

**DEPARTMENT OF PUBLIC WORKS MANAGEMENT MANUAL**

**Personnel  
Directive**

Subject: **PROHIBITION AGAINST SEXUAL  
ORIENTATION DISCRIMINATION IN THE  
DEPARTMENT OF PUBLIC WORKS**

***ADOPTED BY THE BOARD OF PUBLIC WORKS, CITY OF LOS ANGELES***

June 20, 2007

PERSONNEL DIRECTIVE NO. 58

**BACKGROUND**

The policy against sexual orientation discrimination in employment was originally adopted by the City of Los Angeles on February 8, 2001, Mayor's Executive Directive No. 2001-35. The Department of Public Works remains committed to that policy which provides its employees a working environment free from sexual orientation discrimination. Discrimination and harassment on the basis of sexual orientation are illegal, as well as harmful to those in work environments affected by offensive, intolerant and hostile behaviors.

Sexual orientation refers to an individual's physical, spiritual and/or emotional attraction to the same and/or opposite sex, including homosexual, bisexual, or heterosexual orientations. Discrimination is prohibited on the basis of one's actual or perceived sexual orientation.

An employee's sexual orientation is now protected from unlawful employment discrimination under the Fair Employment and Housing Act (FEHA) of the State Government code. An employee now has one year from the date of the alleged sexual discrimination to file a complaint with the Bureau they work in, the Office of Management-Employee Services, the Personnel Department Office of Discrimination Complaint Resolution or Equal Employment Opportunity Section, the State Department of Fair Employment and Housing, or the Federal Equal Employment Opportunity Commission (See attachment).

**PROCEDURE**

An appointing authority shall not consider an applicant's or employee's known or presumed sexual orientation in any pre-employment or employment action or decision, including, but not limited to, background checking, testing, hiring, assigning, training, transferring, upgrading, promoting, compensating, disciplining and discharging. City policy prohibits, as a form of discrimination, the creation of or contribution to a hostile, intimidating, threatening, offensive or abusive work environment on the basis of an individual's known or presumed sexual orientation. This includes written, spoken, graphic or demonstrative derogatory terms, slurs, comments, gestures, ridicule, threats, rumors or jokes with respect to an individual's known or presumed sexual orientation. No one shall be excluded from participating on interview panels due to his or her actual or perceived sexual orientation.

Prompt and appropriate action will be taken by Management to deter and punish sexual orientation discrimination and harassment in the workplace. Therefore, it is the responsibility of all Bureau Managers/Supervisors to take necessary steps, including appropriate disciplinary action as specified in Personnel Policy No. 7, GUIDE TO EMPLOYEE DISCIPLINE, to ensure and maintain a working environment free from sexual orientation discrimination and harassment.

### BUREAU RESPONSIBILITY

Each Bureau Director must ensure that a Sexual Orientation Counselor has been designated and that all Department employees are made aware of the name and phone number of the designated Counselor, the Department Counselor in the Office of Management-Employee Services, and the City's Sexual Orientation Counselor in the Personnel Department or the Personnel Department's Office of Discrimination Complaint Resolution. All reported allegations of sexual orientation discrimination will be fully documented and completely investigated. City policy prohibits retaliation by the City or any Department or employee based on reporting a claim of discrimination on the basis of sexual orientation or for supporting such a complaint or for opposing such discrimination. Investigations will be conducted in accordance with the Sexual Orientation Discrimination Complaint Procedure and/or Citywide Discrimination Complaint Procedure (See attachment). To the extent possible, the City will provide confidentiality with respect to the filing and investigation of complaints of discrimination based upon sexual orientation.

All complaints of discrimination, including those on the basis of sexual orientation, must be prepared and filed on an employee's own time. Bureau managers should make every effort to allow the complainant and other employees time, with pay, to meet with investigator(s) when the meeting is at the request of staff assigned to investigate the complaint.

#### References:

**CITY OF LOS ANGELES DISCRIMINATION FREE WORKPLACE POLICY RESOLUTION, last revised by City Council 10/1/99** <http://www.lacity.org/per/EEO/DISCRIM.pdf>

#### Mayor's Executive Directives

PE-1 (Hahn Series) of 8/31/04

[http://www.lacity.org/mayor/hahned/mayorhahned248333327\\_02082005.pdf](http://www.lacity.org/mayor/hahned/mayorhahned248333327_02082005.pdf)

2001-35 (Riordan Series) of 2/8/2001

<http://www.lacity.org/PER/eoo/ED2001-35.pdf>

#### The Personnel Department's

Discrimination Complaint Procedure <http://www.lacity.org/PER/eoo/DISCRIME.htm>

Sexual Harassment Discrimination Complaint Procedure

<http://www.lacity.org/PER/eoo/sexharas.pdf>

Sexual Orientation Discrimination Complaint Procedure (attached)

<http://www.lacity.org/PER/eoo/sexual%20orientation%20complaint%20procedure.pdf>

List of all Departments' Sexual Harassment and Sexual Orientation Counselors

<http://www.lacity.org/PER/eoo/DeptCoord.pdf>

EEO Handbook for City Commissioners (and all other City Employees)

<http://www.lacity.org/PER/eoo/EEO%20Handbk%20CityComm.pdf>

#### ***The Department of Public Works' (all revised June 20, 2007)***

***Personnel Policy No. 7 – "Guide to Employee Discipline",***

***Personnel Policy No. 13 – "Sexual Harassment and Sexual Orientation Discrimination",***

***Personnel Directive No. 36 - "Public Works Discrimination Complaint Procedure",***

## **CITY OF LOS ANGELES SEXUAL ORIENTATION DISCRIMINATION COMPLAINT PROCEDURE**

The policy of the City of Los Angeles has been, and will continue to be, to promote and maintain an environment free from sexual orientation discrimination. Discrimination is prohibited on the basis of one's actual or perceived sexual orientation, including actual or perceived heterosexual, lesbian, gay, or bisexual orientation. Discrimination and harassment on the basis of sexual orientation is illegal. Therefore, it is an unlawful employment practice for the City to fail or refuse to hire, to segregate, to fail to provide training, to discharge any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions or privileges or employment on the basis (in whole or part) of such individual's known or presumed sexual orientation.

For example, a supervisor should not say in an employee's evaluation that the employee has difficulty getting along with others in the workplace, if the reason why that employee does not get along with co workers is their discriminatory attitudes or ostracism based on the employee's sexual orientation. Such an evaluation could be considered to be an evaluation of an employee's work performance based upon the employee's actual or perceived sexual orientation, which is impermissible. The rationale for prohibiting such an evaluation is that it would be unfair to penalize an employee in relation to an evaluation that was based upon the bigotry of others.

Similarly, a manager selecting employees to conduct outreach to high school students may not exclude a lesbian employee from consideration on the grounds that the manager feels that, because she is a lesbian, she would poorly represent the City. Again, such conduct could be considered to be a job assignment that is based in part upon the employee's sexual orientation, which is prohibited. The rationale for prohibiting such differential job assignments is that the lesbian employee loses an opportunity to gain experiences that could enhance her career and also may feel stigmatized.

Harassment in the workplace of a city employee on the basis of actual or perceived sexual orientation is also prohibited. Sexual Orientation harassment includes the creation of or contribution to a hostile, intimidating, threatening, offensive, or abusive environment for lesbian or gay City employees, through written, spoken, graphic or demonstrative derogatory terms, slurs, comments, gestures, ridicule, threats, rumors, or jokes respecting sexual orientation. The conduct must be sufficiently severe or pervasive that it unreasonably interferes with the work environment or the individual's job performance or creates an intimidating, hostile, or offensive working environment.

Further, City policy prohibits retaliation by the City or any department or employee based on reporting a claim of discrimination or harassment on the basis of sexual orientation. This means that no City employee may intimidate, penalize, or take action against an individual for filing a complaint of discrimination based on sexual orientation, or for supporting such a complaint (as a witness or otherwise) or for opposing such discrimination.

The policy of the City requires that prompt and appropriate action be taken to deter and punish sexual orientation discrimination. Therefore, persons believing that they are victims of sexual orientation discrimination are strongly encouraged to report any and all incidents.

## **FILING A COMPLAINT**

An employee making a sexual orientation discrimination complaint can choose to file the complaint with the employee's department EEO Counselor, the City's Sexual Orientation Counselor, and/or with an external non discrimination enforcement agency. Complaints filed about pre-employment or employment actions or actions directly related to Personnel Department functions should be directed to the City's Sexual Orientation Counselor.

**Complaints filed internal to the City must be filed within one (1) year from the date of the last act alleged to be discrimination.** Otherwise, the complaint may be considered untimely.

Although complaints must be prepared and filed on an employee's own time, department managers and supervisors should allow the employee filing the complaint, and all other employees who are interviewed as part of the investigation to be interviewed while on city time when requested by staff conducting the discrimination investigation. A person filing a sexual orientation discrimination complaint shall have the right of representation by any designated person or organization.

## **WHERE TO FILE**

City employees and employment candidates have the following options for filing a sexual orientation discrimination complaint. Complaints may be filed with:

- 1. The Personnel Section of a City Department Accused of Discriminatory and/or Harassing Practices**

A person wishing to file a complaint with a City department should obtain the name, address and telephone number of the department's Sexual Orientation or Equal Employment Opportunity (EEO) Counselor (***There are Counselors for each Bureau of the Department of Public Works as well as the department wide Counselor, Terry McCarthy, Assistant Director of the Office of Management Employee Services***) **213-978-1904**. Contact the Counselor to discuss the complaint, and if necessary, arrange to meet with the Counselor to file a formal complaint. If information for the department Counselor cannot be obtained, contact the Personnel Department Equal Employment Opportunity Section at (213) 847-9800.

- 2. The City's Sexual Orientation Counselor**

A person wishing to file a complaint directly with the City's Sexual Orientation Counselor about pre-employment or employment actions should contact the Counselor at the address or phone number below. Also complaints about actions directly related to Personnel Department functions should be directed to the City's Sexual Orientation Counselor.

Los Angeles City Personnel Department  
Office of Discrimination Complaint Resolution  
700 E. Temple Street, Room 320  
Los Angeles, CA 90012  
Phone: (213) 485-8250 Fax: (213) 947-9229

Information concerning the City's non-discrimination policies, complaint procedures and filing options, as well as filing deadlines will be provided.

### **3. The City's Civil Service Commission**

A person wishing to file a complaint through the City's centralized discrimination resolution and investigation entity, may write or contact:

Los Angeles City Personnel Department,  
Equal Employment Opportunity Section  
700 East Temple Street, Room 320  
Los Angeles, CA 90012  
(213) 485-8250, (213) 847-9800

Information concerning the City's non-discrimination policies, complaint procedures and filing options, as well as filing deadlines will be provided.

### **4. A Governmental Non Discrimination Enforcement Agency**

Sexual orientation discrimination complaints can also be filed with the California Department of Fair Employment and Housing (DFEH), at 611 W. 6th Street, 15th Floor, Los Angeles, CA 90012. DFEH may also be contacted at 1-800-884-1684. Persons considering filing complaints of discrimination with DFEH should verify the filing criteria, including deadlines for filing. The period of time the City investigation takes will not extend the agency filing period.

## **DISCRIMINATION COMPLAINTS AGAINST DEPARTMENT HEADS AND PUBLIC OFFICIALS**

There is a special procedure for filing a complaint of discrimination against elected and appointed officials. Contact the Personnel Department's Office of Discrimination Complaint Resolution at (213) 485-8250 or Equal Employment Opportunity Section at (213) 847-9800 if the alleged discrimination based on sexual orientation involves the direct action(s) and/or behavior(s) of a head of a department, a member of a City Board of Commissioners or an elected official. A discrimination complaint counselor, at either number, will provide detailed information on this procedure.

Nothing in this procedure shall restrict a person's right to file a complaint with any applicable Federal or State agency responsible for the enforcement of anti-discrimination legislation.

## **EMPLOYEE RIGHTS AND RESPONSIBILITIES**

Every employee is entitled to work in an environment free from sexual orientation discrimination. An employee who perceives comments, gestures or actions which offend against an individual's sexual orientation made by another employee or supervisor should immediately and clearly communicate to that person that such behavior is offensive.

An employee who believes he or she has been discriminated against due to his/her sexual orientation should take the following steps:

1. The employee should immediately report the sexual orientation discrimination complaint to her or his supervisor, or to the department's EEO Counselor, or to the City's Sexual Orientation Counselor in the Personnel Department's Office of Discrimination Complaint Resolution. All employees are assured that they may make such reports without fear of retaliation by the city, department management or their immediate supervisor.
2. The employee has the right to a confidential conference with the person to whom the sexual orientation complaint is made. Additionally, the person filing the complaint has the right of representation by any designated person or organization, e.g., a union representative, an attorney or another individual of the complainant's choice.
3. All investigations, whether conducted by the department EEO Counselor or the City's Sexual Orientation Counselor, will be handled with discretion, sensitivity and due concern for the dignity of those involved, and will be conducted consistent with the procedures indicated in this document. As in any discrimination complaint investigation, information will be kept confidential to the extent possible.
4. All investigations will be thorough. All persons named as potential witnesses by the employee will be contacted as required during the course of the investigation. Anyone who is alleged to have committed acts of sexual orientation discrimination will be contacted during the investigation and allowed to make a statement. (Any person accused or alleged to have committed acts of discrimination or harassment has the right of representation by a union representative or an attorney.)
5. Any employee who witnesses an incident of sexual orientation discrimination shall cooperate in any investigation. All employees are assured that they may cooperate in such an investigation without fear of retaliation or reprisal by the city, department management, their immediate supervisor, or any other city employee.
6. Employees may expect a timely resolution of all complaints.

## **RESPONSIBILITIES OF THE DEPARTMENT EEO COUNSELOR**

Each City department manager must designate an EEO Counselor and ensure that all department employees are made aware of the name and phone number of the designated Counselor. An employee who believes he or she has been discriminated against based on sexual orientation may choose to file a complaint with the department EEO Counselor. Each department EEO Counselor has the following responsibilities with regard to a sexual orientation complaint:

1. Upon receipt of a sexual orientation discrimination complaint, the Counselor shall meet with the complaining employee at the employee's earliest convenience. The Counselor shall fully inform the employee about the City's sexual orientation policies and discrimination complaint procedures and shall answer questions that the employee may have regarding the City's policy.
2. The Counselor shall listen to the employee's complaint and discuss the complaint with discretion, sensitivity and due concern for the dignity of those involved. The Counselor shall ask the complaining employee what remedy s/he seeks.

3. The Counselor shall fully record and document the complaint, including the complainant's proposed resolution to the alleged violation(s).
4. The Counselor shall conduct a complete and timely investigation into the complaint, including conducting interviews as appropriate with witnesses and others who may be involved. The investigation will be conducted consistent with the procedures included in this document. The Counselor shall document all informal resolution efforts.
5. The Counselor will periodically communicate to the complainant the status of the investigation.
6. Upon completion of the investigation, the Counselor shall prepare a report of the results of the investigation. The Counselor shall inform complainants if disciplinary action is taken against the accused employee, although not the specific nature of the action. No information provided to the complaining employee shall compromise any confidentiality or privacy protection afforded to the accused employee under the law or City policy. The Sexual Orientation Counselor should contact the Office of the City Attorney if there are questions in this area.
7. If the employee is not satisfied with the way the sexual orientation discrimination complaint has been resolved, the Counselor shall fully inform the employee of his or her additional rights under the law. These rights include using the Citywide Discrimination Complaint Procedure, and filing a complaint with the State Department of Fair Employment and Housing (DFEH) and/or court.

## **RESPONSIBILITIES OF THE CITY'S SEXUAL ORIENTATION COUNSELOR**

An employee or employment applicant who believes he or she has been discriminated against based on sexual orientation may choose to file a complaint with the City's Sexual Orientation Counselor. The City's Sexual Orientation Counselor has the following responsibilities:

1. The Counselor will be available at (213) 485-8250 to discuss sexual orientation discrimination complaints with employees and fully inform employees about the City's sexual orientation policies and discrimination complaint procedures and shall answer questions that the employee may have regarding the City's policy.
2. The Counselor shall listen to the employee's complaint and discuss the complaint with discretion, sensitivity and due concern for the dignity of the people involved and will conduct the investigation consistent with the procedures included in this document.
3. The Counselor shall fully record and document the complaint, including the complainant's proposed resolution to the alleged violation(s).
4. The Counselor shall make preliminary efforts to resolve the complaint. The Sexual Orientation Counselor will investigate complaints according to the provisions of the section entitled "Employee Rights and Responsibilities" and "Responsibilities of the EEO Counselor."
5. If the employee is not satisfied with the results of the preliminary efforts, he or she may file a formal complaint using the City's Discrimination Complaint Procedure. All efforts to resolve the complaint will be fully documented.

## **RESPONSIBILITIES OF CITY MANAGEMENT**

It is the responsibility of City Management to take necessary steps to prevent sexual orientation discrimination, and, when a complaint is made, has been investigated, and found to exist, to remedy any sexual orientation discrimination that is discovered.

It is the responsibility of the Personnel Department to ensure that the operating departments are in compliance with the Sexual Orientation Discrimination Complaint Procedures, and to monitor said compliance on a regular basis.

In addition, all operating departments are to comply with the Mayor's Directive, No. 2001-35, issued February 8, 2001, and to place said directive in Operating Department manuals, policies and training materials.

City Department EEO counselors should be reminded that all sexual orientation discrimination complaints filed within their operating departments must be handled consistent with the procedures set forth in this Sexual Orientation Discrimination Complaint Procedure.

All operating Departments are directed to evaluate, and if necessary, revise and redistribute their internal sexual orientation discrimination complaint procedures to eliminate any provisions that permit the operating Department to close the complaint without investigation if the complainant files with an outside agency or other City process, or which allow the operating Department to terminate an investigation, regardless of the evidence, for reasons such as failure to cooperate with the investigation and refusing to accept the offered remedy. To the extent it is possible without the cooperation of the complaining party to continue the investigation, the investigation should be completed so that any discovery of improper conduct or behavior can be dealt with and remedied.

All operating Departments are to ensure that sexual orientation harassment is expressly included in Departmental sexual harassment and sexual orientation discrimination policies. However, those policies should expressly state and explain that sexual orientation harassment is not the same as sexual harassment. Employees should be instructed that, while sexual harassment is based upon a person's gender, sexual orientation harassment is based upon a person's sexual orientation, or on another's perception of that person's sexual orientation. City Departments are to review and update their policies in this regard.

## **THE CITY'S DISCRIMINATION COMPLAINT PROCEDURE**

The City's Discrimination Complaint Procedure gives City employees and candidates for City employment the right to file a written complaint with the City's Civil Service Commission. The complaint must deal with a City action, procedure or practice in hiring or employment which the employee or prospective employee believes to be discriminatory. Complaints alleging sexual orientation discrimination are covered by the Citywide Discrimination Complaint Procedure. Complaints made under the City's Discrimination Complaint Procedure must be filed within one year of the alleged act of discrimination.

## **OTHER DISCRIMINATION COMPLAINT OPTIONS**

Employees who believe that they have been discriminated against based on the individual's sexual orientation also have the right to file a discrimination complaint with the California Department of Fair Employment and Housing (DFEH). See Page 2 of this procedure, for contact information. An employee/employment candidate should check directly with the DFEH regarding filing deadlines.

## **DISTRIBUTION OF COMPLAINT PROCEDURE**

This Sexual Orientation Discrimination Complaint Procedure shall be distributed to all employees, and will be provided to all applicants for city employment. In addition, all new employees will receive the Complaint Procedure as part of the orientation process. Moreover, this policy should be incorporated into and added to each operating Department's personnel rules, work rules, or Manuals, or otherwise distributed in a manner that ensures that all employees receive it. In addition, the Sexual Orientation Discrimination Complaint Procedure should be posted on all Department employment-related bulletin boards. Further, all operating Departments should post the City's Equal Employment Opportunity poster on each Department's employment-related bulletin board.

In adapting this procedure, all operating Departments should eliminate any of its prior procedure that required the complaining party to file separate documents with a series of different City officials in order for the complaint to warrant continued review, or that otherwise deviate from this policy. All internal procedures should be reviewed and approved by the Personnel Department.