

Harassment, Discrimination and Retaliation

316.1 PURPOSE

The purpose of this Policy is to establish the City of Fountain Valley's (hereinafter referred to as City) strong commitment to prohibiting and preventing discrimination, harassment and retaliation in employment; to define those terms; and to set forth a procedure for investigating and resolving internal complaints. The City encourages all covered individuals to report, as soon as possible, any conduct that is believed to violate this Policy. The goals of this Policy are to:

1. Define harassment, discrimination and retaliation in the workplace;
2. Fully inform all employees of their right to be free of unlawful harassment, discrimination and retaliation in the workplace;
3. Inform all employees the City forbids harassing, discriminatory and retaliatory conduct and that the City prohibits the condoning or perpetuating of such conduct;
4. Set forth a procedure for reporting, investigating, and resolving internal complaints of harassment, discrimination and retaliation.

316.2 POLICY

The City has zero tolerance for any conduct that violates this Policy. Conduct need not to rise to the level of a violation of law to violate this Policy. A single act can violate this Policy and provide grounds for discipline or other appropriate sanctions.

Harassment, discrimination, or retaliation against an applicant, unpaid intern, volunteer, or employee by a supervisor, management employee, elected or appointed official, co-worker, member of the public, or contractor on the basis of race, religion, sex (including gender, gender identity, gender expression, transgender, pregnancy and breast feeding), national origin, ancestry, citizenship status, physical or mental disability, medical condition, genetic characteristics or information, marital status, age, sexual orientation (including homosexuality, bisexuality or heterosexuality), military or veteran status, or any other protected classification as defined below, will not be tolerated.

This Policy applies to all terms and conditions of employment, internships, and volunteer opportunities, including, but not limited to, selection, hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, compensation and training.

The City shall investigate complaints of discrimination, harassment, and retaliation as appropriate. Although confidentiality cannot be guaranteed under all circumstances, the City will take all reasonable steps to assure the confidentiality of complaints made under this Policy consistent with the confidentiality provisions of this Policy.

Any retaliation against a person for filing a charge or making a complaint regarding conduct prohibited by this Policy, or participating in the complaint resolution process is prohibited. Individuals found to be retaliating in violation of this Policy will be subject to appropriate sanction or disciplinary action up to and including termination.

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316.3 DEFINITIONS

Protected Classifications: This Policy prohibits harassment, discrimination, and retaliation because of an individual's protected classification. "Protected classification" includes race, religion, color, sex (including gender, gender identity, gender expression, transgender, pregnancy and breastfeeding), sexual orientation (including homosexuality, bisexuality or heterosexuality), national origin, ancestry, citizenship status, marital status, age, medical condition, genetic characteristics or information, military or veteran status, physical or mental disability, or any other basis protected by law.

Policy Coverage: This Policy prohibits the City, elected or appointed officials, officers, employees or contractors from harassing, discriminating against, or retaliating against applicants, officers, officials, employees, unpaid interns, volunteers or contractors because of:

1. An individual's protected classification;
2. The perception that an individual has a protected classification; or
3. The individual associates with a person who has or is perceived to have a protected classification.

Protected Activity: This Policy prohibits discrimination, harassment and retaliation because of an individual's protected activity. Protected activity includes: making a request for an accommodation for a disability; making a request for accommodation for religious beliefs; making a complaint under this Policy; opposing violations of this Policy; or participating in an investigation under this Policy.

Discrimination: This Policy prohibits treating covered individuals differently or adversely because of the individual's protected classification, actual or perceived; because the individual associates with a person who is a member of a protected classification, actual or perceived; or because the individual participates in a protected activity as defined in this Policy.

Harassment: May include, but is not limited, to the following types of behavior that is taken because of a person's protected classification. Note that harassment is not limited to conduct by the City's employees. Under certain circumstances, harassment can also include conduct taken by those who are not employees, such as elected officials, appointed officials, persons providing services under contracts, or even members of the public.

1. **Speech:** Such as epithets, derogatory comments or slurs, and propositioning on the basis of a protected classification. This might include inappropriate comments on appearance, including dress or physical features, or dress consistent with gender identification, or race-oriented stories and jokes.
2. **Physical Acts:** Such as assault, impeding or blocking movement, offensive touching or any physical interference with normal work or movement. This includes pinching, grabbing, patting, propositioning, leering, or making explicit or implied job threats or promises in return for submission to physical acts.
3. **Visual Insults:** Such as derogatory posters, cartoons, e-mails, pictures or drawings related to a protected classification.

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4. Unwanted Sexual Advances: Requests for sexual favors and other acts of a sexual nature, where submission is made a term or condition of employment, where submission to or rejection of the conduct is used as the basis for employment decisions, or where the conduct is intended to or actually does unreasonably interfere with an individual's work performance or create an intimidating, hostile, or offensive work environment.

Guidelines for Identifying Harassment:

To help clarify what constitutes harassment in violation of this Policy, use the following guidelines:

1. Harassment includes any conduct which would be unwelcome or unwanted to an individual of the recipient's same protected classification.
2. It is no defense that the recipient "appears" to have consented to the conduct at issue by failing to protest about the conduct. A recipient may not protest for many legitimate reasons, including the need to avoid being insubordinate or to avoid being ostracized or subjected to retaliation.
3. Simply because no one has complained about a joke, gesture, picture, physical contact, or comment does not mean that the conduct is welcome. Harassment can evolve over time. The fact that no one has yet complained does not preclude someone from complaining if the conduct is repeated in the future.
4. Even visual, verbal or physical conduct between two employees who appear to welcome the conduct can constitute harassment of a third person who observes the conduct or learns about the conduct later. Conduct can constitute harassment even if it is not explicitly or specifically directed at an individual.

Retaliation: Any adverse conduct taken against a covered individual because of the individual's protected activity as defined in this Policy. "Adverse conduct" includes but is not limited to disciplinary action, counseling, taking sides because an individual has reported harassment or discrimination, spreading rumors about a complainant or about someone who supports or assists the complainant, shunning or avoiding an individual who reports harassment or discrimination, or making real or implied threats of intimidation to prevent an individual from reporting harassment or discrimination.

The following individuals are protected from retaliation: those who make good faith reports of harassment or discrimination and those who associate with an individual who is involved in reporting harassment or discrimination or who participates in the complaint or investigation process.

316.4 COMPLAINT PROCEDURE

1. A covered individual who believes he or she has been subjected to discrimination, harassment or retaliation may make a complaint verbally or in writing to any of the following:
 - A. Immediate Supervisor

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- B. Any supervisor or manager within or outside of the department
 - C. Department Director
 - D. Division Manager
 - E. Human Resources Director
- 2. There is no need to follow the chain of command.
 - 3. Any supervisor, division manager, or department director who receives a harassment, discrimination or retaliation complaint should notify the Human Resources Director immediately.
 - 4. Upon receiving notification of a harassment complaint, the Human Resources Director shall:
 - A. Timely authorize and supervise an investigation of the complaint and/or investigate the complaint. The investigation will typically include interviews with:
 - 1. The complainant;
 - 2. The accused;
 - 3. Other persons who have relevant knowledge concerning the allegations in the complaint.
 - B. Statutory rights held by the employee in their position will be afforded throughout the investigatory process.
 - C. Review the factual information gathered through the investigation to determine whether the alleged conduct constitutes harassment, discrimination or retaliation giving consideration to all factual information, the totality of the circumstances, including the nature of the conduct and the context in which the alleged incidents occurred.
 - D. Report a summary of the determination as to whether this Policy has been violated to appropriate persons. If discipline or sanctions are imposed, the level of discipline will not be communicated to the complainant. The contents of the investigative documentation and report are privileged information in order to protect the rights of privacy of the complainant, the accused, and all parties involved in the investigation and will therefore not be released. Additional information will only be released for use in any disciplinary action, by court order, or for other uses determined to be appropriate by the Human Resources Director and the Attorneys for the City.
 - E. The Human Resource Director shall be the custodian of record for all harassment, discrimination, and retaliation investigations. All harassment, discrimination, and retaliation investigations shall be maintained in accordance with the City's established records retention schedule.
 - F. If conduct in violation of this Policy occurred, take and/or recommend to the appointing authority prompt and effective remedial action. The remedial action will be commensurate with the severity of the offense.

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- G. Take reasonable steps to protect the complainant from further harassment, discrimination or retaliation.
- H. Take reasonable steps to protect the complainant from retaliation as a result of communicating the complaint.
- 5. The City takes a proactive approach to potential Policy violations and will conduct an investigation if its officers, supervisors, or managers become aware that harassment, discrimination or retaliation may be occurring, regardless of whether the recipient or third party reports a potential violation.
- 6. An individual has the option to report harassment, discrimination or retaliation to the U.S. Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing (DFEH). These administrative agencies offer legal remedies and a complaint process. The nearest offices are listed on the Internet, in the government section of the telephone book, or employees can check the posters that are located on City's bulletin boards for office locations and telephone numbers. (<http://www.eeoc.gov/employees/charge.cfm>) (<https://www.dfeh.ca.gov/complaint-process>)
- 7. The City recognizes that false accusations of discrimination, harassment or retaliation can have serious consequences. If the City determines that an employee has deliberately and falsely accused another person of discrimination, harassment or retaliation, that employee will be subject to appropriate disciplinary action proceedings, up to and including termination.

316.5 CONFIDENTIALITY

Every possible effort will be made to assure the confidentiality of complaints made under this Policy to the greatest extent allowed by law. Complete confidentiality cannot occur, however, due to the need to fully investigate and the duty to take effective remedial action. As a result, confidentiality will be maintained to the extent possible. An individual who is interviewed during the course of an investigation is prohibited from attempting to influence any potential witness while the investigation is ongoing. An employee may discuss his or her interview with a designated representative. The employer will not disclose a completed investigation report except as it deems necessary to support a disciplinary action, to take remedial action, to defend itself in adversarial proceedings or to comply with the law or court order.

316.6 RESPONSIBILITIES OF DEPARTMENT DIRECTORS, DIVISION MANAGERS AND SUPERVISORS

Each department director, division manager, and supervisor is responsible for:

- 1. Informing employees of this Policy.
- 2. Modeling behavior that conforms to this Policy.
- 3. Taking all steps necessary to prevent harassment, discrimination or retaliation from occurring.

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4. Receiving complaints in a fair and serious manner and documenting steps taken to resolve complaints.
5. Monitoring the work environment and taking immediate appropriate action to stop potential violations, such as removing inappropriate pictures or correcting inappropriate language.
6. Following-up with those who have complained to ensure that the behavior has stopped and that there are no reprisals.
7. Informing those who complain of harassment or discrimination of his or her option to contact the U.S. Equal Employment Opportunity Commission or Department of Fair Employment and Housing regarding alleged Policy violations.
8. Assisting, advising or consulting with employees and the Human Resources Director regarding this Policy and Complaint Procedure.
9. Assisting in the investigation of complaints involving employee(s) in their departments and, when appropriate, if the complaint is substantiated, recommending appropriate corrective or disciplinary action in accordance with the City's Personnel Rules, up to and including discharge.
10. Implementing appropriate disciplinary and remedial actions.
11. Reporting potential violations of this Policy of which he or she becomes aware to the Human Resources Department or the Department Director, regardless of whether a complaint has been submitted.
12. Participating in prevention of harassment training within six months of appointment or promotion to a supervisory position then every 2 years thereafter.
13. Scheduling employees for training.

316.7 RESPONSIBILITIES OF EMPLOYEES OR CONTRACTORS

Each employee or contractor (including each department manager, division manager, and supervisor) is responsible for:

1. Reviewing and understanding this Policy. Any questions should be directed to the employee's supervisor or the Human Resources Department.
2. Treating all employees and contractors with respect and consideration.
3. Modeling behavior that conforms to this Policy.
4. Participating in periodic training.
5. Fully cooperating with the City's investigations by responding fully and truthfully to all questions posed during the investigation.
6. Taking no actions to influence any potential witness while the investigation is ongoing.
7. Reporting any act he or she believes in good faith constitutes harassment, discrimination or retaliation as defined in this Policy, to his or her immediate supervisor, Department Director or Human Resources Director.