

## California Department of Public Health

### SEXUAL HARASSMENT PREVENTION POLICY

It is the policy of the California Department of Public Health (CDPH), that all employees have a right to work in an environment free from all forms of discrimination, including sexual harassment, intimidation, retaliation or coercion. The CDPH is committed to providing a work environment free from sexual harassment. Sexual harassment is a form of sex discrimination that is illegal under both state and federal law. It is prohibited by Title VII of the Civil Rights Act of 1964, as amended, and the Fair Employment and Housing Act.

The Fair Employment and Housing Act defines sexual harassment as harassment based on sex or of a sexual nature; gender harassment; and harassment based on pregnancy, childbirth, or related medical conditions. The definition includes harassment based on sexual orientation, and also protects an individual's actual or perceived gender identity, whether or not different from the individual's actual gender at birth.

The CDPH endorses a "zero tolerance" policy aimed at preventing all such inappropriate behavior. As a result, 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. For example, even though a sexual comment by itself might not rise to the level of creating a hostile work environment under the law, such a comment is nevertheless unacceptable in the workplace, violates the CDPH "Zero Tolerance" policy, and may be subject to a corrective action.

Compliance with this policy depends on the efforts of both management and employees of CDPH at all levels. All employees are responsible for ensuring that sexual harassment does not occur by complying with the conduct standards in this policy and by conducting themselves at all times in an appropriate and professional manner. Management is responsible for setting the tone for a harassment-free work environment and for taking appropriate measures, whether or not a complaint has been received, whenever they witness or learn of behavior which could be perceived as sexual harassment. Employees may also help to prevent harassment by taking the initiative to oppose and report conduct that they reasonably believe to be sexual harassment.

Moreover, employees are expected to immediately report any sexually harassing behavior to their immediate supervisor or to the Office of Civil Rights (OCR), regardless of whether the behavior is directed towards himself or herself or towards another employee or contractor. If the alleged offender is the employee's supervisor or manager, the complaining employee may report the conduct to another supervisor or manager in or out of the employee's chain of command, or to the OCR.

Disciplinary action, including warnings, reprimands, suspensions, or dismissal, will be taken against those individuals determined to be in violation of this policy.

## COVERAGE

This sexual harassment policy extends to the conduct of all CDPH personnel towards any applicant or employee. In addition, any employee who, while acting in his or her capacity as a state employee, sexually harasses a contractor, vendor, client, customer, visitor or other individual affiliated with CDPH, will also be subject to disciplinary action.

Similarly, CDPH will not tolerate sexual harassment of its employees, applicants, or contractors, by non-employees, such as third party contractors, vendors, clients and/or customers. The CDPH should be immediately alerted to any such conduct so that it can take immediate and appropriate corrective action, and best attempt to prevent further harassment.

## DEFINITION

Sexual harassment is generally defined as unsolicited and/or unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature directed to a person of the same or of the opposite sex when:

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

While it is not possible to list all circumstances that may be considered to be sexual harassment, some examples of conduct that may violate the CDPH Sexual Harassment Prevention Policy include, but are not limited to, the following:

An unwelcome sexual advance, whether it involves physical touching or not; (this may include an expression of sexual interest after being informed that the interest is unwelcome or a situation which began as reciprocal attractions, but later ceased to be reciprocal.);

Offering employment benefits in exchange for sexual favors;

Unwelcome leering, whistling, brushing against the body, sexual gestures, a suggestive comment, staring, sexual flirtation or proposition;

Displaying a sexually suggestive object in the workplace or telling/showing sexual jokes, stories, drawings, pictures or gestures;

Making and/or repeating a sexually related rumor about another employee;

Making an inquiry into an employee's sexual experience(s);

Reprisal or making a threat after a negative response is made to a sexual advance;

Physical assault such as rape, sexual battery or an attempt to commit an assault or, intentional physical conduct such as impeding or blocking movement or touching or brushing against another employee's body.

Making a derogatory comment or joke regarding an individual's sexual orientation or perceived sexual orientation

It is important to note that:

Such conduct is actionable if offensive to a reasonable person and the victim was actually offended;

A man or woman may be the harasser of a same or opposite sex victim;

The harasser does not necessarily have to be the victim's supervisor;

The victim does not necessarily have to be the one to whom the remark or conduct is directed, but may be someone in the same room who overhears and is offended by the comment or behavior;

A consensual relationship may lead to claims by non-involved employees who believe that they were disadvantaged when favoritism is shown to a paramour, but is not shown to an employee who did not have a romantic relationship with the employee granting the favors. If such sexual favoritism is widespread, it sends a message that employees are sexual playthings, or creates an atmosphere where employees believe they must consent to such relationships as a term or condition of employment.

Any employee, who initiates or persists in conduct that is viewed by another as being of a sexual nature, assumes the risk of liability and the possible penalties for such conduct. An employee who violates the CDPH Sexual Harassment Prevention Policy may face a range of disciplinary actions, including dismissal. Furthermore, offending employees, including supervisors and non-supervisors, can be held personally liable for monetary damages (and may be required to pay for their own attorney) if an offended employee files a lawsuit.

## RETALIATION/REPRISAL PROHIBITION

The CDPH maintains a zero tolerance policy for both sexual harassment and for retaliation. The Department prohibits retaliation against anyone for reporting discriminatory activity, registering a complaint pursuant to the policy, assisting in making a discrimination complaint, or cooperating in an investigation. Any employee who

makes a complaint regarding behavior the employee reasonably and in good faith believes is sexual harassment; assists, testifies, or participates in any sexual harassment investigation or proceeding; or who reasonably opposes such conduct in the workplace, will not be adversely affected in the terms and conditions of his or her employment, and will not be discriminated against or discharged for engaging in such activity.

Some examples of conduct that 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, to include 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.

Complaints of retaliation will be promptly investigated. If retaliation is substantiated, appropriate disciplinary action, including possible dismissal, will be taken.

Acts of reprisal are unacceptable. Reprisal not only affects the recipient, but also can spread rapidly throughout the organizational unit. Reprisal or retaliation against an individual for lodging a complaint destroys faith in leadership and can damage the human relations climate and morale.

Every employee, whether witness, complainant or alleged harasser, is expected to cooperate fully with every investigation. Confidentiality concerning complaints or investigations is maintained to the greatest extent possible in order to prevent embarrassment, further discrimination or harassment, or retaliation. 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. 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. However, 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.

## SUPERVISOR'S RESPONSIBILITY/POLICY IMPLEMENTATION

Managers and supervisors are in key positions to make an impact in terms of correcting inappropriate behavior in the work place and ensuring that a discrimination free workplace is maintained. Therefore, the law has placed a greater responsibility on managers and supervisors to act when they observe or learn of a potential sexual harassment situation.

It is the responsibility of all CDPH supervisors and managers to ensure that their organizational units are in full compliance with the Department's sexual harassment policy and to take all necessary steps to prevent sexual harassment. This includes setting the tone for a harassment-free work environment by informing new employees, periodically reiterating this policy to all subordinate staff, and ensuring that employees receive all mandated sexual harassment training. Supervisors and managers are responsible for informing employees about how to pursue their rights if harassed, promptly notifying OCR for guidance and assistance in the proper handling of the complaint, and taking appropriate corrective action when justified, including disciplining the offender.

Managers and supervisors who are aware of sexual harassment, 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 and the Office/Branch/Division Chief.

Managers and supervisors who engage in sexual harassment and/or make submission to sexual favors a term or condition of an individual's employment will be subject to discipline up to and including dismissal if the allegation is substantiated. They also put themselves at risk for monetary damages (and potentially having to pay the full cost of their own defense) if an offended employee pursues the matter in litigation.

Managers and supervisors are responsible for acts of sexual harassment between employees in the workplace where 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 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 also be responsible for sexual harassment by non-employees where the manager, supervisor, or lead person knew or should have known of the conduct, and fail to take timely and appropriate corrective action. In reviewing these cases, the extent of the manager 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.

Supervisors and managers are responsible for retaining the acknowledgement signed by each of their subordinate employees, and ensuring the employees understanding of the Departments zero tolerance policy towards sexual harassment. Managers and supervisors must:

Provide a discrimination-free work environment and take proactive steps to communicate to the subordinates that sexual harassment in the workplace will not be tolerated;

Ensure that all of their subordinate employees are informed of the Department's policy against sexual harassment and the process for reporting complaints;

Ensure that their subordinate employees are not discouraged from filing complaints (formal or informal) so that complaints may be properly investigated;

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 sexual harassment occurs;

Ensure that all employees attend training to make them aware of (1) conduct that could be construed as sexual harassment and (2) the consequences of such conduct;

Immediately report and forward all sexual harassment complaints to the Office of Civil Rights even if the complainant does not want you to proceed;

Monitor the workplace to identify subtle harassing conduct or behavior;

Take all complaints seriously. Do not shrug off, minimize the complaint, or otherwise discourage employees from reporting such complaints;

Immediately inform the OCR of any sexual harassment complaints you have received, or any sexual harassment you have observed. The OCR will act as the Lead for the Department on any allegations of sexual harassment, and directions from the OCR are to be strictly followed. Do not investigate any such allegations unless specifically directed to by the OCR. In most cases, the OCR will perform the investigation;

Promptly initiate appropriate action, as directed by the OCR and executive level management, to remedy a harassing situation in a manner that will protect the complainant, respondent, and other employees, and to prevent further harassment from occurring; and

Protect the employee(s) complaining of sexual harassment from any form of reprisal or retaliation.

## CONSEQUENCES

Managers and supervisors who become aware of sexual harassment and/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.

## EMPLOYEES RIGHTS/COMPLAINTS PROCEDURES

If you believe you are the target of unwanted sexual attention or behavior, or if you have witnessed sexual harassment, you are encouraged to inform the offending employee or supervisor that the behavior is unwelcome, offensive and inappropriate. You may file a sexual harassment complaint without confronting the offender. Employees who are subject to sexual harassment should immediately report such conduct to their supervisor or the OCR, unless their supervisor is the harasser, in which case the behavior may be reported to any other manager or supervisor, or to the OCR. Every reasonable effort will be made to intervene early and resolve the complaint informally.

If you perceive comments, gestures or actions of an employee, at any level, to be of a sexual nature, mere documentation of that conduct or only confiding with family members or co-workers about it, 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 harassment, 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.

Individuals who believe they have been sexually harassed 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](#). Completed forms should be sent to the CDPH OCR, 1500 Capitol Ave, Room 72.247, MS 0504, Sacramento, CA 95814. The form is also available on-line in the forms sections of the Intranet or can be obtained by calling the CDPH OCR at (916) 445-0938 or TTY (916) 323-5498.

The informal and formal complaint process is outlined in the Department's Non-Discrimination Policy and Complaint Procedure. 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](#)

**SEXUAL HARASSMENT POLICY  
ACKNOWLEDGEMENT**

I understand my rights and obligations to adhere to the Departments' zero tolerance policy towards sexual harassment.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Employee