

STOCKTON POLICE DEPARTMENT

GENERAL ORDER

DISCRIMINATION AND HARASSMENT
SUBJECT

DATE: May 28, 2015

NO: I-2

FROM: CHIEF ERIC JONES

TO: ALL PERSONNEL

INDEX: **Discrimination and Harassment**
Equal Employment Opportunity Commission

I. PURPOSE

The purpose of this policy is to (a) reaffirm the Stockton Police Department's commitment to demonstrating respect for all individuals by strictly prohibiting all forms of harassment and discrimination in the workplace, (b) define the types of conduct prohibited by this policy, and (c) set forth a procedure for investigating and resolving complaints of harassment and discrimination.

II. POLICY

- A. The Stockton Police Department prohibits discrimination and harassment in employment on the basis of membership in any protected class to include race, religious creed, color, national origin, ancestry, military and veterans status, physical or mental disability, marital status, pregnancy (childbirth and breastfeeding), medical condition, gender, sexual orientation, sex (including gender, gender identity, gender expression and transgender), political affiliation, age (40 and older), genetic characteristics or information, denial of family and medical care leave, concerted labor activity, employees who obtain coverage, receive a tax credit or subsidy through the Healthcare "Market Place" or "Exchange" or any other category or attribute as consistent with state or federal law. This Policy applies to all employees, unpaid interns, volunteers, and individuals participating in a training program leading to employment, agents, consultants, and contractors of the Department.
- B. All Department employees share a responsibility to assist in maintaining an employment environment free of harassment and discrimination. This Policy applies to all aspects of employment, including, but not limited to, hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, compensation, and training.
- C. The Department shall investigate promptly all allegations of discrimination and harassment. If the Department determines that discrimination or harassment has occurred, the Department shall take remedial action as appropriate and necessary. Such action may include disciplinary action up to, and including, termination. In addition, under applicable law, individual supervisors and employees may be subject to personal liability and/or punitive damages in any litigation arising as a result of such conduct.
- D. Any employee who retaliates against or participates in retaliating against any person who has brought forth, in good faith, a complaint of discrimination or harassment, or any employee who retaliates against any person who in good faith participates in an investigation of any such complaint shall be subject to disciplinary action up to, and including, termination.

III. DEFINITIONS OF HARASSMENT / DISCRIMINATION

- A. **Harassment:** As used in this Policy, "harassment" consists of any action, behavior, practice, or process directed at another person or persons that is not required for the legitimate conduct of the Department or personnel management, but that is engaged in because of mean spiritedness, bigotry, or other personal motives outside the scope of one's job duties; and that is intended to or results in intimidation or hinders another's ability to effectively perform his or her job duties in an atmosphere free from undue hostility; unreasonably hinders another's ability to remain or advance in his or her employment with the Department; or causes substantial emotional distress. Harassment may take many forms, including, but not limited to, the following:

1. Verbal Examples: Epithets, derogatory comments, rumors, or slurs based on membership in a protected class. Also included are sexually-oriented comments relating to appearance, including dress or physical features, race-oriented remarks, or requests for sexual favors.
 2. Physical Examples: Inflicting unnecessary or unwelcome physical contact or impeding or blocking movement that results in the physical interference with normal work or movement when directed at an individual based on membership in a protected class. This conduct may be in the form of pinching, grabbing, patting, leering, or making explicit or implied job threats or promises in return for submission to physical acts.
 3. Visual Examples: The displaying of derogatory posters, photography, notices, bulletins, cartoons, drawings, or screen savers based on membership in a protected class. This applies to material posted in or on Department equipment or personal property in the workplace.
- B. Discrimination:** “Discrimination,” as used in this Policy, consists of any statements (including slurs, epithets, etc.) or any action, behavior, practice, or process that is intended to, or results in, unfair treatment or unreasonable interference with or denial of employment benefits, privileges, or rights of another person or persons because of his or her membership in a protected class to include, race, religious creed, color, national origin, ancestry, military and veterans status, physical or mental disability, marital status, pregnancy (childbirth and breastfeeding), medical condition, gender, sexual orientation, sex (including gender, gender identity, gender expression and transgender), political affiliation, age (40 and older), genetic characteristics or information, denial of family and medical care leave, concerted labor activity, employees who obtain coverage, receive a tax credit or subsidy through the Healthcare “Market Place” or “Exchange” or any other category or attribute as consistent with state or federal law. Such conduct constitutes harassment when it unreasonably interferes with the work performance of the person or persons to whom such statements or conduct is directed or creates an intimidating or hostile work environment.
- C. Sexual Harassment:** Harassment of the sexual variety in the workplace is a violation of Title VII of the Federal Civil Rights Act of 1964, as amended, and the California Fair Employment and Housing Act. Examples of sexual harassment include unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that unreasonably interferes with a person’s work performance or creates an offensive work environment or the conditioning of employment benefits upon sexual favors.

IV. COMPLAINT PROCEDURES

- A.** The Department shall investigate thoroughly all complaints of harassment and discrimination. To accomplish this, such incidents must be reported to Department Management. Employees who feel they have been subjected to discrimination or harassment in the workplace are encouraged to communicate the situation immediately. The following steps should be followed by any employee who has a complaint of discrimination or harassment.
1. Employees are encouraged, whenever appropriate to directly inform the person(s) engaging in the discriminating or harassing behavior, that such behavior is offensive and must stop.
 2. An employee should contact his or her immediate supervisor to register complaints of discrimination or harassment, unless the immediate supervisor is the person alleged to have engaged in the discriminatory or harassing behavior, in which case the employee should contact someone at the next supervisory level. If the employee feels uncomfortable dealing directly with his or her immediate supervisor, the employee should contact any Department supervisor, manager, or the EEOC Officer.
 - a. The Human Resources Department will be notified when the Police Department receives a complaint of harassment or discrimination. A determination will then be made regarding which Department shall oversee the investigation into the allegations being made. Typically the investigation will be handled by the Police Department.
- B.** To assist the Department in conducting a thorough investigation, an employee should submit complaints in writing and should describe, in detail, the objectionable behavior or conduct. The employee should submit any documents (e.g. notes, etc.) that will corroborate the allegations, along with the written complaint. An employee may also file a verbal complaint.

- C. The EEOC Officer will conduct an investigation into the allegations and will, to the maximum extent possible, maintain the confidentiality of the parties, witnesses, and any information and/or documentation obtained. The EEOC Manager will oversee the investigation.

V. RESPONDING TO THE COMPLAINT

- A. Following the EEOC Officer's investigation, the EEOC Manager will review the investigation and make a Complaint Determination.
 - 1. Complaint Determinations
 - a. Unfounded Complaints: A complaint will be determined Unfounded when an investigation indicates the act(s) complained of did not occur or did not violate federal and/or state discrimination and harassment laws or this policy.
 - b. Not-Sustained Complaints: A complaint will be determined Not-Sustained when an investigation indicates there is not enough evidence to show the act(s) complained of did or did not occur.
 - c. Sustained Complaints: A complaint will be determined Sustained when an investigation indicates the act(s) did occur and violated federal and/or state discrimination and harassment laws and/or this policy.
- B. Following the EEOC Manager's Complaint Determination, the EEOC Manager will submit the Complaint Determination to a Department Review Committee ("Roundtable") that will review the investigation and the Complaint Determination. The Review Committee shall consist of the Deputy Chief over the division or section of the employee about whom the complaint has been made, the Captain or Commander of the employee's division or section, and a legal advisor. The Professional Standards Section will coordinate and schedule Roundtable meetings.
 - 1. At the Roundtable, the EEOC Officer who conducted the investigation and the EEOC Manager will discuss the facts of the case and answer any questions from the Review Committee. The EEOC Officer and Manager will then be excused from the Roundtable and the Review Committee will make its own independent Complaint Determination. The Review Committee may refer the matter to the EEOC Officer for further investigation.
 - 2. The Review Committee will reflect its Complaint Determination on a Roundtable Statement of Findings form and will indicate on the form whether it concurs with the EEOC Manager's Complaint Determination.
 - 3. If the Review Committee determines the Complaint is Unfounded or Not Sustained, the Review Committee will recommend no disciplinary action should be imposed.
 - 4. If the Review Committee determines the Complaint is Sustained, the Review Committee will recommend on the Roundtable Statement of Findings form proposed disciplinary action.
 - 5. If the Review Committee is unable to reach consensus either on the Complaint Determination or on the level of disciplinary action, the Review Committee will document that in a memorandum to the Police Chief.
- C. Following the Roundtable, the Review Committee will submit the investigation and its Roundtable Statement of Findings form to the Chief of Police, who will consider the Complaint Determinations and the recommendations, if any, of the Review Committee and make his/her own independent Complaint Determination and level of discipline, if any. The Chief of Police will then confer with the Director of Human Resources regarding the final determination.
- D. Once the determination is finalized, the EEOC Manager shall provide a written response to the complainant and to the employee alleged to have engaged in the discriminatory or harassing behavior. As to the complainant, the response shall indicate whether the Complaint Determination was Unfounded, Not-Sustained, or Sustained; if the Complaint Determination is Sustained, the response will indicate what remedial action will be taken but the response will not detail specific disciplinary action, if any, taken.

- E. As to the employee alleged to have engaged in the discriminatory or harassing behavior, the response shall indicate whether the Complaint Determination was Unfounded, Not Sustained or Sustained; if the Complaint Determination is Sustained, the response will indicate what remedial action will be taken, including appropriate discipline. If the recommended discipline is for a suspension, reduction in pay, demotion, or termination, the Police Chief will provide the employee with a Notice of Intent to discipline. Thereafter, the employee will be entitled to contest the recommended disciplinary action as provided by law.
- F. When the EEOC Unit receives a complaint that, at the initial intake, does not appear to be a matter within the jurisdiction of the EEOC Unit, the EEOC Officer may nevertheless investigate the complaint as an Inquiry. If such investigation indicates a violation of this Policy, the EEOC Officer will investigate the complaint as provided in this Policy; otherwise, the EEOC Officer will prepare a confidential memorandum documenting the inquiry and, if appropriate, the EEOC Officer may refer the inquiry to the division involved for disposition.

VI. RESPONSIBILITIES

- A. Supervisors.
 - 1. All supervisors will take immediate and appropriate action within their work area to prevent and/or stop discrimination and harassment. Supervisors will immediately report any incidents of discrimination and harassment through the chain of command or directly to the Department EEOC Officer.
 - 2. All supervisors will review this General Order with their subordinate personnel at least twice each year and document this training in the employee's performance records.
 - 3. All supervisors will attend two hours of discrimination and harassment awareness and prevention training within six months of appointment to a supervisory position, and once every two years afterwards as required by state and federal law.
- B. Equal Employment Opportunity Commission Manager and Officer.
 - 1. The Professional Standards Lieutenant is the Department EEOC Manager.
 - 2. The Chief of Police will designate the Department EEOC Officer who will be the Sergeant in charge of the EEOC Unit, directly reporting to the EEOC Manager. The EEOC Officer's responsibilities and duties include: investigating discrimination and harassment complaints; counseling and mediating with employees about discrimination and harassment issues; providing discrimination and harassment training; ensuring adherence to state and federal guidelines for reporting and investigating complaints of discrimination and harassment; being a liaison with the City Attorney and Human Resources Department about discrimination and harassment issues; and maintaining all EEOC files.

VII. ALTERNATIVE REMEDIES

Pursuant to Title VII of the Federal Civil Rights Act of 1964, any person has a right to file a charge of harassment/discrimination with the Equal Employment Opportunity Commission. In addition, pursuant to the California Fair Employment and Housing Act, a person may also file a complaint of harassment/discrimination with the California Department of Fair Employment and Housing. A person may also file a complaint of harassment/discrimination with the City Director of Human Resources.

VIII. COMMUNICATION OF POLICY

This policy shall be provided to all managers, supervisors, and employees and shall be posted in the appropriate places.