



AGENDA REPORT

TO: Edward D. Reiskin
City Administrator

FROM: Artisha McCullough
EEO and Civil Rights
Director

SUBJECT: Informational Report on the City's
Equal Pay Policy

DATE: February 1, 2021

City Administrator Approval 

Date: Feb 5, 2021

RECOMMENDATION

Staff Recommends That The City Council Receive An Informational Report From the City Administrator's Office Regarding The City's Equal Pay Policy That Exist For The Employees Of The City Of Oakland.

EXECUTIVE SUMMARY

The purpose of this informational report from the City Administrator's Office, Employment Investigations and Civil Rights Compliance is to provide information to City Council on how equal pay discrimination is covered within City Policy Administrative Instruction 71, the City's Anti-Discrimination/Non-Harassment policy. The City strictly prohibits any form of unlawful employment discrimination and/or harassment or other inappropriate conduct based on protected status such as gender and age. The policy covers all terms and conditions of employment, including but not limited to: recruitment, hiring, promotion, termination, discipline, layoff, recall, transfer, leaves of absence, position classification, training, compensation and benefits.

The Policy was written in a manner that is consistent with federal and state laws regarding discrimination and harassment, such as Title VII of the Civil Rights Act of 1964 and California's Fair Employment and Housing Act.

BACKGROUND/LEGISLATIVE HISTORY

Staff was asked to prepare an informational report on the City of Oakland's Equal Pay Policy at the January 12, 2021 City Council meeting, as a result of questions raised by a member of the public.

ANALYSIS AND POLICY ALTERNATIVES

Equal Pay discrimination protections are embedded in City Policy Administrative Instruction 71, (Anti-Discrimination/Non-Harassment Policy) and is covered under pay discrimination based on gender. In other words, an employee or applicant can file a pay discrimination complaint if they believe there are pay inequalities based on gender. A City employee or applicant can file a complaint directly with the City's Employment Investigations and Civil Rights Compliance Department (**Intake Form**), or with file with the Federal or State Discrimination Enforcement Agencies, Department of Fair Employment and Housing (DFEH) or the Equal Employment Opportunity Commission (EEOC).

The City's Policy was written and is interpreted in a manner that is consistent with federal and state laws such as Title VII of the Civil Rights Act of 1964, and California's Fair Employment and Housing Act. The Federal Equal Pay Act of 1963 and Title VII makes it illegal to discriminate based on gender in pay and benefits and requires that men and women in the same workplace be given equal pay for equal work.

Sex-Based Discrimination – Title VII of the Civil Rights Act of 1964 forbids unfavorable treatment, which includes pay discrimination, of covered individuals because of that individual's sex.

The Equal Pay Act of 1963 (EPA) prohibits sex-based wage discrimination between men and women in the same establishment who perform jobs that require substantially equal skill, effort, and responsibility under similar working conditions.

Lilly Ledbetter Fair Pay Act of 2009

On January 29, 2009, President Obama signed the first piece of legislation of his Administration: the Lilly Ledbetter Fair Pay Act of 2009 ("Act"). This law overturned the Supreme Court's decision in *Ledbetter v. Goodyear Tire & Rubber Co., Inc.*, 550 U.S. 618 (2007), which severely restricted the time period for filing complaints of employment discrimination concerning compensation.

The Act states the EEOC's longstanding position that each paycheck that contains discriminatory compensation is a separate violation regardless of when the discrimination began. The Ledbetter Act recognizes the "reality of wage discrimination" and restores "bedrock principles of American law." Particularly important for the victims of discrimination, the Act contains an explicit retroactivity provision.

Differences in pay that occur because of sex violate the EPA and/or Title VII of the Civil Rights Act of 1964, as amended. In addition, compensation differences based on race, color, religion, national origin, age, disability, genetic information, and/or retaliation also violate laws enforced by EEOC.

California Equal Pay Act

The amended Equal Pay Act prohibits an employer from paying any of its employees wage rates that are less than what it pays employees of the opposite sex, or of another race, or of another ethnicity for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions.

City Policy Administrative Instruction 71

The City of Oakland (City) is committed to equal employment opportunity and to ensuring that all employees have a work environment free of conduct that could be considered discriminatory or harassing. The City strictly prohibits any form of unlawful employment discrimination and/or harassment or other inappropriate conduct based on protected status. Protected statuses include: race, color, ancestry, national origin (including immigration status, cultural or linguistic characteristics), religion, creed (including religious dress and grooming practices), age (over 40), disability (including both mental and physical), sex (including pregnancy or medical conditions related to pregnancy, childbirth or breastfeeding), sexual orientation, gender identity, gender expression, medical condition (including cancer and genetic characteristics), genetic information (including family medical history), marital status, military and veteran status, and other characteristic protected by law. The City will not tolerate any harassing or discriminatory conduct on these bases, nor retaliation for opposing illegal discrimination or harassment related to one of these categories.

What the Policy Covers-Page 3

The Policy covers all terms and conditions of employment, including but not limited to: recruitment, hiring, promotion, termination, discipline, layoff, recall, transfer, leaves of absence, position classification, training, compensation and benefits.

Most employee pay is transparent and dictated

Initial Salary -Local 21,1021, CMEA

A represented employee's initial salary shall be the salary attached to the lowest rate of the salary schedule established for the classification to which the represented employee is appointed, provided that the appointing authority may appoint a new employee at any step in the applicable salary schedule for the classification involved if there has been unusual difficulty in recruiting competent employees at the lowest rate of said salary schedule and the higher rate is commensurate with the appointee's education and experience.

Equal Employment Opportunity Data Collection

Employment Investigations and Civil Rights Compliance collects and reviews City of Oakland workforce data by job category, salary, race/ethnicity, and gender to analyze trends, consistency and uniformity in our employment practices.

Resources for gender discrimination and equal pay awareness

Training

- Ongoing three-hour training course covering the City's Administrative Instruction 71 anti-discrimination and harassment policy for employees. AI 71 Academy Held Quarterly, and standalone trainings typically held monthly
- Periodic refresher trainings offered to Senior Staff
- New Employee Orientation

All new employees receive an overview of the discrimination and harassment policy and sign off that they have read and understand the policy

City's website

- AI 71 training information and schedules
- Administrative Instruction 71 policy
- Intake Assessment Form
- Union Agreements (MOU) regarding employee initial salary

FISCAL IMPACT

This item is for informational purposes only and does not have a direct fiscal impact or cost.

PUBLIC OUTREACH / INTEREST

No outreach was deemed necessary for the proposed policy action beyond the standard City Council agenda noticing procedures, because City Policy Administrative Instruction 71 is based on mandated State and Federal law.

COORDINATION

The City's Anti-Discrimination/Non-Harassment Policy was created and written as part of mandates issued by the California Department of Fair Employment and Housing and the Federal Equal Employment Opportunity Commission. The Office of the City Attorney, Department of Human Resources/Employees Relations, The City Administrator's Office, and Unions worked collaborative on the content of the policy.

SUSTAINABLE OPPORTUNITIES

Economic: There are no economic opportunities associated with this report.

Environmental: There are no environmental opportunities associated with this report.

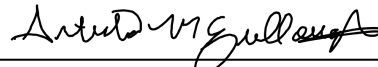
Race & Equity: The City of Oakland is committed to treating all of its employees in a fair and equitable manner as stated in A1 71.

ACTION REQUESTED OF THE CITY COUNCIL

Receive An Informational Report From Informational Report From The City Administrator's Office On The City's Policy Involving Equal Pay Policy For City Of Oakland Employees.

For questions regarding this report, please contact Artisha McCullough, Equal Employment Opportunity and Civil Rights Director, at 510-238-6468.

Respectfully submitted,



Artisha McCullough
EEO and Civil Rights Director, City
Administrator's Office, Employment
Investigations and Civil Rights Compliance

CITY OF OAKLAND



ADMINISTRATIVE INSTRUCTION

SUBJECT	Equal Employment Opportunity/Anti-Discrimination/Non-Harassment Policy and Complaint Procedure	NUMBER	71
REFERENCE		EFFECTIVE	March 9, 2020
SUPERSEDE	AI 70, AI 71 dated 1/1/03, AI 115, AI 116, AI 126, AI 71 dated 4/1/04 AI 71 dated 1/1/08		

I. PURPOSE

The purpose of this Administrative Instruction is: (1) to outline the City of Oakland's Policy, standards, requirements, complaint procedures and disciplinary guidelines regarding inappropriate and/or unprofessional conduct that could potentially rise to the level of discrimination and/or harassment; and (2) set out complaint and investigation procedures for all employees and job applicants who believe they have been subjected to inappropriate workplace conduct based on their protected status.

II. POLICY

A. Unlawful discrimination, harassment or other inappropriate conduct based on protected status

The City of Oakland (City) is committed to equal employment opportunity and to ensuring that all employees have a work environment free of conduct that could be considered discriminatory or harassing. The City strictly prohibits any form of unlawful employment discrimination and/or harassment or other inappropriate conduct based on protected status. Protected statuses include: race, color, ancestry, national origin (including immigration status, cultural or linguistic characteristics), religion, creed (including religious dress and grooming practices), age (over 40), disability (including both mental and physical), sex (including pregnancy or medical conditions related to pregnancy, childbirth or breastfeeding), sexual orientation, gender identity, gender expression, medical condition (including cancer and genetic characteristics), genetic information (including family medical history), marital status, military and veteran status, and other characteristic protected by law. The City will not tolerate any harassing or discriminatory conduct on these bases, nor retaliation for opposing illegal discrimination or harassment related to one of these categories.

Also, the City will not tolerate any inappropriate conduct that affects tangible job benefits, that unreasonably interferes with any individual's work performance, or that creates an intimidating, hostile, or offensive working environment. The City does not allow anyone, including any director, manager, supervisor, co-worker, vendor, elected official, or commissioner, to unlawfully harass or discriminate against City employees or applicants for employment. Harassment and discrimination is also prohibited against any person providing services to or working with the City pursuant to a contract. The City will take prompt and effective remedial action within its power upon discovery of such conduct.

1. Discrimination or harassment based on a perception or belief that a person is a member of protected group or a person's association with a protected group

The City prohibits discrimination and/or harassment based on a perception that a person has any of the above characteristics, or that the person is associated with a person who has, or is perceived to have, any of the above characteristics. Harassment and/or discrimination based on these characteristics (whether actual, perceived or by association) is prohibited.

2. Retaliation against a person based on their expressed concern about unlawful discrimination or harassment or for having filed a complaint or participated in a discrimination or harassment investigation

The City prohibits retaliation against anyone who has expressed a good faith concern about unlawful discrimination or harassment or who has filed a complaint or participated in an investigation of any such complaint. The City will not tolerate retaliatory conduct on these bases.

B. Who and What the Policy Covers

Who the Policy Covers

This Policy applies to all full-time employees, part-time employees, temporary employees, and job applicants. The Policy also applies to any person providing services to or working with the City pursuant to a contract. For the purpose of this Policy only, the term "employees" includes unpaid interns and volunteers.

Where the Policy Applies

This Policy applies to all City locations, as well as to all employer-sponsored activities, such as training, social or other events. This Policy also applies to non-City locations (including locations where no employer-sponsored activity is taking place) and off-duty conduct if a reasonable connection or impact to the workplace can be shown. For example, a City employee sending a racist email from home to another City employee violates this Policy. Such conduct does not fall outside of the Policy just because both employees were not on-duty.

What the Policy Covers

The Policy covers all terms and conditions of employment, including but not limited to: recruitment, hiring, promotion, termination, discipline, layoff, recall, transfer, leaves of absence, position classification, training, compensation and benefits.

The Policy covers communications sent on personal devices. For example, a City employee sending harassing text messages to another City employee violates the Policy even if the messages were sent and received on personal devices.

This Policy prohibits not only unlawful harassment, but also any conduct that is unprofessional, disrespectful or inappropriate based on a protected status/characteristic, whether or not it rises to the level of legally prohibited harassment and whether or not the conduct is to a person in a protected category. **For example**, making racist statements to a group of employees who are not members of that race still violates the Policy. It is the City's goal to prevent the occurrence of harassing activity and to stop harassing conduct when it occurs and before it becomes a violation of law. This Policy therefore prohibits activities based on protected status that are inappropriate whether or not they are sufficiently severe, persistent or pervasive to constitute unlawful harassment.

Additionally, the City wishes to note that inappropriate behavior is only workplace harassment when it is based on membership in a protected category (e.g., race, sex/gender, etc.). For example, even though employees are often offended when a manager yells at them, yelling itself is not workplace harassment unless the yelling can be linked to a protected status (e.g., yelling racist names, only yelling at women, etc.). While such behavior may not violate this Policy, as it is not based on a protected characteristic, it is the responsibility of all City employees to behave in a professional and respectful manner in accordance with the City's Code of Conduct Policy – Administrative Instruction 596, so as to create a comfortable working environment for everyone.

This Policy will be interpreted in a manner that is consistent with federal and state laws regarding harassment, such as Title VII of the Civil Rights Act of 1964, California's Fair Employment and Housing Act, and the Americans with Disabilities Act. A determination as to whether a violation of this Policy has occurred will be evaluated on a case by case basis with consideration for the context and circumstances of the alleged conduct.

III. DEFINITIONS AND APPLICATIONS

A. Harassing Conduct

Prohibited behavior may include, but is not limited to: verbal, visual, physical or any other type of conduct that denigrates, demeans, or shows hostility or aversion towards an employee because of their membership in a protected group. Prohibited behavior also includes conduct directed towards a protected class. For example, saying, “That’s gay,” is prohibited behavior under the Policy, even if the phrase is not directed to a member of a protected class. Some examples of the types of conduct that could violate this Policy include, but are not limited to, the following:

1. **Physical conduct:** Unwanted touching, gesturing, leering, prolonged staring, assault, violence, impeding or blocking movement, or any physical interference with normal work or movement, as well as defacement of a person’s property.
2. **Verbal conduct:** Epithets, slurs, derogatory or demeaning comments, even if not directed at a specific person or persons, innuendos, jokes or ridicule, hostile or more severe treatment based on a person’s protected characteristic or status, threats of violence, or comments indicating stereotyping.
3. **Visual conduct:** Obscene, derogatory or demeaning posters, photos, text messages, cartoons, e-mail, screen savers, social media postings, or drawings.
4. **Audio Conduct:** Playing music with sexually degrading, racially or ethnically offensive or derogatory lyrics, for example, songs that include graphic references to certain parts of human anatomy or descriptions of various types of sexual conduct. Songs that involve hostile or abusive slang terms for members of certain genders, races or religions, including the “N-word” or “B-word.”

Playing radio talk shows or other forms of media that have similar offensive or degrading content is also prohibited.

5. **Other conduct:** Hostility, harsh or less favorable treatment, or selection of assignments based on a person’s protected status.
 - a) Making harassing telephone calls to a coworker, or sending harassing correspondence to an individual based on a person’s protected status, by any means, including but not limited to: public or private mail, interoffice mail, facsimile, email, intranet or internet websites, social media, direct-messaging applications, or text messaging.
 - b) Posting, sharing, or uploading/downloading harassing, discriminatory, retaliatory, or other protected status based content in any form, by any means, including but not limited to: public or private mail, interoffice mail, facsimile, email, intranet or internet websites, social media, direct messaging applications, or text messaging.

B. Sexual/Gender Based Discrimination or Harassment

The City of Oakland incorporates in this Policy the Equal Employment Opportunity Commission's definitions of "sexual harassment" as they have been interpreted and supplemented by federal and state case law:

1. **Prohibited Conduct:** Unwelcome sexual advances, or visual, verbal, physical or other conduct of a sexual or gender-based nature, or which creates an intimidating, hostile or offensive work environment, or which substantially interferes with an individual's work performance based on gender.
2. **Quid Pro Quo Harassment:** Unwelcome sexual advances, requests for sexual favors, and/or other verbal or physical conduct of a sexual nature that is made a term or condition of an individual's employment.
3. **Unlawful Sexual Favoritism:** An employee in a work group who is not involved in a sexual relationship with a supervisor is denied employment opportunities by a supervisor who grants greater opportunities to an employee who is involved in a sexual relationship with that supervisor.
4. **Examples:** Prohibited conduct based on sex or gender includes, but is not limited to:
 - a) Any display of sexually explicit pictures, greeting cards, articles, books, images, photos, art, cartoons, e-mails, text messages, calendars, screen savers, social media postings or other similar material;
 - b) Comments or displays of greeting cards, articles, books, images, photos, art, cartoons, emails, text messages, calendars, screen saver, social media postings or other similar material reflecting gender-based stereotypes;
 - c) Harsh or less favorable treatment based on gender;
 - d) Off-color language or jokes of a sexual nature. These jokes need not be directed to a member of a protected class. For example, making a sexually charged joke regarding women when no women are present is prohibited behavior pursuant to this Policy;
 - e) Sexual flirtation, touching or leering;
 - f) Sexually suggestive comments, propositions or advances;
 - g) Intrusive questions regarding another person's intimate relationships, dating, or sex life;
 - h) Slurs and other verbal, graphic or physical conduct relating to an individual's gender;
 - i) Sexually suggestive physical conduct such as pelvic thrusts, lip licking, kissing sucking noises, groping one's own body, and other such gestures;
 - j) Making harassing telephone calls to a coworker, or sending harassing correspondence to an individual by any means including, but not limited to, public or private mail, interoffice mail, facsimile, computer email, through social media websites, direct-messaging websites or applications or text messaging based on sex or gender;

- k) Posting, sending, uploading/downloading harassing or discriminatory content based on sex or gender, in any form, via public or private mail, facsimile, interoffice mail, email, intranet or internet websites, social media, direct messaging applications, or text messaging.

C. Race/National Origin/Color/Ancestry Discrimination or Harassment

1. **Prohibited Conduct:** Harassment based on race, ethnicity, color, national origin, or ancestry includes, but is not limited to: threats, physical conduct, pranks, vandalism, jokes, slurs, ridicule, verbal, graphic, or written materials, or hostility or less favorable treatment directed at an employee because of their actual or perceived race, color, ancestry or national origin.
2. **Examples:** Inappropriate conduct based on race, color, ethnicity, ancestry or national origin includes, but is not limited to:
 - a) Assault, impeding or blocking movement, or any physical interference with normal work or movement because of race, color, national origin, ancestry, or ethnicity;
 - b) Defacement of a person's property, derogatory or demeaning posters, cartoons, emails, text messages, screen savers, drawings or other similar materials depicting racial or ethnic stereotypes;
 - c) Derogatory or demeaning racial or national origin-based comments even if not directed at a specific person or persons, including stereotyping or mimicry based on race, color, ancestry, immigration status or national origin;
 - d) Jokes or ridicule directed to a specific person or persons about their race, color, national origin or ethnicity, including demeaning comments or stereotyping concerning ancestry, ethnic food or customs, attire, appearance or other ethnic, tribal affiliation, cultural or linguistic characteristics, or national origin-based characteristics;
 - e) Racial or national origin-based epithets or slurs, or threats of deportation;
 - f) Threats of, or actual violence based on race, color, national origin, ethnicity or immigration status.
 - g) Making harassing telephone calls to a coworker, or sending harassing correspondence to an individual by any means including, but not limited to, public or private mail, on social media accounts, direct-messaging websites and/or forums, interoffice mail, facsimile, computer email or text messaging because of race, color, national origin or ethnicity;
 - h) Posting, sending, uploading/downloading discriminatory or harassing content based on race, color, national origin or ethnicity, in any form, via public or private mail, facsimile, interoffice mail, email, intranet or internet websites, social media, direct messaging applications, or text messaging.
 - i) Harassing or discriminatory treatment based on hair texture and protective hairstyles. Protective hairstyles include, but are not limited to braids, locks, and twists.

D. Physical and/or Mental Disability Discrimination and Disability Based Harassment

The City of Oakland incorporates in this Policy, state and federal laws' definition of disability. The City prohibits discrimination and disability-based harassment.

1. **Prohibited Conduct:** Verbal, physical, visual or other conduct described above, or more severe or less favorable treatment based on disability. Additional examples include, but are not limited to: comments, expressions of resentment, jokes, slurs, visual displays, behavior that derides the abilities of an individual with a disability or portrays an individual with a disability as someone to be disdained or feared, mimicry or attempts to imitate an individual's disability, comments or other conduct evidencing stereotyping of individuals with disabilities.
2. **Examples:** Inappropriate conduct or harassment based on disability-based discrimination includes, but is not limited to: derogatory or demeaning comments, epithets or slurs, mimicry or gestures, visual displays, comments or conduct evidencing stereotyping based on disability, comments implying a lack of ability because of a disability, comments that denigrate or disparage on the basis of disability, contempt, condemnation, laughter, hostility or disgust at a person's disability or perceived disability.
3. Employees who are qualified individuals with disabilities protected by the California Fair Employment and Housing Act and/or the American with Disabilities Act are entitled to reasonable accommodation for their disabilities. For information regarding the City's Interactive Process "IAP" and requests for Reasonable Accommodation under the ADA/FEHA, see Administrative Instruction 139, *Procedures for Complying with Employment Aspects of the ADA/FEHA*.
4. The complaint procedure for persons reporting allegations of discrimination/harassment based on disability are the same as that for reporting other forms of prohibited discrimination/harassment.

E. Discrimination and/or Harassment Based on Sexual Orientation

1. **Prohibited Conduct:** Verbal, physical, visual or other conduct described above, including but not limited to: threats, assaults, pranks, vandalism, jokes, slurs; verbal, graphic, or written materials; hostility or less favorable treatment directed at an employee because of their sexual orientation or perceived sexual orientation.
2. **Examples:** Inappropriate conduct or harassment based on sexual orientation includes, but is not limited to: derogatory or demeaning comments, epithets or slurs, mimicry or gestures, visual displays, comments or conduct evidencing stereotyping based on sexual orientation, comments implying a lack of masculinity or femininity or stereotypically appropriate male or female behavior, comments that denigrate or disparage on the basis of sexual orientation, contempt, condemnation, hostility or

disgust at a person's sexual orientation or openness regarding sexual orientation.

F. Discrimination and/or Harassment Based on Gender Identity or Expression

1. **Prohibited Conduct:** Verbal, physical, visual or other conduct described above, including but not limited to: threats, assaults, pranks, vandalism, jokes, slurs; verbal, graphic or written materials; hostility or less favorable treatment directed at an employee because of their transgender status or actual or perceived gender identity.
2. **Examples:** Inappropriate conduct or harassment based on transgender status or actual or perceived gender identity includes, but is not limited to: derogatory or demeaning comments; epithets or slurs; mimicry or gestures; intentionally using names or pronouns a person does not identify with; comments, visual displays, or conduct evidencing stereotyping based on a person's transgender status or actual or perceived gender identity; comments implying a lack of masculinity or femininity or of stereotypically appropriate male or female behavior or dress; comments that denigrate or disparage on the basis of transgender status or actual or perceived gender identity; contempt, condemnation, hostility or disgust at a person's transgender status or actual or perceived gender identity or openness regarding transgender status or gender identity.
3. Pursuant to state law, individuals who identify as transgender have the right to use a restroom or locker room that corresponds with the individual's gender identity, regardless of the individual's assigned sex at birth.

G. Discrimination and/or Harassment Based on Religion

1. **Prohibited Conduct:** Verbal, physical, visual or other conduct described above, including but not limited to: threats, assaults, pranks, vandalism, jokes, slurs; verbal, graphic or written materials; hostility or less favorable treatment directed at an employee because of their, religious beliefs or practices, or lack of religion or religious beliefs.
2. **Examples:** Inappropriate conduct or harassment based on religion includes, but is not limited to: derogatory or demeaning comments; epithets, slurs or gestures; comments, visual displays, or conduct implying the superiority of one religion over another; hostility or less favorable treatment based on an employee's religion or religious beliefs or lack thereof; stereotyping based on religion, religious practices, religious beliefs, or lack thereof; unwanted invitations to participate in religious activities or practices.
3. Employees have a right to reasonable accommodation of religious observance, practice and belief that does not constitute an undue burden on the City.

H. Discrimination and/or Harassment Based on Age

1. **Prohibited Conduct:** Verbal, physical, visual or other conduct described above, including but not limited to: threats, assaults, pranks, vandalism, jokes, slurs; verbal, graphic or written materials; hostility or less favorable treatment directed at an employee because of their being at least 40 years of age or older.
2. **Examples:** Inappropriate conduct or harassment based on age includes, but is not limited to: derogatory or demeaning comments, epithets, slurs, jokes, ridicule or gestures; comments, visual displays, treatment or conduct implying inferiority or inability based on age; hostility or less favorable treatment based on an individual's age; and stereotyping based on age.

I. Discrimination and/or Harassment Based on Medical Condition

1. **Prohibited Conduct:** Verbal, physical, visual or other conduct described above, including but not limited to: threats, assaults, pranks, vandalism, jokes, slurs; or verbal, graphic or written materials directed at an employee because of their medical condition. Discrimination and/or harassment based on medical condition includes, but is not limited to, harassment because of a health impairment related to or associated with a medical condition such as cancer, HIV/AIDS, or gender dysphoria.
2. **Examples:** Inappropriate conduct or harassment based on medical condition includes, but is not limited to, derogatory or demeaning comments, epithets, slurs, jokes, ridicule or gestures; comments, visual displays, treatment or conduct implying inferiority or inability based on medical condition; hostility or less favorable treatment based on an individual's medical condition, stereotyping and negative comments about an individual taking job-protected medical leave.

Disclosing medical-related information outside a need-to-know basis, or gossiping about an employee's medical condition is also prohibited.

J. Discrimination and/or Harassment Based on Marital Status or Pregnancy

1. **Prohibited Conduct:** Verbal, physical, visual or other conduct described above, including but not limited to: threats, assaults, pranks, vandalism, jokes, slurs; or verbal, graphic or written materials directed at an individual or individuals because of their marital status and/or pregnancy.
2. **Examples:** Inappropriate conduct or harassment based on marital status and/or pregnancy includes, but is not limited to: derogatory or demeaning comments, epithets, slurs, jokes, ridicule or gestures; comments, treatment or conduct related to an individual's marital status, pregnancy, childbirth or medical conditions and/or use of medical leave related to pregnancy or childbirth; or unfavorable treatment on such bases.

K. Discrimination and/or Harassment Based on Military/Veteran Status

1. **Prohibited Conduct:** Verbal, physical, visual or other conduct described above, including but not limited to: threats, assaults, pranks, vandalism, jokes, slurs; or verbal, graphic or written materials directed at an individual or individuals because of their service or former service in any branch of the armed services and/or National Guard.
2. **Examples:** Inappropriate conduct or harassment based on military/veteran status includes, but is not limited to: derogatory or demeaning comments, epithets, slurs, jokes, ridicule or gestures, comments, treatment or conduct relating to an individual's military or veteran status.

L. Confidentiality

The City cannot guarantee absolute confidentiality with respect to complaints and/or investigations. Dissemination of information will be limited to those individuals who must be contacted in order to fulfill the City's obligations to investigate and resolve the complaint.

To the extent allowable by law, the City requires that all involved parties maintain confidentiality regarding the existence of complaints made and investigations conducted under this Policy.

M. Retaliation

The City of Oakland strictly prohibits any retaliation against an employee who has filed a complaint of discrimination, harassment or retaliation based on a protected status, or has participated in an investigation or proceeding related to such a complaint. The City of Oakland also strictly prohibits retaliation against an employee who has opposed any practice or conduct that violates this Policy. Retaliation is defined as any adverse action, including but not limited to discharge, discipline, demotion or transfer/reassignment.

IV. PROCEDURES

A. COMPLAINT AND REPORTING PROCEDURE

1. It is the responsibility of each job applicant or employee who believes they have experienced conduct that may violate this Policy to report the conduct promptly. Employees need not report a violation of this Policy to their direct supervisor but may report directly to the Employment Investigations and Civil Rights Compliance Department (EICRC).
2. A complaint may be made by any employee on the following bases:
 - a) The applicant or employee reasonably believes they were subjected to conduct that violates this Policy;

b) The applicant or employee reasonably believes they have been treated in an unlawful, discriminatory, or retaliatory manner; or

c) The applicant or employee witnesses, observes or otherwise becomes aware of conduct by City employee(s) that may violate this Policy.

3. Verbal or written complaints must be made to:

a) Employment Investigations and Civil Rights Compliance Department (EICRC), 150 Frank H. Ogawa Plaza, 2nd Floor, Wilson Building, Oakland, CA 94612; 510/238-3500

b) Any City department or agency head, director, manager, or supervisor.

c) Unless otherwise directed, the Oakland Police Department Internal Affairs Division, will investigate discrimination, harassment and retaliation complaints filed by Oakland Police Department employees against Oakland Police Department employees.

4. Any director, manager or supervisor, who becomes aware of or acquires knowledge of conduct that is in violation or may be in violation of this Policy, or who receives a verbal or written complaint, is required to report it immediately to the Employment Investigations and Civil Rights Compliance (EICRC) Director, 150 Frank H. Ogawa Plaza, 2nd Floor, Wilson Building, 510/238-3500.

5. Any employee or applicant may also complain directly to the Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing (DFEH) in accordance with the agency's procedures.

B. PROCESSING COMPLAINTS/INVESTIGATION PROCEDURE

1. An EEIC Investigator will contact the complainant in a timely manner upon receiving a complaint of discrimination, harassment or retaliation. The assigned investigator will seek information sufficient to determine if EICRC has jurisdiction over the complaint allegations.

2. When the assigned investigator determines there is sufficient information to support EICRC jurisdiction, the investigator will seek to resolve the issue or initiate an investigation into the allegations contained in the complaint.

3. The assigned investigator, whenever possible, will obtain a written, signed statement from the complainant describing the allegations in detail.

4. In the event of an investigation, the assigned investigator will interview the complainant, the charged party(ies), and all relevant witnesses to obtain further information. Employees must participate in the EICRC investigation and provide

truthful and accurate information. The assigned investigator will also seek to obtain and retain all documentary and other evidence pertaining to the complaint allegations. Employees have a right to representation in accordance with Weingarten rules. Weingarten provides that an employee who reasonably believes that an investigatory interview could lead to discipline is entitled to ask for union representation.

5. Upon completion of a formal investigation, the investigator will prepare a thorough, written, fact-finding report that will contain findings related to each relevant, factual allegation in the complaint. Investigative reports are presumed confidential.
6. The EICRC may upon their discretion elect to hire an outside investigator to conduct investigations.

C. CONCLUSION OF THE INVESTIGATION

1. If the assigned investigator concludes that a City policy has been violated, EICRC will notify Employee Relations and the department director/manager in which the harassing or discriminatory conduct occurred. The department director/manager will collaborate with Employee Relations to determine appropriate remedial action. The remedial action shall be sufficient to end the harassing or discriminatory conduct. The department director/manager will inform EICRC what remedial action was taken and provide proof of said action for EICRC file. Remedial actions may include, but are not limited to, discipline up to and including termination, suspension, demotion, transfer/reassignment, training, coaching, and other measures that will remedy the situation giving rise to the violation. Disciplinary actions will be based on the nature, frequency and severity of the conduct, in addition to any prior discipline imposed for violation of this Policy.
2. Upon completion of the investigation, EICRC will prepare closing letters to the complainant and the accused summarizing the investigation's findings. The complainant will not be informed of the nature of the corrective action taken against an individual who has been found to have violated this Policy unless EICRC determines it is appropriate to do so.

Responsible Party

**EICRC Director
City Administrator's Office**

Action

1. Develops, maintains, implements, and administers appropriate Equal Employment Opportunity (EEO) related policies and procedures.
2. Develops, directs and implements policies, procedures, practices, programs, and standards

for implementing, monitoring and evaluating EEO related program objectives. Works to mitigate risks and potential liability through proactive EEO related measures.

3. Advises the City Administrator, Assistant City Administrator, and other Department Heads on germane EEO related issues.
4. Educates Directors and Managers regarding their EEO related responsibilities.
5. Manages the analyses, interpretation, review and implementation of plans and strategies to address and resolve program related issues involving workplace discrimination complaints, and related compliance requirements.
6. Provides technical assistance to City departments on EEO related issues.
7. Collaborates with the Department of Human Resources Management, Employee Relations, and other departments to resolve EEO related issues; and when necessary, provides advice regarding remedial action.
8. Evaluates EEO related compliance reviews and barrier analyses; advises the Assistant City Administrator and Department Heads of findings, and provides advice on best practices and remedial actions.
9. Maintains and distributes current information on EEO related policies, procedures and standards.
10. Investigates and responds to DFEH and EEOC charges of discrimination.
11. Oversees the preparation and filing of compliance reports to related regulatory agencies.

Department Heads, Managers and Supervisors

1. Responsible for conducting themselves appropriately and in accordance with this Policy.
2. Responsible for ensuring a copy of this Policy is provided to current employees and newly hired employees, in addition to redistributing the Policy to current employees on a regular basis.
3. Responsible for monitoring the work environment to ensure that it is free from discriminatory, harassing or retaliatory behavior.

4. Responsible for participating in the City's EEO related training programs, including EICRC AI-71 training for supervisors, as well as online AB1825 harassment prevention training every two years.
5. Responsible for making all subordinates, including interns, volunteers, and part-time employees, aware of the City's anti-harassment policies, and explaining the complaint procedures available to employees.
6. Responsible for reporting all complaints and potential violations of which they become aware, as required by this Policy.
7. Responsible for taking appropriate remedial actions, as required by EICRC and Employee Relations
8. Understanding that a failure to report complaints or violations of this Policy may result in disciplinary action.

All Employees

1. Responsible for conducting themselves appropriately and in compliance with this Policy.
2. Required to cooperate to the fullest extent possible during an EICRC complaint investigation.
3. Responsible for reporting violations of which they become aware, even if they are not the target of the prohibited conduct, in accordance with this Policy.
4. Responsible for participating in the City's EEO related training programs.

V. ADDITIONAL INFORMATION

Please direct any questions regarding this Administrative Instruction to the Employment Investigations and Civil Rights Compliance Director, 150 Frank H. Ogawa Plaza, 2nd Floor, Wilson Building; 510/238-3500.



SABRINA LANDRETH
City Administrator

CITY OF OAKLAND



Employment Investigations and Civil Rights Compliance Intake Assessment Form

Thank you for bringing your concerns to us. The completion and submission of this Intake Assessment Form will initiate an intake interview with a Department of Employment Investigations and Civil Rights Compliance (EICRC) Representative. The EICRC representative will determine if a complaint can be accepted for investigation. If EICRC determines that it has jurisdiction to investigate your complaint, witnesses will need to be interviewed, and the accused employee(s) will have an opportunity to respond to the charge(s). Your complaint will be kept as confidential as possible. It will not generally be treated as a public record and information about it will not be released to persons without a need to know. **If you have read and understand this limited confidentiality provision, initial here _____.**

When completing this form, provide a detailed description of the alleged violation(s) and indicate the type of claim alleged (e.g. gender, age, etc.). Use additional paper, if needed.

I. COMPLAINANT INFORMATION

Name _____ Hire Date _____

Home Address _____

City _____ Zip _____

Job Title _____ Yrs. in current dept. _____

Yrs. worked at City _____ Phone Home _____ Work _____ Other _____

Department _____ Division _____

Location _____ Supervisor _____

Do you need an interpreter or accommodations for a disability during the Intake process?

Yes/No. If yes, please specify: _____

FOR DEPARTMENT USE

Jurisdiction _____

Referral _____

Note: _____

II. BASIS OF DISCRIMINATION [Please check ✓ all that apply]

What is the reason (basis) for your claim of employment discrimination?

FOR EXAMPLE, if you believe that you were treated worse than someone else because of race, you should check the box next to Race. If you believe you were treated worse for several reasons, such as your sex, religion and national origin, you should check all that apply. If you complained about discrimination, participated in someone else's complaint, or filed a charge of discrimination, and a negative action was threatened or taken, you should check the box next to Retaliation.

I believe that I experienced: Discrimination Harassment

Because of my actual or perceived:

<input type="checkbox"/> Age (40 and over) Date of Birth:	<input type="checkbox"/> Ancestry/National Origin Please specify:
<input type="checkbox"/> Color Please specify:	<input type="checkbox"/> Race Please specify:
<input type="checkbox"/> Ethnicity Please specify:	<input type="checkbox"/> Association with a member of a protected class
<input type="checkbox"/> Disability	<input type="checkbox"/> Genetic Information or Characteristic
<input type="checkbox"/> Medical Condition (Cancer or genetic characteristic)	<input type="checkbox"/> Gender Identity or Gender Expression Please specify:
<input type="checkbox"/> Sex/Gender (including pregnancy) Please specify:	<input type="checkbox"/> Pregnancy, Childbirth Please specify:
<input type="checkbox"/> Sexual Harassment	<input type="checkbox"/> Sexual Orientation Please specify:
<input type="checkbox"/> Marital Status Please specify:	<input type="checkbox"/> Religious Creed Please specify:
<input type="checkbox"/> Military or Veteran Status Please specify:	<input type="checkbox"/> Requesting Medical Care Leave

Other please specify: _____

I believe that I experienced Retaliation:

- Because I: Reported or resisted any form of discrimination or harassment
 Participated as a witness in a discrimination or harassment complaint
 Requested or took medical, disability, or pregnancy related leave or accommodation.

III. HOW HAVE YOU BEEN HARMED?

What happened to you that you believe was discriminatory? Include the date(s) of harm.

- Denied hire or promotion
- Fired
- Laid off
- Demoted
- Suspended
- Terminated
- Denied training
- Denied or forced to transfer
- Denied leave time or other benefits
- Denied equal pay/compensation
- Denied work opportunities or assignments
- Given worse job duties than other workers in my same title
- Denied reasonable accommodation for a disability
- Reprimanded or disciplined
- Received a negative performance evaluation
- Forced to quit
- Subjected to inappropriate comments or conduct based on a protected status or activity
- Other: _____

Dates of harm

First date of harm (month/day/year): _____

Last date of harm (month/day/year): _____

IV. DESCRIPTION OF THE ALLEGED DISCRIMINATION OR RETALIATION

Describe your allegations in detail. Be specific and give incident date(s), time(s), and location(s). Use additional paper, if needed.

V. PERSON (S) NAMED IN THE ALLEGED DISCRIMINATION

Provide name(s) and title(s) of the person(s) who you believe discriminated, retaliated against you, or harassed you. Include department/division, and describe their relationship to you.

VI. WITNESS (ES) TO ALLEGED DISCRIMINATION

List eyewitnesses to the alleged complaint of discrimination, and list their contact information.

VII. EVIDENCE AND DOCUMENTATION

List and/or provide any written or automated documents, or other evidence that directly supports your allegations (e.g., pay stub, letter of termination, performance evaluation, disciplinary notice, etc.).

VIII. OTHER RESOURCES SOUGHT

Have you sought help about this situation from your department supervisor, manager, employee relations, human resources, union representative, city official, attorney, outside agency or any other source?

YES NO

If yes, please specify (include dates and name of source)

IX. CASE REMEDY OR RESOLUTION

What remedy or resolution are you seeking? Please explain what you want to happen as a result of this complaint.

I, hereby certify that statements and information provided in this Intake Assessment Form are true and correct to the best of my knowledge. I understand that knowingly providing false information to influence the investigation or cause harm to the accused may be grounds for discipline.

Signature of Complainant

Date

Print Name

*Submit online, or return completed Intake Assessment Form to: Department of Employment Investigations and Civil Rights Compliance, 150 Frank Ogawa Plaza, 2nd Floor, Oakland, CA 94612
Attention: Director, EICRC*