

SAN BERNARDINO MUNICIPAL WATER DEPARTMENT

POLICIES AND PROCEDURES MANUAL

POLICY 33.070 - NON-DISCRIMINATION/HARASSMENT

Date: April 24, 2018
Revision No.: 2
Supersedes: April 1, 2016
First Adopted: July 30, 2008

PURPOSE :

Discrimination and workplace harassment, including sexual harassment, in employment are a violation of State and Federal law as well as a violation of a person's privacy and dignity. It can cause emotional, physical and economic damage to its victims. It undermines the integrity of the employment relationship. It can result in economic loss to the employer and employee, excessive absenteeism and turnover, loss of morale, polarization of staff, sabotaged work, a decrease in management credibility, and a decrease in productivity. The purpose of this policy is to confirm the San Bernardino Municipal Water Department's (Department) commitment to maintain a work environment free from unlawful discrimination and/or harassment.

This policy:

- Defines discrimination, harassment, and retaliation under this policy;
- Confirms the Department's commitment to prohibit and prevent unlawful discrimination, harassment, and retaliation in employment;
- Provides a Department complaint and investigation procedure to resolve complaints of alleged discrimination, harassment, and retaliation in violation of law or this policy.

POLICY:

It is the policy of the Department to provide a work environment free from discrimination and harassment on the basis of actual or perceived race, religious creed (including religious dress and grooming practices), gender, gender expression, gender identity, color, national origin (including language use and undocumented immigrants who hold special "AB-60" driver's licenses), ancestry, genetic information, age (40 and above), sex (including pregnancy, childbirth, breastfeeding, and/or related medical conditions), marital status, disability (physical and mental, including HIV and AIDS), medical condition (genetic characteristics, cancer, or a record or history of cancer), sexual orientation, military or veteran status, or any other classification protected by law. Therefore, the Department will not tolerate any form of discrimination, harassment, or retaliation and expects individuals to adhere to a standard of conduct that is respectful to all persons within the work environment. This policy is intended to allow the Department to resolve complaints of discrimination, harassment and retaliation internally. It is meant to supplement, not replace, any applicable State and Federal remedies.

The Department further acknowledges and understands that in order to implement a non-discrimination/harassment policy of the type hereby promulgated, it is essential that all persons who witness or experience discrimination or harassment of the type prohibited by this policy report that discrimination/harassment immediately in order to facilitate early, effective, efficient and impartial investigation and intervention by the Department. Accordingly, any retaliation against a person for filing a discrimination or harassment complaint, reporting discrimination or harassment which he or she has witnessed, or assisting in a discrimination/harassment investigation, is strictly prohibited.

In interpreting and implementing this policy, the constitutional rights of free speech and association shall be accommodated in a manner consistent with applicable Federal and State law in a manner consistent with the intent of this policy.

SCOPE:

This policy applies to all applicants, employees (including temporary, part-time, interns (paid and unpaid), volunteers, and contracted employees), officers, agents, as well as third parties (e.g., vendors, contractors, members of the public) regularly entering the work environment.

DEFINITIONS:

1. Discrimination as used in this policy is defined to include, but is not limited to:
 - A. Basing an employment decision as to a job applicant or employee, e.g., decision to hire, promote, transfer, terminate, etc., on one's protected status, e.g., race, religious creed, gender, gender identity, gender expression, color, national origin, ancestry, genetic information, age, military or veteran status, sex, marital status, physical disability, mental disability, medical condition, sexual orientation, pregnancy, childbirth, breastfeeding and/or related medical conditions, or any other classification protected by law.
 - B. Treating an applicant or employee differently with regard to any aspect of employment because of his/her protected status.
 - C. Engaging in harassment/sexual harassment as more specifically defined below.

2. Harassment includes the following when based upon race, religious creed, gender, gender identity, gender expression, color, national origin, ancestry, genetic information, age, military or veteran status, sex, marital status, physical disability, mental disability, medical condition, sexual orientation, pregnancy, childbirth, breastfeeding and/or related medical conditions, or any other classification that is protected by law. Harassment may occur regardless of whether the behavior was intended to harass.
 - A. Verbal harassment, e.g. epithets, derogatory comments, lewd propositioning, sexual remarks, or slurs;
 - B. Physical harassment, e.g., assault, unwelcome, unconsented or offensive touching, impeding or blocking movement or any physical interference with normal work or movement;
 - C. Visual harassment, e.g., leers, gestures, or derogatory, prejudicial, stereotypical, or otherwise offensive email messages, web pages, screen savers and

other computer images, posters, notes, notices, bulletins, photographs, cartoons, or drawings.

- D. Unwanted sexual advances, even if the complainant is not the target of the advances, but believes that engaging in sexual conduct or solicitations is a prerequisite to fair treatment.

Ordinary socialization is not actionable as harassment unless the conduct is sufficiently severe or pervasive to create an objectively hostile or abusive work environment. However, it is best to err on the side of caution and always consider fellow employees' feelings and sensitivities.

3. Sexual Harassment includes unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature. Refer to Policy No. 33.050 - Sexual Harassment.
4. Retaliation as used in this policy prohibits retaliation against a person who files a complaint of discrimination or harassment, reports discrimination or harassment, or assists in a discrimination or harassment investigation. Retaliation includes threats, intimidation, reprisals, revenge, retribution and/or adverse actions related to employment.
5. Gender Expression and Identity
 - A. "Gender expression" refers to gender related appearance or behavior, regardless of whether it is stereotypically associated with an individual's sex at birth.
 - C. "Gender identity" is identification as male, female, transgender, or a gender different than the person's sex at birth.
 - D. "Sex stereotype" is an assumption about someone's appearance or behavior, or about the ability or inability to perform certain types of work, based on a myth, social expectation, or generalization about that person's sex.
 - E. "Transgender" refers to someone whose gender identity is different from the person's sex at birth.

POTENTIAL CONSEQUENCES OF DISCRIMINATION/HARASSMENT:

Discrimination and harassment violate a person's privacy and dignity. They can cause anxiety and physical and/or economic problems for their victims. Discrimination and harassment undermine the integrity of the employment relationship. Discrimination and harassment can result in economic loss to the employer and employee, excessive absenteeism and turnover, loss of morale, polarization of staff, a decrease in management credibility and decline in productivity.

The Department will undertake all appropriate necessary actions against any employee found to be in violation of this policy to prevent further discrimination, harassment, or retaliation. Appropriate necessary action may include corrective action (e.g., counseling and/or training) and/or disciplinary action up to and including termination from employment. Employees found to be retaliating against another employee for filing a discrimination or harassment charge or complaint shall be subject to disciplinary action up to and including termination.

In the case of elected officials, disciplinary actions are limited to private or public censure, unless otherwise prohibited by the City of San Bernardino Charter or Municipal Code.

In the case of a citizen, contractor, or vendor the Department shall take such actions to prevent further discrimination and/or harassment as may be within its power.

Any manager, supervisor, or designated employee responsible for reporting or responding to discrimination, harassment and/or retaliation who knew about the discrimination, harassment and/or retaliation and took no action to stop it or failed to report the aforementioned prohibited conduct also may be subject to disciplinary action up to and including termination.

DEPARTMENT RESPONSIBILITIES:

The Department shall take prompt, appropriate action to avoid or minimize discrimination, harassment, retaliation, and liability to the Department. The Department will pursue every possible preventive measure to insure employees are not subject to discrimination, harassment, or retaliation; will investigate all complaints of discrimination, harassment, retaliation, and all instances in which there is good cause to believe an incident

occurred; and will take appropriate disciplinary action against any employee(s) found to be in violation of this policy.

The Deputy General Manager and/or Water Department Human Resources shall be responsible for ensuring that this policy and complaint procedures are disseminated to all employees; providing training and assistance to Directors, supervisors, and employees in preventing and addressing discrimination, harassment, and retaliation; and investigating, resolving, and making findings and recommendations on complaints of unlawful discrimination, harassment, and retaliation.

Division Directors shall be responsible for assisting the Deputy General Manager and/or Water Department Human Resources by disseminating this policy and ensuring that the workplace remains free of discrimination, harassment, and/or retaliation; coordinating and cooperating with the General Manager, Deputy General Manager, Water Department Human Resources, and/or the City Director of Human Resources, and/or City Equal Employment Opportunity (EEO) Officer, as applicable) in resolving complaints involving employees in their respective divisions/sections; and, when discrimination, harassment, and/or retaliation has occurred, to take prompt and appropriate remedial action against the perpetrator/harasser, take reasonable steps to protect the complainant from further discrimination, harassment, and/or retaliation and take action to remedy the effects of discrimination, harassment, and/or retaliation.

Employees shall cooperate fully with all investigations of discrimination, harassment, and retaliation, implementation of remedial measures and shall not retaliate against complainants or witnesses.

COMPLAINT PROCEDURE

Any employee, or applicant, who believes that he/she has been discriminated against, harassed, retaliated against, or has reason to believe that someone else has been the subject of discrimination, harassment, and/or retaliation, has the obligation to notify the employee's supervisor, division director, General Manager, Deputy General Manager, or Water Department Human Resources. If the employee feels the situation is not adequately resolved at this level, then he/she may notify the City Director of Human Resources, and/or City EEO Officer.

The General Manager, Deputy General Manager, Water Department Human Resources Coordinator (or the City Director of Human Resources and/or City EEO Officer, if applicable) shall be responsible for ensuring that all complaints of discrimination, harassment, and retaliation are investigated thoroughly and are responded to in a timely fashion.

The General Manager, Deputy General Manager, and/or Water Department Human Resources Coordinator shall be responsible for arranging periodic training for employees.

The General Manager, Deputy General Manager, Water Department Human Resources Coordinator, and/or City Director of Human Resources, and/or City EEO Officer shall perform his/her duties in a fair, impartial, and objective manner. Any person who attempts to influence the General Manager, Deputy General Manager, Water Department Human Resources Coordinator, and/or City Director of Human Resources, or City EEO Officer by means of any threat, intimidation, persuasion, or assurance of any financial or other advantage, may be subject to prosecution and/or penalties/discipline as provided herein.

Upon the filing of a written complaint (see attached form) or at such time as the General Manager, Deputy General Manager, Water Department Human Resources Coordinator, and/or City Director of Human Resources, or City EEO Officer have good cause to believe that discrimination, harassment, and/or retaliation has occurred, the General Manager, Deputy General Manager, Water Department Human Resources Coordinator, and/or City Director of Human Resources or City EEO Officer, or independent agent shall promptly and confidentially investigate the complaint and keep it confidential to the extent practicable within the context of the investigation.

The General Manager, Deputy General Manager, and/or Water Department Human Resources Coordinator (or City Director of Human Resources, and/or City EEO Officer, if applicable) shall provide the respondent an opportunity for an informal resolution of the matter, and shall notify the complainant of the proposed disposition of his/her complaint by the informal adjustment procedure.

The complainant and respondent shall abide by the terms of any agreed upon settlement. In all other respects, the recommendations of the General Manager, Deputy General Manager, Water Department Human Resources Coordinator, and/or City

Director of Human Resources, or City EEO Officer shall be advisory only.

EMPLOYEES' RIGHTS AND RESPONSIBILITIES

1. Complainant:

Any employee, who believes he or she has been discriminated against, harassed, retaliated against, or has reason to believe that someone else has been the subject of discrimination, harassment, and/or retaliation has the responsibility to immediately report the conduct to the General Manager, Deputy General Manager, and/or Water Department Human Resources to assure that the situation does not persist. If the employee feels that the situation was not resolved at this level, he/she may report the conduct to the City Director of Human Resources, and/or City EEO Officer. An employee may inform the discriminator/harasser directly, in writing, or verbally that their actions are unwelcome and offensive and must cease, and/or likewise notify the employee's supervisor, division director or Human Resources of the discriminator/harasser's actions.

In order to seek resolution within the Department, the incident should be reported immediately to his/her supervisor. The employee may choose to report the incident to any management employee with whom the employee feels safe doing so. If the employee does not feel that the situation was adequately resolved, he/she should report the incident to the City Director of Human Resources or City EEO Officer. If the employee still feels the situation was not adequately resolved, the employee may then seek the intervention of State and Federal agencies.

If the discriminator/harasser is the employee's supervisor, he/she must report the incident to the next level supervisor, the Deputy General Manager, a Division Director, or Water Department Human Resources. If the employee feels that the situation was not adequately resolved at the Department level, he/she may report the incident directly to the City Director of Human Resources or City EEO Officer. If the employee still feels the situation was not adequately resolved, the employee may then seek the intervention of State and Federal agencies.

Any person to whom a report of discrimination or harassment is made shall immediately prepare a written report and

advise the General Manager, Deputy General Manager, Division Director, or Water Department Human Resources. A prompt, thorough investigation must follow the report. Unless otherwise authorized by the General Manager, no one other than the General Manager, Deputy General Manager, Division Director, Water Department Human Resources Coordinator, and/or City Director of Human Resources or City EEO Officer, or independent agent may conduct the investigation.

It is important to keep records of all offensive incidents; what was said or what happened, your response, date, time and any witnesses to the incident. Also, document any action or inaction by your supervisor to correct the situation.

The Department does provide the following guaranteed rights to employees:

- A. The right to a work environment free from discrimination, harassment and/or retaliation.
- B. The right to an informal, confidential hearing by the City Director of Human Resources and/or City EEO Officer.
- C. The right to a full impartial and prompt investigation by a trained investigator including the right to produce witnesses and to have them interviewed.
- D. The right to review all relevant information developed and discovered during the course of the inquiry into the matter.
- E. The right to a timely decision after full consideration of all relevant facts and circumstances.
- F. The right to be represented by legal counsel or other representative at his/her own cost at each and all steps of the process.
- G. The right to be advised of the results of the investigation and conclusions. (If discipline is imposed, the specific terms of the discipline will not be communicated to the complainant).

- H. The right to be free from retaliation for filing a complaint or otherwise participating in an investigation of discrimination and/or harassment.

Any employee who witnesses an incident of discrimination or harassment must report it to the General Manager, Deputy General Manager, a Division Director, or Water Department Human Resources. If the employee feels the situation was not adequately resolved at the Department level, he/she may report the incident to the City Director of Human Resources or City EEO Officer. Failure to report an observed incident of discrimination or harassment may be grounds for discipline. The witness should also support the discriminated against or harassed employee in reporting the incident and is guaranteed freedom from reprisal or retaliation for doing so. Third party non-participants or witnesses may file discrimination/harassment complaints if they are offended by the conduct of others.

If the discriminator/harasser is a customer or vendor, the discriminated against or harassed employee and any employee witnessing the incident have the responsibility to report the incident to the employee's supervisor. The Department shall take such steps as are within its power to investigate and eliminate this form of discrimination and harassment.

Employees may also file complaints of discrimination, harassment and/or retaliation with the following State and Federal Offices:

Department of Fair Employment
& Housing (DFEH)
Los Angeles District Office
320 West 4th Street,
10th Floor
Los Angeles, CA 90013
Phone: (800) 884-1684
TTY: (800)669-6820
Email: contact.center@dfeh.ca.gov
Website: www.dfeh.ca.gov

Equal Employment Opportunity
Commission (EEOC)
Roybal Federal Building
255 East Temple Street,
4th Floor
Los Angeles, CA 90012
Phone (800) 669-4000
TTY: (800)700-2320
Email: info@eeoc.gov
Website: www.eeoc.gov

2. Respondent:

Any employee who has been accused of discrimination, harassment and/or retaliation ("Respondent") has a responsibility to cooperate with the investigation and also has the right to be represented by legal counsel or other representative, at his/her own cost, at all stages of the proceedings.

3. Employee:

It shall be the responsibility of any supervisor or other employee to whom alleged discrimination, harassment, and/or retaliation has been reported to maintain such report as a matter of strict confidence. Such report may be discussed only with the General Manager, Deputy General Manager, Water Department Human Resources, and/or City Director of Human Resources, or the City EEO Officer or any independent agent retained by the Department to investigate, prior to the investigation.

4. Confidentiality:

Confidentiality of information relating to investigations of complaints of discrimination/harassment shall be maintained to the extent practical and appropriate under the circumstances and to the extent permitted by law. Individuals charged with implementing this policy shall share information with regard to given incidents of discrimination/harassment only with those who have a "need to know" in order to implement this policy.

AFFORDABLE CARE ACT (ACA) RETALIATION

An employment action is considered retaliatory under the ACA if it discriminates against any employee with respect to compensation, terms, conditions, or other privileges of employment. "Retaliation" can include termination, demotion, denial of overtime, denial of promotion or other benefits, failure to hire or rehire, intimidation, reassignment, discipline, blacklisting, and the reduction of pay or hours.

The ACA's anti-retaliation provisions prohibit an employer from retaliating against an employee who:

1. Receives a health insurance tax credit or subsidy through Covered California (aka the "Marketplace" or "Exchange").
2. Reports potential violations of protections afforded under Title I of the Act, which provides guaranteed availability protections among other things.
3. Testifies in a proceeding concerning such violation.
4. Assists or participated in a proceeding concerning a violation.
5. Objects to, or refuses to participate in, any activity, policy, practice, or assigned task that the employee reasonably believes to be in violation of any provision of Title I of the Act.

Enforcement

The Department of Occupational Safety and Health Administration (OSHA) will enforce the ACA's anti-retaliation provisions. An employee who believes he/she has been retaliated against pursuant to the ACA must complain within 180 days by an in-person visit or telephone call to a local OSHA office, or by sending a written complaint to the OSHA office.

Employee's Remedies for Retaliation Under the ACA

Remedies include reinstatement, affirmative action to abate the violation, back pay with interest, front pay, compensatory damages, and an award of up to \$1,000 for attorney's fees.

A copy of this policy shall be distributed to all employees and appointed or elected officials.

Policy Review

Established:	<u>7/30/2008</u>
Revised:	<u>4/1/2016</u>
Revision Board Approved:	<u>5/18/2018</u>
No Changes:	<u>7/2019</u>
No Changes:	<u>7/2020</u>
No Changes:	<u>7/2021</u>

**CITY OF SAN BERNARDINO MUNICIPAL WATER DEPARTMENT (SBMWD)
COMPLAINT OF DISCRIMINATION/HARASSMENT**

Your Full Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Home/Cell Phone: _____ Work Phone: _____

Are you currently employed by SBMWD? Yes No

Job Title: _____ Division/Section.: _____

SBMWD employee/agent you believe violated policy against you:

Name: _____

Division/Section the individual is employed within: _____

What is the basis on which you believe you were harassed/discriminated?

- Race Sex Marital Status Age Physical Disability Mental Disability
 Medical Condition Religious Creed Color National Origin
Ancestry Sexual Orientation Other

Date or period the alleged harassment/discrimination occurred: _____

Did the harassment/discrimination occur while on duty? Yes No If yes, where did it occur?

Have you discussed the discrimination/harassment with your supervisor: Yes No

Provide a detailed description of discrimination/harassment (attach additional pages, if necessary):

What corrective action do you want taken on your behalf regarding this complaint (attach additional pages, if necessary)? _____

Signature: _____ Date: _____

**ACKNOWLEDGEMENT OF MANDATORY COMPLIANCE WITH
CITY OF SAN BERNARDINO MUNICIPAL WATER DEPARTMENT POLICY ON
NON-DISCRIMINATION/HARASSMENT**

I hereby acknowledge receipt of the City of San Bernardino Municipal Water Department Policy on Non-Discrimination/Harassment (Policy No. 33.070). I understand that compliance with this policy is mandatory and violation of this policy may result in discipline up to and including termination.

DATE

Employee Signature

Employee Name (Print)