



CITY OF VISALIA PERSONNEL POLICY
Policy #120
Anti-Harassment, Discrimination, Retaliation

I. PURPOSE

- A. To provide all employees, applicants, volunteers, contractors, vendors and customers with an environment that is free from any form of discriminatory harassment, discrimination and/or retaliation as defined in this Policy.
- B. To set forth a procedure and guidelines for investigating and resolving alleged harassment, discrimination and/or retaliation in violation of this Policy.

II. POLICY

The City has zero tolerance for any conduct that violates this Policy. Discriminatory harassment, discrimination, and retaliation are incompatible with a professional work environment, regardless of whether the conduct is intended to offend, and regardless of whether the participants consent, or are perceived to consent to the conduct. Conduct need not rise to the level of a violation of law in order 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, co-workers, contractor, vendor or customer on the basis of race, religion, sex, gender, national origin, ancestry, disability, medical condition, genetic characteristics, marital status, age, sexual orientation (including homosexuality, bisexuality, or heterosexuality), gender identity, gender expression, or any other protected classification as defined below, will not be tolerated.

This Policy applies to all terms and conditions of employment, including, but not limited to, hiring, placement, promotion, disciplinary action layoff, recall, transfer, leave of absence, compensation, and training.

Any retaliation against a person for filing a complaint or participating in the complaint resolution process is prohibited. Individuals found to be retaliating in violation of this Policy will be subject to appropriate sanction or disciplinary action up to and including termination.

This Policy prohibits elected officials, officers, employees, volunteers and contractors from harassing or discriminating against applicants, officers, employees, volunteers and contractors because: 1) of an individual's protected classification, 2) of the perception of an individual's protected classification, or 3) the individual's association with a person who has or is perceived to have a protected classification.

III. DEFINITIONS

- A. Protected Classification – Protected Classification includes race, religion, color, sex, gender identity, sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin, ancestry, uniformed service member status, marital status, pregnancy, age, medical condition and physical or mental disability, whether perceived or actual, or any other category protected by law.



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- B. Discrimination – Treating individuals differently because of the individual's protected classification as defined by this Policy.
- C. Harassment - Conduct based upon the person's protected classification that has the purpose or effect of unreasonably interfering with any employee's work performance, or has the purpose or effect of creating an intimidating, hostile or offensive work environment for any employee. It is the effect of the conduct, and not the intent of the actor, that determines whether harassment has occurred. Thus, prohibited conduct intended only to be friendly "kidding" may constitute harassment if it has the effect of offending any employee and it is reasonable for the employee to be offended. Harassment includes, but is not limited to, the following examples of behavior undertaken because of an individual's protected classification:
1. Verbal harassment, such as epithets (nicknames and slang terms), derogatory or suggestive comments, propositioning, threats, jokes or slurs, including graphic verbal commentaries about an individual's body or physical features, or dress consistent with gender identification, on the basis of an individual's protected classification.
 2. Visual harassment, such as derogatory posters, notices, bulletins, cartoons, pictures, drawings, books, newspapers, magazines, gestures, sexually suggestive objects, leering, mimicking the way someone walks or talks, or emails/computer entries or printouts, related to a protected classification.
 3. Physical harassment, such as assault, touching, impeding or blocking movement, grabbing, patting, offensive touching, making express or implied job-related threats in return for submission to physical acts. In addition, because employees may feel compelled to accept physical contact to "fit in", and because such conduct may offend third party witnesses, this Policy prohibits any unnecessary physical contact.
 4. Sexual harassment, such as unwelcome sexual advances, requests for sexual and/or social favors:
 - Submission to such or rejection of such conduct is used as the basis for employment decisions, or
 - Such conduct is intended to or actually does unreasonably interfere with an individual's work performance or create a hostile, intimidating or offensive work environment.
 5. Bystander or third party harassment is harassing conduct targeted at one employee, but occurs in the immediate presence of another employee.
 6. Unwarranted adverse discriminatory employment decisions are decisions that are (1) motivated by intent to discriminate based upon protected status or retaliation; (2) have no legitimate business purpose; and (3) have a negative effect upon an employees' work conditions, benefits, or ability to advance in his/her employment. Adverse employment decisions include, but are not limited to: negative performance evaluations, discipline or proposed discipline, denial of time off, denial of promotions, and/or denial of any job benefits based upon an individual's protected classification. Adverse employment decisions based on legitimate non-discriminatory reasons such as poor performance, attendance and/or misconduct do not violate this Policy.



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7. Harassment, discrimination or retaliation complaint. Any mention or observation of prohibited conduct that is suspected or perceived to be harassment, discrimination or retaliation to a supervisor, manager or Department Head constitutes a "complaint". This definition applies regardless of whether the information comes from the perceived victim or a witness, and regardless of whether the reporting party conveys the conduct was not offensive. The complainant need not use the word "harassment" or "discrimination."
 8. Hostile Work Environment. A hostile work environment exists when an employee experiences ongoing, unabated harassment based on his/her protected classification that causes disruption beyond a reasonable degree to the work of the employee.
- D. Guidelines for Identifying Harassment: To help clarify what constitutes harassment in violation of this Policy, use the following guidelines:
1. Harassment includes any conduct that occurs because of an individual's protected classification, which would be viewed as unwelcome by an individual of that same protected classification, constitutes harassment.
 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 the conduct is welcome. Harassment can evolve over time. Small, isolated incidents might be tolerated up to a point. The fact no one is complaining now does not preclude anyone from complaining if the conduct is repeated in the future.
 4. Visual, verbal, or physical conduct between two employees who appear to welcome the conduct can constitute harassment of a third-party (e.g. applicant, officer, official, employee, contractor, vendor or customer) who observes the conduct or learns about the conduct later. Conduct can constitute harassment even if it is not explicitly or specifically directed at an individual.
 5. 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, etc.).
- E. Retaliation – Any adverse conduct taken because an applicant, employee, or contractor has reported harassment or discrimination, or has participated in the complaint and investigation process described in this Policy is prohibited. "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; lowering a performance evaluation; failing to hire, failing to promote, withholding any pay increases, assigning more onerous work, abolishing a position, demotion or discharge; or real or implied threats of intimidation to prevent an individual from reporting harassment or discrimination. The following



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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. Any act of retaliation will be treated as a separate and distinct incident, regardless of the outcome of the initial harassment or discrimination complaint.

IV. REPORTING HARASSMENT, DISCRIMINATION AND/OR RETALIATION

- A. An employee, applicant, officer, official, volunteer or contractor who feels he/she has been harassed, discriminated against or retaliated against in violation of this Policy or is witness to conduct that may violate this Policy has a duty to report the conduct/incident immediately to any of the following
- Immediate supervisor;
 - Any supervisor or manager within or outside of the department;
 - Department Head; or
 - Human Resources Manager.
- B. Any supervisor or Department Head who receives a harassment, discrimination and/or retaliation complaint should notify the Human Resources Manager immediately.
- C. Upon receiving notification of a harassment, discrimination and/or retaliation complaint, the Human Resources Manager shall:
1. Authorize and supervise the investigation of the complaint and/or investigate the complaint. The investigation will include interviews with: (1) the complainant; (2) the accused harasser; and (3) other persons who have relevant knowledge concerning the allegations in the complaint.
 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, discrimination, or retaliation 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.



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- D. The City takes a proactive approach to potential Policy violations and will conduct an investigation if its officers, supervisors, or managers become aware that harassment, discrimination or retaliation may be occurring, regardless of whether or not the recipient of the alleged action or a third party reports a potential violation.
- E. Option to Report to Outside Administrative Agencies: An individual has the option to report harassment, discrimination, or retaliation to the U.S. Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing (DFEH). These administrative agencies offer legal remedies and a complaint process. The nearest offices are listed in the government section of the telephone book or employees can check the posters that are located on the City's bulletin boards for office locations and telephone numbers.

V. SUPERVISORS, MANAGERS, DEPARTMENT HEAD AND EMPLOYEE DUTIES

All supervisors, managers and Department Heads are responsible for ensuring that no harassment of any kind occurs or persists in the workplace. Failure to perform any of the following duties constitutes grounds for disciplinary action, up to and including termination of employment.

- A. Managers, Supervisors, and Department Heads are responsible for:
 - 1. Informing employees of this Policy.
 - 2. Modeling appropriate behavior.
 - 3. Immediately informing the Human Resources Manager upon receipt of a complaint.
 - 4. Taking all steps necessary to prevent harassment, discrimination, or retaliation from occurring.
 - 5. Receiving complaints in a fair and serious manner, and documenting steps taken to resolve complaints.
 - 6. Monitoring the work environment and taking immediate appropriate action to stop potential violations, such as removing inappropriate pictures or correcting inappropriate language.
 - 7. Following up with those who have complained to ensure the behavior has stopped and there are no reprisals.
 - 8. Informing those who complain of harassment, discrimination or retaliation of his/her option to contact the EEOC or DFEH regarding alleged Policy violations.
 - 9. Assisting, advising, or consulting with employees and the Human Resources Manager regarding this Policy, and Complaint Procedure.
 - 10. Assisting in the investigation of complaints involving employee(s) in their departments and, if the complaint is substantiated, recommending appropriate



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corrective or disciplinary action in accordance with the City's policies and procedures, up to and including termination of employment.

11. Implementing appropriate disciplinary and remedial actions.
12. Reporting potential violations of this Policy of which he/she becomes aware, regardless of whether a complaint has been submitted, to the Human Resources Department or the Department Head.
13. Participating in periodic training and scheduling employees for training.

B. 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 City's investigations by responding fully and truthfully to all questions posed during the investigation.
5. Maintaining the confidentiality of any investigation the City conducts by not disclosing the substance of any investigatory interview, except as directed by the Department Head or Human Resources Manager.
6. Reporting any act he or she believes in good faith constitutes harassment, discrimination or retaliation as defined in this Policy, to his/her immediate supervisor, Department Head or Human Resources Manager.

C. Response to Complaint

If the complainant works in close proximity to the accused harasser, the person receiving the complaint must determine whether the perceived victim feels uncomfortable continuing to do so. If so, the Department Head in conjunction with the Human Resources Manager must first determine whether it is feasible to move, re-assign, or place the accused harasser on administrative leave pending the outcome of the investigation. If such an adjustment is not feasible, the Department Head should consider reasonable adjustments to the perceived victim's work site, schedule or assignment, and discuss these possibilities with the perceived victim. These changes may only be implemented with the perceived victim's consent; under no circumstances should the perceived victim be made to feel that he/she is required to accept any such changes.

D. Investigating Harassment, Discrimination and/or Retaliation Complaints

1. The Department Head and the Human Resources Manager will, in a timely manner, jointly determine the nature of the investigation to be conducted. This assessment will vary depending upon the nature of the complaint, its complexity, the number of potential witnesses, and the seriousness of the charges. The level of investigation



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may range from casual, discreet inquiries by a supervisor, to taped or transcribed witness interviews conducted by a management employee or outside investigator as deemed appropriate by the City.

2. In situations where an interview may lead to discipline, the investigator must provide the employee to be interviewed with written notice and a reasonable opportunity to secure representation at the interview. (Investigation involving sworn law enforcement personnel will follow the requirements as outlined in Government Code Section 3300, et seq., the Police Officer's Bill of Rights. Investigation involving sworn fire personnel will follow the requirements as outlined in Government Code Section 3250, et seq., the Firefighters Procedural Bill of Rights.)
3. Under no circumstances may the accused harasser or any person subordinate to the accused harasser conduct the investigation.
4. Any person investigating a harassment complaint should identify all witnesses, and interview all witnesses necessary to reach a reasonable conclusion. At a minimum, the perceived victim and alleged harasser must be interviewed.
5. In any formal or informal interview, the investigator must: (a) instruct the witness not to discuss the interview pending the outcome of the investigation; and (b) inform the witness that information about the interview will be released on a need-to-know basis only, or if required by law. The investigator must notify all persons involved in the investigation to maintain the confidentiality of the interview and retaliation against those who report alleged harassment or who participate in the investigation is prohibited. Such breach of confidentiality will result in disciplinary action up to and including termination of employment.
6. In any situation where the evidence is conflicting, the investigator must make a reasonable effort to resolve credibility issues in order to reach an assessment of whether the conduct occurred.
7. Regardless of the formality of the investigation, the investigator must submit written findings to the Department Head and/or Human Resources Manager, including an explanation of any contributing factors such as extenuating circumstances or credibility issues. The Human Resource Division will place the written findings in a file in the Human Resource Division office. This document will not be placed in any employee's personnel file, unless it becomes a basis for disciplinary action.

E. Conclusion

If the investigation determines the alleged conduct did not occur and/or did not violate this Policy, the City will notify the accused of such. If the investigation determines the alleged conduct occurred and the conduct violated this Policy, the City will notify the accused of the general conclusion(s) of the investigation and take effective remedial action that is designed to end the violation(s). Any employee determined to have violated this Policy will be subject to disciplinary action up to and including termination of employment. Disciplinary action may also be taken against any official, supervisor or manager who condones or ignores potential violations of this Policy, or who otherwise fails to take appropriate action to enforce this Policy.



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F. Closure

At the conclusion of the investigation, the Human Resources Manager will notify the complainant in general terms of the outcome of the investigation. The complainant is entitled to learn: (1) whether the charges were sustained; and (2) if so, whether corrective action will ensue. Due to constitutionally protected privacy interests associated with personnel information, the complainant may not learn specific information regarding corrective action taken towards any employee.

G. Confidentiality

Every possible effort will be made to assure the confidentiality of complaints made under this Policy. Complete confidentiality cannot occur, however, due to the need to fully investigate potential Policy violations and take effective remedial action. As a result, confidentiality will be maintained to the extent possible. An individual who is interviewed during the course of an investigation is prohibited from discussing the substance of the interview, except as otherwise directed by a supervisor, manager, Department Head or Human Resources Manager. Any individual who discusses the content of an investigatory interview will be subject to discipline up to and including termination of employment, or other appropriate sanction. The City 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 a court order.

VI. DISSEMINATION OF POLICY

This policy will be displayed on all official City and Department bulletin boards and is available on the City's Intranet. In addition, employees will be provided a copy of this Policy at time of hire and the City will re-distribute this Policy periodically.

VIII. MANDATORY TRAINING

As part of its commitment to ensuring a work environment free from harassment, discrimination and retaliation, the City requires that all employees receive training on this Policy at least once every two years. Human Resources will also schedule training sessions for Supervisors and Managers as required by law. Attendance at the trainings will be documented.

Applicable Laws: Title VII, Equal Pay Act, ADEA, ADA, FEHA, Rehabilitation Act, GINA, POBOR, FOBR