



Policy and Complaint Procedure Against Harassment, Discrimination and Retaliation

POLICY

All employees of the San Diego Unified Port District (District) are required to conduct themselves in a professional manner at all times. Harassment, including sexual harassment, discrimination, and retaliation in employment are contrary to a professional environment and will not be tolerated under any circumstances. As such the District has zero tolerance for any conduct that violates this Policy. Conduct need not arise to the level of a violation of law to violate this Policy. Instead a single act can violate this Policy and provide grounds for discipline or other appropriate sanctions.

Harassment or discrimination against an applicant or employee by a supervisor, management employee, elected or appointed official, co-worker, member of the public, or contractor on the basis of race, religion, color, sex (including gender, gender identity, gender expression, transgender, pregnancy, and breastfeeding), national origin, ancestry, citizenship status, physical or mental disability, medical condition, genetic characteristics or information, marital status, age, sexual orientation (including homosexuality, bisexuality, or heterosexuality), veteran status or any other protected classification as defined below, will constitute a violation of District policy and such misconduct will subject that employee to corrective action up to and including termination.

Since failure to report harassment and discrimination impedes the District's ability to stop the behavior, the District strongly encourages employees who believe they are being harassed to file a complaint. All complaints are taken seriously and will be responded to promptly. To encourage the reporting of incidents, the District will ensure confidentiality to the extent practicable without interfering with the District's obligation to investigate and remediate incidents of harassment. This Policy including the complaint procedures shall be disseminated to all staff at time of hire and whenever it is modified. Anyone wanting to review the policy can also ask his or her immediate supervisor who will have a copy available. Notices will be prominently placed at District work sites to remind employees that discrimination, harassment and retaliation will not be tolerated; the notices will also provide specific information on where to file complaints, including information regarding investigations, and that they will be promptly and thoroughly investigated, and that confidentiality will be respected to the fullest extent possible under existing law and in light of the need to investigate and take disciplinary action and/or remedial action.

The District also seeks to foster an environment in which all employees feel free to report incidents of harassment without fear of retaliation or reprisal. To that end the District strongly forbids retaliation against any individual for filing a complaint and will take appropriate action to end the retaliation. Anyone who engages in conduct found to be retaliatory will be subject to corrective action up to and including termination.

DEFINITIONS

- A. Protected Classifications: This Policy prohibits harassment or discrimination because of an individual's protected classification. "Protected Classification" includes race, religion, color, sex (including gender, gender identity, gender expression, transgender, pregnancy, and breastfeeding), sexual orientation (including heterosexuality, homosexuality, and bisexuality), national origin, ancestry, citizenship status, marital status, pregnancy, age, medical condition, genetic characteristics or information, military and veteran status, and physical or mental disability.
- B. Policy Coverage: This policy prohibits the District, elected or appointed officials, officers, employees or contractors from harassing or discriminating against applicants, officers, officials, employees, or contractors because of: 1) an individual's protected classification; 2) the perception that an individual has a protected classification; or 3) the individual associates with a person who has or is perceived to have a protected classification.
- C. Discrimination: This policy prohibits treating individuals differently because of the individual's protected classification as defined in this Policy.
- D. Harassment may include, but is not limited to, the following types of behavior related to a person's protected classification. Note that harassment is not limited to conduct employees take. Under certain circumstances, harassment can also include conduct taken by those who are not employees, such as elected officials, appointed officials, persons providing services under contracts, or even members of the public:
 - 1. Speech, such as epithets, derogatory comments or slurs, and propositioning on the basis of a protected classification. This might include inappropriate comments on appearance, including dress or physical features, or dress consistent with gender identification, or race-oriented stories and jokes.
 - 2. Physical acts, such as assault, impeding or blocking movement, offensive touching, or any physical interference with normal work or movement. This includes pinching, grabbing, patting, propositioning, leering, or making explicit or implied job threats or promises in return for submission to physical acts.
 - 3. Visual acts, such as derogatory posters, cartoons, emails, pictures, or drawings related to a protected classification.
 - 4. Unwanted sexual advances, requests for sexual favors and other acts of a sexual nature, where submission to or rejection of the conduct is used as the basis for employment decisions, including but not limited to hiring, salary, promotion or where the conduct is intended to or actually does unreasonably interfere with an individual's work performance or create an intimidating, hostile, or offensive working environment.

E. Guidelines for Identifying Harassment. To help clarify what constitutes harassment in violation of this Policy, use the following guidelines:

1. Harassment includes any conduct which would be "unwelcome" to an individual of the recipient's same protected classification and which is taken because of the recipient's protected classification.
2. It is no defense that the recipient appears to have voluntarily "consented" to the conduct at issue. A recipient may not protest for many legitimate reasons, including the need to avoid being insubordinate or to avoid being ostracized.
3. Simply because no one has complained about a joke, gesture, picture, physical contact, or comment does not mean that the conduct is welcome. Harassment can evolve over time. Small, isolated incidents might be tolerated up to a point. The fact that no one is complaining now does not preclude anyone from complaining if the conduct is repeated in the future.
4. Even visual, verbal, or physical conduct between two employees who appear to welcome the conduct can constitute harassment of a third applicant, officer, official, employee, or contractor who observes the conduct or learns about the conduct later.
5. Conduct can constitute harassment even if it is not explicitly or specifically directed at an individual.
6. Conduct can constitute harassment in violation of this Policy even if the individual engaging in the conduct has no intention to harass. Even well-intentioned conduct can violate this Policy if the conduct is directed at, or implicates a protected classification, and if an individual of the recipient's same protected classification would find it offensive (e.g., gifts, over attention, endearing nicknames).
7. It is not possible to identify each and every act, which constitutes or may constitute sexual harassment. However, certain conduct is clearly inappropriate and is strictly prohibited. Employees who engage in conduct which constitutes or may constitute sexual harassment will be subject to discipline. The level of discipline will depend upon the severity and pervasiveness of the conduct and, depending on the totality of the circumstances, can result in termination even for a single act in violation of this Policy.

Unsolicited conduct prohibited, and subject to discipline under this Policy includes, but is not limited to:

- a) Derogatory or vulgar comments, innuendoes, slurs, jokes, teasing or gestures;
- b) Graphic verbal comments about an individual's body or sexual prowess/deficiencies, whistling or cat calls;

- c) Hostile conduct or comments based on an individual's gender, even if the content is not sexual in nature;
- d) Derogatory or sexually charged written materials such as posters, notices, letters, cartoons, photographs, or drawings;
- e) Repeated leering, ogling or sexually suggestive gestures;
- f) Displaying sexually suggestive graphics, pictures, or language retrieved, transmitted, downloaded and/or printed from the use of computers, including e-mail, screen saver displays, the Internet or other electronic programs or services;
- g) Touching, pinching, patting, assault or coerced sexual acts;
- h) Gender based physical aggression such as hitting, pushing, any physical interference with normal or work movement, or other physical conduct or threats of physical aggression;
- i) Expressions of sexual interest after being informed that the interest is unwelcome. This Policy is not intended to prohibit employees from asking other employees for social engagements. However, employees should refrain from persistent invitations after an employee has indicated that such invitations are unwelcome;
- j) Offers of favors or employment benefits such as promotions, favorable performance evaluations, favorable assigned duties or shifts, recommendations, reclassifications, etc. in exchange for sexual favors;
- k) Treating an employee who has provided sexual favors, either voluntarily or under a threat, more favorably than any other employee on account of the sexual favor in such a manner that it conveys the impression that others will be similarly favored for providing sexual favors.

Any of the conduct described above, when perpetrated against a District employee by a vendor or other third party, may also constitute sexual harassment and will not be tolerated. Employees are strongly encouraged to report such conduct and the District will take all reasonable steps within its control to stop the conduct.

An employee who is not the target or subject of harassing behavior, but is disturbed or offended, may also be the victim of harassment, whether or not the target of attention does not feel similarly harassed or offended.

CONSENSUAL RELATIONSHIPS

The District strongly discourages its supervisors and managers from engaging in amorous, romantic or sexual relationships with individuals over whom they have a supervisory role or otherwise exercise or can exercise supervisory or managerial authority. Because of the power differential, such relationships could lead to charges of coerced submission, sexual harassment and/or discrimination, even if there was apparent consent or initial consent. In the event that such relationships do occur, the District has the authority to transfer either or both of the involved employees to eliminate or attenuate the supervisory authority of one over the other. Such action by the District is a proactive and preventive measure to avoid possible charges of harassment and does not constitute discipline against the affected employees.

Romantic relationships between co-workers of equal status are not prohibited as long as: (1) the relationship is consensual; (2) the involved employees maintain professional and efficient work practices; (3) the involved employees abide by all other District policies; (4) the involved employees do not exhibit any inappropriate public displays of affection at the office; and (5) the relationship between the involved employees does not interfere with work performance.

CONFIDENTIALITY

The District recognizes that confidentiality is important to all parties involved in a harassment investigation. Confidentiality will be maintained to the extent possible. Because the District is committed to eliminating harassment, complete confidentiality cannot be guaranteed. However, only those individuals with a legitimate right to know or who are necessary for complaint resolution will be involved in the investigatory process.

Moreover, all witnesses interviewed during the course of an investigation will be directed to maintain all information obtained as a consequence of the investigation confidential and warned that any breach of confidentiality may constitute a separate basis for discipline.

The District will not disclose a completed investigation report except as it deems necessary to support a disciplinary action, to take remedial action, to defend itself in adversarial proceedings or to comply with the law or court order.

RETALIATION PROHIBITED

The District will not tolerate any adverse conduct against any applicant, employee, or contractor for initiating, pursuing or assisting with a complaint of possible harassment or discrimination, or has participated in the complaint and investigation process described herein. For example, it is improper either to imply to withhold, or actually withhold, support for an appointment, promotion, or change of assignment, or to suggest a poor

performance report will be prepared or probation will be failed as an act of retaliation. "Adverse conduct" includes but is not limited to: taking sides because an individual has reported harassment or discrimination, spreading rumors about a complaint, shunning and avoiding an individual who reports harassment or discrimination, or real or implied threats of intimidation to prevent an individual from reporting harassment or discrimination. The following individuals are protected from retaliation: those who make good faith reports of harassment or discrimination, and those who associate with an individual who is involved in reporting harassment or discrimination or who participates in the complaint or investigation process.

Any individual who engages in retaliation against any District employee in violation of this Policy may be subject to disciplinary action up to and including termination.

COMPLAINT PROCEDURE

- A. This Complaint Procedure, and any enforcing regulations or procedures, shall be distributed to all employees. Additional copies will be supplied to any employee making such request by his or her immediate supervisor or the Human Resources Department. Additional copies will also be available from the District's Intranet, <http://internal.portofsandiego.org>. The procedure will also be prominently posted at work sites throughout the District.
- B. The District strongly encourages any employee who believes that he or she is the victim of harassment let the offending person know immediately and firmly that he/she is rejecting to the advance or invitation and/or the behavior is unwelcome, offensive, in poor taste and/or inappropriate.
- C. Any employee who believes that he or she has been subjected to harassment by any employee, including supervisors or members of management, or other persons such as vendors, persons providing services pursuant to contract, or tenants, are strongly encouraged to immediately report the matter to the Director, Human Resources, the Executive Vice-President, Administration, Department head, or any supervisor or manager within or outside of the department. .
- D. Any supervisor, manager, or Department head who knows of, directly or indirectly, or receives a report of any act of harassment or of the existence of a hostile, intimidating, or offensive work environment at the District, has an affirmative duty to immediately stop the harassment and report it to the Director, Human Resources, or to the Executive Vice-President, Administration.,
- E. Upon receiving notification of a harassment complaint, the District will conduct a prompt and thorough investigation into any and all complaints of harassment. Based on that investigation, the District will determine whether the conduct complained of occurred, and whether it violates this Policy.
 1. The District will authorize and supervise the investigation of the complaint and/or investigate the complaint. An investigator shall be a neutral individual trained in the area of harassment investigations. He or she will conduct a prompt and thorough investigation including interviews with 1) complainant; 2. the accused harasser; and 3) other

persons who have relevant knowledge concerning the allegations in the complaint); strictly adhere to the confidentiality terms of this Policy; remind the complainant, accused and all interviewees of the confidentiality policy and that retaliation will not be tolerated; maintain a written record of the investigation; and keep the complainant informed of the progress of the investigation and the results of the investigation.

2. Review the factual information gathered through the investigation to determine whether the alleged conduct constitutes harassment, discrimination, or retaliation giving consideration to all factual information, the totality of the circumstances, including the nature of the conduct, and the context in which the alleged incidents occurred.

3. Report a summary of the determination as to whether harassment occurred to appropriate persons, including the complainant, the alleged harasser, the supervisor, and the department head. If discipline is imposed, the level of discipline will not be communicated to the complainant.
4. If conduct in violation of this Policy occurred, take or recommend to the appointing authority prompt and effective remedial action. The remedial action will be commensurate with the severity of the offense.
5. Take reasonable steps to protect the complainant from further harassment, discrimination, or retaliation.
6. Take reasonable steps to protect the complainant from retaliation as a result of communicating the complaint.

- G. No individual will suffer reprisals for reporting any incidents of harassment or for participating in the investigation of any such complaints. Any incidents of further harassment, discrimination or retaliation should be reported immediately to the individual specified above or the investigator conducting the investigation.
- H. The District supports a proactive approach in the prevention of harassment and discrimination. The District will conduct an investigation if it becomes aware that harassment may be occurring, regardless of whether the victim or third party files a complaint or no complaint is filed.
- I. An individual has the option to report harassment, discrimination, or retaliation to the California Department of Fair Employment and Housing (DFEH) or the U. S. Equal Employment Opportunity Commission (EEOC) who offers legal remedies and a complaint process. By contacting a representative at these offices, an employee can learn specifically how to file a complaint. Contact information for the DFEH may be found on their website http://www.dfeh.ca.gov/Complaints_ComplaintProcess.htm or by calling (800) 884-1684. Information for the EEOC may be found on their website <http://www.eeoc.gov/employees/charge.cfm> or by calling the local San Diego Office at (800) 669-4000. Information is also available by checking the poster on appropriate bulletin boards or the pamphlet distributed to all employees. The DFEH and EEOC offer protection against retaliation for opposing prohibited practices or for bringing or initiating an action or proceeding with a sexual harassment complaint with the DFEH or EEOC.

DISCIPLINARY ACTIONS

Any employee found to be responsible for harassment, discrimination or retaliation in violation of this Policy will be subject to appropriate disciplinary action up to and including termination. The severity of the disciplinary action will be based upon the circumstances of the infraction which may include counseling, training, education and/or other remedial steps as a condition of employment.

Employees found to have engaged in conduct, which if allowed to continue could create a hostile environment constituting harassment are also subject to discipline. This includes single acts of inappropriate conduct. The severity of the disciplinary action will be based upon the circumstances of the infraction.

REMEDICATION

In the event that the District determines that harassment or discrimination has occurred, it will assess what remedial steps are required to address and correct the hostile environment and prevent its occurrence in the future. Remedial steps include, but are not limited to, disciplinary action against the perpetrator, reorganization of personnel, training and education, counseling for the perpetrator, counseling or other employee assistance for the complainant.

TRAINING

As a preventive and proactive step, all employees of the District will receive training on sexual harassment and utilization of the complaint procedure.

RESPONSIBILITIES

Managers and Supervisors are responsible for:

1. Informing employees of this Policy.
2. Modeling appropriate behavior.
3. Taking all steps necessary to prevent harassment, discrimination, or retaliation from occurring.
4. Receiving complaints in a fair and serious manner, and documenting steps taken to resolve complaints.
5. Monitoring the work environment and taking immediate appropriate action to stop potential violations, such as removing inappropriate pictures or correcting inappropriate language.
6. Following up with those who have complained to ensure that the behavior has stopped and that there are no reprisals.
7. Informing those who complain of harassment or discrimination of his or her option to contact the EEOC or DFEH regarding alleged Policy violations.
8. Assisting, advising, or consulting with employees and the Human Resources Director regarding this Policy and Complaint Procedure.

9. Assisting in the investigation of complaints involving employee(s) in their departments and, if the complaint is substantiated, recommending appropriate corrective or disciplinary action in accordance with District Personnel Rules, up to and including termination.
10. Implementing appropriate disciplinary and remedial actions.
11. Reporting potential violations of this Policy of which he or she becomes aware, regardless of whether a complaint has been submitted, to the Human Resources Department or the department head.
12. Participating in periodic training and scheduling employees for training.

Each employee or contractor is responsible for:

1. Treating all employees and contractors with respect and consideration.
2. Modeling appropriate behavior.
3. Participating in periodic training.
4. Fully cooperating with the employer's investigations by responding fully and truthfully to all questions posed during the investigation.
5. Maintaining the confidentiality of any investigation that the District conducts by not disclosing the substance of any investigatory interview, except as directed by the department head or Human Resources Director.
6. Reporting any act he or she believes in good faith constitutes harassment, discrimination, or retaliation as defined in this Policy, to his or her immediate supervisor, or department head, or Human Resources Director.