

POLICY TITLE: Unlawful Harassment

POLICY NUMBER: 3140

3140.1 Harassment and discrimination in employment on the basis of sex, race, color, national origin, ancestry, citizenship, religion (including religious dress and grooming practices), age (40 and over), physical or mental disability, medical condition, sexual orientation, gender identity or gender expression, veteran status, marital status, registered domestic partner status, genetic information, or any other protected basis is prohibited by federal and state law. The District does not tolerate unlawful discrimination or harassment in the workplace or in a work-related situation. Unlawful discrimination and harassment is a violation of these Guidelines. Section 3140 shall also include and apply to members of the District Board of Directors, independent contractors, unpaid interns, volunteers, persons providing services to the District pursuant to a contract, and other persons with whom District employees may come into contact while working.

3140.2 Unlawful harassment in employment may take many forms. Some examples include, but are not limited to:

- Verbal conduct such as epithets, derogatory comments, slurs, or unwanted comments and jokes;
- Visual conduct such as derogatory posters, cartoons, drawings, or gestures;
- Physical conduct such as blocking normal movement, restraining, unwanted touching, or otherwise physically interfering with work of another individual;
- Threatening or demanding that an individual submit to certain conduct or to perform certain actions in order to keep or get a job, to avoid some other loss, or as a condition of job benefits, security, or promotion; and
- Retaliation by any of the above means for having reported harassment or discrimination, or having assisted another employee to report harassment or discrimination.
 - Communication via electronic media of any type that includes any conduct that is prohibited by state and/or federal law or by District policy.

Please note that prohibited harassment is not just sexual harassment but harassment based on any protected category.

3140.3 Sexual harassment under state and federal laws is defined as unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- Submission to such conduct is made either explicitly or implicitly as a term or condition of an individual's employment;
- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual;
- Such conduct has the purpose or effect of substantially interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment; or adversely
- affected the employee's performance, appraisal, assigned duties, or any other condition of employment or career development; or
- Such conduct is offered in order to receive special treatment or in exchange for or in consideration of any personal action.

3140.4 Prohibited acts of sexual harassment can take a variety of forms ranging from unwanted verbal or physical actions from subtle pressure for sexual activity to physical assault. Sexual harassment conduct need not be motivated by sexual desire to be unlawful or to violate this policy. For example, hostile acts toward an employee because of his/her gender can amount to sexual harassment, regardless of whether the treatment is motivated by sexual desire.

Examples of the kinds of conduct included in the definition of sexual harassment are:

3140.4.1 Direct or indirect threats or suggestions of sexual relations or sexual contact which is not freely or mutually agreeable to both parties.

3140.4.2 Continual or repeated verbal abuses of a sexual nature including graphic commentaries on the person's body; sexually suggestive objects or pictures placed in the work area that may embarrass or offend the person, sexually degrading words to describe the person, or propositions of a sexual nature.

3140.4.3 The following is a list of some, but not all, actions employees are to avoid that could be interpreted as sexual harassment:

- Unwelcome sexual advances and propositions;
- Offensive flirtations with sexual overtones;
- Sexual innuendo;
- Obscene and suggestive comments;
- Humor or jokes about sex or gender specific traits;
- Sexual or graphic comments about an individual's body, dress, or overall appearance; or
- Sexually suggestive or explicit graffiti, illustrations, visual or printed material in the workplace, including inappropriate emails, internet sites, and social media postings.

3140.5 Abusive conduct or workplace bullying of the District's employees, by any person in or from the work environment, is strictly prohibited. Abusive conduct or workplace bullying is the conduct of any employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interest. Abusive conduct or workplace bullying includes, but is not limited to:

- Repeated infliction of verbal abuse;
- Derogatory remarks, insults, epithets;
- Verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating; or
- Gratuitous sabotage or undermining of a person's work performance.

3140.6 Policy Publicizing. All employees shall be informed of the District's unlawful harassment policy and complaint process prior to their need to know, and again when any complaint is filed. Also, said policy and complaint process shall be readily available to all employees and members of the general public utilizing the District's facilities and services.

3140.6.1 All new employees shall be given a copy of the sexual harassment policy at the time of hiring and said policy's contents shall be discussed with said employee at that time by the division manager within whose division they will be working.

3140.6.2 An annual bulletin may also be prepared and distributed to all employees informing them of the District's sexual harassment policy.

3140.7 Complaint Process. Any employee who believes he or she is the victim of unlawful harassment, abusive conduct, or discrimination on any prohibited basis, or who has observed such conduct, or believes he or she is subject to retaliation (“Unlawful Harassment”) may file a formal or informal confidential complaint without fear of reprisal or embarrassment.

3140.7.1 An informal complaint is made verbally by the employee to the immediate supervisor and/or HR Manager/Personnel Manager. Although filing the complaint with the immediate supervisor is preferred, the employee is free to file a complaint with any supervisory employee.

3140.7.2 A formal complaint is made in writing using the “Employee Grievance Form,” see “Appendix A” in Policy #3120. Said form should be submitted by the employee to their immediate supervisor and/or HR/Personnel Manager. Although submitting the formal complaint with the immediate supervisor and/or HR/Personnel Manager is preferred, the employee is free to submit a formal complaint with any supervisory employee, including the General Manager, or with the President of the Board of Directors, if the employee’s immediate supervisor is the General Manager and the General Manager is unavailable or personally involved in said complaint.

3140.8 Complaint Response Process. Any supervisory employee who receives a formal or informal Unlawful Harassment complaint shall maintain the confidentiality of the complainant to the extent possible and shall personally deliver said complaint immediately and directly to the division manager, or to the General Manager if the division manager is unavailable or personally involved in said complaint. If the General Manager is unavailable or personally involved in said complaint then said complaint shall be delivered to the President of the Board of Directors.

3140.8.1 After a formal or informal complaint is received, an impartial investigation shall be conducted by the manager of the division, the General Manager, the HR/Personnel Manager, or another impartial investigator within a timely manner.

3140.8.2 A written record of any investigation of an alleged Unlawful Harassment complaint shall be maintained. Findings will be sent to the General Manager. The General Manager shall immediately inform, in total confidentiality, the Personnel Committee of the Board if one exists or the entire Board of Directors. If the General Manager is personally involved in the complaint, such findings will instead be provided directly to the Personnel Committee of the Board if one exists or to the entire Board of Directors to determine options and/or remedial action, if appropriate.

3140.8.3 All discussions resulting from said investigation shall be kept confidential to the extent possible by all informed of said investigation.

3140.8.4 The person initiating the complaint has the right to be accompanied by an advocate(s) when discussing alleged incidents. Said person shall be advised of this right prior to the commencement of such discussions. Said advocate may support and/or represent the complainant but should not interfere with the integrity of the investigation or the investigatory process.

3140.9 Disciplinary Procedures and Sanctions. If upon the conclusion of the investigation of the alleged Unlawful Harassment claim, the investigator determines that harassment, discrimination, retaliation, or other prohibited conduct has occurred, appropriate corrective and remedial action shall be taken by the General Manager/Board of Directors against the harasser in accordance with the circumstances involved. The District will also take appropriate action to deter future misconduct. Any employee determined by the District to be responsible for harassment, discrimination, retaliation, or other prohibited conduct will be subject to appropriate disciplinary action, up to, and including, termination. Employees should also know that if they engage in unlawful harassment, they can be held personally liable for the misconduct.

3140.10 Retaliation. Retaliation against any individual for making a report, or for participating in an investigation, under this policy is strictly prohibited. Individuals are protected by law and by District policy from retaliation for opposing unlawful discriminatory practices, for filing an internal complaint under this policy or for filing a complaint with the California Department of Fair Employment and Housing ("DFEH") or Federal Equal Employment Opportunity Commission ("EEOC"), or for otherwise participating in any proceedings conducted by the District under this policy or by either of these agencies.

3140.11 Employee should also be aware that the EEOC and the DFEH investigate and prosecute complaints of prohibited harassment, discrimination, and retaliation in employment. Information is available at www.eeoc.gov and www.dfeh.ca.gov.