the Counsel to the Mayor. This designation and reporting responsibility shall be completed within 60 days of the issuance of this Directive.
2. Distribute this Executive Directive to all departmental employees and executive officers via email with a return receipt requested (these receipts shall be forwarded to the Personnel Department by each department), or by internal mail for those employees for whom email distribution is not available.

3. Review all of the department's non-discrimination and harassment policies to ensure that all policies are in accordance with current law and that sexual orientation (not "sexual preference"), gender identity and gender expression is explicitly included as one of the protected bases under relevant State law. Ensure that those policy documents that exclude sexual orientation, gender identity or gender expression as covered bases under relevant State law or refer to the Division of Labor are destroyed and replaced with language advising employees that the proper state agency with which to file such a complaint is the California Department of Fair Employment and Housing. Include this Executive Directive and all revised equal employment opportunity and non-discrimination policies and procedures in the appropriate department operating and training manuals. A report that the Department has complied with this responsibility, as well as copies of the department's revised policies are to be forwarded to the Personnel Department for review within the timeframe set forth above and to the Office of the Counsel to the Mayor after that review.
4. Adhere to the Personnel Department's Citywide Discrimination Complaint Procedure and the Sexual Orientation Discrimination Complaint Procedure as the departmental policy and distribute the departmental policy and complaint procedures to all employees in the same manner described in paragraph 2 above. Report to the Personnel Department, when, how and to whom this distribution was made in the same manner as is set forth in Paragraph 2 above.
5. Review departmental documents that discuss the City's benefit and leave policies and MOUs to ensure that they comport with the Los Angeles Administrative Code sections governing domestic partners, and revise and redistribute any that are not in compliance. Report completion of this responsibility to the Personnel Department and to the Office of the Counsel to the Mayor.
6. Post the City's equal employment opportunity poster and this Executive Directive on employment-related bulletin boards. Report completion of this responsibility to the Personnel Department and to the Office of the Counsel to the Mayor.
7. Adopt a written policy welcoming the attendance of employees' spouses, domestic partners and significant others to department-sponsored social events open to employees' spouses. Provide a copy of this policy to the Personnel Department and to the Office of the Counsel to the Mayor.

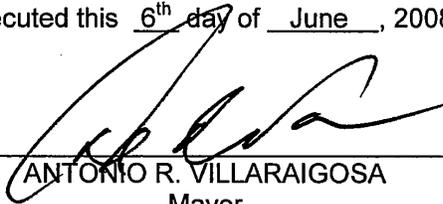
Responsibilities of the Head of the City's Personnel Department Relating to the City's Policy on Employment Discrimination Based on Sexual Orientation, Gender Identity or Gender Expression

The Head of the City's Personnel Department shall be responsible for carrying out the following actions within 180 days of the issuance of this Directive:

1. Ensure that all City departments have timely complied with all the responsibilities set forth above, including but not limited to all distribution and reporting procedures set forth above, and notify the Mayor's Office of any department which has failed to do so. To the extent that any department is not in compliance, the Mayor shall issue an order to comply forthwith.

The City's Personnel Department shall also re-distribute the Directive and the City's complaint procedures to each Department which shall in turn distribute the policy to all employees via email with a return receipt requested (these receipts shall be forwarded to the Personnel Department by each department), or by internal mail for those employees for whom email distribution is not available. This shall be done on an annual basis for at least three years after the initial distribution of these City policies.

Executed this 6th day of June, 2008



ANTONIO R. VILLARAIGOSA
Mayor

Supersedes Riordan Series Executive Directive No. 4 dated September 8, 1994, and No. 2001-35 dated February 8, 2001.

**CITY OF LOS ANGELES
SEXUAL ORIENTATION, GENDER IDENTITY, AND GENDER EXPRESSION
DISCRIMINATION COMPLAINT PROCEDURE**

The policy of the City of Los Angeles has been, and will continue to be, to promote and maintain an environment free from sexual orientation, gender identity, or gender expression discrimination. Discrimination is prohibited on the basis of one's actual or perceived sexual orientation, including heterosexual, lesbian, gay, or bisexual, transgender, or gender identity, or gender expression. Also prohibited is discrimination against an individual based on his or her association with a person of a particular sexual orientation, gender identity, or gender expression or because of his or her political activities or affiliations to further the rights of people of a particular sexual orientation, gender identity, or gender expression. Discrimination and harassment on the basis of sexual orientation, gender identity, or gender expression is illegal. Therefore, it is an unlawful employment practice for the City to fail or refuse to hire, to segregate, to fail to provide training, to discharge any individual, or to otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment on the basis (in whole or part) of such individual's known or presumed sexual orientation, gender identity, or gender expression.

For example, a supervisor should not state in an employee's evaluation that the employee has difficulty getting along with others in the workplace, if the reason that employee does not get along with co-workers is their discriminatory attitudes or ostracism based upon the evaluated employee's sexual orientation. Such an evaluation could be considered an evaluation of an employee's work performance based upon the employee's actual or perceived sexual orientation, which is impermissible. The rationale for prohibiting such an evaluation is that it would be unfair to penalize an employee for the bigotry of others.

Similarly, a manager selecting employees to conduct outreach to high school students may not exclude a lesbian employee from consideration on the grounds that the manager feels that, because she is a lesbian, she would poorly represent the City. Again, such conduct could be considered making a job assignment based, in part, upon the employee's sexual orientation, which is prohibited. The rationale for prohibiting such differential job assignments is that the lesbian employee loses an opportunity to gain experiences that could enhance her career. Additionally, the lesbian employee may feel stigmatized.

The following are additional examples of conduct prohibited by City policy. These examples are mere illustrations and are in no way intended to limit the basis for filing a complaint:

1. Inquiring into a job applicant's relationship with a roommate;

2. Refusing to hire (or impeding the hiring of) an applicant based on the applicant's sexual orientation, gender identity, or gender expression or perceived sexual orientation, gender identity, or gender expression;
3. Denying training to a gay, lesbian, bisexual, or transgender employee for a position that involves working with children based on the view that the employee's sexual orientation, gender identity, or gender expression makes him/her inappropriate for the position, and;
4. Imposing greater supervision or discipline on an employee based on the employee's sexual orientation, gender identity, or gender expression or perceived sexual orientation, gender identity, or gender expression.

Harassment in the workplace of a city employee on the basis of actual or perceived sexual orientation, gender identity, or gender expression, and/or the association with a person or persons of a particular sexual orientation, gender identity, or gender expression, and/or political activity or affiliations to further the rights of persons of a particular sexual orientation, gender identity, or gender expression is also prohibited. Sexual orientation, gender identity, or gender expression harassment includes the creation of or contribution to a hostile, intimidating, threatening, offensive, or abusive environment for lesbian, gay, bisexual, transgender, or heterosexual City employees through written, spoken, graphic or demonstrative derogatory terms, slurs, comments, gestures, ridicule, threats, rumors, or jokes regarding sexual orientation, gender identity, or gender expression.

Further, City policy prohibits retaliation by the City, any department, or employee based on making a claim of discrimination or harassment on the basis of sexual orientation, gender identity, or gender expression. This means that no City employee may intimidate, penalize, or take action against an individual for filing a complaint of discrimination based on sexual orientation, gender identity, or gender expression or for supporting such a complaint (as a witness or otherwise) or for opposing such discrimination.

The policy of the City requires that prompt and appropriate action be taken to deter and punish sexual orientation, gender identity, or gender expression discrimination. Therefore, persons believing that they are victims of sexual orientation, gender identity, or gender expression discrimination are strongly encouraged to report any and all incidents.

I. FILING A COMPLAINT

An employee making a sexual orientation, gender identity, or gender expression discrimination complaint can choose to file the complaint with the employee's department EEO Counselor, the City's Sexual Orientation Counselor, and/or with

an external non-discrimination enforcement agency. Complaints filed about pre-employment, employment actions, or actions directly related to Personnel Department functions should be directed to the City's Sexual Orientation Counselor, and/or to an external, non-discrimination enforcement agency.

Complaints filed internal to the City must be filed within one (1) year from the date of the last alleged act of discrimination. Otherwise, the complaint may be considered untimely.

Although complaints must be prepared and filed on an employee's own time, department managers and supervisors should allow the employee filing the complaint, and all other employees who are interviewed as part of the investigation, to be interviewed while on city time when requested by staff conducting the discrimination investigation. A person filing a sexual orientation, gender identity, or gender expression discrimination complaint shall have the right of representation by any designated person or organization.

II. WHERE TO FILE

City employees and employment candidates have the following options for filing a sexual orientation, gender identity, or gender expression discrimination complaint. Complaints may be filed with:

1. The Personnel Section of your City Department

A person wishing to file a complaint with a City department should obtain the name, address and telephone number of the department's Sexual Orientation or Equal Employment Opportunity (EEO) Counselor. Contact the Counselor to discuss the complaint and if necessary, arrange to meet with the Counselor to file a formal complaint. If information for the department Counselor cannot be obtained, contact the Personnel Department Equal Employment Opportunity Section at (213) 473-9100.

2. The City's Sexual Orientation Counselor

A person wishing to file a complaint directly with the City's Sexual Orientation Counselor about pre-employment or employment actions should contact the Counselor at the address or phone number below. Also complaints about actions directly related to Personnel Department functions should be directed to the City's Sexual Orientation Counselor.

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|---|
| <p style="text-align: center;">Los Angeles City Personnel Department Office of Discrimination Complaint Resolution 700 E. Temple Street, Room 380, Los Angeles, CA 90012 Phone: (213) 473-9123 Fax: (213) 473-0138</p> |
|---|

Information concerning the City's non-discrimination policies, complaint procedures and filing options, as well as filing deadlines will be provided by the City's Sexual Orientation Counselor upon request.

3. The City's Civil Service Commission

A person wishing to file a complaint through the City's centralized discrimination resolution and investigation entity may write or contact:

**Los Angeles City Personnel Department
Office of Discrimination Complaint Resolution
700 E. Temple Street, Room 380
Los Angeles, CA 90012
(213) 473-9123 Fax: (213)473-0138**

Information concerning the City's non-discrimination policies, complaint procedures and filing options, as well as filing deadlines will be provided by the Civil Service Commission upon request.

4. A Governmental Non-Discrimination Enforcement Agency

Sexual orientation discrimination complaints can also be filed with the State compliance agency. The State compliance agency may be contacted at the following address:

**Department of Fair Employment and Housing
1055 W. Seventh St., Suite 1400
Los Angeles, CA 90017
1-800-884-1684
TTY (800) 700-2320**

Persons considering filing complaints of discrimination with DFEH should verify the filing criteria, including deadlines for filing. The period of time the City investigation takes will not extend the agency filing period. An individual who files a complaint with the DFEH shall not lose any rights he or she has to pursue redress under the City's internal complaint procedures. A DFEH filing shall not terminate or have any other negative impact on the City's investigation or processing of a parallel complaint filed with any City entity. Individuals who file complaints with the DFEH are encouraged to also file with the City, so the City has the opportunity to investigate the complaint, correct the situation, and offer an acceptable remedy to the complainant. Even where an internal complaint is not filed, the City shall conduct its own investigation upon learning of a complaint to an outside agency in an effort to prevent further occurrences or complaints.

III. DISCRIMINATION COMPLAINTS AGAINST ELECTED OFFICIALS

There is a special procedure for filing a complaint of discrimination against elected officials outlined in the Los Angeles Administrative Code Sections 4.405 through 4.411. Contact the Personnel Department Equal Employment Opportunity Section at (213) 473-9100 should you need detailed information on this procedure.

The investigation of such a complaint shall not be conducted by the accused official nor by such official's subordinates nor by the departments or personnel under such official's supervision or management.

Nothing in this procedure shall restrict a person's right to file a complaint with any applicable State agency responsible for the enforcement of anti-discrimination legislation.

IV. EMPLOYEE RIGHTS AND RESPONSIBILITIES

Every employee is entitled to work in an environment free from sexual orientation, gender identity, or gender expression discrimination. An employee who perceives comments, gestures, or actions which offend against an individual's sexual orientation, gender identity, or gender expression made by another employee or supervisor should immediately and clearly communicate to that person that such behavior is offensive.

Any employee who believes he or she has been discriminated against due to his/her sexual orientation, gender identity, or gender expression should take the following steps:

1. The employee should **immediately** report the sexual orientation, gender identity, or gender expression discrimination complaint to her or his supervisor, or to the department's EEO Counselor, or to the City's Sexual Orientation Counselor in the Personnel Department's Office of Discrimination Complaint Resolution. All employees are assured that they may make such reports without fear of retaliation by the City, department management, or their immediate supervisor.
2. The employee has the right to a confidential conference with the person to whom the sexual orientation, gender identity, or gender expression complaint is made. Additionally, the person filing the complaint has the right of representation by any designated person or organization, e.g., a union representative, an attorney or another individual of the complainant's choice.

3. If an employee chooses to initiate a complaint of sexual orientation, gender identity, or gender expression discrimination, the employee's department EEO Counselor or the City's Sexual Orientation Counselor should make preliminary efforts to resolve the complaint, and if not resolved, will conduct a complete investigation. All efforts to resolve the complaint will be fully documented.
4. All investigations, whether conducted by the department EEO Counselor or the City's Sexual Orientation Counselor, will be handled with discretion, sensitivity, and due concern for the dignity of those involved, and will be conducted consistent with the procedures indicated in this document. As in any discrimination complaint investigation, information will be kept confidential to the maximum extent allowed by law.
5. All investigations will be thorough. All persons named as potential witnesses by the employee will be contacted as required during the course of the investigation. Anyone who is alleged to have committed acts of sexual orientation, gender identity, or gender expression discrimination will be contacted during the investigation and allowed to make a statement. Any person accused or alleged to have committed acts of discrimination or harassment has the right to representation by a union representative or attorney.
6. Any employee who witnesses an incident of sexual orientation, gender identity, or gender expression discrimination shall cooperate in any investigation. All employees are assured that they may cooperate in such an investigation without fear of retaliation or reprisal by the City, department management, their immediate supervisor or any other City employee. Any employee who fails or refuses to cooperate or to be truthful shall be subject to disciplinary action, up to and including termination from City employment.
7. Employees may expect a timely resolution of all complaints.

V. RESPONSIBILITIES OF THE DEPARTMENT EEO COUNSELOR

Each City department manager must designate an EEO Counselor and ensure that all department employees are made aware of the name and phone number of the designated Counselor. An employee who believes he or she has been discriminated against based on sexual orientation, gender identity, or gender expression may choose to file a complaint with the department EEO Counselor. All department EEO Counselors who may receive a complaint of discrimination or harassment based on sexual orientation, gender identity, or gender expression shall receive specialized

training in the law and on the City's policies and procedures governing sexual orientation, gender identity, or gender expression discrimination and harassment and the handling of discrimination and harassment complaints; personnel complaint documentation; investigation and reporting; interviewing skills and techniques; and federal, state and City resources available to assist those concerned about such discrimination or harassment.

Handling a complaint of sexual orientation, gender identity, or gender expression discrimination or harassment according to the responsibilities outlined below shall be considered a primary duty assignment. The EEO Counselor shall not be constrained in conducting a proper investigation by any City employee, manager, or supervisor. Each department EEO Counselor has the following responsibilities with regard to a sexual orientation, gender identity, or gender expression complaints:

1. The Counselor shall initiate an inquiry into the alleged sexual orientation, gender identity, or gender expression harassment or discrimination. The Department EEO Counselor may not refuse to accept or investigate a complaint that alleges sexual orientation, gender identity, or gender expression discrimination or harassment.
2. The Counselor shall meet with the complaining employee at the employee's earliest convenience. The Counselor shall fully inform the employee about the City's sexual orientation, gender identity, or gender expression policies and discrimination complaint procedures and shall answer questions that the employee may have regarding the City's policies and procedures. The Counselor shall provide the complainant with relevant referral and resource information, including a general statement that there are time limitations for filing a complaint with an outside agency.
3. The Counselor shall listen to the employee's complaint and discuss the complaint with discretion, sensitivity, and due concern for the dignity of those involved. The Counselor shall ask the complaining employee what remedy he or she seeks, including whether the complainant seeks a temporary or permanent transfer for the alleged offender or for him or herself.
4. The Counselor shall fully record and document the complaint, including the complainant's proposed resolution to the alleged violation(s).
5. The Counselor shall notify the City's Sexual Orientation Counselor of the complaint.

6. The Counselor shall conduct a complete and timely investigation into the complaint, including conducting interviews with all non-cumulative witnesses and others who may be involved. The investigation will be conducted in a manner consistent with the procedures included in this section.
7. The Counselor shall immediately notify the Citywide Sexual Orientation Counselor in writing if any City Department, manager, supervisor, or employee fails to cooperate fully during the investigation.
8. The Counselor will communicate to the complainant in writing the status of the investigation at least once every two months.
9. Upon completion of the investigation, the Counselor shall prepare a report of the results of the investigation. The Counselor shall inform complainants if disciplinary action is taken against the accused employee, although not the specific nature of the action. No information provided to the complaining employee shall compromise any confidential or privacy protection afforded to the accused employee under the law or City policy. The Sexual Orientation Counselor should contact the Office of the City Attorney if there are questions in this area.
10. If the employee is not satisfied with the way the sexual orientation, gender identity, or gender expression discrimination complaint has been resolved, the Counselor shall fully inform the employee of his or her additional rights under the law. These rights include appealing, filing a complaint under the Citywide Discrimination Complaint Procedure, filing a complaint with the Civil Service Commission, and filing a complaint with the State Department of Fair Employment and Housing (DFEH) and/or in court.

VII. RESPONSIBILITIES OF THE CITY'S SEXUAL ORIENTATION COUNSELOR

An employee or employment applicant who believes he or she has been discriminated against based on sexual orientation, gender identity, or gender expression may choose to file a complaint with the City's Sexual Orientation Counselor. The City's Sexual Orientation Counselor has all of the duties and responsibilities of a department EEO Counselor, as well as the following additional responsibilities:

1. Issue Personnel Discrimination Complaint Report numbers.

2. Accept, investigate, and complete any sexual orientation, gender identity, or gender expression discrimination or harassment complaint that is referred from a department EEO Counselor.
3. Maintain custody of completed sexual orientation, gender identity, or gender expression discrimination and harassment complaint investigations.
4. Maintain a copy of each completed sexual orientation, gender identity, or gender expression discrimination or harassment complaint investigation report in secure storage in City filing facilities for no less than five years.
5. Advise EEO Counselors on sexual orientation, gender identity, or gender expression complaint intake and investigation.
6. Ensure that the posting containing the name and phone number of the City Sexual Orientation Counselor is maintained, accurate, and conspicuous in all City Department offices, and promptly compile a written report for the Personnel Department General Manager and the City Board of Civil Service Commissioners of any locations where postings have been removed.

Prior to any employee assuming any of the above duties as the City Sexual Orientation Counselor, the employee must have received training in the law and the City's policies and procedures governing discrimination and harassment and the handling of discrimination and harassment complaints; personnel complaint documentation, investigation, and reporting; interviewing skills and techniques; and federal, California, and City of Los Angeles resources available to assist him or her in competently performing all of the duties required to handle issues related to sexual orientation, gender identity, or gender expression discrimination and harassment on a Citywide basis, including training and providing guidance to department EEO Counselors. Prior to or shortly after assuming the above duties, the Sexual Orientation Counselor shall seek out and obtain specialized training in the law governing sexual orientation, gender identity, or gender expression discrimination and harassment and handling complaints thereof.

The City also has a Sexual Orientation Coordinator; this position is situated in the City's Personnel Department. The Sexual Orientation Coordinator's areas of responsibility include training and policy and procedure development for the City on issues related to sexual orientation, gender identity, or gender expression. The Sexual Orientation Coordinator, in cooperation with the Sexual Orientation Counselor, shall provide training to department EEO Counselors on conducting sexual orientation, gender identity, or gender expression complaint investigations. As described above, the responsibilities of the City's Sexual

Orientation Counselor relate to the handling of formal complaints for sexual orientation, gender identity, or gender expression discrimination.

VII. RESPONSIBILITIES OF CITY MANAGEMENT

It is the responsibility of City Management to take necessary steps to prevent sexual orientation, gender identity, or gender expression discrimination, and, when a complaint is made, has been investigated, and discrimination is found to exist, to remedy any sexual orientation, gender identity, or gender expression discrimination that is discovered.

It is the responsibility of the Personnel Department to ensure that the operating departments are in compliance with the Sexual Orientation, Gender Identity, or Gender Expression Discrimination Complaint Procedures, and to monitor said compliance on an ongoing basis.

In addition, all operating departments are to comply with the Mayor's Directive, 12 issued on June 6, 2008 and to place said directive in Operating Department manuals, policies and training materials.

City Department EEO counselors should be reminded that all sexual orientation, gender identity, or gender expression discrimination complaints filed within their operating departments must be handled in a manner consistent with the procedures set forth in this Sexual Orientation, Gender Identity, or Gender Expression Discrimination Complaint Procedure.

All Operating Departments are directed to evaluate, and if necessary, revise and redistribute their internal sexual orientation, gender identity, or gender expression discrimination complaint procedures to eliminate any provisions that permit the operating department to close the complaint without investigation if the complainant files with an outside agency or other City process, or which allow the operating department to terminate an investigation regardless of the evidence, for reasons such as failure to cooperate with the investigation or refusing to accept the offered remedy. To the extent possible, without the cooperation of the complaining party, the investigation should continue and be completed so that any discovery of improper conduct or behavior can be dealt with and remedied.

All operating departments are to ensure that sexual orientation, gender identity, or gender expression harassment is expressly included in departmental sexual harassment and sexual orientation, gender identity, or gender expression non-discrimination policies. However, those policies should expressly state and explain that sexual orientation, gender identity, or gender expression harassment is *not* the same as sexual harassment. Employees should be instructed that, while sexual harassment is based upon a person's gender, sexual orientation, gender identity, or gender expression harassment is based upon a person's sexual orientation, gender identity, or gender expression or on another's

perception of that person's sexual orientation, gender identity, or gender expression. City departments are to review and update their policies in this regard.

VIII. THE CITY'S DISCRIMINATION COMPLAINT PROCEDURE

The City's Discrimination Complaint Procedure gives City employees and candidates for City employment the right to file a written complaint with the City's Civil Service Commission. The complaint must deal with a City action, procedure, or practice in hiring or employment which the employee or prospective employee believes to be discriminatory. Complaints alleging sexual orientation, gender identity, or gender expression discrimination are covered by the Citywide Discrimination Complaint Procedure.

Complaints made under the City's Discrimination Complaint Procedure must be filed within one year of the alleged act of discrimination.

IX. OTHER DISCRIMINATION COMPLAINT OPTIONS

Employees who believe that they have been discriminated against based on sexual orientation, gender identity, or gender expression also have the right to file a discrimination complaint with the California Department of Fair Employment and Housing (DFEH). See Section II of this procedure for contact information. An employee/employment candidate should check directly with the DFEH regarding filing deadlines.

X. DISTRIBUTION OF COMPLAINT PROCEDURE

This Sexual Orientation, Gender Identity, or Gender Expression Discrimination Complaint Procedure shall be distributed to all Departments, which shall then distribute it to all employees via internal mail or e-mail with a return receipt requested (these receipts shall be forwarded to the Personnel Department by each department), or by internal mail for those employees for whom email distribution is not available. It will also be provided to all applicants for City employment. In addition, all new employees will receive the Complaint Procedure as part of the orientation process. Moreover, this policy should be incorporated into and added to each operating department's personnel rules, work rules, or manuals, or otherwise distributed in a manner that ensures all employees receive it. In addition, the Sexual Orientation, Gender Identity, or Gender Expression Discrimination Complaint Procedure should be posted on all department employment-related bulletin boards. Further, all operating departments should post the City's equal employment opportunity poster on each department's employment-related bulletin board.

In adapting this procedure, all operating departments should eliminate any of its prior procedure that required the complaining party to file separate documents

with a series of different City officials in order for the complaint to warrant continued review, or that otherwise deviate from this policy. All internal procedures should be reviewed and approved by the Personnel Department.

Revised 09/2013

City of Los Angeles Personnel Department

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CITY OF LOS ANGELES
PERSONNEL DEPARTMENT
 Partnering to Meet the Challenge

Disciplinary Guidelines for Discrimination Offenses

Taken from the **POLICIES OF THE PERSONNEL DEPARTMENT**
 (<http://per.lacity.org/pdf/Policy.pdf>)

Discrimination/Harassment

City employees are expected to comply with Federal and State laws and regulations and City policies including applicable mayoral directives ensuring equal employment opportunity and a discrimination and harassment free workplace. City employees are expected to demonstrate sensitivity to and respect for individual and personal differences when working with other employees and the public. Actions that create a hostile, offensive, threatening, or intimidating work environment will not be tolerated.

SUGGESTED ACTIONS

| OFFENSE | FIRST OFFENSE | SECOND OFFENSE | THIRD OFFENSE |
|---|---------------------------|----------------|---------------|
| 1. Failure to comply with City policies on equal employment opportunity, including but not limited to, the recruitment, selection, promotion, training or disciplining of employees. | Oral warning to discharge | Discharge | |
| 2. Demonstrating insensitivity to others by making derogatory comments, epithets, jokes, teasing, remarks, or slurs, or making suggestive gestures or displaying images or written material that derogatorily depict or demean people. | 5 day suspension | Discharge | |
| 3. Retaliating against an employee for filing a discrimination complaint, for participating in a discrimination complaint investigation, or for opposing discriminatory actions | 5 day suspension | Discharge | |
| 4. Supervisory Standard: 5 day suspension to Discharge Failure to maintain a discharge harassment free workplace for subordinates; failure to foster a discrimination free workplace by one's own individual actions or failure to act; or allowing subordinates to retaliate against an employee for filing a discrimination complaint, for participating in a discrimination complaint investigation, or for opposing discriminatory actions. | 5 day suspension | Discharge | |

Sexual Harassment

City policy and Federal and State law prohibit sexual harassment in the workplace. Supervisors are required to ensure and maintain a working environment free of sexual harassment, intimidation, and coercion. City employees are expected to conduct themselves in a manner that fosters a workplace environment which is free from conduct that is hostile, offensive, threatening, or intimidating, or that interferes with an individual's work performance. Some of these violations, if proved, may also constitute crimes under local and/or state law. Departments should take appropriate measures to report such actions and to advise their employees about reporting such actions that have occurred on City property or involving City employees.

SUGGESTED ACTIONS

| OFFENSE | FIRST OFFENSE | SECOND OFFENSE | THIRD OFFENSE |
|--|--------------------|----------------|---------------|
| 1. Sexual Favors Implicit or explicit coercive pressure for sexual favors. | 20 days suspension | Discharge | |

| | | | |
|---|-------------------------------|------------------------------------|-----------|
| | | to discharge | |
| 2. Physical | | Discharge | |
| a. Any physical conduct or act of a sexual nature, involving the use of force or the threat of force. | | | |
| b. Unwelcome physical contact in sexual areas, including but not limited to breasts, buttocks, or genitalia. | 20 days suspension | Discharge | |
| c. Unwelcome touching, rubbing, or any type of physical contact and/or conduct toward other employees, which is sexually suggestive. | 1 day suspension to discharge | Discharge | |
| 3. Verbal | | Oral warning to 20 days suspension | Discharge |
| Demonstrating insensitivity to others by making derogatory comments, epithets, jokes, teasing, remarks, slurs, or questions of a sexual nature | | | |
| 4. Visual | | Oral warning to 20 day suspension | Discharge |
| Demonstrating insensitivity to others through non-verbal actions, such as making sexually suggestive gestures; displaying sexually explicit objects, pictures, cartoons, or posters; leering; unwanted letters, gifts, and/or materials of a sexual nature | | | |
| 5. Hostile Work Environment | | 10 days suspension to discharge | Discharge |
| Repeated, unwelcome, unwanted to discharge actions as described in #1, #2, #3, and/or #4 which create or could lead to a hostile, offensive, threatening, or intimidating work | | | |
| 6. Retaliation | | 10 days suspension to discharge | Discharge |
| Retaliating against an employee for filing a sexual harassment complaint, for participating in a sexual harassment complaint investigation, or for opposing discriminatory actions | | | |
| 7. Supervisory Standard | | 20 day suspension to discharge | Discharge |
| Failure to take appropriate action to correct and eliminate sexual harassment from the workplace; failure to foster a discrimination free workplace by personal actions or conduct; or allowing subordinates to retaliate against an employee for filing a sexual harassment complaint, for participating in a sexual harassment complaint investigation, or for opposing discriminatory actions. | | | |

DISCRIMINATION/HARASSMENT

Standard: City employees are expected to comply with Federal and State laws and regulations and City policies including applicable mayoral directives ensuring equal employment opportunity and a discrimination and harassment free workplace. City employees are expected to demonstrate sensitivity to and respect for individual and personal differences when working with other employees and the public. Actions that create a hostile, offensive, threatening, or intimidating work environment will not be tolerated.

~~SUGGESTED ACTIONS~~

| <u>OFFENSE</u> | <u>FIRST OFFENSE</u> | <u>SECOND OFFENSE</u> | <u>THIRD OFFENSE</u> |
|--|-------------------------------|-----------------------|----------------------|
| 1. Failure to comply with City policies on equal employment opportunity, including but not limited to, the recruitment, selection, promotion, training or disciplining of employees. | Oral warning to discharge | Discharge | |
| 2. Demonstrating insensitivity to others by making derogatory comments, epithets, jokes, teasing, remarks, or slurs, or making suggestive gestures or displaying images or written material that derogatorily depict or demean people. | 5 day suspension to discharge | Discharge | |
| 3. Retaliating against an employee for filing a discrimination complaint, for participating in a discrimination complaint investigation, or for opposing discriminatory actions. | 5 day suspension to discharge | Discharge | |

DISCRIMINATION/HARASSMENT (Continued)

Standard: City employees are expected to comply with Federal and State laws and regulations and City policies including applicable mayoral directives ensuring equal employment opportunity and a discrimination and harassment free workplace. City employees are expected to demonstrate sensitivity to and respect for individual and personal differences when working with other employees and the public. Actions that create a hostile, offensive, threatening, or intimidating work environment will not be tolerated.

SUGGESTED ACTIONS

| <u>OFFENSE</u> | <u>FIRST OFFENSE</u> | <u>SECOND OFFENSE</u> | <u>THIRD OFFENSE</u> |
|--|-------------------------------|------------------------------|-----------------------------|
| 4. Supervisory Standard: Failure to maintain a harassment free workplace for subordinates; failure to foster a discrimination free workplace by one's own individual actions or failure to act; or allowing subordinates to retaliate against an employee for filing a discrimination complaint, for participating in a discrimination complaint investigation, or for opposing discriminatory actions. | 5 day suspension to discharge | Discharge | |

SEXUAL HARASSMENT

Standard: City policy and Federal and State law prohibit sexual harassment in the workplace. Supervisors are required to ensure and maintain a working environment free of sexual harassment, intimidation, and coercion. City employees are expected to conduct themselves in a manner that fosters a workplace environment which is free from conduct that is hostile, offensive, threatening, or intimidating, or that interferes with an individual's work performance. Some of these violations, if proved, may also constitute crimes under local and/or state law. Departments should take appropriate measures to report such actions and to advise their employees about reporting such actions that have occurred on City property or involving City employees.

SUGGESTED ACTIONS

| <u>OFFENSE</u> | <u>FIRST OFFENSE</u> | <u>SECOND OFFENSE</u> | <u>THIRD OFFENSE</u> |
|--|--------------------------------|------------------------------|-----------------------------|
| 1. Sexual Favors: Implicit or explicit coercive pressure for sexual favors | 20 day suspension to discharge | Discharge | |
| 2. Physical: | | | |
| a. Any physical conduct or act of a sexual nature, involving the use of force or the threat of force. | Discharge | | |
| b. Unwelcome physical contact in sexual areas, including but not limited to breasts, buttocks, or genitalia. | 20 day suspension to discharge | Discharge | |
| c. Unwelcome touching, rubbing, or any type of physical contact and/or conduct toward other employees, which is sexually suggestive. | 1 day suspension to discharge | Discharge | |

SEXUAL HARASSMENT (Continued)

Standard: City policy and Federal and State law prohibit sexual harassment in the workplace. Supervisors are required to ensure and maintain a working environment free of sexual harassment, intimidation, and coercion. City employees are expected to conduct themselves in a manner that fosters a workplace environment which is free from conduct that is hostile, offensive, threatening, or intimidating, or that interferes with an individual's work performance. Some of these violations, if proved, may also constitute crimes under local and/or state law. Departments should take appropriate measures to report such actions and to advise their employees about reporting such actions that have occurred on City property or involving City employees.

SUGGESTED ACTIONS

| <u>OFFENSE</u> | <u>FIRST OFFENSE</u> | <u>SECOND OFFENSE</u> | <u>THIRD OFFENSE</u> |
|--|--------------------------------------|------------------------------|-----------------------------|
| 3. Verbal: Demonstrating insensitivity to others by making derogatory comments, epithets, jokes, teasing, remarks, slurs, or questions of a sexual nature | Oral warning to 20 day suspension | Discharge | |
| 4. Visual: Demonstrating insensitivity to others through non-verbal actions, such as making sexually suggestive gestures; displaying sexually explicit objects, pictures, cartoons, or posters; leering; unwanted letters, gifts, and/or materials of a sexual nature | Oral warning to 20 day suspension | Discharge | |

SEXUAL HARASSMENT (Continued)

Standard: City policy and Federal and State law prohibit sexual harassment in the workplace. Supervisors are required to ensure and maintain a working environment free of sexual harassment, intimidation, and coercion. City employees are expected to conduct themselves in a manner that fosters a workplace environment which is free from conduct that is hostile, offensive, threatening, or intimidating, or that interferes with an individual's work performance. Some of these violations, if proved, may also constitute crimes under local and/or state law. Departments should take appropriate measures to report such actions and to advise their employees about reporting such actions that have occurred on City property or involving City employees.

SUGGESTED ACTIONS

| <u>OFFENSE</u> | <u>FIRST OFFENSE</u> | <u>SECOND OFFENSE</u> | <u>THIRD OFFENSE</u> |
|---|--------------------------------|------------------------------|-----------------------------|
| 5. Hostile Work Environment: Repeated, unwelcome, unwanted actions as described in #1, #2, #3, and/or #4 which create or could lead to a hostile, offensive, threatening, or intimidating work environment | 10 day suspension to discharge | Discharge | |
| 6. Retaliation: Retaliating against an employee for filing a sexual harassment complaint, for participating in a sexual harassment complaint investigation, or for opposing discriminatory actions | 10 day suspension to discharge | Discharge | |

SEXUAL HARASSMENT (Continued)

Standard: City policy and Federal and State law prohibit sexual harassment in the workplace. Supervisors are required to ensure and maintain a working environment free of sexual harassment, intimidation, and coercion. City employees are expected to conduct themselves in a manner that fosters a workplace environment which is free from conduct that is hostile, offensive, threatening, or intimidating, or that interferes with an individual's work performance. Some of these violations, if proved, may also constitute crimes under local and/or state law. Departments should take appropriate measures to report such actions and to advise their employees about reporting such actions that have occurred on City property or involving City employees.

SUGGESTED ACTIONS

| <u>OFFENSE</u> | <u>FIRST OFFENSE</u> | <u>SECOND OFFENSE</u> | <u>THIRD OFFENSE</u> |
|--|--------------------------------|------------------------------|-----------------------------|
| 7. Supervisory Standard: Failure to take appropriate action to correct and eliminate sexual harassment from the workplace; failure to foster a discrimination free workplace by personal actions or conduct; or allowing subordinates to retaliate against an employee for filing a sexual harassment complaint, for participating in a sexual harassment complaint investigation, or for opposing discriminatory actions (Amended 12-15-95) | 20 day suspension to discharge | Discharge | |

HAZING

Standard: City employees are expected to comply with Federal and State laws and regulations and City policies including applicable mayoral directives ensuring equal employment opportunity and a discrimination and harassment-free workplace. Hazing is a form of harassment. Hazing activities are defined as any action taken or situation created in the workplace, which causes or is likely to cause, bodily danger or physical harm, or personal degradation or disgrace. Hazing includes but is not limited to any form of rite of passage or horseplay that involves engaging in illegal, harmful, demeaning or dangerous acts, which are not consistent with City policy and performing job-related activities. Employees are responsible for maintaining a work environment which is free from any form of harassment including hazing. Employees are further expected to promptly report any hazing incidents to management. Supervisors are also held accountable for reporting hazing incidents to the Department Personnel Director and taking all necessary action to prevent hazing, eliminate hazing in the workplace and to discipline employees engaged in hazing incidents.

SUGGESTED ACTIONS

| <u>OFFENSE</u> | <u>FIRST OFFENSE</u> | <u>SECOND OFFENSE</u> | <u>THIRD OFFENSE</u> |
|--|--------------------------------|------------------------------|-----------------------------|
| 1. Planning or engaging in hazing activities | 20 day suspension to discharge | Discharge | |
| 2. Supervisor standard: | 20 day suspension | Discharge | |
| a. Failure to take appropriate to discharge action to correct and eliminate hazing activities from the workplace; failure to foster a hazing free workplace by personal actions or conduct; or, allowing subordinates to retaliate against an employee for reporting hazing activities, for participating in a hazing complaint investigation, or for opposing hazing in the workplace | | | |
| b. Planning or engaging in hazing activities | 20 day suspension to discharge | Discharge | (Amended 12-11-08) |

DO YOU HAVE MORE QUESTIONS?

Ask.....

There are many resources available to answer any questions you may have on these issues. Each Department has a designated Equal Employment Opportunity (EEO) Coordinator and Sexual Harassment Counselor available for its employees. Each Department also has a Personnel Director to respond to personnel issues affecting employees. It is a good idea to know whom to call before you need assistance. Check with your department to find out who these individuals are in your department. Record their names and telephone numbers below.

My Department Personnel Director is: _____

Telephone Number: _____

My Departmental EEO Coordinator is: _____

Telephone Number: _____

My Sexual Harassment Counselor is: _____

Telephone Number: _____

My Union Representative is: _____

Telephone Number: _____

OTHER RESOURCES

| | |
|--|----------------|
| Civil Service Commission | (213) 473-9107 |
| EEO, Personnel Department | (213) 473-9100 |
| Citywide Sexual Harassment Awareness Coordinator | (213) 473-9100 |
| Citywide Sexual Orientation Counselor | (213) 473-9100 |

The Equal Employment Opportunities Section of the Personnel Department of the City of Los Angeles has prepared this brochure. The Personnel Department provides a wide range of assistance to departments and employees as part of the City's Affirmative Action Program. Among these services are investigations of discrimination in the workplace, training for supervisors in the prevention of discrimination in the workplace, and counseling of employees who believe they have been victimized by discrimination, including sexual harassment and sexual orientation harassment. The Personnel Department is committed to a full program of equal employment opportunity to ensure that City employment practices are based on merit, and that employees are provided work environments free of harassment.