

EL DORADO COUNTY FIRE PROTECTION DISTRICT

POLICY TITLE: Sexual and Workplace Harassment

POLICY NUMBER: 2210

PURPOSE & SCOPE

Upon issue, this policy supercedes any and all current or past policy as numbered above. The purpose of this policy is to clearly establish the El Dorado County Fire Protection District's (herein referred to as the "District") commitment to provide a work environment free from harassment, to define discriminatory harassment, and to set forth the procedure for investigating and resolving internal complaints of harassment. All jobs with the District are extremely important to the public safety of our community. It is critical that all employees treat all other employees with dignity and respect. Because of the unique circumstances present in many District jobs, it is the responsibility of each and every employee, supervisor, and manager to make sure there is no inappropriate behavior in the workplace. Inappropriate behavior will not be tolerated.

The goal of this policy is to prevent District members from being subjected to discrimination or sexual harassment and to ensure full equal employment opportunity, in conformance with Title VII of the Civil Rights Act of 1964, the guidelines issues by the Equal Employment Opportunity Commission (EEOC), the California Fair Employment and Housing Act (FEHA), and the guidelines issued by the California Department of Fair Employment and Housing (DFEH).

LIMITATIONS ON USE

The use of this policy and procedures is limited to complaints related to workplace harassment on the basis of sex, sexual orientation, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition, age, marital status or denial of family care or pregnancy disability leave. All other complaints shall be handled through the processes established by applicable MOU's between the District and its Employee Associations.

DEFINITIONS

DISCRIMINATION

Any act or omission of an act which would create a hostile work environment, or exclude any person from employment or promotional opportunities because of sex, sexual orientation, race, colors, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition, age, marital status, or denial of family care or pregnancy disability leave.

SEXUAL HARASSMENT

Sexual Harassment includes but is not limited to, unwelcome sexual advances, request for sexual favors and other verbal, visual, or physical conduct of a sexual nature when:

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

RETALIATION

Retaliation is a form of harassment. Retaliation against a person for initiating a harassment complaint or participating in an investigation is expressly prohibited and subject to disciplinary action up to and including termination.

Discrimination, harassment, or retaliation does not include the following:

- Bona fide acts or omission of acts based solely upon bona fide occupational qualifications under EEOC and DFEH guidelines

- Bona fide requests or demands by a supervisor that the employee improve his/her work quality or output, that the employee report to the job site on time, that the employee comply with District's rules and regulations, or any other appropriate work related communication between supervisor and employee.

EXAMPLES OF INAPPROPRIATE AND HARASSING BEHAVIOR

VERBAL HARASSMENT

Epithets, derogatory comments, slurs, jokes, propositions, whether made in general, directed to an individual, or to a group of people regardless of whether the behavior was intended to harass. This includes but is not limited to inappropriate sexually oriented comments on appearance, including dress or physical features, sexual rumors, code words, electronic mail, voice mail, and race oriented stories.

PHYSICAL HARASSMENT

Assault, impeding or blocking movement, leering, and interference with normal work, privacy or movement when directed at an individual. This includes but is not limited to pinching, patting, grabbing, inappropriate behavior in or near bathrooms, sleeping facilities and eating areas, or making explicit or implied threats or promises in return for submission to physical and/or sexual acts.

VISUAL HARASSMENT

Derogatory, prejudicial, stereotypical or otherwise offensive posters, photographs, cartoons, notes, bulletins, drawing or pictures, including those that are computer generated.

REPORTING PROCEDURES

INFORMAL NOTIFICATION TO OFFENDER

Any employee who feels he or she is a victim or witness of inappropriate behavior is encouraged to notify the perpetrator(s). This is especially appropriate in isolated incidents that are not severe, such as jokes, remarks, posters, or cartoons. Often the perpetrator is not even aware of the offensive nature of his or her conduct. This one-on-one informal contact has proven effective in immediately stopping the inappropriate behavior. If the employee is uncomfortable utilizing the informal notification procedure, or the behavior continues after the informal notification, then the employee must utilize one of the reporting procedures set forth below.

FORMAL REPORTING PROCEDURES

If the above informal procedure is not appropriate or effective in stopping the harassment, and the employee feels that he or she has been or is being harassed based on any of the categories listed in this policy, or is aware of or suspects the occurrence of any such harassment, he or she must without delay report it, either in writing or verbally, to the duty chief or Chief. It is not required that a complaint or notification of inappropriate activity be initially made with the employee's immediate supervisor. It is of utmost importance that employees inform the District as soon as possible as nothing can be done to remedy the situation if the District does not know that it exists.

An employee may, at any time, also file a complaint with the EEOC or DFEH, as set forth in DFEH Brochure 185.

ALTERNATIVE REPORTING PROCEDURE

The District has instituted a training, awareness, and alternative reporting program since education and training for employees at each level of the workforce are critical to the success of the District's Harassment Policy.

If an employee believe that the comments, gestures, or conduct of any employee, supervisor, or person doing business with or for the District are inappropriate or offensive, he/she has an alternative option to report the facts of the incident directly to the A&E Groups' ActionLine, phone (800) 775-5463. The A&E Groups is an independent third party who will receive and report information to the appropriate official. An

employee does not have to be involved in the harassment but may be aware of others who are. Do not assume those victimized by the harassment will report the incidents in a timely manner.

Courteous specialists trained and sensitized in sexual harassment and discrimination answer the ActionLine during normal business hours. An employee may, in reporting instances of harassment, elect to furnish his/her name or maintain confidentiality. Information will be noted and handled in a professional manner to ensure the District can take corrective action.

SUPERVISOR RESPONSIBILITY

Each supervisor and manager has the responsibility of maintaining a work environment free of harassment. Supervisors who receive complaints, observe, or in any way become aware of harassing conduct may take immediate corrective action. In all cases the supervisor will notify the Chief of any complaint or harassing conduct, including any corrective action that was taken. This responsibility includes being available to discuss this policy with the employees he or she supervises and assuring them that they are not required to endure any offensive or harassing conduct in the workplace.

Individual employees may be held personally liable for discriminatory acts, including sexual harassment.

INVESTIGATION OF COMPLAINTS

As applicable to this policy and subject to the Resolution and Response set forth below, the District will ensure that a non-biased, timely, thorough, and complete investigation is conducted of the complaint. If appropriate, the Chief shall determine if the investigation will be conducted by a professional third party. If feasible and appropriate, the confidentiality of the complaint will be protected. At the conclusion of the investigation the Chief will attempt to determine whether inappropriate behavior or harassment as occurred. The Chief will look at the totality of the circumstances, including the nature of the conduct and the context in which it occurred, and resolve the complaint as set forth below.

RESOLUTION AND RESPONSE

Before, during or following the investigation, the Chief will make one of the following five resolutions regarding the complaint:

1. **Substantiated Complaint**—If the complaint is substantiated, this policy and procedure prohibiting discrimination/harassment will be reviewed with the offender. Appropriate training and/or disciplinary action, up to and including termination, will be taken pursuant to District disciplinary procedures. Also, the victim may be afforded appropriate remedial procedures.
2. **Unsubstantiated Complaint**—If there is insufficient evidence to either prove or disprove the allegation(s), both parties to the complaint will be informed of the reason(s) for this disposition. Appropriate adjustments in the workplace, consistent with the allegations and investigation, may be made to mitigate the likelihood of future complaints.
3. **False Complaint**—If it is determined that an act reported pursuant to this policy/procedure did not in fact occur, a finding that the complaint was false shall be made. Should it be determined that the reporting party filed the complaint in good faith and/or through a mistake of fact, that employee shall be counseled/trained. Should it be determined that the reporting party maliciously filed the complaint knowing that it was false or frivolous at the time of the complaint, that employee shall be subject to the disciplinary process up to, and including termination. This section is not intended to discourage employees from making complaints regarding harassment. However, false complaints, even when disproved, adversely impact the workplace and the career of the accused, and, if found to have been filed maliciously, will not be tolerated.

4. Exonerated Complaint—If it is determined that an act reported pursuant to this policy did in fact occur, but was bona fide work related, lawful, and proper within the guidelines established herein, a finding of exoneration shall be made. The employee against whom the complaint was filed as well as complaint may be trained or counseled as deemed appropriate.
5. Out of Scope—It is determined that the alleged conduct is not related to workplace harassment on the basis of sex, sexual orientation, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition, age, marital status or denial of family care or pregnancy disability leave, then determination of out of scope shall be made. These complaints shall be handled through the processes established by applicable MOU's between the District and its Employee Associations.

NOTIFICATION OF RESOLUTION AND RESPONSE

The complainant and victim will be notified in writing of the disposition of the investigation and action(s) taken to remedy the complaint.

DOCUMENTATION OF COMPLAINTS

All complaints or allegations shall be documented as designated by the Chief. All reports shall be:

- Approved by the Chief
- Maintained for a minimum of five years

DISTRIBUTION AND QUESTIONS

This policy shall be disseminated to all employees, supervisors, and managers. Any questions, concerns, or comments related to this policy should be directed to the Chief.

SEXUAL HARASSMENT IS FORBIDDEN BY LAW (From DFEH Brochure 185)

Sexual harassment in employment violates the provisions of the Fair Employment and Housing Act, specifically Government Code Sections 12940(a), (h), and (I).

EMPLOYER OBLIGATIONS

Employers must take all responsible steps to prevent discrimination and harassment from occurring.

Employers must act to ensure a workplace free from sexual harassment by posting in the workplace a poster made available by the Department of Fair Employment and Housing.

Employers must act to ensure a workplace free from sexual harassment by distributing to employees an information sheet on sexual harassment. An employer may either distribute this brochure (DFEH-185) or develop an equivalent document, which must meet the requirements of Government Code Section 12950(b).

DEFINITION OF SEXUAL HARASSMENT

The Fair Employment and Housing Act defines harassment because of sex as including sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions. The Fair Employment and Housing Commission regulations define sexual harassment as unwanted sexual advances, or visual, verbal, or physical conduct of a sexual nature. This definition includes gender-based harassment of a person of the same sex as the harasser; the following is a partial list:

- Unwanted sexual advances
- Offering employment benefits in exchange for sexual favors
- Making or threatening reprisals after a negative response to sexual advances
- Visual conduct; leering, making sexual gestures, displaying of sexually suggestive objects or pictures, cartoons, or posters
- Verbal conduct: making or using derogatory comments, epithets, slurs, and jokes
- Verbal sexual advances or propositions
- Verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes, or invitations
- Physical conduct: touching, assault, impeding or blocking movements

EMPLOYER LIABILITY

The harassment section of the Fair Employment and Housing Act covers all employers. If harassment occurs, an employer may be liable even if management was not aware of the harassment. An employer might avoid liability if the harasser is a rank and file employee and if the employer had no knowledge of the harassment, and if there was a program to prevent harassment. If the harasser is a rank and file employee, the employer may avoid liability if the employer takes immediate and appropriate corrective action to stop the harassment once the employer learns about it. Employers are strictly liable for harassment by their supervisor or agents. The harasser, as well as any management representative who knew about the harassment and condoned or ratified it, can be held personally liable for damages.

Additionally, Government Code Section 12940(I) requires an entity to take "all reasonable steps to prevent harassment from occurring. "If an employer has failed to take such preventative measures, that employer can be held liable for the harassment.

A victim may be entitled to damages even though no employment opportunity has been denied and there is no actual loss of pay or benefits.

TYPICAL SEXUAL HARASSMENT CASES

The three most common types of sexual harassment complaints filed with the Department are:

An employee is fired or denied a job or employment benefit because he/she refused to grant sexual favors or because he/she complained about harassment. Retaliation for complaining about harassment is illegal, even if it cannot be demonstrated that the harassment actually occurred.

An employee quits because he/she can no longer tolerate an offensive work environment, referred to as a "constructive discharge" harassment case. If it is proven that a reasonable person, under like conditions, would resign to escape the harassment, the employer may be held responsible for the resignation as if the employee had been discharged.

An employee is exposed to an offensive work environment. Exposure to various kinds of behavior or to unwanted sexual advances alone may constitute harassment.

HOW THE LAW IS ENFORCED

Employees or job applicants who believe that they have been sexually harassed may, within one year of the harassment, file a complaint of discrimination with the California Department of Fair Employment and Housing. The Department serves as a neutral fact-finder and attempts to help the parties voluntarily resolve disputes. If the Department finds evidence of sexual harassment and settlement efforts fail, the Department may file a formal accusation against the employers and the harasser. The accusation will lead either a public hearing before the Fair Employment and Housing Commission or a lawsuit filed on the complainant's behalf by the Department. If the Commission finds that harassment has occurred, it can order remedies, including up to \$50,000 in fines or damages for emotional distress from each employer or harasser charged. In addition, the Commission may order hiring or reinstatement, back pay, promotion, and changes in the policies or practices of the involved employer. A court may order unlimited damages.

PREVENTING SEXUAL HARASSMENT

A program to eliminate sexual harassment from the workplace is not only required by law, but it is the most practical way to avoid or limit damages if harassment should occur despite preventive efforts.

An employer should take immediate and appropriate action when he/she knows, or should have known, that sexual harassment has occurred. An employer must take effective action to stop any further harassment and to ameliorate any effects of the harassment. To those ends, the employer's policy should include provisions to:

- Fully inform complainant of his/her rights and any obligation to secure those rights.
- Fully and effectively investigate. It must be immediate, thorough, objective, and complete. All those with information on the matter should be interviewed. A determination must be made and the results communicated to the complainant, to the alleged harasser, and, as appropriate, to all others directly concerned.
- If proven there must be prompt and effective remedial action. First appropriate action must be taken against the harasser and communicated to the complainant. Second, steps must be taken to prevent any further harassment. Third, appropriate action must be taken to remedy the complainant's loss, if any.

TRAINING OF ALL INDIVIDUALS IN THE WORKPLACE:

All employees must receive from their employers a copy of this pamphlet (DFEH-185) or an equivalent document. Any person may duplicate this brochure in any amount.

All employees should be made aware of the seriousness of violations of the sexual harassment policy. Supervisory personnel should be educated about their specific responsibilities. Rank and file employees

should be cautioned against using peer pressure to discourage harassment victims from using the internal grievance procedure.