

California Department of Public Health

NON-DISCRIMINATION AND HARASSMENT POLICY AND COMPLAINT PROCEDURE

The California Department of Public Health (CDPH) is committed to providing a workplace in which all individuals are treated with respect and professionalism. It is the policy of this Department to provide equal employment opportunities to all employees and applicants on the basis of merit and to prevent discrimination, harassment, and retaliation in the workplace.

Consistent with this commitment, the Department complies with all state and federal laws that give employees the right to work in an environment free from discrimination, and forbids discrimination based on non job-related factors such as race, color, religious creed, national origin, age, sex (including sexual harassment), pregnancy, childbirth or related medical condition, physical and mental disability, religion, ancestry, political affiliation, marital status, medical condition, sexual orientation, gender identity, and Vietnam era veteran status. Furthermore, the Department forbids harassment against any individual based upon his or her membership in a protected class, and further forbids retaliation against anyone who opposes or reports discrimination or harassment or who participates in any such investigation or proceeding.

The Department endorses a zero tolerance policy toward discrimination, harassment and retaliation, which means that CDPH may take corrective actions up to and including formal discipline when policy violations occur, even if they are not so serious as to be unlawful. The CDPH is dedicated to ensuring the fulfillment of this policy in all aspects of employment. Every employee in the Department is responsible for ensuring that the workplace is free of discrimination, harassment, and retaliation, and is expected to avoid any behavior or conduct that could reasonably be interpreted as such. Because all forms of discrimination are unprofessional and disrespectful, and may damage an individual's career and well being, CDPH will strictly enforce this policy.

DEFINITION

Discrimination is the treatment of a person less favorably than others have been, or should be treated, based on characteristics protected by law, such as race, national origin or sex.²

¹ Although a form of discrimination, sexual harassment is dealt with in more detail in a separate policy statement.

² It is important to note that treatment that may be perceived as "unfair" may not necessarily be unlawful or a violation of the Department's antidiscrimination policies. Employment actions may be perceived by the employee as harsh, insensitive or unjust, but they do not become unlawful under the above laws or violate the Department's policies unless the unfair treatment is motivated in part because of a person's protected status.

Harassment of a person based upon that person's protected status is a form of discrimination and is also unlawful. While it is not possible to list all circumstances that may be considered to be impermissible discrimination or harassment, some examples of conduct that may violate the CDPH Non-Discrimination and Harassment Policy includes, but is not limited to, the following:

- Making derogatory comments, slurs, jokes, remarks, rumors, or epithets;
- Displaying objects, cartoons, pictures or posters of a derogatory or discriminatory nature;
- Treating an individual differently based on the individual's membership in one of the protected classes described above;
- Hazing of employees;
- Implying or actually withholding support for appointment, promotion, transfer, or change of assignment; initiating a rejection during probation or adverse action without a justified nondiscriminatory business related reason;
- Displaying, transmitting, or forwarding Internet material of a discriminatory and/or offensive nature;
- Engaging in reprisals or threats against anyone who opposes discriminatory, harassing or offensive behavior.

RESPONSIBILITIES OF MANAGERS AND SUPERVISORS

- Managers and supervisors may create liability (against CDPH, themselves, or both) for acts of discriminatory and harassing conduct occurring in the workplace, if the managers and supervisors know or should have known of the conduct, unless they can show that they took timely and appropriate corrective action. Ignorance of discriminatory activity is not an acceptable defense for inaction of a manager or supervisor if, through reasonable care, they should have been aware of the conduct.
- Managers and supervisors may create liability for discriminatory or harassing acts by non-employees where the managers and supervisors know or should have known of the conduct and fail to take timely and appropriate corrective action. In reviewing these cases, the extent of the managers' and supervisors' control, and any other legal responsibility which they may have with respect to the conduct of such non-employees, will be taken into consideration.
- Managers and supervisors who are aware of discriminatory conduct, even if the occurrence is not directly within their line of supervision or responsibility, have the obligation to immediately and concurrently report the harassment to the Department's Office of Civil Rights (OCR) and the Office/Branch/Division Chief.
- Managers and supervisors who engage in harassing or retaliatory conduct may be held personally liable for such conduct. Managers, supervisors, or employees who engage in

discrimination, harassment or retaliation will also face discipline, up to and including termination of employment.

Managers and supervisors must:

- Provide a discrimination-free work environment, and take proactive steps to communicate to the subordinates that discrimination and harassment in the workplace will not be tolerated;
- Ensure that all of their subordinate employees are informed of the Department's policy against discrimination and harassment and its discrimination complaint process;
- Ensure that their subordinate employees are not discouraged from filing complaints (formal or informal) so that complaints may be investigated in a thorough, confidential manner;
- Set an example by their own behavior and let others know that they support the Department's policy and will take appropriate corrective action if discrimination occurs;
- Ensure that all employees attend training at least once every three years to make them aware of (1) conduct that is discriminatory, and (2) the consequences of such conduct;
- Immediately report all discrimination complaints to the OCR even if the complainant does not want you to proceed;
- Take all complaints seriously. Do not shrug off or minimize the complaint, or otherwise discourage employees from reporting such complaints;
- Monitor the workplace to identify subtle discriminatory conduct or behavior;
- Strictly follow directions and instructions from the OCR, that office being charged with oversight and control over all complaints or incidents of discrimination. Do not initiate any investigation unless specifically directed to by the OCR;
- Consult with the OCR office prior to taking any action in order to determine the appropriate action(s) to take;
- Promptly initiate appropriate action, as directed by the OCR and executive level management, to remedy a discriminatory situation in a manner that will protect the complainant, respondent, and other employees, and to prevent further discriminatory acts or harassment from occurring; and
- Protect the employee(s) complaining of discrimination from any form of reprisal or retaliation.

CONSEQUENCES

Managers and supervisors who become aware of discrimination, harassment, or retaliation and do not take immediate and appropriate corrective action will be held accountable. Failure to adhere to the above responsibilities will result in appropriate corrective and/or disciplinary action, up to and including dismissal from State service, regardless of job level or classification. In addition, individuals may be sued in their personal capacity, and could be required to provide for the cost of their own defense.

EMPLOYEE/JOB APPLICANT RIGHTS AND OBLIGATIONS

Any employee who believes that this discrimination policy, or his or her rights under federal or State law has been violated, may file an informal or formal discrimination complaint with the Department's OCR. They may also file directly with the State Department of Fair Employment and Housing, or the Federal Equal Employment Opportunity Commission.

If you perceive comments, gestures, decisions or actions of an employee, at any level, to be of a discriminatory, harassing or retaliatory nature, mere documentation of that conduct or only confiding with family members or co-workers, without more, is insufficient to prevent that conduct from occurring again. Inappropriate behavior must be reported to your supervisor or a counselor or manager at the OCR so the CDPH has an opportunity to put a stop to that conduct and take appropriate corrective action. If you perceive your supervisor as a source of the discrimination, harassment or retaliation, then you still have the obligation to prevent and correct his or her conduct by reporting it to a counselor or manager at the OCR or to that supervisor's chain of command. It is the responsibility of all employees to prevent harassment and the only way the CDPH can prevent it effectively is if those subjected to it come forward immediately.

All complaints filed with CDPH will be handled in an impartial manner in compliance with federal and State laws and departmental policy. Employees filing a complaint or responding to allegations against them are assured of the following:

1. The right to a reasonable amount of State work time to prepare and present their discrimination complaints. Such use of time should be approved in advance by the employee's supervisor or higher-level supervisors or managers, as appropriate. The OCR could assist employees with this process, if necessary.
2. The right to choose a representative to assist them throughout the resolution process.
3. The obligation to provide accurate and factual information during all phases of the complaint process.
4. The right to freedom from influence that would discourage them from filing a complaint, and/or freedom from reprisal for filing a complaint.
5. The right to an objective investigation by a trained investigator.

6. The right to a decision from the Department after full consideration of all relevant facts and circumstances, and the right to a written explanation of the decision within 180 days of filing of a discrimination complaint.
7. The right to appeal the Department's decision to the State Personnel Board (SPB).

INFORMAL COMPLAINTS

To facilitate early resolution of a complaint, employees who believe they have experienced conduct that is prohibited by the Department's discrimination policy are encouraged to first inform their supervisor. If their supervisor is named in the complaint, or directly involved in the discriminatory conduct, the employee should inform their second-level supervisor, who in turn will contact the OCR. Alternatively, employees may contact the OCR directly, or any other manager or supervisor. An EEO Counselor from the OCR will assist in the resolution of the complaint. Every attempt will be made to keep the complaint confidential. The informal resolution process will be completed in 15 days unless the complainant grants additional time.

FORMAL COMPLAINTS

If the complainant is not satisfied with the results of the informal resolution, or 15 days have lapsed without an informal resolution, the complainant has the option of filing a formal complaint directly with the Department's OCR. A formal complaint must be made in writing within one year of the alleged act or awareness of the act. (Exception: an additional 90 days immediately following the 365-day expiration date may be granted in some cases if the complainant just obtained knowledge of the unlawful conduct. The complainant must justify the need for the additional 90 days e.g.; he or she did not become aware that the action was discrimination until the one-year limit expired). Notwithstanding the time limitation on filing a formal discrimination complaint, it is imperative for the employee to make a formal discrimination complaint as soon as possible after the alleged conduct has occurred, so as to give the Department an opportunity to respond and to stop the conduct.

CONFIDENTIALITY

Confidentiality concerning complaints or investigations is maintained to the greatest extent possible in order to prevent embarrassment, further discrimination or harassment, or retaliation. Concerns of individuals regarding confidentiality of information provided by them will be handled as sensitively as possible, and information shall not unnecessarily be disclosed to others. Tapes and notes and other materials gathered in an investigation are kept as confidential as possible, however, complete confidentiality cannot be guaranteed. Employees should be aware that the CDPH is required in certain circumstances to take preventive or corrective actions that may be inconsistent with an individual's desire that a report of certain behavior be kept completely confidential. In the event of an administrative or other legal proceeding, all investigative materials may legally be required to be disclosed to others involved in such proceedings.

Confidential or sensitive information obtained by any employee during the course of an official investigation, whether acquired as a witness, complainant, respondent, or representative, shall not be disclosed to others unless required by law.

APPEALS

If the complainant is not satisfied with the Department's decision, he or she may forward the complaint to the SPB Appeal's Division within 30 days from the date of the receipt of the Department's decision.

OTHER FILING OPTIONS

Employees also have the option of filing complaints through the grievance process, or with EEOC or DFEH. When a complaint is filed through the grievance process, the supervisor and/or the Labor Relations Office (LRO) will forward the complaint to the OCR for investigation. The OCR will communicate the results of the investigation to the supervisor and the LRO.

RETALIATION

Retaliation is an adverse employment action taken as a result of an employee participating in a protected activity. The Department prohibits retaliation against anyone for reporting discriminatory activity or harassment, registering a complaint pursuant to the policy, assisting in making a discrimination complaint, or cooperating in an investigation. Some examples of conduct which may violate the CDPH retaliation policy include, but are not limited to the following:

- Termination, demotion, disadvantageous transfers or assignments, refusals to promote, threats, reprimands, negative evaluations;
- Co-worker hostility or retaliatory harassment, including intimidation, gossip, rumors, insults, or otherwise offensive conduct that would subject a person to public ridicule or humiliation;
- Any action or combination of actions that are reasonably likely to materially and adversely affect an employee's job performance or opportunity for advancement.

Anyone experiencing or witnessing conduct they believe to be retaliation should immediately inform the OCR. Complaints of retaliation will be promptly investigated. If retaliation is substantiated, appropriate disciplinary action, up to and including possible dismissal, will be taken.

A complaint relating to retaliation for the filing of a discrimination complaint may be filed directly with the Department's OCR, SPB, DFEH, or EEOC.

CONSEQUENCES

An employee found to have engaged in discrimination, harassment, or retaliation will face formal adverse action up to and including dismissal, regardless of job level or classification. Employees do not necessarily need to violate State or federal discrimination laws, regulations, rules, guidelines, or executive orders to be in violation of the Department's policy. All employees will be held accountable for their conduct, and any employee who fails to adhere to the Department's policies will be subject to inquiry or investigation. If it is determined through the investigation process that a violation of the Department's policy has occurred, the Department will take immediate and appropriate action up to and including dismissal.

SPECIAL ASSISTANCE

Questions regarding the policy or procedure should be referred to the Department's OCR.

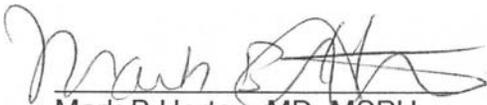
FILING

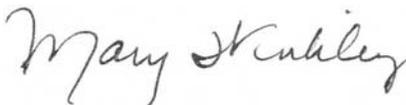
Individuals who believe they have been discriminated against are requested to use the departmental discrimination complaint process to ensure that their complaint is responded to quickly and completely. Attached is a copy of the discrimination complaint form [CDPH 1046](#). The completed form should be sent to the CDPH OCR, 1500 Capitol Ave, MS 0504, Room 72.247, Sacramento, CA 95814. The form is also available on-line in the forms section of the Intranet or can be obtained by calling the CDPH OCR at (916) 445-0938 or TDD (916) 323-5498.

Individuals may also file a complaint, either separately or concurrently (within each agency's regulatory timeframe), with the Department of Fair Employment and Housing, or the United States Equal Employment Opportunity Commission.

5/29/08
Date of Approval
Director

5/29/08


Mark B Horton, MD, MSPH



[Attachment](#)