County of Los Angeles
CHIEF EXECUTIVE OFFICE
Kenneth Hahn Hall of Administration
500 West Temple Street, Room 713, Los Angeles, California 90012
(213) 974-1101
http://ceo.lacounty.gov

WILLIAM T FUJIOKA
Chief Executive Officer

Board of Supervisors
GLORIA MOLINA
First District

MARK RIDLEY-THOMAS
Second District

ZEV YAROSLAVSKY
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

November 4, 2010

To: Supervisor Gloria Molina, Chair
Supervisor Mark Ridley-Thomas
Supervisor Zev Yaroslavsky
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: William T Fujioka
Chief Executive Officer

FEASIBILITY OF CREATING A COUNTYWIDE MODEL SIMILAR TO THE SHERIFF'S EQUITY OVERSIGHT PANEL AND WAYS TO IMPROVE THE COUNTY'S OVERALL EMPLOYMENT DISCRIMINATION COMPLAINT PROCESS (ITEM 30, AGENDA OF SEPTEMBER 7, 2010)

On September 7, 2010, your Board instructed the Chief Executive Office (CEO), in conjunction with the Department of Human Resources (DHR) and the Office of Affirmative Action Compliance (OAAC), to report back in 30 days on the feasibility of creating a model similar to, but not necessarily identical to, the Sheriff's Equity Oversight Panel (EOP). The EOP is an independent body of employment attorneys and/or experts in the area of employment investigations responsible for the review and monitoring of the Sheriff Department's employment discrimination and harassment complaint process from intake through the investigations phase and EOP hearing. The report was to include a review of current procedures, practices and policies, and recommended changes to improve the County's overall employment discrimination complaint process.

The CEO, DHR and OAAC met twice with staff from the EOP, including the Sheriff's Internal Affairs Bureau, which does the actual investigations, and attended an EOP meeting to discuss policies, practices and procedures with the EOP members. CEO staff also met twice with OAAC staff to discuss OAAC policies, practices and procedures regarding their discrimination complaint investigation process. There were both similarities and some significant differences between the two operations, as discussed below. There are four attachments to this report: attachment 1 shows the comparison of timeframes between the EOP and the OAAC, attachment 2 provides the cost of the EOP function and attachments 3 and 4 are binders with detailed descriptions of the EOP and OAAC programs, including information on policies, procedures and practices.

Key Findings

Equity Oversight Panel Model – The EOP is one component of an Equity Process that was implemented in the Sheriff Department in 2003, as a result of the Bouman v. Baca litigation. That Equity Process included:

- Creation of a new harassment/discrimination and retaliation policy entitled the "Policy of Equality" (POE);

- Development and implementation of an eight-hour training program on the POE for all department members;
- Creation of a centralized Intake Unit through which all complaints under the POE are processed and triaged by a team of equity experts for appropriate classification and handling;
- Establishment of an Equity Investigations Unit staffed with sergeant level investigators who have received special training in investigating employment complaints; and
- Establishment of an EOP Panel that oversees the Equity Process from intake through the conclusion of the investigation and the EOP hearing.

Utilization of the Equity Process and the EOP Panel has proven to be a very successful approach for the Sheriff's Department in effectively handling equity based complaints and in bringing about a change in the culture at the Sheriff's Department. Since 2003, the Department's Equity Process and EOP Panel have become a part of the infrastructure of the Department. The extraordinary caliber of EOP Panel members has resulted in Department members having a great deal of confidence in the EOP Panel's disciplinary recommendation. Confidence in the process and in those persons staffing the process is critical to a successful equity investigation model.

The EOP takes a comprehensive and continuous improvement process approach to handling discrimination complaints. In addition to acting as a resource and reviewer of decisions made at the intake assessment and Equity Unit Investigation level, the EOP also:

- Recommends specific discipline actions, training and victim counseling;
- Analyzes case patterns and trends;
- Works with the management of problem divisions to address and solve problems;
- Identifies preventative measures through recommended best practices and lessons learned; and
- Follows up with quarterly reports to verify that discipline and best practices were implemented.

The EOP and the Equity Process in its totality enjoy the buy-in and support of the Sheriff and his executive team, who have made the Department's "Policy of Equality" an ingrained part of the Sheriff's Department culture. The strong institutional support from the Sheriff down has significantly changed the culture in the department. For example, as mentioned above, all Sheriff Department employees were required to attend a mandatory eight-hour training course, including an exam, on the Policy of Equity.

Implementation and utilization of the Equity Process and the EOP Panel have resulted in the number of discrimination complaints dropping from 477 cases filed in 2003 to 287 cases filed in 2009, with 2010 projected to be even lower. The number of claims varied from four in 2003-04 to 12 in 2005-06 to seven in 2008-09. The cost of claims paid also varied over that period, from $.128 million in 2003-04 to $1.263 million in 2005-06 to $1.543 million in 2008-09. It should be noted, however, that the claims accounting system simply shows all claims related costs paid in any year, regardless of which year the claims were actually filed. The EOP process clearly reduced the number of complaints since 2003.

OAAC-Related Changes During the Past Ten Years – Over the past ten years, there have been several countywide Board policies adopted, and OAAC initiatives implemented, to address employment discrimination in the workplace. Your Board has:

- Mandated that all employees receive both Sexual Harassment Prevention and Employment Discrimination Prevention training every two years;
- Required that all employees review the County's Policy on Sexual Harassment and sign an acknowledgement statement to that effect; and
- Approved the OAAC's established Employment Discrimination Complaint Process.

To meet these obligations, the OAAC has developed training curriculum and directives. OAAC has also worked to transition employment discrimination investigations from a de-centralized monitoring model to a centralized model, where OAAC has the responsibility to conduct investigations. Incorporating the successful approaches of the EOP will further enhance existing employment discrimination prevention efforts.

Consistency of Discipline Applied - One major difference between the two operations is that the EOP recommends the disciplinary and other actions that the Sheriff's Department should take when a POE violation is founded. Further, the EOP makes sure that the discipline they recommend is in accordance with the Sheriff's Department discipline guidelines and in alignment with past similar cases. Additionally, the EOP process respects the Sheriff's Department right to make a final decision on discipline. However, should a manager make a modification to the EOP recommended discipline, a written justification must be provided to the EOP outlining the reasons for any modification.

OAAC, on the other hand, provides the results of their investigation to the originating department. The originating department determines the discipline in accordance with their discipline guidelines, as applicable. While the originating department may consult with OAAC, DHR or County Counsel on the appropriate level of discipline, this type of consultation is not required. The potential outcome is that different levels of discipline could be applied in different County departments for incidents with similar circumstances. This inconsistency could weaken the County's position in cases that involve litigation or on appeal to the Civil Service Commission. Because every department tracks their own discipline, manual reviews of discipline imposed would be very time consuming.

In March 2009, OAAC began using a new computer system called the Investigation Tracking Management System (ITMS), which has the capability of tracking discipline related to all OAAC cases found to be substantiated. This new system provides an excellent opportunity to gather disciplinary data from departments so that future disciplinary actions can be compared to past actions for consistency. On a related note, DHR has identified the need for a countywide system which could be used by all departments to track all types of discipline (not just discrimination-related cases). DHR has reviewed systems developed in-house by several departments which could potentially be rolled out countywide. OAAC should work closely with DHR to ensure that any DHR countywide system which is developed is linked and/or data pulled from the OAAC discrimination complaint tracking system.

One key area for improvement would be to implement an EOP panel that evaluates the cases and, if substantiated, recommends the discipline and/or administrative action necessary (such

as additional training, etc.). Department heads would have to provide written justification to the panel for modifying the recommended discipline. A second improvement would be to require all departments to submit disciplinary information to OAAC so that OAAC could track it.

Trend Analysis and Communication of Lessons Learned/Best Practices – One of the key benefits of the EOP approach to their case review is that they do quarterly reports which identify areas for improvement. If they see a pattern of cases or a particular trend developing, they reach out to the management of the affected division to discuss their findings and to determine what steps need to be taken to address and resolve the problem. The EOP also takes a broad view when making recommendations. For example, along with disciplinary actions, they may recommend different types of employee training, disciplinary counseling (if the case is not upheld but the employee's behavior was questionable), victim counseling, supervisory training, etc. Attachment 3 - Tab 7 lists EOP lessons learned and best practices, most of which are applicable to all County departments.

Consistent with the EOP's approach and the County's ongoing efforts to reduce legal exposure, the OAAC will implement new initiatives to assist the County in taking proactive steps to prevent problems identified in discrimination complaints. OAAC has indicated that they will immediately revise their processes to include information on the following topics as part in their quarterly reports sent to the Board and all departments:

- lessons learned
- best practices
- complaint trend analysis
- pattern and practice issues and
- changes in employment discrimination law

OAAC will also continue to share information through meetings with department heads, chief deputies, administrative deputies, human resources managers and risk managers. In addition, OAAC will look for innovative ways to communicate best practices, such as the Sheriff's Department use of "pop up" policy messages requiring acknowledgement when computers are turned on each day (Attachment 3 – Tab 8).

OAAC lists recent and new initiatives in a section of the Attachment 4 summary document called, "Overview of Efforts to Address Employment Discrimination." Some of these changes include:

- Notifying the Complaining Party in writing should the investigation extend beyond the stated time frame.
- Distributing an informational brochure regarding the voluntary Dispute Resolution Mediation program as an attachment to "Acknowledgement of Complaint" letters.
- Implementing a triage procedure to identify cases that pose a high risk to the County and which will be given priority status.
- Conducting investigations simultaneously with all cases electing dispute resolution.
- Digitally recording all complaining party, subject of investigation and witness interviews, and transcribing as necessary.

- Use of OAAC's new computer system to do:
  - Case trend analysis to identify problem areas for focus;
  - Provide management reports tied to workload and timeliness; and
  - Electronic workflow, templates and on-line review and approvals.

Comparison of Caseload Statistics - The following table provides statistics comparing the caseload and timeliness of the EOP and OAAC. *Please note that performance measurements differ between the two agencies, so we have provided the data that matches most closely.*

Fiscal Year 2009-10	Sheriff/EOP	OAAC
# of Cases Submitted	690	1,096
# of Cases Referred Back to Originating Dept/Unit as Non-Jurisdictional	463 (67%)	476 (43%)
# of Cases Requiring Initial Investigation (Jurisdictional)	227	n/a
# of Cases Referred Back to Originating Unit after Initial Investigation Done	161 (23%)	n/a
# of In-Depth Investigations Done*	66 (10%)	620 (57%)
# of Cases Closed**	62	436
# of Cases Substantiated	54	75
% of Cases Closed Which Were Substantiated	82%	17%
% of Cases Substantiated Compared to Total Number of Jurisdictional Cases	24%	17%
%of Cases Investigated within 120 Days	68%	72%
%of Cases Investigated within 168 Days	n/a	19%
%of Cases Investigated within 200 Days	32%	n/a
%of Cases Investigated over 252 Days	n/a	9%
# of Investigators	5	27
# of Cases Per Investigator***	13	23
# of Cases Monitored at Other Departments***	n/a	105

Note: OAAC uses business days, which were converted to calendar days for this chart.

* Case investigations may span fiscal years, so cases investigated and closed will not total.

** Cases closed for EOP means investigation, hearing held and findings made by EOP panel. Cases closed for OAAC means mediation (if elected), investigation, and final OAAC report findings.

*** It should be noted that, in addition to handling cases, the OAAC investigators also monitor the status of an average of four discrimination complaint investigations by other County departments who handle their own investigations.

Case Designation and Investigation Differences - The Sheriff Intake Unit staff designate complaints as either jurisdictional to the Sheriff's POE or not jurisdictional to the POE. The OAAC Intake Unit staff then assign an "A, B or C" case designation to the jurisdictional cases.

- An "A" case has sufficient facts that support a probable violation of the POE. These cases are immediately referred to the Equity Investigation Unit for a thorough investigation by Internal Affairs Bureau (IAB).
- A "B" case is a case which involves an equity issue related to a protected category, but the alleged conduct does not rise to the level of an IAB investigation or does not warrant at least a written reprimand.
- A "C" case is a case where the alleged conduct does not show a causal connection to a protected category.
- Cases designated "B" or "C" require an initial investigation by the Intake Specialist Unit (OAAC staff) to determine if these cases have sufficient facts to warrant a full investigation similar to an "A" case. The initial investigations are done in 15 days. After the initial Intake Specialist Unit investigation is done, if sufficient facts are found, the case is reclassified to an "A" and referred to the Equity Unit. If the ""B" and "C" cases have insufficient facts, they are referred back to the appropriate Unit Commander for follow-up action and resolution, such as training, rebriefing on POE and non-POE related policies, informal conflict resolution or OAAC mediation.

OAAC designates cases as Class 1 (jurisdictional) or Class 2 (non-jurisdictional). All Class 1 (jurisdictional) cases are referred for full investigation by OAAC staff. The majority of cases investigated, but not substantiated, by the OAAC are similar in nature to the Sheriff's "B" and "C" designated cases. These cases are referred back to the line department for further review and resolution of non-jurisdictional issues.

Cases Substantiated – As noted above, EOP and OAAC use very different approaches when deciding which cases to investigate fully. This difference is reflected in the statistics related to "Cases Substantiated."

- For 2009-10, EOP did in-depth investigations on all of the "A" cases (about 10% of the total cases submitted) and substantiated 82% of those "A" cases. Looked at another way, substantiated cases were 24% of the total POE jurisdictional cases which the EOP handled.
- For 2009-10, OAAC did in-depth investigations on 57% of the cases submitted (the equivalent of all "A, B and C" cases) and substantiated 17% of the cases investigated.

The case designation process used by the EOP results in only the strongest cases with the best evidence being referred for in-depth investigation. The process used by OAAC refers all jurisdictional cases for in-depth investigation, regardless of the amount or quality of evidence.

The Sheriff Department's Equity Process Intake Unit (staffed by both OAAC and Sheriff employees) refers only the complaints supported by sufficient evidence for investigation. The sworn Intake Unit staff determine whether each complaint is POE-related or not. (If not, the complaint is referred back to the originating unit.) The OAAC Intake Unit staff then analyze the POE-related complaints to classify/prioritize them as "A, B or C" and allow for an initial 15-day investigation period to determine the quality of the evidence. Cases classified as "A" are

referred to the Equity Investigation Unit for a complete investigation. Cases classified as "B or C" are referred back to the originating unit. Every decision made by the Intake Unit staff is also reviewed by an EOP panel member. Agreement is reached between the EOP member and the Intake Unit staff regarding the manner in which the complaint will be handled. The EOP intake process helps ensure that investigation resources are used as efficiently as possible, so that time is not spent on complaints that do not have sufficient evidence or turn out not to be jurisdictional to the EOP.

The OAAC intake process follows a different model. The OAAC Deputy Compliance Officers (DCO) in the OAAC Shared Services section handle both intake and investigation, rather than specializing in one area or the other. OAAC staff also investigate all cases deemed to be jurisdictional (the equivalent of "A, B and C" cases). There have been instances where the core issues of the investigation turned out to be employee relations issue rather than discrimination issues. Those complaints should have been returned to the originating department rather than having an OAAC investigation. OAAC plans to reorganize the Shared Services section to create a specialized Intake Unit, whose staff will spend more time on the upfront analysis of the complaints filed to prioritize the most egregious cases and to improve the accuracy in determining whether a case should go to an OAAC investigator or be returned to the originating department as non-jurisdictional. By doing a more thorough analysis of complaints at the intake stage, we anticipate that the OAAC ratio of complaints investigated to complaints substantiated will improve. More time spent on upfront analysis will maximize the efficiency of existing OAAC investigatve resources, which should also result in more timely investigations.

OAAC plans to mirror the Sheriff Department's EOP Intake process and the "A, B, C" classification model, which were developed as part of the Department's Equity Process. OAAC intake staff, which support the EOP, should train their counterparts in the reorganized OAAC unit on how to implement the revised intake process for complaints filed by other County departments. The Sheriff's Internal Affairs investigators may have investigative techniques that OAAC investigators could successfully use. Training provided by the EOP outside attorneys and the Internal Affairs investigators would benefit the OAAC investigators. It may also be possible for OAAC investigators to "shadow" the Internal Affairs staff. Another key factor to improve the outcomes of OAAC investigations will be for OAAC investigators to have access to the new panel to seek guidance, as needed, during the investigations. This approach has been part of the EOP's successful process.

OAAC and DHR should work together to improve the quality of departments' documentation of discipline and complaints, as well as a continued emphasis on employee and supervisor training and departmental culture. Trend analysis will be an important tool to identify and focus on departmental problem areas.

Average Time to Handle Cases from Start to Finish – Attachment 1 provides a side by side comparison of the steps and timeframes for OAAC and EOP.

OAAC indicates that the average time to handle cases is 154 (calendar) days. The 154 day period includes intake, investigation, report writing and OAAC management approval. However, cases that elect to use the OAAC's Dispute Resolution Mediation Program used to require an additional 10 days for election and 30 days for convening the mediation session. OAAC has

now revised their process to begin the investigation concurrently with the dispute resolution mediation process.

EOP staff indicate that the average time to handle Sheriff's Department discrimination investigation cases is approximately 95 (calendar) days. The 95 day period runs from the date of Department notification of the complaint, including the initial intake process, investigation and report writing, through the EOP hearing and decision.

The significant differences between the two operations are that:

- The OAAC process has been designed to follow the Federal Equal Employment Opportunity Commission (EEOC) and California State Department of Fair Employment and Housing (DFEH) model, which includes a dispute resolution process (referred to by both EEOC and DFEH as "mediation"). After the investigation and report are done, the OAAC sends the report electronically to the originating department. That department is given three to five business days to review the report and discuss it with OAAC. The originating department then has ten days to respond with a corrective action plan.
- The EOP process does not include dispute resolution (mediation), but does include time for the EOP hearing and recommendations on discipline, which Department management is generally expected to follow.
- Another significant factor is the caseload per investigator. An analysis of annual case intake and investigation numbers for both the Sheriff and OAAC indicates that in 2009-10:
    - The EOP Intake Specialist Unit investigators each did an average of 76 initial investigations to determine A, B or C status.
    - The five EOP investigators each handled an average of 13 cases per year.
    - The 27 OAAC investigators each did their own intake analysis and handled an average of 23 cases per year, plus monitored four more cases at departments which handle their own investigations.

Total Caseload and Number of Cases Per Investigator – One of the major differences we noted between EOP and OAAC was the difference in caseload handled by the investigators for the two organizations. The OAAC investigators handle 75% more cases than the Sheriff investigators.

Over the past several years, the EOP carefully monitored the average number of cases handled per investigator. One of the "red flags" was a significant increase in the average time it took to complete investigations. In that situation, the EOP would identify the need for the Sheriff to assign more investigators. This became an action item which the EOP followed up on until an appropriate number of investigators were assigned and the time to investigate cases was brought down to be within the goal range.

As an example, for the April-June 2007 quarter, the EOP caseload had increased to 22 cases. At that time, the EOP had three full-time sergeants and one full-time deputy assigned to conduct investigations. In addition, there were four sergeants who had been trained and were available to conduct equity investigations. However, they had previously been assigned to non-equity IAB investigations (because the EOP caseload dropped to 12 cases). At the point when the EOP caseload got back up to 22 cases, the EOP recommended "...that the Department

consider restoring some or all of those sergeants to equity cases to ensure that the caseload remains manageable and investigative times continue to decrease." In the July-September 2007 report, the EOP noted that the number of full time investigators had been increased to seven and an eighth investigator was being trained. The ability to ramp up and ramp down the number of investigators to match caseload, as well as the previously discussed approach of doing in-depth investigations of only the "A" designated cases, are both clearly important components to the EOP's caseload management and timeliness.

Dispute Resolution (Mediation) Process - The OAAC dispute resolution process is offered to the complaining party and the department as an opportunity to communicate the complaining party's concerns and attempt to resolve those concerns, if possible, through immediate action. The dispute resolution process has been a successful tool for the OAAC. During 2009-10, 25% or 152 of the cases to be investigated went to dispute resolution. Of those, 101 dispute resolutions (16% of the total cases to be investigated and 66% of the cases mediated) were resolved with a binding no-fault settlement agreement. OAAC states that over the past two fiscal years (2008-09 and 2009-10), 95 complaints resolved through the mediation process were deemed "high risk cases," resulting in an estimated savings to the County of up to $14.1 million in potential litigation costs.

It should be noted that even with approval of binding no-fault settlement agreements, OAAC is still required to investigate the cases to determine the circumstances. In future, OAAC will enhance the investigative reports to recommend what should be done to prevent similar incidents.

Like the federal model, the OAAC discrimination complaint investigation did not commence until <u>after</u> the dispute resolution ("mediation") was completed or turned down. OAAC has now revised their process to begin the investigation concurrently with the dispute resolution process.

OAAC Computer System - Approximately 18 months ago the new ITMS case tracking system developed by ISD and OAAC was brought online and is now being used by OAAC staff. All cases are now handled electronically in the system through use of templates, workflow processing, online review and approvals, and standard and customized reports regarding case status and workload.

One type of report produced by the new system is trend analysis. The system now has over one year of data, which creates a baseline for the trend analysis. This tool will enable OAAC staff to quickly identify trends by department, type of incident, time frame, etc. The group in OAAC which has been designated to handle high risk cases and risk management analysis will also be responsible for doing the trend analysis and developing mechanisms for communicating lessons learned to County departments and the Board of Supervisors.

In addition, Attachment 4 – Tab 6 provides information about OAAC's new computer system, such as the type of information tracked in the system and the types of reports available for OAAC investigators, supervisors and management.

EOP Cost

The cost for the Sheriff's EOP operation is approximately $4.1 million per year. This cost includes 19 Sheriff and three OAAC staff, three EOP panel members plus the chairperson. Supplies and overhead costs such as computer system support would be in addition. EOP Panel members get paid $200 per hour; each member's hours are capped at 500 hours per year (for a maximum of $100,000 each per year). The EOP chairperson is paid $200 per hour and is capped at 750 hours per year (for a maximum of $150,000 per year). For 2009-10, the EOP panel contracts cost a total of about $351,000. Attachment 2 summarizes the various EOP direct costs and staffing.

Options

1. EOP "Equivalent" – Option 1 would be to implement a centralized EOP Panel over OAAC investigations. The new EOP Panel would be composed of four outside employment law attorneys (one as chair) or other employment type experts. OAAC had 60% more cases filed than the Sheriff did. Therefore, we increased the outside attorney panel time by approximately the same percentage. Assuming 750 hours per year for each panel member plus 1,000 hours for the chairperson, the panel would cost $650,000. The EOP Panel would report to the Board of Supervisors. One full time position in OAAC would be needed to provide staff support (trend analysis, drafting panel reports, etc.) to the new EOP panel, at an estimated cost of $76,000 per year. Also, additional investigators would need to be hired in OAAC to bring the caseload per investigator down roughly equivalent to same level as Sheriff. If the OAAC investigative caseload were to continue at the current level, OAAC would need approximately 25 more investigative positions plus support staff at a cost of about $3.5 million. The total EOP "Equivalent" Option is therefore estimated to cost an additional $4.25 million per year.

2. Hybrid Approach – Option 2 would be to incorporate the "best of the equity process" implemented at the Sheriff Department including the EOP approach (centralized Intake Unit, new EOP to act as a resource for Intake Unit staff and for the investigator staff, disciplinary recommendations, consistency, best practices/lessons learned, trend analysis, more timely investigations). The new panel would be composed of executive or senior management level staff from DHR Civil Service Advocacy group and County Counsel, with OAAC acting in an advisory/support role. Intake and investigations would continue to be handled by existing OAAC staff, including an internal reorganization to create a specialized intake unit. Both intake and investigative staff would have direct access to the new EOP Panel as a resource. Cases, investigation status, caseload, and disciplinary actions would be tracked using the OAAC computer system. The new system would also be used to identify patterns of cases and do trend analysis. This option would require an estimated $357,000 per year in additional staff resources.

    a. OAAC – one new staff position to do trend analysis, draft quarterly reports, and provide other types of research and support for the new panel (estimated annual cost $76,000)

b. County Counsel - one new attorney position to work with the centralized Intake Unit to review intake assessments and "A,B,C" categorizations, act as legal resource to run issues past, provide counsel and advice as the investigations are proceeding, provide training seminars to investigators and other County staff, and sit on the new panel to hear the presentation of investigations, vote on disposition and recommend disciplinary action (estimated annual cost $191,000).
c. DHR – one half-time new position at the Human Resources Analyst IV level in Civil Service Advocacy (estimated annual cost $90,000).

3. Hybrid Plus Approach – Option 3 would be to supplement the Option 2 hybrid approach by hiring two outside expert attorneys to serve on the panel along with DHR and County Counsel. One outside attorney would have expertise as a plaintiff's attorney and the other as a defense attorney. The additional cost is estimated to be $300,000 (750 hours for each attorney) per year in addition to Option 2 costs, for a total of $657,000 per year.

4. As Is – Option 4 is to keep operating "as is," but have OAAC absorb the minimal cost process improvements such as having OAAC begin investigations concurrently with mediation, reorganizing to create a specialized Intake Unit, and having existing staff do trend analysis, lessons learned and best practices as time permits.

Funding Recommendation

After reviewing the options and the costs, we recommend Option 3 at this time because the County would be able to implement most of the EOP practices and receive most of the benefits from the EOP approach, including the benefit of having outside legal experts who specializes in this area of law.

Preliminary Implementation Schedule

A number of process improvements have been identified which will help OAAC to become more effective, will leverage the work that OAAC does to benefit all County departments, and which should, over time, reduce the number of discrimination complaint incidents. Listed below is a general plan and timeframe to implement these changes:

OAAC improvements underway:

October 2010

- Notifying the Complaining Party in writing should the investigation extend beyond the stated time frame.
- Distributing an informational brochure regarding the voluntary Dispute Resolution Mediation program as an attachment to "Acknowledgement of Complaint" letters.
- Implementing a triage procedure to identify cases that pose a high risk to the County and which will be given priority status.
- Conducting investigations simultaneously with all cases electing dispute resolution.
- Digitally recording all complaining party, subject of investigation and witness interviews, and transcribing as necessary.

- Use of OAAC's new computer system to do:
  - Case trend analysis to identify problem areas for focus;
  - Provide management reports tied to workload and timeliness; and
  - Electronic workflow, templates and on-line review and approvals.
- OAAC will enhance the investigative reports to recommend what should be done to prevent similar incidents.

November 2010

- OAAC to reorganize staff to create a specialized Intake Unit.
- OAAC to implement the "A, B, C" intake classification model developed by the EOP.
- OAAC to work with Sheriff/EOP to set up a training class for OAAC investigators and discuss other options such as shadowing IA investigators to learn their techniques.
- CEO to prepare Board letter or Board motion to implement option selected by BOS.
- If funding is approved for outside attorneys to serve on a new EOP panel, OAAC/CEO to develop Request for Qualifications (RFQ) to seek two outside attorneys to serve on the oversight panel – one attorney with expertise working with plaintiffs and the other attorney with defendants.
- DHR/OAAC to begin development of County policy for use of the new oversight panel, including:
  - Review of Sheriff Manual of Policy and Procedures for the Policy of Equality
  - Development of disciplinary guidelines and written departmental justification for implementing discipline other than recommended by the panel (DHR)
  - Corrective Action Plans and requirement for departments to provide OAAC with written documentation of disciplinary action and corrective actions taken
  - Identification of potential problem areas and corrective actions through trend analysis (CEO Risk Management/OAAC)
  - Identification of best practices to be shared with departments and Legal Exposure Reduction Committee and to be incorporated into training

December 2010

- CEO, OAAC, County Counsel and DHR to review responses to RFQ for outside attorneys received, evaluated and selected
- DHR and County Counsel staff selected to serve on oversight panel
- OAAC and DHR to draft County policy on new oversight panel and share with EOP attorneys and departments for comment
- OAAC and DHR to develop Countywide Policy on Equality
- OAAC and DHR to develop training on Equality and related policies

January 2011

- Meetings with outside attorneys and County staff to serve on panel;
  - Meeting with EOP panel for briefing on how EOP panel operates
  - Meeting to establish how new panel will operate (mirroring EOP as much as possible), including review of draft County policy by outside attorneys, timeframe needed for panel to review OAAC investigation reports, etc.
  - Meeting calendar established

- Countywide policy on new panel finalized and distributed along with information on regular oversight panel meeting dates
- OAAC and DHR to initiate mandatory training on equality and policies to all employees.
- OAAC to include best practices and lessons learned in the quarterly reports which are copied to all departments.
- OAAC to continue to share information through meetings with department heads, chief deputies, administrative deputies, human resources managers and risk managers.

February 2011

- New oversight panel begins hearing cases. Phased in approach for departments with highest need
  - Phase 1 - Probation, DCFS, DPSS
- OAAC will research additional innovative ways to communicate best practices, such as the Sheriff's Department use of "pop up" messages when computers are turned on each day.

April 2011

- Review and assess the implementation roll-out and add new departments based on program capacity
  - Phase 2 – DHS, DPH, DMH

July 2011

- Assess and review entire Equity Panel process and add remaining departments. Consider whether Sheriff's Equity Panel should remain separate or be merged into countywide process.

If you have any questions, please contact me or have your staff contact Ellen Sandt, Deputy Chief Executive Officer at (213) 974-1186 or esandt@ceo.lacounty.gov.

WTF:BC:EFS
GS:LG:ef

c: Executive Office, Board of Supervisors
Affirmative Action Compliance
County Counsel
Human Resources

Attachments: Comparison of EOP and OAAC Functions and Investigation Timelines
EOP Costs
EOP Equity Program
OAAC Procedures, Practices and Policies

FACT SHEET

ESTABLISHMENT OF EQUITY OVERSIGHT PANEL FOR ALL COUNTY DEPARTMENTS

Board Motion from Sept. 7, 2010

- **Sheriff's Equity Oversight Panel (EOP) established in 2003**, with focus on quality of investigations, consistent discipline, staff education, and pro-active approach to minimize future claims/lawsuits. Sept. 7 Board motion instructed CEO, DHR and OAAC to look at that model for other County departments.

- **Annual Cost of Sheriff's EOP Function** $4.1 million
  (including outside attorneys on panel)

- **Comparison of EOP and OAAC Metrics** *(Please note that performance measurements differ between the two agencies, so we have provided the data that matches most closely.)*

Fiscal Year 2009-10	Sheriff / EOP	OAAC
# of Cases Submitted	690	1,096
# of Cases Referred Back to Originating Dept./Unit As Non-Jurisdictional	**463 (67%)**	**476 (43%)**
# of Cases Requiring Initial Investigation (Jurisdictional)	227	n/a
# of Cases Referred Back to Originating Unit after Initial Investigation Done	161 (23%)	n/a
# of In-Depth Investigations Done*	**66 (10%)**	**620 (57%)**
# of Cases Closed**	62	436
# of Cases Substantiated	54	75
% of Cases Closed Which Were Substantiated	82%	17%
% of Cases Substantiated Compared to Total Number of Jurisdictional Cases	**24%**	**17%**

Fiscal Year 2009-10	Sheriff / EOP	OAAC

(Note: OAAC uses business days, which were converted to calendar days for this chart.)

%of Cases Investigated within 120 Calendar Days	68%	n/a
%of Cases Investigated within 168 Calendar Days	n/a	72%
%of Cases Investigated within 200 Calendar Days	32%	n/a
%of Cases Investigated over 252 Calendar Days	n/a	9%
# of Investigators	5	27
# of Cases Per Investigator* **	**13**	**23**
# of Cases Monitored at Other Departments***	n/a	105

* Case investigations may span fiscal years, so cases investigated and closed will not total.

** Cases closed for EOP means investigation, hearing held and findings made by EOP panel. Cases closed for OAAC means mediation (if elected), investigation, and final OAAC report findings.

*** It should be noted that, in addition to handling cases, the OAAC investigators also monitor the status of an average of four discrimination complaint investigations by other County departments who handle their own investigations.

Number of Sheriff Claims / Cost of Sheriff Claims Paid Since EOP Began*

Year:	03-04	04-05	05-06	06-07	07-08	08-09
# of Claims:	4	4	12	6	8	7
Cost in millions:	$.128	$.339	$1.263	$.809	$1.235	$1.543

*Expenses paid each fiscal year are for all expenses paid regardless of what year the claims were filed.

Options:

Option 1 – "EOP Equivalent" $4.25 million per year
Four outside attorneys on panel, one new support position for panel, 25 new OAAC Investigators

Option 2 – "Hybrid" Approach $.36 million per year
Two and half new positions for panel and support

Option 3 – "Hybrid Plus" Approach $.66 million per year
Two outside attorneys on panel, two and half new positions for panel and support (***This is the recommended option.***)

Option 4 – "As Is" $ 0
OAAC to absorb minimal cost process improvements

ATTACHMENT I

COMPARISON OF OAAC AND EOP TIMEFRAMES IN CALENDAR DAYS*

Activity	OAAC # of Days	EOP # of Days
Receive Complaint from Department or Charging Party	1	1
Complete Intake Assessment	16	5 to 30
Conduct Investigation, Draft Report, Management Review, Finalize Report	97 to 168	50 to 84
Submit Report to Department, Departmental Review and Response	27	n/a
EOP Panel Review/Findings/Disciplinary Recommendation	n/a	5 to 14
AVERAGE TIME SPENT PER CASE DURING 2009-10	154 day average	95 day average

* OAAC has historically tracked timeframes using business days, while EOP used calendar days. For purposes of this chart, the OAAC business days were converted to calendar days.

ATTACHMENT II

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT
EQUITY STAFFING AND CONTRACTS
FISCAL YEAR: 2009-2010

DESCRIPTION	SERVICE TYPE or PURCHASE	EXPENDITURE
LASD Personnel	Staffing (Salaries & Employee Benefits)	$3,037,000
Equity Oversight Panel Contracts	Contract Services	$351,000
Office of Affirmative Action Compliance	Equity Investigation Services	$736,000
GRAND TOTALS: FY 09/10		$4,124,000

Note: Expenditures (07/01/09 to 06/30/10)

LASD Personnel:

Bureau of Labor Relations and Compliance/Intake Specialist Unit

Captain	1
Commander	1
Lieutenant	1
Sergeant	3
Deputy	4
Operations Assistant I	1
Operations Assistant III	1
Intermediate Typist Clerk	1

Bureau of Internal Affairs/Equity Investigations Unit

Lieutenant	1
Sergeant	5

Equity Oversight panel Contracts

Three EOP Members and a Chairperson

Office of Affirmative Action Compliance

Services provided at the Intake Unit

1 Bouman Case & BOLRAC Overview

2 Equity Court Orders

3 Policy of Equality (POE)

4 Equity Oversight Panel (EOP)

5 Respect-Based Leadership Training

6 POE Acknowledgment of Receipt

7 Lessons Learned

8 Computer Logon Advisements

9 POE Posting Form & Checklist

10 POE Cases 2003-2009

11 Equity Expenditures

12 EOP 30th Quarterly Report

AVERY READY INDEX 600086

Facts About the Bouman Case

1980 - Susan Bouman filed a Federal Court action for sex discrimination

- Sued the then Sheriff, the County of Los Angeles, the Department, and several other named defendants
- Filed on behalf of herself and a class of female deputies
- Specifically challenged the 1975 and 1977 Sergeant's exam

The case was tried in Federal Court

- Judgment entered in favor of Bouman in March 1988
- Court ordered the Department to develop a valid and job-related Sergeant's exam and pay attorney fees and costs

The Department appealed and Court of Appeals ruled in 1991

- LASD engaged in intentional sex discrimination by failing to promote Bouman despite available vacancies
- The Sergeant's exam had disparate impact on women
- The findings of discrimination supported injunctive relief

The Department's efforts to comply were not met with success

- As the years passed, the Department agreed to (i.e., "stipulated" to) and/or the Court ordered additional requirements

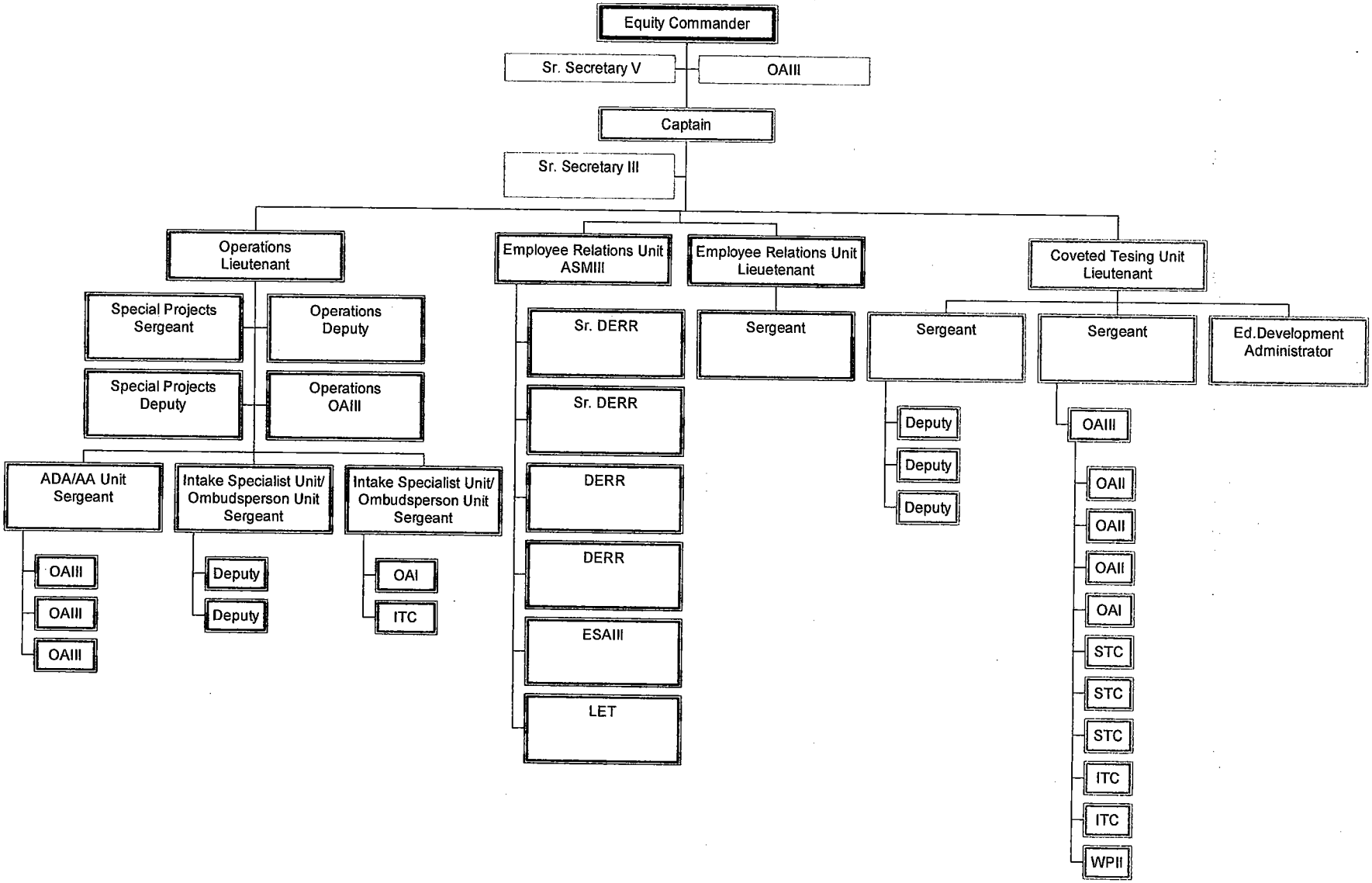
Since 1988, some 19 or more additional Court Orders and the Consent Decree have been rendered, all of which must be complied with

- A consent decree is an agreement between relevant parties that is entered by the court; it has the effect of law

These Orders address the following four categories:

- Development of a legally defensible Sergeant selection process
- Development of valid and job-related selection criteria for transfer and assignment to Coveted Positions
- Entry level monitoring
- Sexual harassment policy development and implementation

BUREAU OF LABOR REL TIONS AND COMPLIANCE ORGANIZATIONAL CHART



ROBERT H. PHILIBOSIAN, CBN 41515
DOUGLAS R. HART, CBN 115673
RONDA D JAMGOTCHIAN, CBN 200236
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership, IPC
333 South Hope Street, 48th Floor
Los Angeles, California 90071-1448
Telephone: (213) 620-1780
Facsimile: (213) 620-1398
Email: dhart@sheppardmullin.com

ROBERT E. KALUNIAN, Acting Cnty Cnsl
MANUEL A. VALENZUELA, CBN 60103
MARY WICKHAM, CBN 145664
OFFICE OF COUNTY COUNSEL
COUNTY OF LOS ANGELES
500 West Temple Street
Los Angeles, California 90012
Telephone: (213) 974-1904

Attorneys for Defendants

DENNIS M. HARLEY, CBN 57230
DENNIS M. HARLEY, A LAW CORPORATION
510 South Marengo Avenue
Pasadena, California 91101
Telephone: (626) 796-7555
Fax: (626) 577-0124
Email: dharleylaw@aol.com

DELLA BAHAN, CBN 88649
BAHAN & ASSOCIATES, INC.
125 University Avenue, Suite 120
Berkeley, CA 94710
Telephone: (510) 845-0740
Fax: (510) 845-3634
Email: db@bahanlaw.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SUSAN L. BOUMAN, et al.,

Plaintiffs,

v.

LEROY D. BACA, et al.,

Defendants.

Case No. CV 80-1341 TJH

ORDER RE: JOINT REPORT OF FULL AND FINAL COMPLIANCE REGARDING THE DEVELOPMENT AND IMPLEMENTATION OF A LAWFUL SEXUAL HARASSMENT POLICY

ORDER

1. On August 2, 1993, the Court ordered Defendants Sheriff Leroy D. Baca, the Los Angeles County Sheriff's Department, and the County of Los Angeles (collectively "Defendants" or "Department") to "implement and enforce a policy regarding sexual harassment which shall comply fully with the requirements of both federal and state law." Defendants were also required to post the sexual harassment policy "at each location where employees are located," and ensure that each Department member received a copy of the policy and signed for its receipt.

2. On July 17, 1997, the Court ordered Defendants to "publish a lawful sexual harassment policy. forthwith and to post such, administer such, and have each member of the Department sign for a copy."

3. In February 1999, the Court ordered, among other things, that "[D]efendants will rewrite and submit for the Court's approval a lawful sexual harassment policy," and would "us[e] the services of an expert to assist in the preparation of a lawful harassment policy."

4. On July 20, 2001, the Court approved the Department's sexual harassment policy entitled the "Policy of Equality and Associated Procedures" (the "Policy"), found that it constituted a lawful sexual harassment policy in compliance with the Court's July 1997 Order, and ordered its implementation. At that same time, the Court ordered Defendants to submit a status report within 90 days, updating the Court on progress made toward the implementation of the Policy, and setting forth a timeline specifying the date on which Defendants would "return to the Court for a final determination of compliance with its orders." In October 2001,

Defendants submitted their status report, and in October 2002, the parties filed a Joint Status Report, advising the Court of the status of the Policy and related issues.

5. On January 5, 2007, Defendants filed a "Motion For Final Determination of Compliance Regarding the Development and Implementation of a Lawful Sexual Harassment Policy." On January 8, 2007, Plaintiffs Susan L. Bouman, et al., filed a Motion for Declaration of Non-Compliance Regarding Development and Implementation of a Lawful Sexual Harassment Policy.

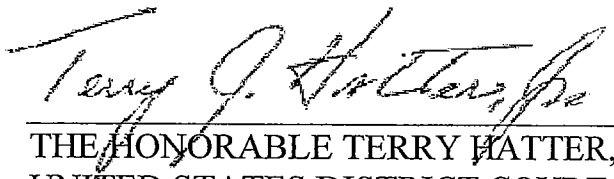
6. On September 13, 2007, the Court entered an order which, among other things: (1) provided for an additional two-year period of monitoring in the sexual harassment portion of the case; and (2) set forth the specific steps required to effectuate the termination of the sexual harassment portion of the case. The Court further ordered that if Defendants satisfied those remaining obligations, the Equity portion of the case would be extinguished on September 12, 2009.

7. On September 11, 2009, the parties submitted a "Joint Report of Full and Final Compliance Regarding the Development and Implementation of a Lawful Sexual Harassment Policy" (the "Joint Report"). In the Joint Report, the parties assert that Defendants have successfully fulfilled all of their obligations regarding the sexual harassment portion of the case, as set forth in the Judgment, Amended Judgment, Consent Decree and related Court Orders, as evidenced by, *inter alia*, Equity Status Reports filed by Defendants each month since September 2007.

HAVING READ AND CONSIDERED THE PARTIES' JOINT REPORT, AND FOR CAUSE SHOWN, IT IS HEREBY ORDERED THAT Defendants have fully complied with all of their obligations regarding the sexual harassment portion of the case, as set forth in the Judgment, Amended Judgment, Consent Decree, and related Court Orders, and that Defendants shall have no further obligations to Class Counsel, the Class Monitor, or the Court with respect thereto. Accordingly, it is further ordered that the sexual harassment portion of the case, as set forth in the Judgment, Amended Judgment, Consent Decree, and related Court Orders, is hereby terminated, and all of Defendants' obligations thereunder are hereby extinguished.[1,2]

IT IS SO ORDERED.

Dated: September 21, 2009



THE HONORABLE TERRY HATTER, JR.,
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

[1] The Entry Level order dated April 3, 2008, and the Coveted order dated July 30, 2008, remain in full force and effect.

[2] Except to the extent specifically modified herein or in other Court Orders, the Judgment, Amended Judgment, Third Amended Consent Decree, and related Court orders remain in full force and effect.

ROBERT H. PHILIBOSIAN, CBN 41515
DOUGLAS R. HART, CBN 115673
RONDA D JAMGOTCHIAN, CBN 200236
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership, IPC
333 South Hope Street, 48th Floor
Los Angeles, California 90071-1448
Telephone: (213) 620-1780
Facsimile: (213) 620-1398
Email: rjamgotchian@sheppardmullin.com

RAYMOND FORTNER, JR.,
County Counsel
LESTER J. TOLNAI, CBN 60103
MARY WICKHAM, CBN 145664
OFFICE OF COUNTY COUNSEL
COUNTY OF LOS ANGELES
500 West Temple Street
Los Angeles, California 90012
Telephone: (213) 974-1904

Attorneys for Defendants

DENNIS M. HARLEY, CBN 57230
DENNIS M. HARLEY
A LAW CORPORATION
510 South Marengo Avenue
Pasadena, California 91101
Telephone: (626) 796-7555;
Fax: (626) 577-0124
Email: dharleylaw@aol.com

DELLA BAHAN, CBN 88649
BAHAN & ASSOCIATES, INC.
125 University Avenue, Suite 120
Berkeley, CA 94710
Telephone: (510)845-0740
Fax: (510) 845-3634
Email: db@bahanlaw.com

Attorneys for Plaintiffs

P-SENT
FILED
CLERK, U.S. DISTRICT COURT
SEP 13 2007
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

LODGED
2007 SEP 13 PM 2:59
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

SUSAN L. BOUMAN, et al.,

Plaintiffs,

v.

LEROY D. BACA, et al.,

Defendants.

Case No. CV 80-1341 RMT

JOINT STIPULATION RESOLVING THE PARTIES' CROSS MOTIONS RE: EQUITY ISSUES; ~~[PROPOSED]~~ ORDER

DOCKETED ON CM
SEP 14 2007
BY 060

1470

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD AND TO THE HONORABLE COURT:

Plaintiffs Susan L. Bouman, et al. ("Plaintiffs") and Defendants Sheriff Leroy D. Baca, the Los Angeles County Sheriff's Department, and the County of Los Angeles ("Defendants" or "Department") (collectively, the "Parties") hereby submit the following joint stipulation for the Court's approval:

RELEVANT PROCEDURAL BACKGROUND

1. On September 27, 1992, the Parties in this case submitted a document to the Court entitled, the Third Amended Consent Decree (the "Consent Decree"). The Consent Decree was approved and entered by the Court in 1993.

2. Section VI of the Consent Decree required Defendants Sheriff Leroy D. Baca, the Los Angeles County Sheriff's Department, and the County of Los Angeles (collectively, "Defendants" or "Department") to "implement and enforce a policy regarding sexual harassment which shall comply fully with the requirements of both federal and state law." (Consent Decree at 21.) The Consent Decree required that such policy "be posted at each location where employees are located" and further required that each Department member receive a copy of the policy and sign for its receipt. (Consent Decree at 21.)

3. On July 17, 1997, the Court ordered Defendants to "publish a lawful sexual harassment policy forthwith and to post such, administer such, and have each member of the Department sign for a copy." (July 17, 1997 Order, 4:10-12.)

4. In February 1999, the Parties stipulated, among other things, that "[D]efendants will rewrite and submit for the Court's approval a lawful sexual harassment policy," and would be "using the services of an expert to assist in the preparation of a lawful harassment policy." (February 1999 Stipulation and Order In

Response To Pending Motion For An Order To Show Cause Regarding Contempt And Extending Time To Respond, at 3.)

5. On July 20, 2001, the Court approved the Department's sexual harassment policy entitled the "Policy of Equality and Associated Procedures" (the "Policy"), found that it constituted a lawful sexual harassment policy in compliance with the Court's July 1997 Order, and ordered its implementation. (July 2001 Joint Stipulation and Order Regarding Development and Administration of a Lawful Sexual Harassment Policy.)

6. In January 2003, the Department began training Department members on the contents and requirements of the Policy.

7. In October 2006, the Department filed a Status Report with the Court, seeking a ruling that Defendants had substantially complied with the sexual harassment portion of the Consent Decree and related Court Orders. The Court denied the request, ordering Defendants to submit a stipulation or file an appropriate motion for such relief.

8. On January 5, 2007, Defendants filed a Motion for Final Determination of Compliance Regarding the Development and Implementation of a Lawful Sexual Harassment Policy ("Defendants' Equity Motion"). In their Equity Motion, Defendants argue that they have substantially complied with the sexual harassment portion of the Consent Decree and related Court Orders, and request that the Court make a final determination that such compliance has been achieved. Defendants also request that the Court extinguish Class Counsel's monitoring authority over the Equity portion of the case.

9. On January 8, 2007, Plaintiffs filed a Motion for Declaration of Non-Compliance Regarding Development and Implementation of a Lawful Sexual Harassment Policy ("Plaintiffs' Equity Motion"). In their Equity Motion, Plaintiffs

argue that Defendants have not substantially complied with the sexual harassment portion of the Consent Decree and related Court Orders, and request that the Court extend their monitoring authority over the Equity portion of the case.

10. After extensive discussions and negotiations, the Parties wish to settle their respective Equity motions (currently scheduled to be heard on September 18-19, 2007) on the terms set forth below.

SETTLEMENT TERMS

1. **Monitoring Period**. The Equity Portion of the Consent Decree and related Court orders, along with Class Counsel's monitoring thereof, will continue for a period of two years from the date the Court approves the instant Stipulation. Defendants may not seek to terminate the Equity Portion of the Consent Decree prior to the expiration of the two-year period. Plaintiffs may not seek to extend the Equity Portion of the Consent Decree beyond the two-year period so long as Defendants have demonstrated that the terms set forth in this Stipulation have been fully satisfied and the Policy has otherwise been enforced.

2. **Length of Investigations**.

a. **Average Length of Investigation Not to Exceed Ninety Days**. A 90-day average "lifespan" requirement will apply to complaints which involve: (i) potential harassment or discrimination based upon sex, gender or sexual orientation (excluding same sex male-on-male claims) and a sworn Department member as either a complainant or a subject; or (ii) potentially inadequate or improper supervisory response to complaints under the Policy; or (iii) potential retaliation by or against a sworn Department member (collectively, "*Bouman* cases"). Beginning on the date the Court approves this Stipulation, the average time to process *Bouman* complaints, from the date the Department is first notified of the potential violation through the date of the Equity Oversight Panel hearing, may not exceed 90 calendar days. This 90-day

average will be maintained, at a minimum, for the one year period preceding the expiration of the monitoring period provided herein.

b. **No Single Investigation to Exceed 120 Days**. No single *Bouman* case may take longer than 120 days to investigate and be presented to the EOP, absent "extenuating circumstances." "Extenuating circumstances" are limited to: (a) military service impacting the availability of a subject, complainant, or key witness; (b) a supervisor's failure to report the potential violation of the Policy for which the supervisor has been disciplined; (c) unavailability of a subject, complainant, or key witness, due to "injury on duty" or other administratively-recognized leaves (*e.g.*, FMLA, CFRA, workers' compensation, etc.); (d) cases generated by an external source (*e.g.*, DFEH, EEOC), except that no such case will exceed 120 days from the date it is referred by the external source; (e) cases returned by the EOP for additional investigation and/or interviews; and (f) other circumstances as to which Class Counsel has approved in advance an extension of time beyond the 120-day maximum.

c. **Pending Cases.** *Bouman* cases pending as of the date the Court approves the instant Stipulation will be resolved within a reasonable period of time, not to exceed 90 days from the date this Stipulation is approved, absent "extenuating circumstances" as defined in paragraph 2(b) above. *Bouman* cases pending as of the date the Court approves the instant Stipulation will not be included in computing the 90-day average "lifespan" of investigations as required by paragraph 2(a) above.

3. **Changes in Discipline**. Beginning on the date this Stipulation is approved by the Court, all recommendations of the Equity Oversight Panel (the "EOP") will be promptly reduced to writing and communicated to the subject(s) in all cases. Similarly, and to the extent not inconsistent with the law, all complainants will receive written notification informing them that the Department investigated their complaint, and either: (a) their allegations could not be substantiated; or (b) their

allegations were "founded" and appropriate administrative action will be taken (subject to applicable grievance, Skelly, and/or appellant rights). Additionally, the following rules will be enforced:

a. **EOP Recommendations Regarding Disposition**. EOP recommendations regarding disposition (*i.e.*, founded, unfounded, unresolved, etc.) cannot be changed, to the extent consistent with the law and the Memoranda of Understanding between the Sheriff's Department and its Employee Unions (which were in effect as of the date the Court approves this Stipulation).

b. **EOP Recommendations Regarding Discipline.** EOP recommendations regarding discipline (including holding days in abeyance) will be implemented, except that if, after reviewing the entire investigative file, a unit commander disagrees with the EOP's recommended discipline, or wishes to hold all or part of the recommended discipline in abeyance, he or she may seek the approval of the Undersheriff to a change in the EOP's recommended discipline. Any such request must be supported by a written letter from the unit commander to the Undersheriff ("Justification Letter") which: (i) certifies that the unit commander has reviewed the entire investigative file, including the audiotape of the complainant's interview, (ii) certifies that the unit commander has consulted with the Chairperson of the EOP; and (iii) explains in detail the reasons for the proposed change in discipline.

c. **Impermissible Bases for Changing Discipline**. Changes to EOP recommendations regarding discipline may not be based on: (i) new facts that were not considered by the EOP, (ii) the subject's remorse, (iii) credibility findings, or (iv) a standard of proof higher than a preponderance of the evidence.

d. **Permissible Bases for Changing Discipline.** Changes to EOP recommendations regarding discipline may only be based on the unit commander's reasoned judgment, supported by specific facts articulated in the Justification Letter,

which demonstrate that the recommended discipline is too severe or too lenient as compared to other similar cases. Any proposal to change a disciplinary recommendation of the EOP shall be based on all of the following: (i) the unit commander's grievance/*Skelly* meeting with the subject, (ii) the unit commander's review of the investigative file, including the audiotaped interview of the complainant, (iii) the unit commander's telephonic or in-person consultation with the Chairperson of the EOP, and (iv) the concurrence of the Undersheriff.

e. **Notice to Class Counsel.** All Justification Letters which have been approved by the Undersheriff will be faxed to Class Counsel and the EOP within seven (7) calendar days of approval. All Justification Letters which have been denied by the Undersheriff will be faxed to Class Counsel and the EOP within seven (7) calendar days of denial.

4. **Credibility**. In cases brought under the Policy where credibility is an issue, the EIU Lieutenant shall ensure that the investigator includes a thorough discussion of all relevant credibility factors in the investigation. If requested by the EOP, the investigator will thoroughly brief the EOP on these factors at the hearing. If first-hand observation is deemed necessary by the EOP, the investigator will be required to render an opinion on credibility.

5. **DFEH Flier**. No later than ninety (90) calendar days from the date the Court approves the instant Stipulation, the Department shall submit to the Court a sworn declaration by the Equity Commander, attesting that: (a) within the same ninety-day period, every current Department employee (with the exception of those on extended authorized leave), has received a copy of the Policy with the DFEH flier attached, and has signed for a copy of same; and (b) the DFEH flier has been attached to the copy of the Policy posted in every work location, including all computer-based copies and on the Department's intranet site. Upon the conclusion of the two-year

monitoring period set forth herein, the Equity Commander shall similarly file a declaration that all Department employees hired since submission of the previous declaration have received and signed for a copy of the Policy with the DFEH flier attached, and that the Policy remains posted throughout the Department (and on the Department's intranet site) with the DFEH flier attached thereto.

6. **Intake Specialist Unit**. During the two-year period of the instant Stipulation, the Intake Specialist Unit ("ISU") will continue to conduct the initial assessments of Equity complaints, and will continue to categorize those complaints using the lettering system currently in place. The EOP will continue to review the ISU's categorization decisions. Where the EOP disagrees with the ISU's categorization, the Equity Commander, with the written concurrence of the Undersheriff, will serve as the final decision-maker. A copy of the Undersheriff's written concurrence will be faxed to Class Counsel within seven (7) days of issuance.

7. **Monthly Status Reports**. By the 15th day of every month, Defendants will serve and file with the Court an Equity Status Report, advising the Court that the Department has complied with the foregoing settlement terms for the previous month, and reporting: (i) the average length of *Bouman* investigations during that period; (ii) the reasons any single *Bouman* investigation has taken longer than 120 days; (iii) the number of Justification Letters received by the Undersheriff, the number of such letters that were approved, and the reasons for the approval; (iv) a certification that every new hire during the preceding month has received and signed for a copy of Policy, including the DFEH flier; (v) a certification that the Policy remains posted throughout the Department (and on the Department's intranet site) with the DFEH flier attached thereto. The Equity Status Report shall be signed by the Equity Commander under penalty of perjury.

If Class Counsel receives information indicating that any Monthly Status Report is inaccurate, or that Department has otherwise failed to comply with a material term of this Stipulation, the Equity Portion of the Consent Decree, or a related Court order, Class Counsel shall give written notice to the Department of such perceived deficiency ("Notice of Deficiency") within thirty days of receiving such information. The Notice of Deficiency may be in the form of a letter to defense counsel. Any "Notice of Deficiency" shall specify, with particularity, the perceived deficiency and the reasonable and specific steps necessary to cure that deficiency.

Once Defendants have received a Notice of Deficiency, the Department shall have 14 calendar days (or longer, if necessary and agreed to by Class Counsel) to cure said deficiency and to provide written notice to Class Counsel of the steps taken to cure said deficiency.

Once a Notice of Deficiency has been served, Defendants will include with the next monthly Status Report a copy of the Notice of Deficiency, Defendants' written response to Class Counsel concerning the steps taken to cure said deficiency, and any further written response of Class Counsel.

If a dispute arises over any perceived deficiency and the Parties are unable to resolve said dispute among themselves, the Parties may request that the Court rule on the issue.

As of this date, Plaintiffs are not aware of any perceived deficiency other than the issues raised in their Equity motion, which the Parties contemplate will be resolved through compliance with this Stipulation.

8. **Termination**. Absent Defendants' material non-compliance with the terms of this Stipulation, or with the Equity Portion of the Consent Decree and related orders, at the end of the two-year monitoring period provided in this Stipulation, Defendants will be deemed to have substantially complied with the Equity portion of

the Consent Decree and related Court orders. Accordingly, the Equity portion of the Consent Decree and related Court orders will be extinguished at that time, as well as all of Defendants' obligations thereunder.

9. **Case Evaluation Plan**. Prior to execution of this Stipulation, Class Counsel shall submit to counsel for Defendants a written description of the equity monitoring efforts in which Class Counsel anticipates engaging, along with an estimation of the reasonable attorneys' fees expected to be incurred therewith, and a description of the documents required to be produced by the Department in connection therewith. Except for documents covered by the attorney-client privilege and attorney work-product doctrine, Class Counsel shall have the right to review all documents, files, correspondence and electronic data concerning the receipt, investigation, and processing of complaints under the Policy. Class Counsel shall also have the right to attend EOP hearings on all cases under the Policy, review monthly status reports concerning all cases under the Policy, review all proposed Equity-related educational materials and attend related training sessions as requested, review prior to distribution all documents distributed to Department members concerning the Policy and issues related thereto including the Investigative Handbook being developed by the Department. Class Counsel shall be entitled to regular access to the Equity Data Base, including data for all cases brought under the Policy.

Class Counsel's access to non-*Bouman* case files, data, and hearings under the POE shall not in any way be construed to extend Plaintiffs' standing, or the Court's jurisdiction, beyond discrimination, harassment or retaliation on the basis of gender (female). The Parties understand and agree that Plaintiffs may not seek to extend the Consent Decree based on any perceived deficiency in the implementation or enforcement of the Policy of Equality which is unrelated to the process of

investigating and resolving *Bouman* cases or to discrimination, harassment or retaliation on the basis of gender (female).

10. **All Court Orders Remain in Effect**. Except to the extent specifically modified herein, the Third Amended Consent Decree and related Court orders shall remain in full force and effect.

////

////

////

////

////

////

////

////

////

////

////

////

////

////

////

////

////

////

////

////

////

////

11. **Equity Motions Taken Off Calendar**. The Parties respectfully request that the Court issue the proposed Order based on this Stipulation. The Parties further request that their pending Equity Motions, currently set to be heard on September 18 and 19, 2007, be taken off calendar and deemed resolved by this Stipulation.

IT IS SO STIPULATED:

Dated: September 13, 2007

SHEPPARD MULLIN RICHTER & HAMPTON LLP

By _____
DOUGLAS R. HART
RONDA D. JAMGOTCHIAN
Attorneys for Defendants

Dated: September 13, 2007

LAW OFFICE OF DENNIS M. HARLEY
BAHAN & ASSOCIATES

By _____
DENNIS M. HARLEY
Attorneys for Plaintiffs

ORDER

FOR GOOD CAUSE, IT IS SO ORDERED.

DATED: SEP 13 2007

HONORABLE ROBERT M. TAKASUGI
UNITED STATES DISTRICT JUDGE

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles; I am over the age of eighteen years and not a party to the within entitled action; my business address is 333 South Hope Street, 48th Floor, Los Angeles, California 90071-1448.

On **September 13, 2007**, I served the following document(s) described as **JOINT STIPULATION RESOLVING THE PARTIES' CROSS MOTIONS RE: EQUITY ISSUES; [PROPOSED] ORDER** on the interested party(ies) in this action by placing true copies thereof enclosed in sealed envelopes and/or packages addressed as follows:

SEE ATTACHED LIST.

☒ **BY MAIL:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **BY OVERNIGHT DELIVERY:** I served such envelope or package to be delivered on the same day to an authorized courier or driver authorized by the overnight service carrier to receive documents, in an envelope or package designated by the overnight service carrier.

☐ **BY FACSIMILE:** I served said document(s) to be transmitted by facsimile pursuant to Rule 2008 of the California Rules of Court. The telephone number of the sending facsimile machine was 213-620-1398. The name(s) and facsimile machine telephone number(s) of the person(s) served are set forth in the service list. The sending facsimile machine (or the machine used to forward the facsimile) issued a transmission report confirming that the transmission was complete and without error. Pursuant to Rule 2008(e), a copy of that report is attached to this declaration.

☐ **BY HAND DELIVERY:** I caused such envelope(s) to be delivered by hand to the office of the addressee(s).

☒ **FEDERAL:** I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on **September 13, 2007**, at Los Angeles, California.

Gail C. Hasely

Gail C. Hasely

SERVICE LIST

Dennis M. Harley, Esquire
Dennis M. Harley, A
Law Corporation
510 So. Marengo Avenue
Pasadena, CA 91101-3115

Della Bahan, Esquire
Puja Batra, Esquire
Bahan & Associates
125 University Avenue, Suite 102
Berkeley, CA 94710

MANUAL

OF

POLICY

AND

PROCEDURES

POLICY OF EQUALITY

SHERIFF'S DEPARTMENT
COUNTY OF LOS ANGELES

Effective January 5, 2003 (Revised October 1, 2007)

3-01/121.00 POLICY OF EQUALITY

CORE VALUES

Our Policy of Equality reflects and builds upon our Core Values, which each Department member is responsible for demonstrating in both actions and words.

These Core Values lie at the heart of our Policy of Equality:

As a ***leader*** in the Los Angeles County Sheriff's Department,

I commit myself to ***honorably*** perform my duties with

respect for the dignity of all people,

integrity to do right and fight wrongs,

wisdom to apply common sense and ***fairness*** in all I do and

courage to stand against racism, sexism, anti-Semitism,

homophobia and bigotry in all its forms.

These Core Values do not limit the responsibility of Department members to upholding only the stated values. All Department members are required to conduct themselves in accordance with the entirety of this Policy of Equality, and all applicable local, county, state, and federal laws.

PURPOSE

This Policy is intended to preserve the dignity and professionalism of the workplace as well as protect the right of employees to be free from discrimination, harassment, and retaliation. Discrimination, harassment, and retaliation are absolutely contrary to the values of the law enforcement profession as a whole and to the Core Values of the Los Angeles County Sheriff's Department. Discrimination, harassment, and retaliation are also illegal under local, county, state, and federal law.

The Department will not tolerate unlawful discrimination on the basis of sex, race, color, ancestry, religion, national origin, ethnicity, age (40 and over), disability, sexual orientation, marital status, or medical condition, nor will it tolerate unlawful harassment or retaliation. As a preventive measure, the Department also will not tolerate inappropriate conduct toward others based on a protected status even if the conduct does not meet the legal definition of discrimination or harassment.

All Department members are responsible for conducting themselves in accordance with this Policy and its associated Procedures. Violation of the Policy and/or Procedures will lead to prompt and appropriate Departmental action including, but not limited to, counseling, training, written reprimand, suspension, demotion, and/or discharge.

3-01/121.05 POLICY OF EQUALITY - PROHIBITED CONDUCT

Each Department member is responsible for understanding these definitions of prohibited conduct as they will govern in any disciplinary proceeding for violations of this Policy and/or associated Procedures.

3-01/121.10 POLICY OF EQUALITY - DISCRIMINATION

Discrimination is the disparate or adverse treatment of an individual based on or because of that individual's sex, race, color, ancestry, religion, national origin, ethnicity, age (40 and over), disability, sexual orientation, marital status, or medical condition.

3-01/121.15 POLICY OF EQUALITY - SEXUAL HARASSMENT

Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal, visual or physical conduct of a sexual nature which meets any one of the following three criteria:

- Submission to such conduct is made either explicitly or implicitly 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; or
- Such conduct has the purpose or effect of unreasonably interfering with the individual's employment or creating an intimidating, hostile, offensive, or abusive working environment.

3-01/121.20 POLICY OF EQUALITY - DISCRIMINATORY HARASSMENT (OTHER THAN SEXUAL)

Harassment of an individual because of the individual's race, color, ancestry, religion, national origin, ethnicity, age, disability, sexual orientation, marital status, or medical condition is also discrimination and prohibited by federal and/or state civil rights statutes. Discriminatory harassment is conduct which has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, offensive, or abusive work environment.

3-01/121.25 POLICY OF EQUALITY - THIRD-PERSON HARASSMENT

Third-person harassment is indirect harassment of a bystander, even if the person engaging in the conduct is unaware of the presence of the bystander. When an individual engages in harassing behavior, he or she assumes the risk that someone may pass by or otherwise witness the behavior. The Department considers this to be the same as directing the harassment toward that individual.

3-01/121.30 POLICY OF EQUALITY - INAPPROPRIATE CONDUCT TOWARD OTHERS

Inappropriate conduct toward others is any physical, verbal, or visual conduct based on or because of sex, race, color, ancestry, religion, national origin, ethnicity, age (40 and over), disability, sexual orientation, marital status, or medical condition when such conduct reasonably would be considered inappropriate for the workplace.

This provision is intended to stop inappropriate conduct before it becomes unlawful discrimination or harassment. As such, the conduct need not be pervasive or repeated in order to violate this Policy. An isolated derogatory comment, joke, racial slur, sexual innuendo, etc., may be grounds for discipline. Similarly, the conduct need not be unwelcome to the party against whom it is directed; if the conduct reasonably would be considered inappropriate for the workplace, it will violate this Policy.

3-01/121.35 POLICY OF EQUALITY - RETALIATION

Retaliation is an adverse action against another for reporting an incident or filing a complaint of conduct that violates this Policy or the law or participating in an investigation or otherwise exercising their rights or performing their duties under this Policy or the law.

3-01/121.40 POLICY OF EQUALITY - EXAMPLES OF CONDUCT THAT MAY VIOLATE THIS POLICY AND SCOPE OF COVERAGE

Depending on the facts and circumstances, the following are examples of conduct that may violate this Policy:

- Posting, possessing, sending, soliciting or displaying in the workplace sexually suggestive, racist, "hate-site" related, or obscene letters, notes, invitations, cartoons, posters, facsimiles, electronic mail or web links;
- Verbal conduct such as whistling and cat calls, using or making lewd or derogatory noises or making graphic comments about another's body, or participating in explicit discussions about sexual experiences and/or desires;

- Verbal conduct such as using sexually, racially or ethnically degrading words or names, using or making racial or ethnic epithets, slurs, or jokes;
- Verbal conduct such as comments or gestures about a person's physical appearance which have a racial, sexual, disability-related, religious, age or ethnic connotation or derogatory comments about religious differences and practices;
- Physical conduct such as touching, pinching, massaging, hugging, kissing, rubbing or brushing the body, making sexual gestures, impeding or blocking an individual's passage or normal movements;
- Visual conduct such as staring, leering, displaying or circulating sexually suggestive objects, pictures, posters, photographs, cartoons, calendars, drawings, magazines, computer images or graphics;
- Sexual advances or propositions, including repeated and unwanted requests for a date;
- Retaliation in any form, including withholding work-related information, giving punitive work assignments, or denial of job benefits; and
- Hazing based on any protected status, including withholding assistance, giving demeaning, unattainable, or unnecessary job assignments, or ignoring the presence of a co-worker.

This list is not exhaustive. Any conduct which is retaliatory or based on or because of sex, race, color, ancestry, religion, national origin, ethnicity, age (40 and over), disability, sexual orientation, marital status, or medical condition may also violate this Policy.

SCOPE OF COVERAGE

Department Members: For purposes of this Policy, "Department members" is defined as employees of the Los Angeles County Sheriff's Department and applicants for employment, whether sworn (regular or reserve) or civilian, all volunteers, and Explorer Scouts and outside vendors (see the Department's Outside Vendor Policy).

Location: This Policy prohibits discrimination, harassment, retaliation, and inappropriate conduct toward others in the workplace or in other work-related settings such as work-related social events (e.g., retirement parties). Depending upon the facts and circumstances, this Policy also prohibits off-site, off-duty conduct where such conduct meets one of the foregoing definitions of prohibited conduct and has the purpose or effect of unreasonably interfering with an individual's employment or creating an intimidating, hostile, offensive, or abusive working environment.

Communication System/Equipment: This Policy also applies to the use of any Departmental communication system or equipment, including but not limited to, electronic mail, internet, intranet, JDIC, telephone lines, computers, facsimile machines, voice-mail, radio, and mobile digital terminals. Employees will be disciplined in accordance with this Policy for using any Departmental communication system or

equipment to deliver, display, store, publish, circulate, or solicit material in violation of this Policy.

3-01/121.45 POLICY OF EQUALITY - REPORTING VIOLATIONS OF THIS POLICY

Any Department member who believes he or she has been subjected to conduct that violates this Policy is strongly encouraged to report the matter to any Department supervisor or manager or the Intake Specialist Unit. The Intake Specialist Unit may be reached at (323) 890-5371, and is located at: 4900 South Eastern Avenue, Suite 203, Commerce, California, 90040.

Any non-supervisory Department member who believes he or she has knowledge of conduct that violates this Policy is strongly also encouraged to report the matter.

Supervisors and managers have an affirmative duty to report potential violations of this Policy to the Intake Specialist Unit. Supervisors and managers also have additional duties and responsibilities as detailed in the procedures associated with this Policy.

The Department will fully and fairly investigate any complaints and take immediate and appropriate corrective action.

Department members also may contact the California Department of Fair Employment and Housing by calling (800) 884-1684 or visiting their website at www.dfeh.ca.gov and may contact the Federal Equal Employment Opportunity Commission by calling 213-894-1000 or 800-669-4000 or visiting their website at www.eeoc.gov. For more information regarding the Fair Employment and Housing Act, Department members may refer to the California Department of Fair Employment and Housing's brochure entitled "Sexual Harassment: The Facts about Sexual Harassment", which is attached to this Policy.

Department members may also contact the County Office of Affirmative Action Compliance at (213) 974-1251.

3-01/121.50 POLICY OF EQUALITY - DUTY TO COOPERATE

All Department members are responsible for cooperating fully in any Department inquiry or investigation related to this Policy. Failure to do so will lead to prompt Departmental action including, but not limited to, counseling, training, written reprimand, suspension, demotion, and/or termination.

3-01/121.55 POLICY OF EQUALITY - NO RETALIATION

This Policy absolutely prohibits retaliation. No person will be retaliated against for making a complaint of conduct that violates this Policy or the law, cooperating in any

investigation or corrective action, or otherwise preventing prohibited practices under this Policy or the law. The Department will take immediate and corrective action to prevent retaliation, including the imposition of appropriate discipline to any Department member who engages in retaliation.

3-01/122.00 POLICY OF EQUALITY - PROCEDURES

INTRODUCTION

All Department members are responsible for conducting themselves in accordance with the Policy of Equality ("Policy") and these procedures ("Procedures"). The Policy and Procedures are the internal controlling authority for all Department equity matters. Violation of the Policy or Procedures will lead to prompt and appropriate Departmental action including, but not limited to, counseling, training, written reprimand, suspension, demotion, and/or discharge.

Any Department member who believes he or she has been subjected to a violation of the Policy is strongly encouraged to report the matter. Any non-supervisory Department member who has knowledge of a violation of the Policy is also strongly encouraged to report the matter.

Supervisors and managers have an affirmative duty to report potential violations of the Policy. Supervisors and managers shall also take all reasonable steps to prevent discrimination, harassment, and retaliation from occurring in the workplace and take immediate and appropriate corrective action to stop any discrimination, harassment, and retaliation that does occur.

The Department will promptly and effectively investigate all reports of violations of the Policy and will take immediate and appropriate preventive and corrective action. Department members shall cooperate fully in any inquiry or investigation related to the Policy.

3-01/122.05 POLICY OF EQUALITY - PROCEDURES - DUTIES OF SUPERVISORS AND MANAGERS

Under these Procedures, supervisors and managers shall perform certain duties as enumerated below.

Supervisors and managers for purposes of the Procedures include the Sheriff, the Undersheriff, Assistant Sheriffs, Chiefs, Commanders, Captains, Lieutenants, Sergeants, Deputies performing supervisory duties or acting in a supervisory capacity, and civilian directors, managers, and supervisors.

NOTE: FAILURE BY ANY SUPERVISOR OR MANAGER TO CARRY OUT THESE DUTIES MAY BE CAUSE FOR DISCIPLINE.

Duty of All Supervisors and Managers to Report

Supervisors and managers have an affirmative duty to report potential violations of the Policy. Supervisors and managers are required to report potential violations of the Policy to the Intake Specialist Unit as provided below even when a complaining or reporting party requests that no action be taken. The supervisor or manager shall:

- Immediately notify the Intake Specialist Unit of the incident(s) or complaint and any initial steps taken by the supervisor or manager; and
- Complete a Policy Of Equality Report form POE-001 ("POE Report Form") and promptly file the original with the Intake Specialist Unit with copies to: (a) the reporting party's Unit Commander, unless the complaint is against the Unit Commander, in which case it shall be sent to the Department's Equity Commander; and (b) the Equity Oversight Panel.

Additional Duties of All Supervisors and Managers

Supervisors and managers are also responsible for:

- Being aware of and understanding the Policy and Procedures, as well as any modifications that may be made to them;
- Actively monitoring the work environment to ensure that discrimination, harassment, and/or retaliation are not occurring;
- Informing Department members under their supervision of the types of behavior prohibited, and the Department's procedures for reporting and resolving complaints arising under the Policy;
- Stopping conduct that violates the Policy and taking immediate and appropriate action whether or not the involved Department members are within their line of supervision;
- Taking immediate action to prevent retaliation towards the complaining party (if there is one), and to deter and eliminate any hostile work environment. If a situation requires separation of the involved parties, particular care must be taken to avoid actions that appear to punish the complaining party.

Supervisors and managers have the foregoing duties whether or not a complaint has been made.

Additional Duties of Unit Commanders

In addition to the duties described above, Unit Commanders have the following duties:

- Ensuring that blank POE report forms POE-001 are maintained in a prominent and accessible place in every Unit. It is the further duty of the Unit Commander

to ensure that the location, availability, and purpose of these forms are made known to each Unit member; and

- Performing all duties required by the Outside Vendor Policy Regarding Discrimination, Harassment, and Retaliation.

3-01/122.10 POLICY OF EQUALITY - PROCEDURES - INFORMATION ABOUT THE POLICY AND PROCEDURES

Office of the Ombudsperson

The Office of the Ombudsperson functions as a specialized resource for all Department members concerning the Policy of Equality and these Procedures. The Office of the Ombudsperson shall respond to inquiries, including anonymous inquiries, about the Department's Policy and Procedures and provide information to Department members about, among other things, their rights and responsibilities and complaint and investigation procedures concerning equity matters.

The Office of the Ombudsperson is not a complaint intake Unit. However, if a caller provides enough information to indicate a violation of the Policy, the Office of the Ombudsperson must report the matter to the Intake Specialist Unit. The Office of the Ombudsperson shall notify each caller of this obligation.

QUESTIONS ABOUT THIS POLICY

Any Department member who has questions about the meaning or interpretation of this Policy should contact the Office of the Ombudsperson. They may be reached at:

Office of the Ombudsperson (323) 890-5348

3-01/122.15 POLICY OF EQUALITY - PROCEDURES - EQUITY COMPLAINT PROCESS

Reporting Complaints

Any Department member who believes he or she has been subjected to conduct that violates the Policy is encouraged to report the matter to:

- Any Department supervisor or manager (whether or not in the Department member's chain-of-command); or
- The Intake Specialist Unit at (323) 890-5371.

Non-supervisory Department members are also encouraged to report potential violations of the Policy directed toward another to a supervisor, manager, or to the Intake Specialist Unit, the number for which has been provided above.

Supervisors and managers shall report potential violations of the Policy in accordance with the procedures detailed above.

- The Intake Specialist Unit

  The Intake Specialist Unit, staffed by both sworn and civilian Department members, is an initial point of contact for Department members who wish to report a violation of the Policy. Department members are not required to identify themselves when contacting the Intake Specialist Unit.

  The Intake Specialist Unit shall be responsible for directing any reports concerning equity issues to the Equity Unit for investigation and resolution. The Intake Specialist Unit also shall assist Department members in finding the right point of contact for questions regarding the Policy and Procedures or equity issues.

  The Intake Specialist Unit shall contact the complainant during the course of the investigation to ensure that no retaliation is occurring. The Intake Specialist Unit shall make prompt notification to the appropriate parties if an issue of retaliation is raised.

- Supervisors and Managers

  Department members also may report potential violations of the Policy and/or Procedures to any Department supervisor or manager as defined above.

Investigating Complaints: The Equity Unit

The Equity Unit is responsible for promptly and effectively investigating reports of conduct that violates the Policy or Procedures. Equity Unit investigations shall be immediate, thorough, objective, and complete. Equity Unit investigations shall be as confidential as reasonably possible consistent with the Department's obligation to conduct a full and effective investigation. Upon conclusion of the investigation, the Equity Unit investigators shall present their findings to the Equity Oversight Panel for review.

The Equity Unit investigator(s) assigned to the case shall conduct an initial investigation to determine whether there has been a potential violation of the Policy and/or Procedures. If the initial investigation indicates a potential violation of the Policy and/or Procedures, the investigator shall open an administrative investigation at the direction of an Equity Unit Lieutenant, who may seek the advice or concurrence of the Equity Commander or Equity Unit attorney. Any decision not to open an administrative investigation shall be forwarded to the Equity Oversight Panel for review.

Review of Equity Unit Investigations

- The Equity Oversight Panel

  The Equity Oversight Panel is an independent oversight body which, in accordance with the procedures described in this section, shall have authority and be responsible for reviewing Equity Unit investigations and making appropriate determinations for violations of the Policy and/or Procedures. The Equity Oversight Panel shall meet bi-monthly, or more frequently if necessary, to discuss and review each Equity Unit investigation.

  In addition, the Equity Oversight Panel shall be responsible for, among other matters, monitoring and evaluating the quality of the Equity Unit investigations and the effectiveness of the Policy and Procedures. The Equity Oversight Panel shall also serve as an equity policy advisor to the Department.

- The Review Process

  The review process shall consist of the following steps:

  a. The Equity Oversight Panel shall receive a thorough briefing from and have the opportunity to question the investigator(s) who handled the Equity Unit investigation. The subject's Chief and/or Unit Commander may attend the briefing. In addition, the Equity Oversight Panel shall have the authority to command the appearance of any Department member deemed necessary to a full and effective resolution of the complaint or incident. Any information relied upon by the Equity Oversight Panel to reach its decisions must be reflected in the subject's investigation package, including any new information received from any attendee to the Equity Oversight Panel's briefing.
  b. The Equity Oversight Panel shall meet to discuss and deliberate on the Equity Unit case presented. A representative from County Counsel and the Office of Affirmative Action Compliance may be present to offer advice as required under applicable Protocols. The subject's Chief and/or Unit Commander may be present at the request of the Equity Oversight Panel members. After discussion, the Equity Oversight Panel shall determine appropriate dispositions and discipline, if discipline is warranted. The Equity Oversight Panel immediately shall cause to be forwarded to the Sheriff for review all cases where its final recommended discipline determination exceeds 15 days suspension (See "Sheriff's Review of Discipline in Excess of 15 Days Suspension," below.).
  c. In all cases, the Equity Oversight Panel may direct the Equity Unit to conduct further investigation. If further investigation is directed, another review shall be held in accordance with this section after the investigation.
  d. The Equity Oversight Panel shall communicate its recommendations to the Equity Unit, which shall notify the appropriate parties. The Equity Unit

shall issue a Letter of Intent to Impose Discipline to the subject or, where appropriate, inform the subject that the complaint was unfounded or unresolved. At the same time, the Equity Unit shall issue a letter to the complainant indicating that the complaint was either founded, unfounded, or unresolved and that, if founded, appropriate corrective action was determined. Proposed disciplinary action shall be kept confidential until the Equity Unit receives the determinations regarding dispositions and discipline from the Equity Oversight Panel or Sheriff or his delegate.

Sheriff's Review of Discipline in Excess of 15 Days Suspension

The Sheriff shall have the authority to review all cases of discipline in excess of 15 days suspension, including demotion and termination. For these cases, the Sheriff shall have the authority to adopt or modify the discipline and/or reopen the investigation if deemed necessary.

The Sheriff may delegate the aforementioned authority to the Undersheriff or an Assistant Sheriff.

Skelly Hearings

Where applicable, the subject Department member may elect to have a hearing on discipline (a "Skelly" hearing) before the discipline is imposed. If the subject elects to have a Skelly hearing, the Department shall designate a Skelly officer.

Information presented by the subject at the Skelly hearing that was known to the subject at the time of the subject's Equity Unit investigation but not disclosed shall not be grounds for overturning the Equity Oversight Panel's recommendation. If the subject presents new facts during the Skelly hearing (i.e., facts discovered subsequent to the subject's Equity Unit investigation), the Skelly officer shall send the case back to the Equity Unit for further investigation.

The Skelly officer shall promptly communicate, in writing, the factual and legal basis for any decision to modify the Equity Oversight Panel's determinations to the Sheriff and to the Equity Oversight Panel. Failure to do so may be grounds for discipline.

Grievance Procedures

- Department Member Rights

  Department members also may grieve disciplinary actions according to the terms of applicable memoranda of understanding ("MOU") negotiated by the Department and the union representing said members. As such, these MOUs may require separate or additional procedures according to their respective terms.

- Supervisors' and Managers' Responsibilities

  Any supervisor authorized to conduct grievances shall promptly communicate, in writing, to the Equity Oversight Panel and to the subject's Chief the factual and legal basis for any decision to modify the Equity Oversight Panel's determinations. Failure to do so may be cause for discipline.

  Information presented by the subject during the grievance that was known to the subject at the time of the subject's Equity Unit investigation but not disclosed shall not be grounds for overturning the Equity Oversight Panel's recommendation. If the subject presents new facts during the grievance (i.e., facts discovered subsequent to the subject's Equity Unit investigation), the supervisor authorized to conduct the grievance shall send the case back to the Equity Unit for further investigation.

Appeals To Civil Service

Department members also may appeal final determinations of discipline to the Civil Service Commission in accordance with the Civil Service Rules. Where the final discipline determination exceeds 15 days suspension, the Department may not settle a Civil Service Commission case without prior approval by the Sheriff or his designee. In all other cases, the Department may not settle a Civil Service Commission case without prior approval by the Equity Oversight Panel.

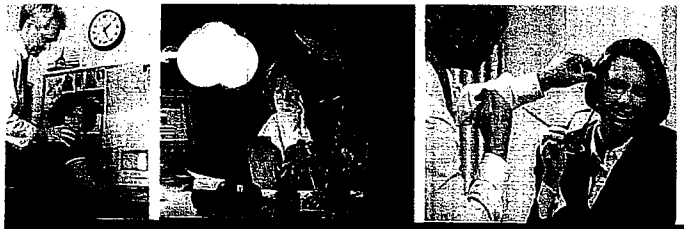
3-01/122.20 POLICY OF EQUALITY - PROCEDURES - EXTERNAL COMPLAINT MONITORING

The Department's Affirmative Action Unit, in conjunction with the County's Office of Affirmative Action Compliance, will receive and process all external discrimination, harassment, and retaliation complaints. Where appropriate, the Affirmative Action Unit will forward the complaint to the Equity Unit for investigation and resolution.

3-01/122.25 POLICY OF EQUALITY - PROCEDURES - CONFIDENTIALITY

The Department shall maintain all complaint-related information in confidence to the extent possible given the Department's obligation to conduct a full and effective investigation. For more information concerning confidentiality, Department members should contact the Office of the Ombudsperson.

The Department shall keep all information and material reviewed confidential in accordance with California Penal Code §§ 832.7 and 832.8, California Evidence Code § 1043 *et seq.*, and any other provision regarding the confidentiality of peace officer personnel records.



The definition of sexua ssment includes many forms of offensive behavior.

Department of Fair Employment and Housing

Sexual Harassment

The Facts About Sexual Harassment

The *Fair Employment and Housing Act* (FEHA) defines sexual harassment as harassment based on sex or of a sexual nature; gender harassment; and harassment based on pregnancy, childbirth, or related medical conditions. The definition of sexual harassment includes many forms of offensive behavior, including harassment of a person of the same gender as the harasser. The following is a partial list of types of sexual harassment:

- Unwanted sexual advances
- Offering employment benefits in exchange for sexual favors
- Actual or threatened retaliation
- Leering; making sexual gestures; or displaying sexually suggestive objects, pictures, cartoons, or posters
- Making or using derogatory comments, epithets, slurs, or jokes
- Sexual comments including graphic comments about an individual's body; sexually degrading words used to describe an individual; or suggestive or obscene letters, notes, or invitations
- Physical touching or assault, as well as impeding or blocking movements

such as a lead, supervisor, manager or agent;

- the employer had no knowledge of the harassment;
- there was a program to prevent harassment; and
- once aware of any harassment, the employer took immediate and appropriate corrective action to stop the harassment.

Filing a Complaint

Employees or job applicants who believe that they have been sexually harassed may file a complaint of discrimination with DFEH within **one year** of the harassment.

DFEH serves as a neutral fact-finder and attempts to help the parties voluntarily resolve disputes. If DFEH finds sufficient evidence to establish that discrimination occurred and settlement efforts fail, the Department may file a formal accusation. The accusation will lead to either a public hearing before the Fair Employment and Housing Commission or a lawsuit filed by DFEH on behalf of the complaining party.

If the Commission finds that discrimination has occurred, it can order remedies including:

- Fines or damages for emotional distress from each employer or person found to have violated the law
- Hiring or reinstatement
- Back pay or promotion
- Changes in the policies or practices of the involved employer

Employees can also pursue the matter through a private lawsuit in civil court after a complaint has been filed with DFEH and a Right-to-Sue Notice has been issued.

For more information, see publication DFEH-159 "Guide for Complainants and Respondents."

For more information, contact DFEH toll free at
(800) 884-1684
Sacramento area & out-of-state at **(916) 478-7200**
TTY number at **(800) 700-2320**
or visit our Web site at ***www.dfeh.ca.gov***

In accordance with the California Government Code and ADA requirements, this publication can be made available in Braille, large print, computer disk, or tape cassette as a disability-related reasonable accommodation for an individual with a disability. To discuss how to receive a copy of this publication in an alternative format, please contact DFEH at the numbers above.

State of California
Department of Fair Employment & Housing

DFEH-185 (11/07)

The mission of the D ent of Fair Employment and Housing is to protect the people of California from unlawful discrimination in employment, housing and public accommodations, and from the perpetration of acts of hate violence.

Employers' Obligations

All employers must take the following actions against harassment:

- Take all reasonable steps to prevent discrimination and harassment from occurring. If harassment does occur, take effective action to stop any further harassment and to correct any effects of the harassment.
- Develop and implement a sexual harassment prevention policy with a procedure for employees to make complaints and for the employer to investigate complaints. Policies should include provisions to:
- Fully inform the complainant of his/her rights and any obligations to secure those rights.
- Fully and effectively investigate. The investigation must be thorough, objective, and complete. Anyone with information regarding the matter should be interviewed. A determination must be made and the results communicated to the complainant, to the alleged harasser and, as appropriate, to all others directly concerned.
- Take prompt and effective corrective action if the harassment allegations are proven. The employer must take appropriate action to stop the harassment and ensure it will not continue. The employer must also communicate to the complainant that action has been taken to stop the harassment from recurring. Finally, appropriate steps must be taken to remedy the complainant's damages, if any.
- Post the Department of Fair Employment and Housing (DFEH) employment poster (DFEH - 162) in the workplace (available through the DFEH publications line [916] 478-7201 or Web site).
- Distribute an information sheet on sexual harassment to all employees. An employer may either distribute this pamphlet (DFEH 185) or develop an equivalent document that meets the requirements of Government Code section 12950(b). This pamphlet may be duplicated in any quantity. **However, this pamphlet is not to be used in place of a sexual harassment prevention policy, which all employers are required to have.**
- All employees should be made aware of the seriousness of violations of the sexual harassment policy and must be cautioned against using peer pressure to discourage harassment victims from complaining.
- Employers who do business in California and employ 50 or more part-time or full-time employees *must* provide at least two hours of sexual harassment training every two years to each supervisory employee and to all new supervisory employees within six months of their assumption of a supervisory position.
- A program to eliminate sexual harassment from the workplace is not only required by law, but is the most practical way for an employer to avoid or limit liability if harassment should occur despite preventive efforts.

Employer Liability

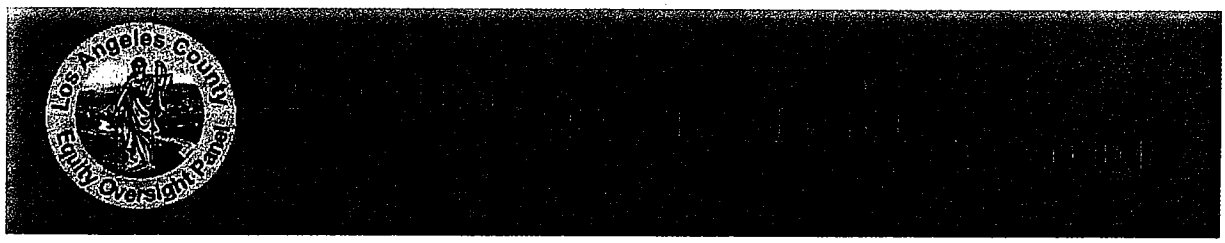
All employers, regardless of the number of employees, are covered by the harassment section of the FEHA. Employers are generally liable for harassment by their supervisors or agents. Harassers, including both supervisory and non-supervisory personnel, may be held personally liable for harassing an employee or coworker or for aiding and abetting harassment.

Additionally, the law requires employers to take "all reasonable steps to prevent harassment from occurring." If an employer has failed to take such preventive measures, that employer can be held liable for the harassment. A victim may be entitled to damages, even though no employment opportunity has been denied and there is no actual loss of pay or benefits.

In addition, if an employer knows or should have known that a **non-employee** (e.g. client or customer) has sexually harassed an employee, applicant, or person providing services for the employer and fails to take immediate and appropriate corrective action, the employer may be held liable for the actions of the non-employee.

An employer might avoid liability if

- the harasser is not in a position of authority,



Home

Welcome to the Equity Oversight Panel Home Page

The Los Angeles County Equity Oversight Panel is an integral part of the Los Angeles County Sheriff's Department Policy of Equality and has been in existence since 2003. We hope that this website will provide you with a good overview of how the EOP functions and answer any questions you may have.

Home
FAQ
Panel Members
Reports
How to Contact Us
Important Resources

Our Mission Statement

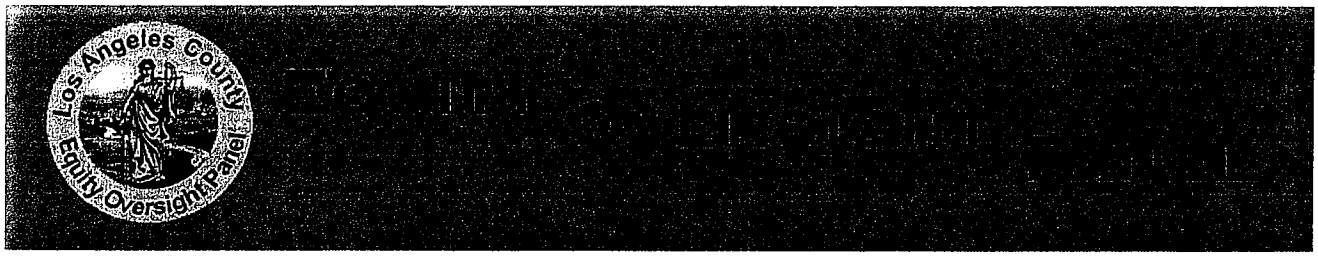
The Los Angeles County Equity Oversight Panel's mission is to provide timely information, offer expert advice and constructive feedback, and make recommendations regarding equity matters to the Sheriff's Department through reviews, audits, and monitoring to assist the Sheriff's Department with its goal of providing every Department member a workplace free of harassment, discrimination, and retaliation.

In its role as reviewers of equity investigations, the Equity Oversight Panel's mission is to make the fairest, most appropriate and accurate findings and recommendations possible for each investigation.

You are visitor #

Error

Vi



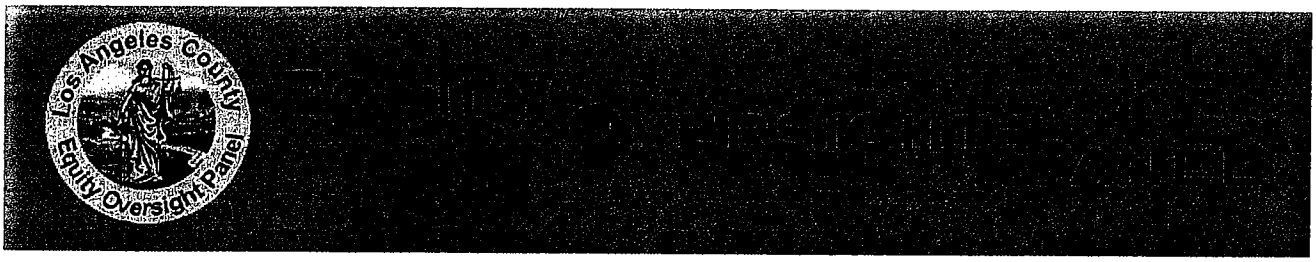
Home
FAQ
Panel Members
Lynda R. Castro
Mercedes Cruz
Nora A. Quinn
Keith Rohman
Reports
How to Contact Us
Important Resources

LYNDA R. CASTRO, CHAIRPERSON

Lynda R. Castro was a member of the Los Angeles County Sheriff's Department for 32 years. She recently retired as the Equity Commander on March 30, 2009 and began her new position as the Chairperson of the Equity Oversight Panel. Ms. Castro has taken her recent experience and efforts to address harassment, discrimination and retaliation within the workplace in the Department into collaboration with the Board of Supervisors, County Counsel, and Bouman Class Counsel for the Federal Consent Decree.

Ms. Castro preceded her Equity assignment as a Department-wide Commander chairing the Military Activation Committee (MAC), sitting on Risk Review, Performance Mentoring and Executive Force Review Committees, as well as developing problem solving strategies for critical issues identified by the Executive Planning Council, including recognizing the LGBT community, both internally in the Department and externally in the community.

Ms. Castro received her Bachelor's Degree in Criminal Justice, and a graduate of the F.B.I National Academy. Ms. Castro is the president of Castro and Associates, a consulting firm providing assistance and training in discrimination, harassment and retaliation issues as well as mentoring and professional development.



Home
FAQ
Panel Members
Lynda R. Castro
Mercedes Cruz
Nora A. Quinn
Keith Rohman
Reports
How to Contact Us
Important Resources

MERCEDES CRUZ

Mercedes Cruz was admitted to the California State Bar in 1985 after graduating from UC Berkeley Boalt Hall School of Law. Ms. Cruz is a Partner in the law firm of Lewis Brisbois Bisgaard & Smith, LLP. The firm is a full service, national law firm with over 600 attorneys in offices throughout the State of California, as well as offices in the states of Arizona, Nevada, Illinois, Louisiana, New York, Florida and Georgia.

Ms. Cruz specializes in defending and advising private and public entities in all aspects of employment law, with a special emphasis in dispute resolution and prevention.

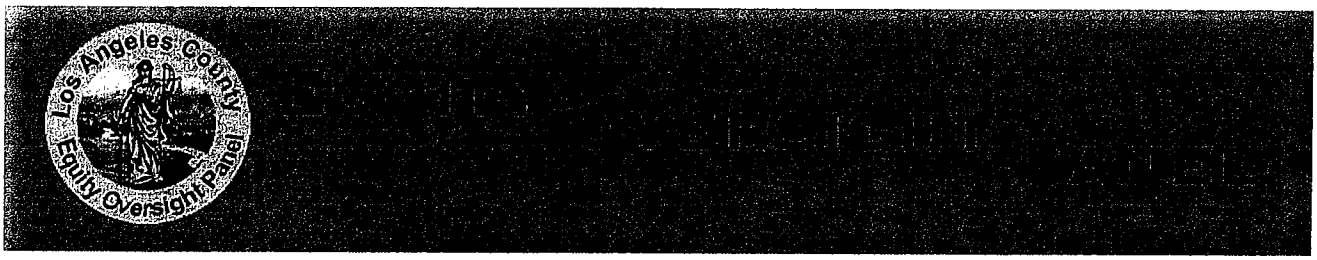
Ms. Cruz has extensive experience in employment litigation in court as well as state and federal administrative agencies, such as the California Fair Employment and Housing Commission, the United States Equal Opportunity Commission, and the California State Labor Commission. Her areas of concentration include internal investigations, advising employers on terminations, discipline, complying with state and federal employment laws, and training and formulation of policy. Ms. Cruz also defends employers in litigation involving wrongful termination, retaliation, harassment, employment discrimination, and related tort action. Ms. Cruz's clients include municipalities, counties, automotive companies, entertainment clients, corporations, small businesses, non-profit entities, educational institutions, and Fortune 500 companies.

In her twenty-three years of practice, Ms. Cruz has conducted and overseen hundreds of investigations in both the public and private sectors, and has assisted hundreds of employers in drafting their policies and procedures, as well as in resolving employee claims and disputes. Ms. Cruz has also trained thousands of employers and their employees, including law enforcement personnel, in the prevention of harassment and discrimination in the workplace and related employment topics.

As a litigator, Ms. Cruz has defended local, national, and international clients in a variety of litigation and has served as coordinating litigation counsel for two international companies with respect to their litigation and claims within the United States.

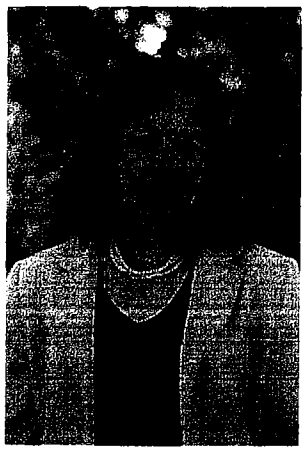
Ms. Cruz is fluent in Spanish, is active in several charitable organizations, and serves as Special Employment Counsel to the National Association of Latino Elected and Appointed Officials (NALEO) on a pro-bono basis.

Ms. Cruz regularly writes and lectures in the area of employment law.



>

Home
FAQ
Panel Members
Lynda R. Castro
Mercedes Cruz
Nora A. Quinn
Keith Rohman
Reports
How to Contact Us
Important Resources



NORA A. QUINN

Nora Quinn graduated from UCLA Law School in 1983 and was admitted to practice that same year. She was the student commencement speaker at her law school graduation and a member of the Federal Communications Law Journal. Immediately after law school she clerked for the Honorable Judith N. Keep, Federal District Court, Southern District of California.

In 1984, Ms. Quinn returned to Los Angeles and joined the law firm of Irell & Manella where she specialized in complex litigation and was part of the first trial team to invalidate a software patent. She left Irell & Manella in 1986 and became a Visiting Professor of Law at Loyola Law School.

At Loyola, Ms. Quinn taught Ethics, Counseling and Negotiations, Trial Advocacy, Legal Rights of the Disabled and served as the Legal Director of the Western Law Center for Disability Rights (now the Disability Rights Legal Center). During this time she participated in several landmark settlements establishing the rights of people with disabilities to health care, airport facilities, and other aspects of daily living. As a professor, she pioneered the use of people with disabilities for role playing activities in the Ethics, Counseling and Negotiations classes.

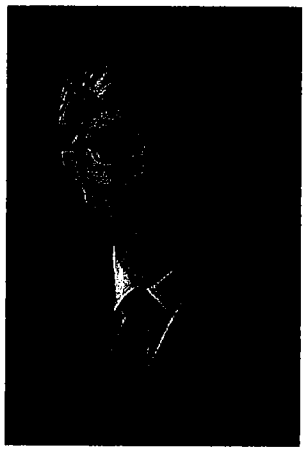
A cross country move to the Washington, D.C. area in 1992 led to a position as a writer with the American Bar Association Mental and Physical Disability Law Reporter, and later to an appointment as the Project Director for the American Bar Association Section of Litigation Task Force on Children.

Ms. Quinn founded her own business, Civil Rights Investigations, Inc., in 1995. She and her staff performed hundreds of investigations for clients including the Office of the Civil Rights Monitor for the nationwide Denny's class actions and the Selective Service Administration in Washington, D.C. Upon returning to California in 1999 she opened the Law Offices of Nora Quinn where she specializes in civil rights and employment discrimination.

Currently her practice includes cases involving sexual harassment and gender discrimination. She has been an instructor in continuing legal education seminars offered by the National Institute of Trial Advocacy.

Ms. Quinn is on the Board of Directors for the Claremont Forum, a non-profit organization dedicated to fundraising for a variety of projects in the Claremont area, including arts education and literacy. She is an active participant in the annual back-to-school drive sponsored by Uncommon Good, an organization which aids families who are, or have been, homeless and are living in apartments.

Home
FAQ
Panel Members
Lynda R. Castro
Mercedes Cruz
Nora A. Quinn
Keith Rohman
Reports
How to Contact Us
Important Resources

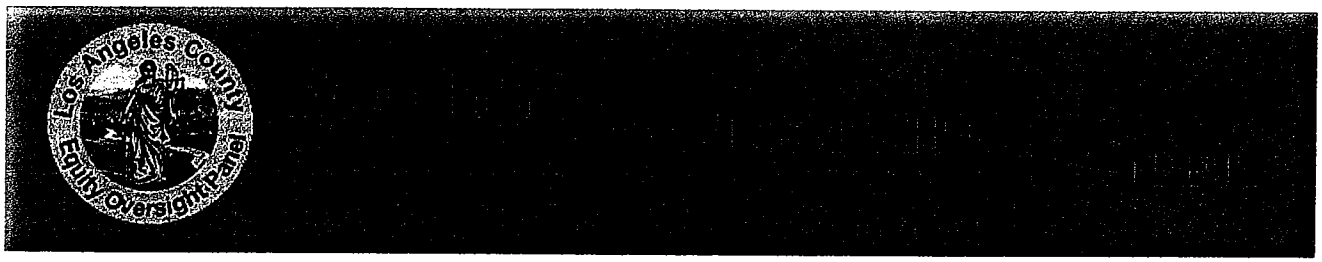


KEITH ROHMAN

Keith Rohman is the president of Public Interest Investigations, Inc., in Los Angeles. He has been involved in sexual harassment and employment discrimination investigations for over twenty years, with a focus on public sector employers, including police and fire departments. From 1997 to 2001, he was the executive director of the Los Angeles City Office of Discrimination Investigation (ODI). The ODI was a neutral agency operating under the City's Personnel Department. It investigated complaints of employment discrimination by City employees, including Los Angeles Police Department employees.

Mr. Rohman is an Adjunct Professor of Law at Loyola Law School in Los Angeles where he teaches Fact Investigation. He is vice-president of the Los Angeles City Human Relations Commission, and he served as an International Monitor at the South African Truth and Reconciliation Commission. Rohman's non-employment work has included international human rights investigations for clients such as Amnesty International, and American attorneys representing 90 Thai workers who were enslaved in a sweat shop in El Monte, California.

Mr. Rohman conducted fraud investigations for the Los Angeles Department of Water and Power on the Fleischman-Hillard litigation which produced a six -million dollar settlement for the City. He investigated allegations of employee misconduct related to the Belmont Learning Complex and the Los Angeles Unified School District's environmental health and safety department. His firm serves as the Investigator/Ombuds for the City of West Hollywood for complaints filed under the City's Whistleblower Ordinance.



Home
FAQ
Panel Members
Reports
How to Contact Us
Important Resources

Frequently-Asked Questions:

Q. What is the Equity Oversight Panel?

A. The Equity Oversight Panel (EOP) is an independent citizen panel that was created as a part of the Policy of Equality (POE). In July 1997, the Federal District Court ordered the Sheriff"s Department and the County to publish and implement a lawful sexual harassment policy as part of the *Bouman v. Baca* Consent Decree. The Department complied with the Court's order and developed the Policy of Equality (POE). Sheriff Leroy D. Baca suggested creating an independent panel that would not only oversee the Department's implementation of the POE but would review, and make findings and recommendations for, equity-related internal investigations. The Equity Oversight Panel (EOP) became a component of the POE which went into effect on January 5, 2003.

Q. Who is on the EOP?

A. The EOP is comprised of five members, which includes a chairperson. The County and Class Counsel each selected two members, and both sides agreed upon the chairperson. The four members are attorneys with broad experience in the area of equity; the chairperson is a retired sworn Department member who has an extensive background in equity matters (see EOP bios). All five went through a rigorous interview process before being confirmed as members.

Q. Is the EOP a full-time panel?

A. No. The non-chair members are contracted to work part-time for a maximum of 500 hours per year. The chairperson is contracted to work a maximum of 750 hours per year. The non-chair members serve a one-year term with a maximum term limit of five years; the chairperson serves a two-year term with a maximum term limit of six years.

Q. What exactly does the EOP do?

A. The EOP's primary responsibility is to monitor and review equity-related Internal Affairs Bureau investigations to ensure that they are complete, effective, and fair. The EOP carefully reviews each investigation and holds hearings where it makes findings (Founded, Unfounded, Unresolved, Exonerated) and, when Founded, recommends discipline in accordance with the Sheriff's Department's Guidelines for Discipline.

Q. How does the EOP make decisions on findings and discipline recommendations?

discipline recommendations?

A. After thoroughly reviewing an equity investigation, the EOP holds a hearing. The hearing is attended by the Equity Investigations Unit (EIU)–part of the Internal Affairs Bureau–investigator who conducted the investigation as well as the EIU Lieutenant and/or Captain. Also in attendance are representatives from the concerned Division–usually the Division Chief, Area Commander, and Unit Commander. Finally, the Equity Commander, an Advocacy Unit representative, County Counsel, and a supervisor from the Intake Specialist Unit regularly attend. All personnel who attend hearings are required to sign a confidentiality agreement to protect the rights and privacy of the parties involved in the investigations.

The hearings are interactive with the EOP providing its preliminary findings and the bases for those findings to the attendees. Division representatives may provide insight, ask questions, and discuss issues involved in the case. There is often a discussion about how the case came about, i.e., might the situation have been preventable, and whether retraining, mediation, rebriefing, etc., may be appropriate. In the case of a Founded investigation, there is also discussion as to the most appropriate level of discipline consistent with the Founded behaviors. As of the end of April 2008, the EOP had reviewed and made findings on over 500 equity-related investigations.

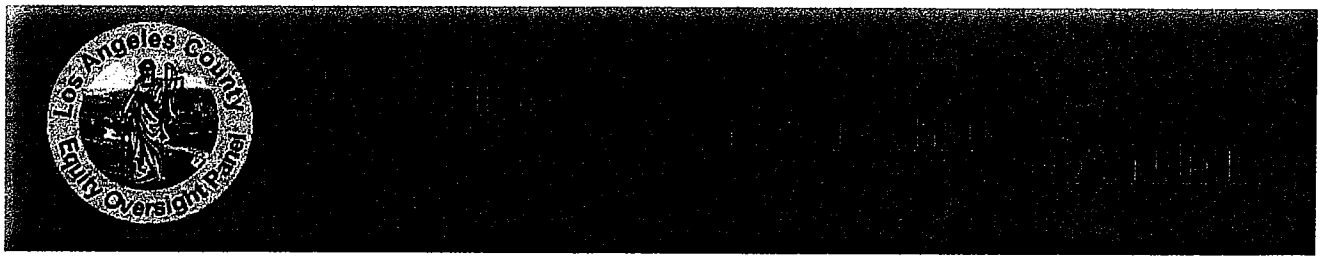
Q. What if a Subject wants to appeal his/her discipline?

A. All of the Department's appeal processes are available just as in any other type of case where there was a finding of "Founded" and discipline was recommended. The Department has the final decision regarding any modifications of the recommendations made by the EOP; however, per the POE, Department managers who make disciplinary modifications are required to provide to the EOP a memo outlining the reasons for making the modifications.

Q. Does the EOP perform any other functions?

A. Yes. In addition to reviewing and hearing completed equity investigations, the EOP monitors the Intake Specialist Unit's (ISU) assessment of complaints. The ISU is comprised of sworn and professional staff from the Sheriff's Department and Deputy Compliance Officer personnel from the County Office of Affirmative Action Compliance (OAAC). The ISU assesses each complaint and assigns a code: "A" means the complaint appears to rise to the level of requiring a formal equity investigation; "B" means the complaint has an equity aspect to it, but the complaint does not rise to the level of a formal equity investigation; and "C" means that the complaint contains no equity aspects. Once the ISU makes its assessment, the intake file is reviewed by the EOP to ensure that the information in the intake file supports the assessment. The ISU does an excellent job of assessing intakes but, from time to time, the EOP requests additional information to ensure that the assessment file contains all relevant and necessary data upon which to base a determination and, in some instances, has recommended that the assessment be changed.

The EOP also monitors the Department's ongoing equity training, serves as an equity policy advisor to the Department, and generally monitors the Department's compliance with the POE.



Important Resources

For general questions about the Consent Decree and the Policy of Equality:

Equity Commander Eric K. Hamilton
Bureau of Labor Relations and Compliance
4700 Ramona Blvd., Room 234
Monterey Park, CA 91754
Phone: 323-526-5037
Email: EKHamilt@lasd.org

For a specific question about the Policy on Equality, or to make a complaint:

Intake Specialist Unit
4900 Eastern Ave., Suite 203
Commerce, CA 90040
Phone: 323-890-5371

For general questions about the Policy on Equality:

Ombudsperson Unit
4900 Eastern Ave., Suite 203
Commerce, CA 90040
Phone: 323-890-5348

For equity-related medical questions:

Americans with Disabilities Act (ADA) Unit
4700 Ramona Blvd., Room 214
Monterey Park, CA 91754
Phone: 323-526-5671

Respect-based Leadership

Los Angeles County
Sheriff's Department

Respect based
Leadership Training

Respect-based Leadership

- Respect-based Leadership
  - You are ALL leaders
  - It is reflected in the Core Values
  - It is standing up for what is right and fighting what is wrong
- As stated by the Sheriff, a "Respect-based" organization is one where you:
  - Are judged by your professional ability and integrity, not upon sex or race
  - Do not have to listen to demeaning or inappropriate comments about your religion, disability or ethnicity
  - Are a role model for the diverse community you serve and for your peers in the Department
  - In essence, it means that you are treated with the respect you deserve and you treat others with the respect they deserve
- It is the theory behind the Policy of Equality

© Copyright 2002, County of Los Angeles.
ALL RIGHTS RESERVED.

Respect-based Leadership Training

Objectives

- To increase understanding of what it means to be a part of a "Respect-based Leadership" organization
- To obtain a thorough understanding of the Policy of Equality and its associated Procedures
- To reinforce the role of leadership in promoting a respect-based environment
- To explore ways to maintain or enhance a respect-based work environment
- To enhance skills and commit to actions

© Copyright 2002, County of Los Angeles.
ALL RIGHTS RESERVED.

Respect-based Leadership Training

Agenda

- Introductions
- Pre-Audit
- "Business Case" for Change
- Introduction to the Policy of Equality
- Skill Practice
- Action Planning
- Post-Audit
- Workshop Evaluation
- Executive Visit

© Copyright 2002, County of Los Angeles.
ALL RIGHTS RESERVED.

Respect-based
Leadership Training

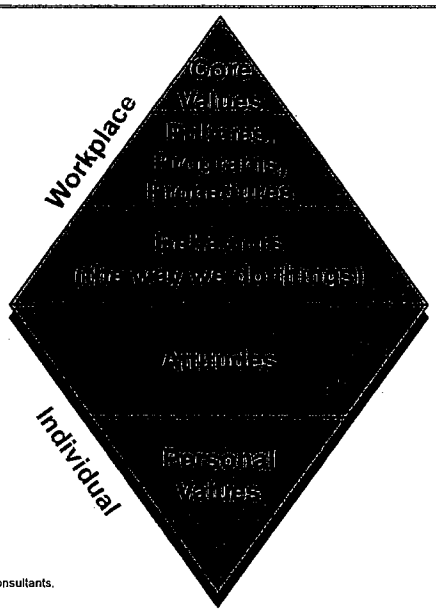
Introductions

- Name
- Years with Department
- Current Assignment
- Hope or Concern about this Topic

© Copyright 2002, County of Los Angeles.
ALL RIGHTS RESERVED.

Respect-based
Leadership Training

Living Out Values in the Workplace



Copyright © 2002, Buck Consultants.
ALL RIGHTS RESERVED.

Respect-based Leadership Training

Small Group Exercise: Cost/Benefit Analysis

- At your table, please discuss your assigned question:
  - What are the consequences/costs to the Department of not maintaining a "Respect-based" leadership organization
  - What are the benefits to the Department of maintaining a "Respect-based" leadership organization
  - What are the consequences/cost to you, as leaders, of not maintaining a "Respect-based" leadership organization
  - What are the benefits to you, as leaders, of maintaining a "Respect-based" leadership organization
- Write your responses on the flipchart
- Choose a representative(s) from your group to report your responses to the main group

© Copyright 2002, County of Los Angeles.
ALL RIGHTS RESERVED.

Respect-based Leadership Training

Facts About Bouman Case

- 1980—Susan Bouman filed a Federal Court action for sex discrimination
  - Sued the then Sheriff, the County of Los Angeles, the Department and several other named defendants
  - Filed on behalf of herself and a class of female deputies
  - Specifically challenged the 1975 and 1977 sergeant's exam
- The case was tried in Federal Court
  - After 8 years, judgment entered in favor of Bouman in March 1988
  - Court ordered the Department to develop a valid and job-related sergeant's exam and pay attorney fees and costs

© Copyright 2002, County of Los Angeles.
ALL RIGHTS RESERVED.

Respect-based Leadership Training

Facts About Bouman Case *continued*

- Department appealed and Court of Appeals ruled in 1991 that:
  - LASD engaged in intentional sex discrimination by failing to promote Bouman despite available vacancies
  - The Sergeant's exam had disparate impact on women
  - The findings of discrimination supported injunctive relief
- Since 1988, some 19 or more additional Court Orders have been rendered, all of which must be complied with
- The most significant and well known is the consent decree
- In addition to the consent decree, the following "big four" are significant current requirements:
  - Development of a legally defensible Sergeant selection process
  - Development of valid and job-related selection criteria for transfer and assignment to Coveted Positions
  - Entry level monitoring
  - Sexual harassment policy development and implementation

© Copyright 2002, County of Los Angeles.
ALL RIGHTS RESERVED.

Respect-based Leadership Training

Progress to Date

- The Sergeant selection process has met the requirements. The department has no further obligation to the Court with respect to the Sergeant's process
- Validation of Coveted Position selection process ongoing
- The policy was developed and implemented January 5, 2003 (after the training of all supervisors)
- Entry level monitoring is ongoing
- Much progress has been achieved, however, there is still much to be done
- Compliance is the key to full achievement

© Copyright 2002, County of Los Angeles.
ALL RIGHTS RESERVED.

Respect-based Leadership Training

The Policy of Equality

- Purpose
- Prohibited conduct
- Examples of conduct that may violate
- Scope of coverage
- Reporting violations
- Duty to cooperate
- Retaliation

© Copyright 2002, County of Los Angeles.
ALL RIGHTS RESERVED.

Respect-based Leadership Training

Purpose

- To promote a respect-based environment
- To preserve the dignity and professionalism of the workplace as well as protect the right of employees to be free from discrimination, harassment, and retaliation
  - Discrimination, harassment, and retaliation are absolutely contrary to the values of the law enforcement profession as a whole and to the Department's Core Values
  - Discrimination, harassment, and retaliation are illegal under local, county, state, and federal law

© Copyright 2002, County of Los Angeles.
ALL RIGHTS RESERVED.

Respect-Based Leadership Training

Behavior Prohibited by the Policy

- Discrimination
- Sexual Harassment
- Discriminatory Harassment (other than sexual)
- Third-Person Harassment
- Retaliation
- Inappropriate Conduct Towards Others

© Copyright 2002, County of Los Angeles.
ALL RIGHTS RESERVED.

Respect-Based Leadership Training

Discrimination

- Disparate or adverse treatment of an individual based on or because of that individual's sex, race, color, ancestry, religion, national origin, ethnicity, age (40 and over), disability, sexual orientation, marital status, or medical condition

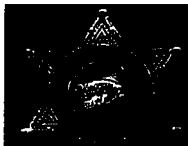
© Copyright 2002, County of Los Angeles.
ALL RIGHTS RESERVED.

Respect based
Leadership Training

Sexual Harassment

- Unwelcome sexual advances, requests for sexual favors, and other verbal, visual or physical conduct of a sexual nature which meets any one of the following three criteria:
  - Submission to such conduct is made either explicitly or implicitly 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; or
  - Such conduct has the purpose or effect of unreasonably interfering with the individual's employment or creating an intimidating, hostile, offensive, or abusive working environment

© Copyright 2002, County of Los Angeles.
ALL RIGHTS RESERVED.



Respect based
Leadership Training

Discriminatory Harassment (other than sexual)

- Harassment of an individual because of the individual's race, color, ancestry, religion, national origin, ethnicity, age, disability, sexual orientation, marital status, or medical condition
- Has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, offensive, or abusive work environment

© Copyright 2002, County of Los Angeles.
ALL RIGHTS RESERVED.

Respect-based Leadership Training

Third-Person Harassment

- Indirect harassment of a bystander, even if the person engaging in the conduct is unaware of the presence of the bystander
- A person who engages in harassing behavior assumes the risk that someone may witness the behavior. The Department considers this to be the same as directing the harassment toward that individual

© Copyright 2002, County of Los Angeles.
ALL RIGHTS RESERVED.

Respect-based Leadership Training

Harassment

- Unwelcome
- Severe or Pervasive
- Creates a "Hostile Work Environment"

© Copyright 2002, County of Los Angeles.
ALL RIGHTS RESERVED.

Respect-based Leadership Training

Retaliation

- An adverse action against another for reporting an incident or filing a complaint of conduct that violates this Policy or the law or participating in an investigation or otherwise exercising their rights or performing their duties under the Policy or the law
- The Department will take immediate and corrective action to prevent retaliation

© Copyright 2002, County of Los Angeles.
ALL RIGHTS RESERVED.

Respect-based Leadership Training

Inappropriate Conduct Toward Others

- Any physical, verbal, or visual conduct based on or because of sex, race, color, ancestry, religion, national origin, ethnicity, age (40 and over), disability, sexual orientation, marital status, or medical condition when such conduct reasonably would be considered inappropriate for the workplace
- Intended to stop inappropriate conduct before it becomes unlawful discrimination or harassment
- Does not need to be pervasive or unwelcome to violate the policy
- Inappropriate conduct has no place in the Department

© Copyright 2002, County of Los Angeles.
ALL RIGHTS RESERVED.

Respect-based Leadership Training

Examples of Prohibited Behaviors

Visual/Verbal/Written	Touching	Threats and Force
◻ Sexually suggestive, racist or obscene comments or notes ◻ Whistling, cat calls, lewd comments ◻ Racial, ethnic, religious, disability-related sexual jokes/comments ◻ Leering, ogling, staring ◻ Unwanted requests for dates ◻ Lewd posters, cartoons, magazines, unwanted letters	◻ Violating space ◻ Patting, grabbing, pinching ◻ Brushing against body "accidentally" ◻ Inappropriate hugging ◻ Massaging	◻ "Something for something"; an employment-related benefit given in exchange for a favor demanded ◻ Withholding assistance, hazing, giving demeaning assignments ◻ Retaliation ◻ Physical assault

Copyright © 2002, Buck Consultants.
ALL RIGHTS RESERVED.

Respect-based Leadership Training

Examples of Prohibited Behaviors *continued*

- ◻ Behaviors of this type:
  - Are not respectful
  - Are not the right thing to do
  - Undermine the principles of respect-based leadership
- ◻ Behavior to the far left may escalate, causing the Department significant vulnerability
- ◻ Even one action must be stopped and may be a violation of the policy

© Copyright 2002, County of Los Angeles.
ALL RIGHTS RESERVED.

Respect-based Leadership Training

Scope of Coverage

- Applies to all Department members including applicants, sworn, civilian, volunteers, Explorer Scouts and outside vendors
- The policy prohibits discrimination, harassment, retaliation and inappropriate conduct toward others
  - In the workplace
  - In other work-related settings (e.g., retirement parties)
  - Depending on the facts and circumstances, it also prohibits off-site, off-duty conduct that meets violation criteria **AND** has the effect of unreasonably interfering with an individual's employment or creates a hostile work environment
- Applies to the use of any Department communication system or equipment

© Copyright 2002, County of Los Angeles.
ALL RIGHTS RESERVED.

Respect-based Leadership Training

Reporting Violations/Duty to Cooperate

- Reporting Violations
  - Any Department member who believes he or she has been subjected to conduct that violates the Policy is strongly encouraged to report the matter to any Department supervisor or manager or the Intake Specialist Unit
  - Any non-supervisory Department member who believes he or she has knowledge of violation is also strongly encouraged to report
  - Supervisors and managers have an affirmative duty to report potential violations to the Intake Specialist Unit
  - Department members also may contact the California Department of Fair Employment and Housing and the Federal Equal Employment Opportunity Commission
- Duty to Cooperate
  - All Department members are responsible for cooperating fully in any inquiry or investigation
- Retaliation prohibited

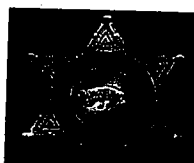
© Copyright 2002, County of Los Angeles.
ALL RIGHTS RESERVED.

Respect-based Leadership Training

Duty of All Supervisors and Managers to Report

- Have an affirmative duty to report potential violations even when a complaining or reporting party requests that no action be taken
- Immediately notify the Intake Specialist Unit of the incident(s); @ (323)890-5371, or complaint and any initial steps taken by the supervisor or manager and
- Complete a Policy of Equality Report Form and promptly file the original with the Intake Specialist Unit with copies to: (a) the reporting party's Unit Commander, unless the complaint is against the Unit Commander, in which case it shall be sent to the Department's Equity Commander; and (b) the Equity Oversight Panel

© Copyright 2002, County of Los Angeles.
ALL RIGHTS RESERVED.



Respect-based Leadership Training

Additional Duties of All Supervisors and Managers

- Being aware of and understanding the Policy and Procedures and any modifications to them
- Actively monitoring the work environment to ensure it is free from discrimination, harassment and retaliation
- Communicating prohibited behavior to subordinates
- Stopping conduct that violates the Policy and taking immediate and appropriate action even if the parties involved are not under direct line of supervision
- Taking immediate action to prevent retaliation and to deter and eliminate any hostile work environment. If a situation requires separation of the involved parties, particular care must be taken to avoid actions that appear to punish the complaining party
- Fostering an environment where employees respect and value each other as individuals.
- Serving as a role model of a Respect-based leader

© Copyright 2002, County of Los Angeles.
ALL RIGHTS RESERVED.

Respect-based Leadership Training

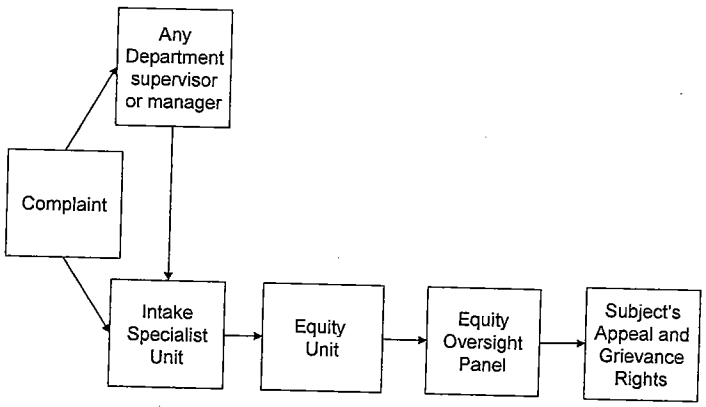
Additional Duties of Unit Commanders

- Ensuring that blank Policy of Equality (POE) are maintained in a prominent and accessible place in every Unit. It is the further duty of the Unit Commander to ensure that the location, availability, and purpose of these forms are made known to each Unit member; and
- Performing all duties required by the Outside Vendor Policy Regarding Discrimination, Harassment, and Retaliation

© Copyright 2002, County of Los Angeles.
ALL RIGHTS RESERVED.

Respect-based Leadership Training

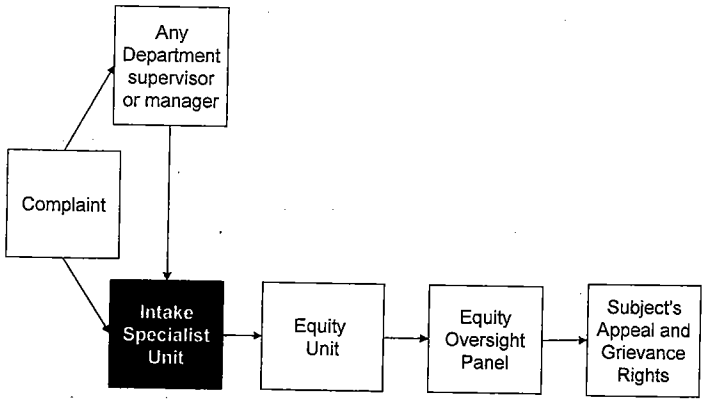
Equity Complaint Process



© Copyright 2002, County of Los Angeles.
ALL RIGHTS RESERVED.

Respect-based Leadership Training

Equity Complaint Process *continued*

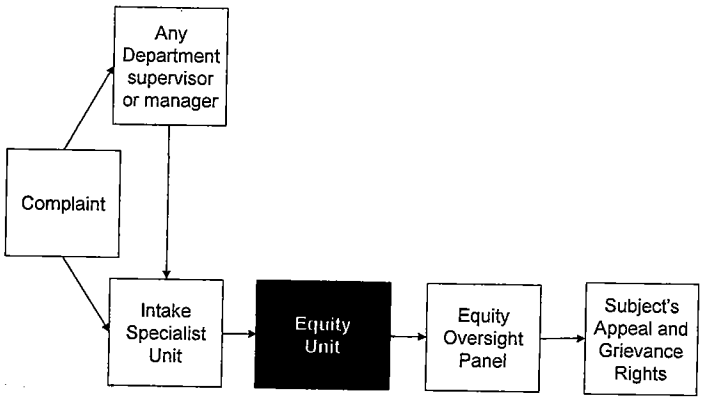


- Central repository
- Track complaints
- Determine if complaint is equity related

© Copyright 2002, County of Los Angeles.
ALL RIGHTS RESERVED.

Respect-based Leadership Training

Equity Complaint Process *continued*

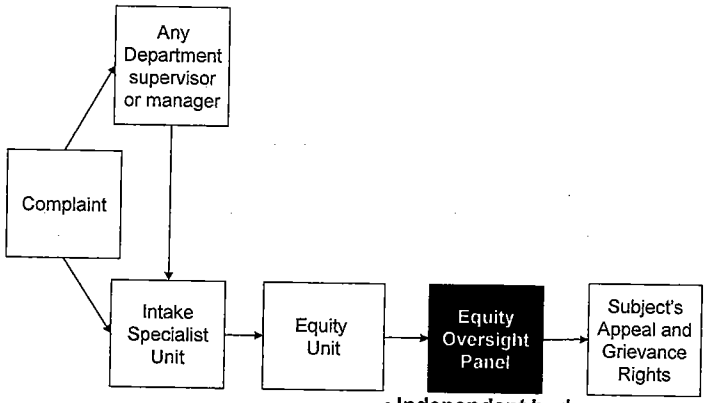


- Highly specialized and trained group
- Investigate complaint
- Prepare case

© Copyright 2002, County of Los Angeles.
ALL RIGHTS RESERVED.

Respect-based Leadership Training

Equity Complaint Process *continued*

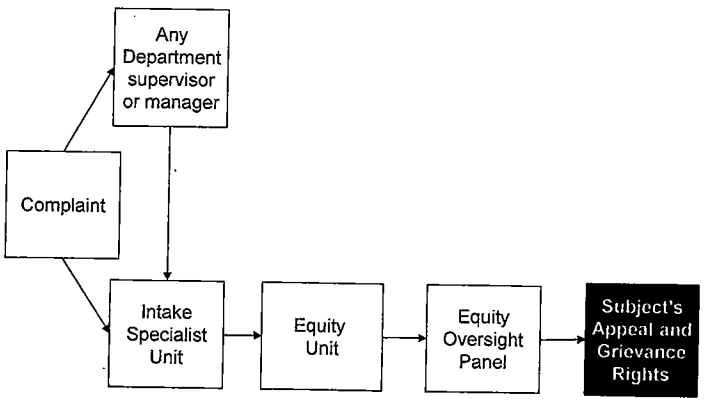


- Independent body
- Review case; determine appropriate Dept. action
- Discipline over 15 days reviewed by Sheriff
- Monitor quality and effectiveness

© Copyright 2002, County of Los Angeles.
ALL RIGHTS RESERVED.

Respect-based Leadership Training

Equity Complaint Process *continued*



- Any changes to the EOP determinations by any supervisor authorized to conduct grievances, must be justified in writing to the EOP and the Undersheriff

© Copyright 2002, County of Los Angeles.
ALL RIGHTS RESERVED.

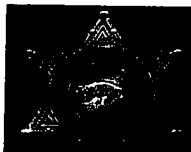
Respect-based Leadership Training

Information About the Policy and Procedures

Office of the Ombudsperson

- Call if you have questions about the Policy or Procedures @ (323)890-5348
- Responds to anonymous inquiries as well
- Provides information to Department members about their rights and responsibilities and complaint and investigation procedures concerning equity matters
- Is NOT a complaint intake unit
- If a caller provides enough information about a possible violation of the Policy, the Office of the Ombudsperson must report it to the Intake Specialist Unit

© Copyright 2002, County of Los Angeles.
ALL RIGHTS RESERVED.



Respect-based Leadership Training

Application of the Policy of Equality

Video Vignettes

© Copyright 2002, County of Los Angeles.
ALL RIGHTS RESERVED.

Respect-based Leadership Training

Skill Practice

- Your table will be assigned a discussion scenario
- Please read your assigned scenario and:
  - Discuss potential replies
  - Choose spokesperson(s) to communicate your reply
  - Share with the full group

© Copyright 2002, County of Los Angeles.
ALL RIGHTS RESERVED.

Respect-based Leadership Training

Living Up to Respect-based Leadership

- What you must do
  - Read and understand the policy completely
  - Do not engage in behavior that is a violation of the policy
- What you can do
  - Do the right thing
    - Do not make light of actions that constitute harassment
  - Tell it like it is
    - If you witness offensive actions, tell the offender that the behavior and request that it be stopped
  - Take it down
    - If you see disrespectful materials that are a violation of the policy, remove them
  - Spread the word
    - Encourage co-workers who may experience harassment to speak to a supervisor or the Intake Specialist Unit
  - Report violations of the Policy

© Copyright 2002, County of Los Angeles.
ALL RIGHTS RESERVED.

Respect-based Leadership Training

Options to Consider if you Experience a Violation of this Policy

- You are strongly encouraged to report the matter to any Department supervisor, manager or the Intake Specialist Unit
  - You also may report anonymously
  - Matters will be kept as confidential as reasonably possible consistent with the Department's obligation to conduct a full and effective investigation
  - The investigation will be conducted in accordance with the Policy of Equality and related procedures
- You also may report to the EEOC, the DFEH or the County Office of Affirmative Action and Compliance
- Reach out to others for support
- While you are in no way required, you may try telling the harasser that the behavior is offensive and you want it to stop; the person may not realize that the behavior is inappropriate

© Copyright 2002, County of Los Angeles.
ALL RIGHTS RESERVED.

POLICY OF EQUALITY

ACKNOWLEDGMENT OF RECEIPT

Department Member: _____ / Employee Number _____
(print)

I hereby acknowledge receiving a copy of the Los Angeles Sheriff's Department's ("LASD's") Policy of Equality and Procedures (with a copy of the Department of Fair Employment and Housing flier, "Sexual Harassment: The Facts about Sexual Harassment" attached thereto) (the "Policy"). I recognize LASD's commitment to providing a work environment that is free from discrimination, harassment, and retaliation.

Furthermore, I acknowledge that:

- I have been trained on the Policy (____ initial here if you are a new hire and have not yet received training on the Policy);
- I understand that I am fully responsible for reading and understanding the Policy;
- I understand that I may be disciplined for conduct in violation of the Policy;
- I understand that, if I am a supervisor or manager, I have additional duties including an affirmative duty to report potential violations of the Policy.

_____ _____

Date **Signature**

_____

Printed Name

BUREAU OF LABOR RELATIONS AND COMPLIANCE

Intake Specialist Unit

TRAINING BULLETIN

Lessons Learned

VOLUME 1 NUMBER 1 August 28, 2007 / Page 1 of 1

LESSONS LEARNED - MULTIPLE SUPERVISORS REPORTING RECOMMENDATIONS

When an apparent violation of the Policy of Equality is witnessed by more than one supervisor and/or supervisors of various ranks, the reporting mandate remains in effect. In order to appropriately document the occurrence, yet avoid duplication of POEs of the same incident, the following guidelines shall apply.

Example: During a supervisorial staff meeting, an inappropriate comment is made and is witnessed by numerous supervisors who were present. According to the Policy of Equality, every supervisor has a duty to report the event to the Intake Specialist Unit.

GUIDELINES:

1) When a potential violation of the Policy of Equality comes to the attention of several supervisors, there SHALL be a discussion amongst the supervisors as to who will be the designated supervisor to contact the Intake Specialist Unit and complete and submit the POE to the Intake Specialist Unit.

2) The other supervisors SHALL individually notify the ISU with an e-mail to BOC Intake Specialist Unit indicating their knowledge of the incident and indicate which supervisor will be submitting the POE. (e.g., Supervisor Smith.) They SHALL also include their Unit Commander in the cc line of the e-mail. This e-mail will suffice for their notification requirement of this type of situation only.

3) Based upon the e-mails received, ISU will then be responsible for following-up with the designated author of the POE if one is not received in a timely manner.

The Department's preferred method of reporting equity violations, witnessed by more than one supervisor, is to have one designated supervisor complete the POE reporting requirements. **There is nothing to prevent a supervisor from submitting a POE whenever a potential violation occurs, even in the presence of more than one supervisor.** If multiple reportings of the same potential violation do occur, the Intake Specialist Unit will file each as a separate POE and cross-reference them.

BUREAU OF LABOR RELATIONS AND COMPLIANCE

OMBUDSPERSON UNIT

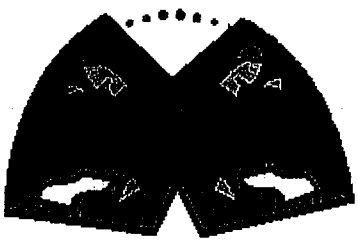
TRAINING BULLETIN

Lessons Learned

VOLUME 1 NUMBER 2 AUGUST 28, 2007 / Page 1 of 1

Anonymous Complaints

Any Department member, regardless of rank or classification, who believes he or she has been subjected to inappropriate conduct based on a protected class, has the right to report the incident anonymously. The Intake Specialist Unit, as well as the Office of the Ombudsperson (Ombudsperson Unit), will respond to anonymous inquiries.



The Ombudsperson Unit is also available to answer any questions relating to the Policy of Equality, including Department member's rights and responsibilities, as well as the POE complaint and investigation procedures. The Ombudsperson Unit is a resource for information and is **not** a complaint reporting unit. The Intake Specialist Unit is the appropriate unit to receive all POE complaints.

- Department members who need direction or guidance as to whether an incident rises to the level of a possible violation of the policy, may call the Ombudsperson Unit as an effective and appropriate first resource. If the incident described does rise to the level of a potential POE violation, the Ombudsperson Unit and caller must report the matter to the Intake Specialist Unit.

Thus, Department members who only seek consultation from the Ombudsperson Unit, and do not wish to make a report, should refrain from using unique descriptors when inquiring about a specific incident, as the Ombudsperson Unit is mandated to report any potential violation of the POE.

Any Department member who has a question regarding the Policy of Equality may contact the Ombudsperson Unit at 323-890-5348.

BUREAU OF LABOR RELATIONS AND COMPLIANCE

OMBUDSPERSON UNIT

TRAINING BULLETIN

Lessons Learned

VOLUME 1 NUMBER 3 JANUARY 1, 2009 / Page 1 of 1

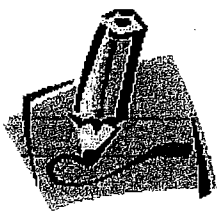
SUPERVISOR RESPONSIBILITY
DUTY TO REPORT

As a leader and supervisor within the Los Angeles County Sheriff's Department, you are entrusted with the duty to uphold and model our Department's Core Values and adhere to the Policy of Equality. The following guidelines will assist you in maintaining a positive work environment within your unit.

- ***OBSERVANT AND ASSERTIVE SUPERVISION***
  - Be visible and available
  - Know and understand the Policy of Equality
  - Be aware of behavior, attitudes and/or activities between co-workers
  - Communicate and model appropriate behavior to personnel

- ***PROMPT SUPERVISORY INTERVENTION***
  - Take ***immediate*** corrective action to stop:
    - Inappropriate behavior
    - Harassment
    - Retaliation
  - Take ***immediate*** corrective action even when no one appears offended by inappropriate behavior.

- ***SUPERVISORS MUST HOLD SUBORDINATES ACCOUNTABLE***
  - Adhere to the Policy of Equality and do not ignore, tolerate or excuse violations
  - You will be held accountable, hold your personnel accountable



- ***"IF IN DOUBT, FILL IT OUT"***
  - If unsure, call the Intake Specialist Unit
  - Complete and send the Policy of Equality report form
  - Report after hours violations to the on-call ISU staff via Sheriff's Headquarters Bureau

BUREAU OF LABOR RELATIONS AND COMPLIANCE

OMBUDSPERSON UNIT

TRAINING BULLETIN

Lessons Learned

VOLUME 1 NUMBER 4

LINE STAFF REPORTING RESPONSIBILITIES

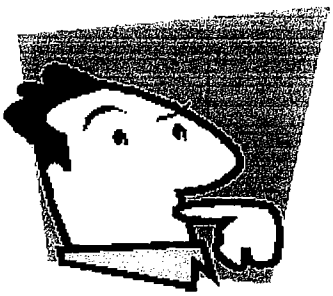
The following guidelines have been designed to assist you in determining what your line staff responsibilities are with respect to reporting violations of the Policy of Equality (POE).

KEEP IN MIND - All Department members are responsible for conducting themselves in accordance with the Policy of Equality and related procedures.

♦ RESPONSIBILITY TO YOURSELF

Any Department member who is subjected to conduct that violates the Policy of Equality is strongly encouraged to report the incident to:

- *Any Department Supervisor or Manager*
- *The Intake Specialist Unit*



Food For Thought: *While supervisors and managers are mandated to report potential violations of the Policy of Equality, line staff have options when they encounter violations. You may choose to tell the individual the behavior is offensive and request he/she stop, or you may avoid the individual and not subject yourself to further offensive behavior. Although these alternatives may work well for some, keep in mind that the offender may continue to repeat the inappropriate behavior with others. Reporting the incident to your supervisor or the Intake Specialist Unit will ensure the incident receives appropriate intervention.*

♦ RESPONSIBILITY TO OTHERS

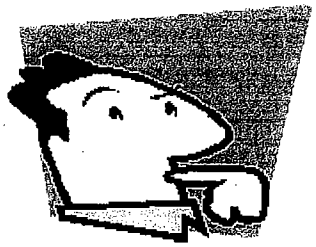
Any non-supervisory Department member who has knowledge of conduct that violates the Policy of Equality is strongly encouraged to report the incident to:

- *Any Department Supervisor or Manager*
- *The Intake Specialist Unit*

Food For Thought: *Supervisors and managers have no discretion when they receive information of a potential violation, they must report. The initial response of some line staff who have knowledge of inappropriate conduct may be to ignore the behavior and not get involved while others prefer to handle these situations on their own. Keep in mind that a co-worker may be in a vulnerable position and have difficulty addressing the offensive behavior. Situations may occur where line staff need to support co-workers. Remember, everyone has a responsibility to keep our work environment respectful.*

♦ ANONYMOUS REPORTING

Department members desiring to remain anonymous may contact the Ombudsperson Unit for guidance interpreting the Policy of Equality. If the caller provides enough information about a possible violation of the Policy, the Ombudsperson Unit must report it to the Intake Specialist Unit. Department members contacting the Intake Specialist Unit to report a violation may also request to remain anonymous. The Department shall maintain all complaint-related information in confidence to the extent possible given the Department's obligation to conduct a full and thorough investigation.



Food For Thought: *If a caller remains anonymous, the Intake Specialist Unit assessor and/or Equity Unit Investigator may experience difficulty conducting a thorough and complete investigation. If an investigation is initiated, it may be requested that the anonymous reporter provide identifying information.*

♦ SUPERVISOR RESPONSIBILITIES

Supervisors and managers have an affirmative duty to report violations even when the complaining or reporting party requests no action be taken.

Food For Thought: *Understand there are no "off the record" situational discussions related to Policy of Equality allegations. Information confided to a supervisor will require that supervisor to report the violation to the Intake Specialist Unit.*

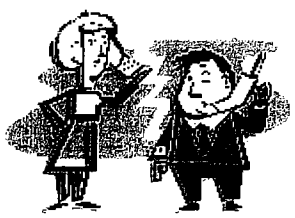
♦ DUTY TO COOPERATE

All Department members are responsible for cooperating fully in any Department inquiry or investigation.

OUTSIDE REPORTING RESOURCES

Department members may also contact:

California Department Of Fair Employment and Housing (DFEH)
Federal Equal Employment Opportunity Commission (EEOC)
Los Angeles County Office Of Affirmative Action Compliance (OAAC)



BUREAU OF LABOR RELATIONS AND COMPLIANCE

ADA UNIT

TRAINING BULLETIN

Lessons Learned

VOLUME 2 NUMBER 1

BUREAU OF LABOR RELATIONS AND COMPLIANCE
AMERICANS WITH DISABILITIES ACT UNIT
TITLE I - EMPLOYMENT RIGHTS FOR PERSONS WITH DISABILITIES

The ADA Unit functions as a specialized resource for all Department members concerning the Policy of Equality, ADA laws, and FEHA laws. Federal (ADA) and state (FEHA) laws prohibit discrimination against qualified individuals with disabilities in state and local government **services**, public accommodations, transportation and telecommunications. These laws are enforced by the Federal Equal Employment Opportunity Commission (EEOC) and the State of California Department of Fair Employment and Housing (DFEH).

The ADA Unit is comprised of two interrelated components. The Title I component focuses primarily on the employment rights of persons with disabilities and Title II focuses primarily on insuring the rights of all persons with disabilities to government services, accommodation, transportation and telecommunications. Title II is described in more detail in Lessons Learned Bulletin, Volume 2 Number 2.

Employment Rights

The ADA and FEHA laws are intended to allow qualified individuals ***(applicants/ employees)*** with disabilities the opportunity to enjoy the same benefits of employment as persons without disabilities. These laws ensure that the rights of individuals with disabilities are **protected** from employment discrimination.

I. ***Employees*** **- Responsibilities to Request a Reasonable Accommodation**

- Notify their supervisor or contact the ADA Coordinator directly and advise them of the request for accommodation.

- Complete and submit an ADA Reasonable Accommodation Request **(Document 1)** and Authorization to Release Medical/Disability Records **(Document 2)**. (These forms are located on the Bureau of Labor Relations & Compliance's website, ADA Section.)
- Participate in a "good faith interactive process" with a Department representative to review available options for reasonable accommodation that will allow the employee to continue to perform their essential job duties.

II. ***Supervisors* and *Managers* - Responsibilities When Confronted with a Request for Accommodation**

- Meet with the employee promptly.
- Engage the employee in a "Good Faith Interactive Process" to determine what is the appropriate accommodation needed.
- Request Employee Reasonable Accommodation Form **(Document 1)**
- Secure a medical certification stating restrictions **(Document 2)**.
- If the request is for a different job (voluntary transfer or voluntary demotion) or reassignment, ask the employee what they are qualified to do and which they would prefer.
- Ask what his/her limitations are (# of hours, breaks, start and stop times)?
- Forward the documents to the employee's unit commander or designee for approval and further discussion with employee.
- If employee's request is reasonable, accommodate him/her and have them sign the accommodation form. If reassignment is deemed necessary it is up to the employer to make the final decision as long as the employee is qualified to perform the essential functions of the new position.
- When applicable, allow him/her to work in a temporary modified position until the situation is re-evaluated (30-days). The evaluation should be based on several factors: availability of the position, undue hardship to the Department, medical restrictions, etc.
- When the appropriate accommodation is not readily apparent, the Department should make every effort to identify one if possible.
- If an agreement cannot be reached, the unit commander (or designee) should contact the ADA Unit for further guidance.

If you have questions, contact the ADA Unit via e-mail at BOC ADA UNIT or call (323)526-5671.

BUREAU OF LABOR RELATIONS AND COMPLIANCE

ADA UNIT

TRAINING BULLETIN

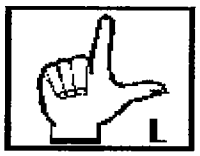
Lessons Learned

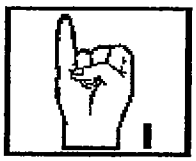
VOLUME 2 NUMBER 2

BUREAU OF LABOR RELATIONS AND COMPLIANCE
AMERICANS WITH DISABILITIES ACT UNIT

TITLE II

Title II of the ADA prohibits state and local governments from discriminating against people with disabilities in their programs, services and activities. Program accessibility must be provided in existing facilities, while new and altered facilities must be readily accessible to and usable by people with disabilities. In order to provide accessibility to programs and services, auxiliary aids (devices or services that compensate for disabling conditions) may be needed. Included are qualified interpreters or other means of communication such as teletypewriters (TTYs) for people who are deaf or hard of hearing; qualified readers, taped texts or other devices for people who have visual impairments; adaptive equipment; and other similar services.

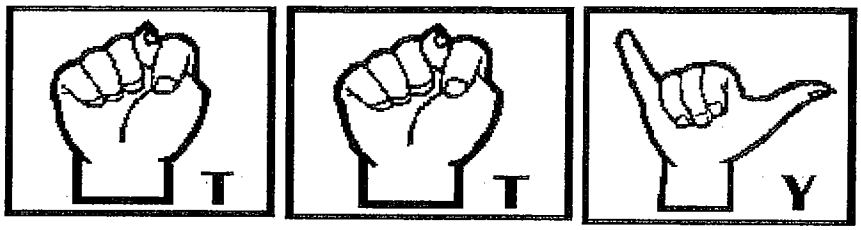




I. Sign Language Interpreters

Sign language interpreters are needed to ensure effective communication between the individual who is deaf or hard of hearing and the hearing person. Some instances where a sign language interpreter may be needed to ensure effective communication with deaf or hard of hearing individuals are: responding to calls for service, interrogating a suspect, interviewing a witness or victim of a crime, taking a report at the counter, and providing programs and services to deaf inmates.

A sign language interpreter can be obtained by calling Sheriff's Headquarters Bureau, per **MPP 5-09/005.30 COMMUNICATING THROUGH A SIGN LANGUAGE INTERPRETER .**



II. Teletypewriter (TTY)

A TTY allows individuals with speech or hearing impairments to directly call another person without using an interpreter because the conversation is typed, not spoken. A TTY is equivalent to a telephone. TTYs come in many forms. Some are completely portable and some are located in a fixed position. Portable TTYs are located in every Sheriff station in the jailer's area. These portable TTYs may be used at the front counter to assist with communication. The Department's 24 hour TTY number is (323) 267-6669 located at SHQ.

III. ADA Complaint Forms

Any member of the public, disabled or not, may file an ADA complaint. When asked for a complaint form, the "Americans with Disabilities Act Complaint form" SH-AD-680 should be provided to the public. This form can be found in Outlook under "All Forms." These types of complaints are investigated by the Department's ADA Coordinator within the Bureau of Labor Relations and Compliance.

If you have questions, contact the ADA Unit via e-mail at BOC ADA UNIT or call (323)526-5671.

BUREAU OF LABOR RELATIONS AND COMPLIANCE

ADA UNIT

TRAINING BULLETIN

Lessons Learned

VOLUME 2 NUMBER 3

PROFESSIONAL CONDUCT WHEN DEALING WITH PERSONS WITH DISABILITIES

There are many people with disabilities, some disabilities apparent and others hidden. Whether it be people with mobility impairments or learning disabilities, please remember that people with disabilities are individuals with feelings just like you and I. We are all unique. Although a person's disability is a part of who they are, it does not totally define them. Don't feel uncomfortable when in contact with persons who have a disability. Treat them with the same respect and dignity that we are all entitled to as individuals.

People With Disabilities Using Wheelchairs

- Don't push or touch (without prior permission) a person's wheelchair; it's part of their personal space.
- Keep accessible paths of travel clear.
- Avoid using the term "wheelchair bound."
- Don't ask a wheelchair user to hold things for you.

People Who Are Blind/Visually Impaired

- Identify yourself before you make physical contact with a person who is blind.
- Do not touch the person's cane or guide animal. The cane is part of the person's individual space and the guide animal is a working animal, not a pet.
- If you give directions, be specific.
- Offer to read written material.

People Who Are Deaf/Hard Of Hearing

- Face the person when speaking and do not obscure your face.
- If a sign language interpreter is present, look directly at the person who is deaf while speaking and maintain eye contact.
- Speak clearly. Many people who are hard of hearing rely on watching the speaker's lips to help them understand.
- When exchanging complex information, such as reporting a crime, the most effective way to

communicate with a person who is deaf is with a qualified sign language interpreter.

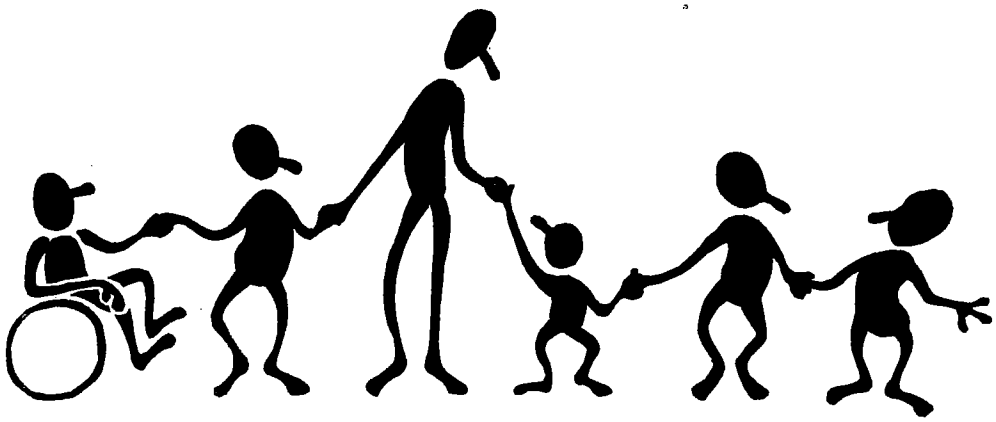
People With Developmental Disabilities

- Don't assume that a person with a developmental disability is a person with mental retardation. Developmental disabilities also include autism, cerebral palsy and epilepsy.
- Don't talk down to a person. Gauge the pace, complexity and vocabulary used according to that used by the individual.
- Be patient and allow the person to take their time. It may be difficult for them to make quick decisions.

People With Psychiatric Disabilities/Mental Illness

- Try to keep the pressure of a situation to a minimum.
- Treat persons as individuals and ask what will make them most comfortable.
- In an emergency, stay calm and be as supportive as you would be with anyone else.
- Ask how you can help and ascertain if there is a support person who can be sent for them.

Information concerning disability etiquette or additional information concerning the Americans with Disabilities Act is available from the ADA Unit. The Department's ADA Coordinator can be reached at (323) 526-5671.



BUREAU OF LABOR RELATIONS AND COMPLIANCE

Intake Specialist Unit

TRAINING BULLETIN

Lessons Learned

VOLUME 3 NUMBER 1

HOSTILE WORK ENVIRONMENT

Definition:

A *Hostile Work Environment* under the Policy of Equality (POE) refers to harassment or discrimination that is based on, or because of, that individual's sex (Gender Identity*), race, color, ancestry, religion, national origin, ethnicity, age (40 and over), disability, sexual orientation, marital status, medical condition.

Therefore, in order to have a *Hostile Work Environment,* ***the behavior must be occurring because of either sexual/discriminatory harassment or discrimination based upon protected class status***. Remember, the term *Hostile Work Environment,* is a legal term in which **certain elements must be present to constitute harassment.** If these elements are not present, then one may be working in an environment which one may feel is hostile; however, it is not a *Hostile Work Environment* in the legal sense.

A *Hostile Work Environment, under the POE,* is **not** one in which morale is low due to an individual's non-POE-related actions or inactions; for example, a supervisor documenting an employee's performance when other supervisors might not, a supervisor "micro-managing" employees, or an employee being discourteous to other employees. It is also not necessarily a hostile work environment when two employees have difficulty working together unless the basis is POE related. (This is not to say that while there may be no POE violations, there may be general Policy violations, such as non-POE conduct toward others, relationships with subordinates, etcetera.)

*Gender Identity was legislatively added as a protected characteristic as of January 1, 2004. The Department's POE does not specifically list gender identity as its printing predates the legislative addition; however, consistent with state law, gender identity is a protected characteristic defined within sex and is inclusive in the POE.

BUREAU OF LABOR RELATIONS AND COMPLIANCE

Intake Specialist Unit

TRAINING BULLETIN

Lessons Learned

VOLUME 3 NUMBER 2

BEING OFFENDED IS NOT AN ELEMENT

Being members of law enforcement, we sometimes tend to take the criminal law point of view of "No victim, no crime!" meaning that if nobody is offended then there is no victim; therefore, no violation. While that might be accurate in some criminal law situations, ***it is not accurate when determining violations of the Policy of Equality***. If the behavior is inappropriate for the workplace and involves any of the protected characteristics, it is a potential Policy of Equality violation, regardless of intent or whether or not the parties are offended.

The factors that must be present to constitute a potential violation of the Policy of Equality are:

- The behavior is directed to one or more individuals because of membership in one or more protected classes, and
- the behavior occurs in the workplace (including extensions of the workplace), and
- the behavior involves Sheriff Department members including vendors, reserves, volunteers and explorers.

BEING OFFENDED IS NOT A FACTOR!

For example, if a Department member tells a joke to other Department members, that refers to any of the protected characteristics, and none of the other Department members present are offended, there is still a potential Policy of Equality violation. (Inappropriate behavior, in the workplace, involving Sheriff's members.)
Note: If one of those persons present is a supervisor, that supervisor is now obligated to report the potential violation to the Intake Specialist Unit. Failure to report such an incident may result in discipline for the supervisor.

The Policy of Equality and Procedures are intended to preserve the dignity and professionalism of the workplace, as well as protect the right of employees to be free from discrimination, harassment and retaliation. Any Department member who has a question regarding the Policy of Equality may contact the Ombudsperson Unit at (323) 890-5348.

BUREAU OF LABOR RELATIONS AND COMPLIANCE

OMBUDSPERSON UNIT

TRAINING BULLETIN

Lessons Learned

VOLUME 4 NUMBER 1

ELECTRONIC WORKPLACE VIOLATIONS
COMMON ELECTRONIC WORKPLACE VIOLATIONS

The appropriate usage of any Department communication system or equipment is insured within the Policy Of Equality. Employees **will be disciplined** for using any Department communication system or equipment to deliver, display, store, publish, circulate, or solicit material which is not business-related, which involves sex, race, color, ancestry, religion, national origin, ethnicity, age (40 and over), disability, sexual orientation, marital status, or medical condition.

Department Communication Systems and common violations:

ELECTRONIC MAIL/ FACSIMILE MACHINES/MOBILE DIGITAL TERMINALS/JDIC

Department members who send or print jokes, stories, editorials or cartoons are in violation of the electronic communication policy and may be in violation of the POE. Although the sender may believe the intended recipient will welcome the message and agree with the content, if the message is inappropriate, it is still a violation! Sometimes the message is sent in error to another employee or a supervisor. A supervisor must take corrective action and report this to the Intake Specialist Unit as they are mandated reporters.

Keep in mind: Employees are to use Department computer systems for Department business and have no rights of privacy. If you are unsure of the appropriateness of the message content, don't send it. If you receive an inappropriate message, delete it and advise the sender not to send inappropriate messages. **"Think before you send"**

COMPUTERS/INTERNET SITES

Computer technology and the instant availability of information has contributed significantly to the efficiency and effectiveness of LASD.

Unfortunately, some employees have chosen to abuse the access to the Internet system. Some Department members have accessed pornographic websites while on duty, others have viewed inappropriate images on Department computers, and others have saved inappropriate material on Department computers. These employees faced significant discipline, up to termination. Inappropriate materials do not belong in the workplace. Don't run the risk of having the images viewed by co-workers or supervisors. Inappropriate images may also be discovered by Data Systems Bureau during diagnostic checks or during random audits.

Keep in mind: Utilizing Department computers for personal use is prohibited by the Departmental computer policy and may be a violation of the POE. The USERID and password will be considered evidence of the owner of any computer activity. **Secure your computer access.**

TELEPHONE/RADIO/VOICE MAIL

All employees are expected to communicate with a high degree of professional and personal courtesy. The tone and content of our communications are to be businesslike and exclude inflammatory remarks and inappropriate language. Conversations within the workplace conducted via the telephone or radio can be overheard by other Department personnel.

Keep in mind: Within the workplace there is no expectation of privacy. Conversations which contain inappropriate or derogatory language may be a violation of the POE, and those involved may be subject to discipline.

The Policy of Equality and Procedures are intended to preserve the dignity and professionalism of the workplace, as well as protect the right of employees to be free from discrimination, harassment and retaliation. Any Department member who has a question regarding the Policy of Equality may contact the Ombudsperson Unit at 323-890-5348.

BUREAU OF LABOR RELATIONS AND COMPLIANCE

OMBUDSPERSON UNIT

TRAINING BULLETIN

Lessons Learned

VOLUME 4 NUMBER 2

ELECTRONIC WORKPLACE VIOLATIONS SUPERVISOR RESPONSIBILITY

It is estimated that approximately 15,000 Department members access their e-mail accounts daily. In accordance with Department policy (3-07/210.10 System Use), employees are responsible for reading their e-mail no less than once a day.

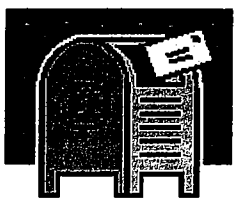
Electronic communications not only include computer related transmissions, but the use of other devices such as telephone, fax machine, radio, voice mail, and MDT's. While electronic communication is a necessary and valuable tool, continued misuse has been the basis for Policy of Equality (POE) complaints alleging inappropriate material, and subjecting employees to discipline.

How is it possible for a supervisor to ensure all personnel are adhering to the electronic communications policies in every arena?

The following guidelines have been designed to assist you in your supervisory duties while maintaining a positive work environment within your unit. Policies regarding the use of electronic communication systems clearly indicate employees shall not send or receive electronic communications for non-Department business.

Supervisor Responsibilities

- ***Observant supervision*** *of the electronic work environment*



  - Be visible and attentive
  - Know and understand Department policy
  - Take time to review content of messages and images
  - Communicate and model appropriate behavior

- ***Supervisory intervention*** *to correct behaviors*

  - Take immediate and corrective action to stop inappropriate electronic communication
  - Inform those involved that the communication is inappropriate and must not occur
  - Immediate corrective action is necessary even when inappropriate behavior appears to be welcomed or no one is offended
  - If the content is inappropriate, it does not belong in the workplace

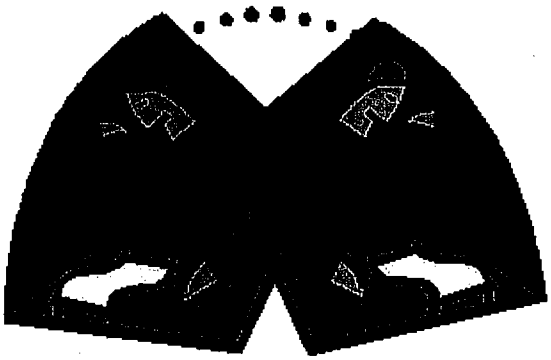
- ***Report potential violations of the Policy of Equality*** to the Intake Specialist Unit

  - Immediately notify the Intake Specialist Unit via telephone at (323) 890-5371
  - Complete and send the Policy of Equality report form
  - For after hours notification, contact Sheriff's Headquarter's Bureau who will inform on-call personnel from the Intake Specialist Unit to contact you

Resources

A "Policy of Equality E-Mail Violations" training video is available on the Department Intranet site and is required viewing for all supervisors and managers.

Supervisors and managers who have questions concerning the POE should contact the Office of the Ombudsperson at (323) 890-5348. **The Office of the Ombudsperson serves as a specialized resource for all Department members concerning Equity related matters.**



BUREAU OF LABOR RELATIONS AND COMPLIANCE

OMBUDSPERSON UNIT

TRAINING BULLETIN

Lessons Learned

VOLUME 5 NUMBER 1

UNIT COMMANDER RESPONSIBILITIES
OMBUDSPERSON UNIT AVAILABILITY

Successfully managing all of your required duties can be challenging. The **Ombudsperson Unit** is an excellent resource available to assist Unit Commanders in accomplishing their goals.

Services provided to Unit Commanders:

Interpretation of the Policy of Equality
Each situation involving conduct that may be related to the Policy of Equality is unique. The Ombudsperson Unit is available to assist in determining whether the conduct could potentially violate the POE. The Unit can also provide an overview of the equity investigation process, the rights of the involved parties, and the responsibilities of the unit's manager.

Supervising Personnel

- *Mediation/Conflict Resolution*

A workplace dispute determined to be unrelated to the Policy of Equality can sometimes create unresolvable conflict within a unit. The Ombudsperson Unit can assist Unit Commanders by providing mediators who can negotiate with both parties to establish workable agreements. Mediation is available upon request, or when recommended by the Equity Oversight Panel.

- *Workplace Violence Assistance and Support*

Any possible threats or acts of violence and/or retaliation are to be reported to the Ombudsperson Unit. The Ombudsperson Unit provides assistance and support and will coordinate the response of the Threat Management Team (TMT). The TMT will evaluate the situation and develop an action plan, if warranted. Violence prevention programs and awareness training are also provided upon request. The Ombudsperson Unit may be reached at 323-890-5348, and is located at 4900 S. Eastern Ave., Suite 203, Commerce, CA 90040.

BUREAU OF LABOR RELATIONS AND COMPLIANCE

OMBUDSPERSON UNIT

TRAINING BULLETIN
Lessons Learned

VOLUME XI NOVEMBER 2, 2007 / Page 1 of 1

LANGUAGES IN THE WORKPLACE

The Los Angeles County Sheriff's Department is becoming an increasingly diverse organization. This diversity is an asset and often facilitates better service to the communities we serve. A diverse work force also presents unique organizational challenges, such as when employees speak a multitude of different languages in the work place. The following bulletin is written to educate and assist you in legal as well as attitudinal issues surrounding foreign languages spoken in the work place.

When a monolingual person finds himself in the presence of a foreign language conversation, often, the experience can evoke feelings of anxiety.
Specific fears may include:

- ✓ Are they talking about me?
- ✓ Am I being deliberately excluded from the conversation?

These fears are often misguided as well as unsubstantiated. Nevertheless, their impact on workplace unity is very real.

There are several compelling reasons why a person may choose to speak his native language while at work.

One's native language usually represents his most comfortable, most effective, and most efficient means of communication.

State and Federal Laws indicate that it is unlawful for any employer to adopt or enforce policies that limit or prohibit the use of any language in the workplace unless:

1. **There is a legitimate business necessity**
2. **The employer notifies the employees when and where the foreign languages are restricted as well as the consequences for violating the policy. <u>Both requirements must be met.</u>**

The Los Angeles County's position is that most county business should be conducted in English. However, there are no restrictions on L.A. County employees from speaking any non-English language. Due to the complex and sensitive nature of this topic, please contact the Ombudsperson Unit prior to restricting any languages spoken in the workplace.

For information call (323) 890-5348 or contact the Ombudsperson Unit via e-mail at <u>BOC Ombudsperson</u>

BUREAU OF LABOR RELATIONS AND COMPLIANCE

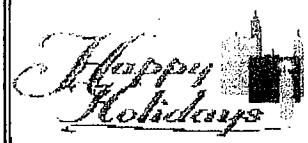
OMBUDSPERSON UNIT

TRAINING BULLETIN

Lessons Learned

VOLUME 5 NUMBER 3 NOVEMBER 2, 2007 / Page 1 of 2

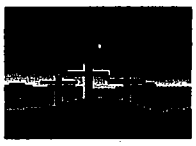
RELIGIOUS ACCOMMODATION AND ETIQUETTE



When we hear this cheerful greeting we generally think of Thanksgiving, Christmas, or perhaps Easter or Passover. Workplace diversity is often defined by Race, Gender, and Ethnic differences. Within these groups, there exists Religious diversity, including Muslims, Christians, Jews, Buddhists, Sikhs and people of new and non-traditional faiths.

Title VII of the Civil Rights Act (a federal law) and most state laws prohibit employers from discriminating on the basis of religious beliefs. Under the law an employer can't make decisions in any aspect of employment, from hiring to firing and everything in between, based on one's religious orientation. In addition, employers are generally required to accommodate their workers need to express their religious beliefs and practices in the workplace.

Similar to the Americans with Disabilities Act (ADA) reasonable accommodation process, upon notice for religious accommodation, an employer must engage the individual in the "interactive process." It is the responsibility of the supervisor engaging the employee in the interactive process to document the entire process thoroughly and confirm the conversation in writing. ***Tip:*** You should also explore with the employee specifically what he or she feels is required by his or her religious beliefs.



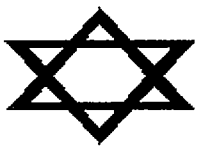
How far should a company go in accommodating an employee's religious observance?

Some examples of accommodations include holiday leave, attire, designated space for religious observance, flexible scheduling, voluntary substitutes or swaps of shifts or assignments, display of religious materials as long as they are not visible to the public, formation of on-site affinity groups, and consideration of religious preferences in event planning. Managers should keep in mind that accommodation situations require individualized decision-making since a solution that may work in one situation may not work in another.

Keep in Mind: Employers must reasonably accommodate an employees religious practice unless doing so would cause an undue hardship (on the employers legitimate business interest). As indicated by the EEOC, "An employer can show undue hardship if accommodating an employee's religious practices requires more than ordinary administrative costs, diminishes efficiency in other jobs, infringes on other employees' job rights and benefits, impairs workplace safety, causes co-workers to carry the accommodated employee's share of potentially hazardous or burdensome work, or if the proposed accommodation conflicts with other law or regulation."

What is appropriate regarding the display of religious symbols?

Employees should also be permitted the ability to wear religious clothing and accessories, such as, religious necklaces or medallions, bracelets, or prayer beads. Employees may also display religious symbols, such as, pictures or quotes, books or statues at their work station.



CAUTION! **Displaying religious symbols is fine as long as they aren't used to proselytize or intimidate other employees.** ***Proselytizing is the act of trying to convert others to your religious belief.*** **Employees who engage in behavior that implies overtly or subtly that their belief system is better than that of others create tension and conflict in the workplace. Comments or jokes which demean or disparage a religious belief could also violate the Policy of Equality.**

Employers should foster a workplace environment where employees feel comfortable expressing their religious beliefs and are not obligated to participate or not participate in religious activity while at work or away from the workplace.

For information call (323) 890-5348 or contact the Ombudsperson Unit via e-mail at BOC Ombudsperson

BUREAU OF LABOR RELATIONS AND COMPLIANCE

OMBUDSPERSON UNIT

TRAINING BULLETIN

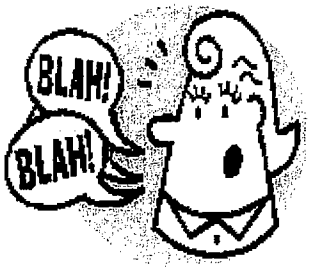
Lessons Learned

VOLUME 6 NUMBER 1

Sexual Gossip in the Workplace

The Los Angeles County Sheriff's Department is often described as a family. In some instances, we form bonds with each other that transcend working relationships and carry over into dating or work related romances. In other instances, we may know employees involved in these workplace relationships. Since many personal relationships that begin, also end in the workplace, it is important to remember that sexual gossip is inappropriate for the work environment.

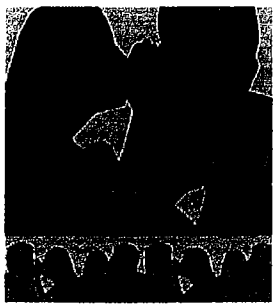
Professionalism



If you are involved in a personal relationship with a co-worker that goes "sour," keep in mind that you are still accountable for your actions and are obligated to represent yourself and the Department with dignity and professionalism, consistent with Our Core Values. **Remember, you cannot engage in sexual rumors or gossip about any Department member.**

Instances where you are not directly involved in the relationship still does not give you the right to engage in these negative activities. **Professionalism dictates that the details of intimate relationships should not be discussed in the workplace.**

Policy Violations



In addition to it being inappropriate for the work environment, sexual gossip and/or rumors may also constitute violations of Departmental standards for general conduct, professional conduct, and/or the Policy of Equality (POE).

Depending upon the severity or recurrence of the gossip and rumors, sexual gossip can lead to Sexual Harassment, Retaliation or Inappropriate Conduct Toward Others under the POE.

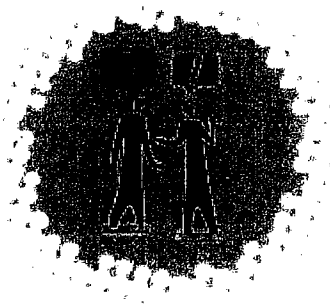
Liability

- Department members who engage in these types of behaviors in the workplace are subject to Departmental action, including discipline.
- The Department can be exposed to potential legal action.

- Employees' work product and morale often suffer because of hurtful rumors and gossip.

Remember, when in doubt as to whether a topic of discussion is too explicit for the workplace, the safest practice is to refrain from having the conversation.

Supervisors



Supervisors are required to monitor the work environment. If you witness or receive reports of sexual gossip occurring in the workplace, you have an **affirmative duty** to report the incident to the Intake Specialist Unit along with any actions taken to stop the conduct. Understand that these actions are harmful to the work environment if gone unchecked.

The Policy of Equality and associated procedures are intended to preserve the dignity and professionalism of the workplace, as well as protect the right of employees to be free from discrimination, harassment and retaliation. Any Department member who has a question regarding the Policy of Equality may contact the Office of the Ombudsperson at (323) 890-5348.

BUREAU OF LABOR RELATIONS AND COMPLIANCE

OMBUDSPERSON UNIT

TRAINING BULLETIN

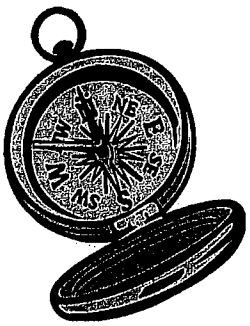
Lessons Learned

VOLUME 6 NUMBER 2

OFF-DUTY WORK-RELATED CONDUCT

Department members understandably are held to a high standard of behavior both on and off-duty. Committing oneself to "honorably perform" his/her duties while at work or in work-related settings generally is understood and accepted. However, there are instances when Department personnel forget they are responsible for maintaining this standard away from the workplace. To help make Department personnel better aware that their off-duty conduct can impact the workplace, the following information is provided.

Scope of Coverage

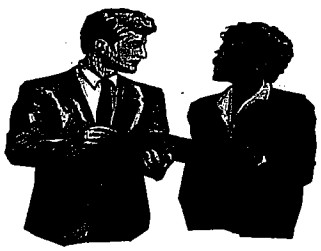


The Policy of Equality prohibits discrimination, harassment, retaliation and inappropriate conduct toward others in the workplace or in other work-related settings including retirement parties and other work-related social events. **Depending on the facts and circumstances**, off-site or off-duty conduct that meets violation criteria and has the purpose or effect of unreasonably interfering with an individual's employment or creating an intimidating, hostile, or abusive working environment, can also violate this Policy (MPP 3-01/121.40).

Keep in mind: Off-duty behavior or conduct may carry over into the work environment.

Personnel engaging in inappropriate behavior off-duty must always be mindful that their actions can create a nexus to the workplace, resulting in a hostile work environment and/or violations of the Policy of Equality (POE). A specific example occurred recently when an off-duty employee sent a cellular telephone text message to various Department members from his personal cellular telephone to their personal cell phones, referencing another employee with a sexually derogatory term. Subsequently, Department members commented on the text message while in the workplace, a supervisor was notified of the text, and a POE complaint was filed.

Professional Conduct



Department members are held accountable for their actions and conduct when these behaviors are in conflict with policies and our Core Values. Remember, we all have an obligation to our co-workers as well as the public to maintain the highest ethical standards in both personal and official conduct.

Keep in mind: Off-Duty behavior can affect the work environment, Department members' performance, morale and our Department's reputation.

Inappropriate Communications

Inappropriate off-duty communications that can find their way into the workplace and create a hostile work environment include, but are not limited to:

- sexually charged comments or notes
- gossip involving sex, race, religion, disability or sexual orientation
- electronic communications involving the above via e-mail, phone and text messages

Experience tells us that discriminatory bias exhibited off-duty will likely manifest itself at some time or another in the work environment. Don't allow your off-duty behavior to cause you undue embarrassment or damage your reputation because it has been deemed to violate the Policy of Equality.

Remember: All Department members are responsible for conducting themselves in accordance with the Policy of Equality and associated procedures. Any Department member who has a question regarding the Policy of Equality may contact the Office of the Ombudsperson at (323) 890-5348.

BUREAU OF LABOR RELATIONS AND COMPLIANCE

OMBUDSPERSON UNIT

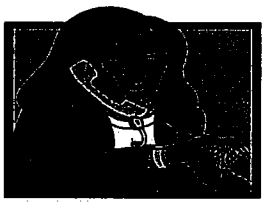
TRAINING BULLETIN

Lessons Learned

VOLUME 7 NUMBER 1 AUGUST 28, 2007 Page 1of 1

PROCEDURES WHEN EMPLOYEE GRIEVANCES CONTAIN POSSIBLE EQUITY ISSUES

The Policy of Equality process is not intended to supersede or change the grievance processes agreed to in the various MOUs. Guidelines have been designed to ensure that both the POE process and the grievance process are handled appropriately. These steps should be followed when receiving grievances with potential POE implications.



❑ **NOTIFY THE BUREAU OF LABOR RELATIONS AND COMPLIANCE, EMPLOYEE RELATIONS UNIT**

- E-mail or fax (323) 267-6665 a copy of the grievance
- For any questions, call the Employee Relations Unit at (323) 526-5080

❑ **INFORM GRIEVANT THAT YOU MUST, BY POLICY, CONTACT INTAKE SPECIALIST UNIT (ISU)**

- Advise the grievant that the POE requires that management receive direction from the ISU
- Advise the grievant that the ISU will review the complaint as described in the grievance
- Recommend that the grievant waive time for the ISU to complete the inquiry/investigation
  -If the grievant is willing, waive time until you receive direction from ISU
  -If the grievant is not willing, the grievant may pick up grievance when time has expired as specified in their MOU and move grievance to next level.
- The response on the grievance should read, ***"Grievant is unwilling to waive time for completion of POE review/investigation. Based on available information, this grievance is denied."***
- Notify the Employee Relations Unit

❑ **RECEIVE DIRECTION FROM THE ISU**

-If the ISU deems the situation does not involve a POE issue, hear the grievance and render a decision based on unit level information
-If the ISU deems it does involve a POE issue, recommend that the grievant waive time until completion of the investigation
-Take appropriate immediate corrective action as necessary
-Notify the Employee Relations Unit

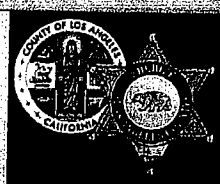
E-Mail Advisement - Windows Internet Explorer

http://2-intranet-sql/boc/emailadvisement/wa.9.1.2009.asp

F. View Favorites Tools Help

Google G Go Bookmarks Popups okay Check AutoLink Send to Settings

E-Mail Advisement Page Tools



Los Angeles County

Sheriff's Department

Computer / E-Mail Advisement

Confidentiality

Allegations of Policy of Equality (POE) violations and the resulting investigations are complicated. People who do not have access to all of the information risk forming opinions that are often inaccurate.

It is essential that the rules regarding confidentiality are followed. These rules are intended to protect subjects and complainants alike and to avoid disruption in the workplace.

Current User: LASD\abcastro

AGREE

Local intranet 100%

E-Mail Advisement - Windows Internet Explorer

http://2-intranet-sql/boc/emailadvisement/wa.9.2.2009.asp

File Edit View Favorites Tools Help

Google G Go Bookmarks Popups okay Check AutoLink Send to Settings

E-Mail Advisement Page Tools

Los Angeles County
Sheriff's Department

Tradition of Service

Computer / E-Mail Advisement

Don't Press "Send"

Avoid forwarding inappropriate non-work related, sexually explicit or suggestive, and/or bigoted e-mail material.

Be mindful that a founded Policy of Equality (POE) violation is documented and may negatively affect your career.

Press "Delete" instead!

Current User: LASD\abcastro

AGREE

Local Intranet 100%

Advisement - Windows Internet Explorer

http://2-intranet-sql/boc/emailadvisement/wa.9.3.2009.asp

File Edit View Favorites Tools Help

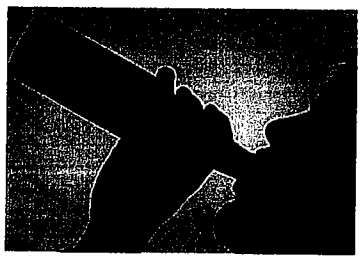
Google G Go Bookmarks Popups okay Check AutoLink Send to Settings

E-Mail Advisement Page Tools

Los Angeles County
Sheriff's Department

Tradition of Service

Computer E-Mail Advisement



Deputy Arrested

On Thursday, August 27, 2009, at 0020 hours, officers from the Covina Police Department arrested an off-duty patrol deputy for being **Drunk in Public**.

The officers found our deputy passed out on the sidewalk near a local bar. He was reportedly belligerent with the officers and did not identify himself as a deputy sheriff until they discovered a handgun concealed on his person.

LEAD BY EXAMPLE, *DON'T BECOME ONE!*

Current User: LASD\abcastro

AGREE

Local Intranet 100%

E-Mail Advisement - Windows Internet Explorer

http://2-intranet-sql/boc/emailadvisement/wa.9.4.2009.asp

File Edit View Favorites Tools Help

Google Go Bookmarks Popups okay Check AutoLink AutoFill Send to Settings

E-Mail Advisement Page Tools

Los Angeles County

Sheriff's Department

Computer E-Mail Advisement

Domestic Violence

Domestic Violence affects many people, including their children.

If you or a loved one are having problems in a relationship, Employee Support Services Bureau (ESSB) can provide assistance.

Domestic violence hurts everyone!

Current User: LASD\abcastro

AGREE

Local intranet 100%

Advisement - Windows Internet Explorer

http://2-intranet-sql/boc/emailadvisement/wa.9.5.2009.asp

File Edit View Favorites Tools Help

Google G Go Bookmarks Popups okay Check AutoLink Send to Settings

E-Mail Advisement Page Tools

Los Angeles County
Sheriff's Department

Computer / E-Mail Advisement

It's not okay to drink and drive

On Friday, August 28, 2009, at 2018 hours, a parking control officer was arrested by officers from the Glendale office of the California Highway Patrol for DUI.

After leaving a friend's home, where she had been drinking, our employee was involved in a traffic collision with two parked vehicles. Fortunately, she was not seriously injured and the other two vehicles were not occupied.

Think before you drink!

Current User: LASD\abcastro

AGREE

Local Intranet 100%

E-Mail Advisement - Windows Internet Explorer

http://2-intranet-sql/boc/emailadvisement/wa.9.6.2009.asp

File Edit View Favorites Tools Help

Google G Go Bookmarks Popups okay Check AutoLink AutoFill Send to Settings

E-Mail Advisement Page Tools

What is LASD University?

- LASD University is a consortium of over 22 colleges and universities offering over 45 programs.
- LASDU is open to all members of the Los Angeles County Sheriff's Department, as well as members of other law enforcement and public service organizations.
- LASDU offers Associates, Bachelors, Masters, PhD and Juris Doctorate degrees in a wide variety of disciplines.
- Classes are designed for working professionals and many are on-line or held at various Sheriff's facilities throughout the County.
- For more information, please contact Sergeant John Hunter at (562) 946-7204 (jphunter@lasd.org) or OAIII Laura Galliher at (562) 903-7571 (lagallih@lasd.org).

Visit our website at:

http://intranet/intranet/sites/tb/LASDU/LASDU-Home.htm

Current User: LASD\abcastro

AGREE

Local intranet 100%

dvisement - Windows Internet Explorer
http://2-intranet-sql/boc/emailadvisement/wa.9.7.2009.asp
File Edit View Favorites Tools Help
Google Go Bookmarks Popups okay Check AutoLink Send to Settings
E-Mail Advisement
Page Tools

Los Angeles County
Sheriff's Department

Computer E-Mail Advisement

Retaliation

Retaliation is an adverse action against another for reporting an incident or filing a complaint of conduct that violates this Policy (Policy of Equality) or the law or participating in an investigation or otherwise exercising their rights or performing their duties under this Policy or the law.

The Department will take immediate and corrective action to prevent retaliation.

Current User: LASD\abcastro

AGREE

one Local intranet 100%

E-Mail Advisement - Windows Internet Explorer

http://2-intranet-sql/boc/emailadvisement/wa.9.8.2009.asp

File Edit View Favorites Tools Help

Google Go Bookmarks Popups okay Check AutoLink Send to Settings

E-Mail Advisement Page Tools

Los Angeles County

Sheriff's Department

Computer / E-Mail Advisement

Subject's Testimony

A Subject involved in a recent Policy of Equality investigation admitted to using poor judgement in forwarding sexually explicit material that was sent to them. The Subject indicated they knew they should have deleted the message, but forwarded it to a group that included their supervisor.

The Subject's supervisor reported the violation to the Intake Specialist Unit and admonished the employee.

Delete inappropriate e-mails!

Current User: LASD\abcastro

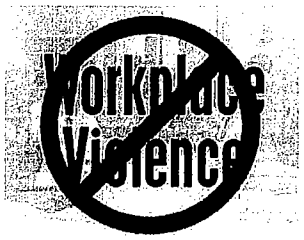
AGREE

Local intranet 100%

dvisement - Windows Internet Explorer
http://2-intranet-sql/boc/emailadvisement/wa.9.9.2009.asp
File View Favorites Tools Help
Google G Go Bookmarks Popups okay Check AutoLink Send to Settings
E-Mail Advisement Page Tools

Los Angeles County
Sheriff's Department

Computer/ E-Mail Advisement



Workplace Violence

The Department enforces a policy of zero tolerance for workplace violence or threats of violence. These activities are subject to disciplinary action up to and including discharge.

All Department members have the right to work in an environment that promotes safety, respect and dignity, free from acts of violence and threats of violence.

Current User: LASD\abcastro

AGREE

one Local Intranet 100%

POLICY OF EQUALITY
ACKNOWLEDGEMENT OF POSTING

Work Station(s):

- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____

This is to acknowledge that the Department's Policy of Equality, with the DFEH flier attached thereto, is currently posted at the above-referenced work station.

_____	_____
Date	Signature of Unit Commander or Designee
_____	_____
Unit Name	Printed Name of Unit Commander or Designee

Policy of Equality (POE)

Electronic Communications Unit Commander Checklist

The Policy of Equality is intended to preserve the dignity and professionalism of the workplace as well as protect the right of employees to be free from discrimination, harassment and retaliation.

The Policy applies to the use of any Departmental communication system or equipment, including but not limited to; e-mail, internet, intranet, JDIC, telephone lines, computers, facsimile machines, photo copy machines, voice mail, radio and mobile digital terminals.

In addition to supervisors and managers' responsibilities identified in the Policy, Unit Commanders should ensure appropriate measures are taken to address electronic communication misuse within units of assignments.

Use the following checklist to indicate actions taken at your unit to address electronic communication/ computer misuse:

- ☐ Supervisors are actively monitoring the work environment for computer misuse.
- ☐ I personally communicate with supervisors, sworn and professional staff about computer misuse issues.
- ☐ My expectations regarding appropriate use of LASD computer equipment and sanctions applied when violation are discovered have been codified in a unit order, etc.
- ☐ My unit issues regular warnings to staff about consequences of electronic communication misuse including; individual accountability and discipline for violations, loss of Department resources, liability, loss of productivity and the direct conflict with our Core Values.
- ☐ Supervisors have been added to every user group within my command.
- ☐ Supervisors continually re-brief the Policy of Equality and log APIS rosters into the Learning Management System (LMS).
- ☐ Supervisors initiate random computer checks when observing employees using County owned electronic equipment.
- ☐ I regularly send e-mail warnings to staff reminding them not to engage in inappropriate e-mail communication. I review and remove computer access as appropriate to the Department needs and/or when founded misconduct occurs.
- ☐ I have initiated targeted computer audits for previous violators.
- ☐ All supervisors have viewed the POE supervisor e-mail training video.
- ☐ Additional actions _____

*The checklist shall be provided on a **quarterly** basis to the Bureau of Labor Relations and Compliance, attention Equity Commander. Refer to Sheriff's Bulletin #575.*

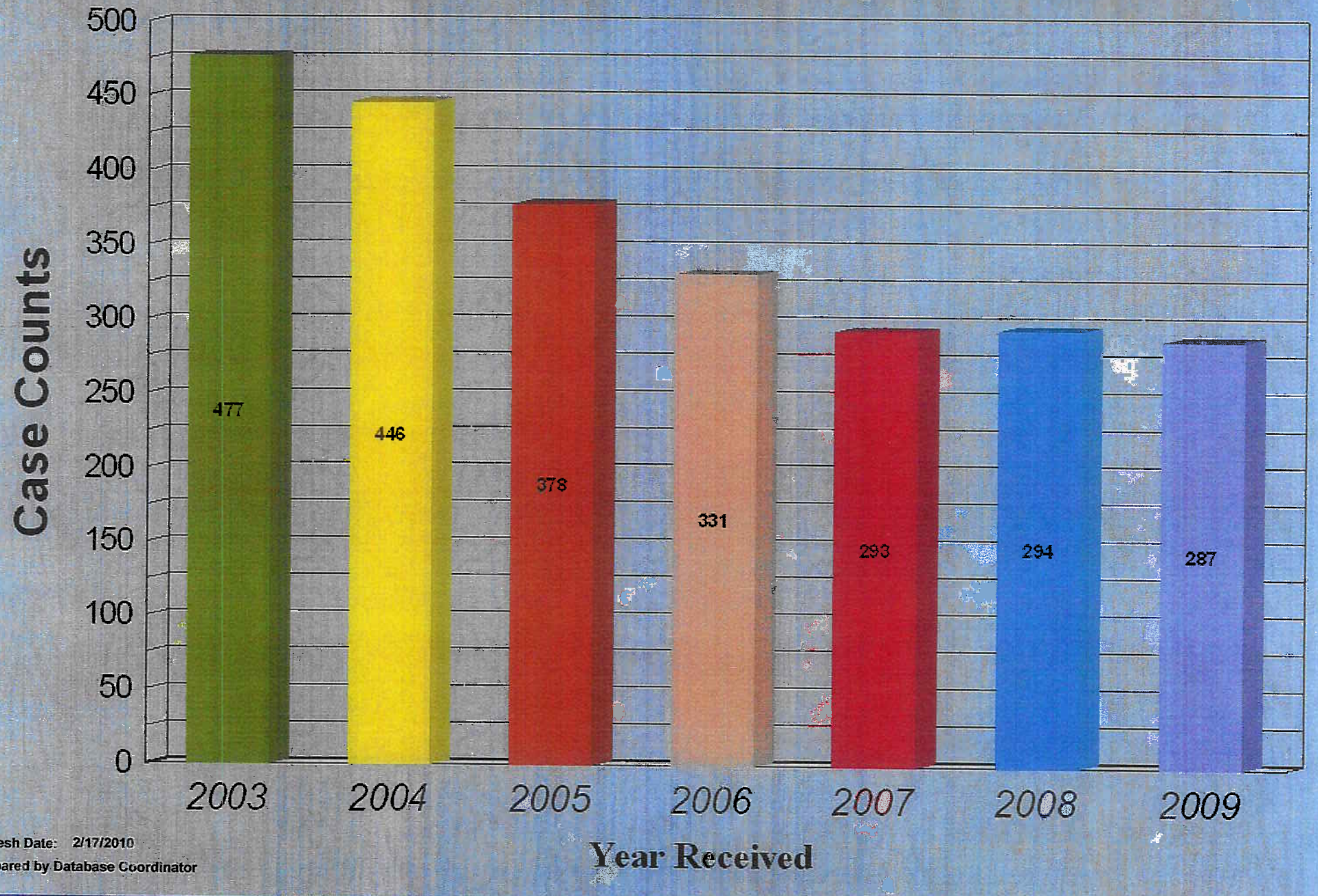
_____ Date

_____ Signature of Unit Commander

_____ Unit of Assignment

_____ Printed Name of Unit Commander

Yearly Intake Comparison



Refresh Date: 2/17/2010
Prepared by Database Coordinator

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT

BOUMAN RELATED EXPENDITURES

FISCAL YEAR: 2008-2009

DESCRIPTION	SERVICE TYPE or PURCHASE	EXPENDITURE
Equity Oversight Panel Contracts	Equity Oversight Panel Services	$384,460.00
Office of Affirmative Action Compliance	Equity Investigative Services	$752,811.58
GRAND TOTALS: FY 08/09		**$1,137,271.58**

Prepared by: Marie Villalobos 2/25/2010

LOS ANGELES SHERIFF'S DEPARTMENT
INTERNAL VOUCHERS - 09AA0069
FISCAL YEAR 2008 - 2009

DSO: OFFICE of AFFIRMATIVE ACTION COMPLIANCE
SERVICES: EQUITY INVESTIGATIONS

STARTING BALANCE		$500,000.00
SUPPLEMENT #1	$240,000.00	**$740,000.00**

BILLING PERIOD	EXPENDITURES	BALANCE
JULY, 2008	$61,257.56	$678,742.44
AUGUST, 2008	$61,834.85	$616,907.59
SEPTEMBER, 2008	$62,004.59	$554,903.00
OCTOBER, 2008	$61,834.85	$493,068.15
NOVEMBER, 2008	$62,164.85	$430,903.30
DECEMBER, 2008	$61,834.85	$369,068.45
JANUARY, 2009	$63,296.44	$305,772.01
FEBRUARY, 2009	$63,322.03	$242,449.98
MARCH, 2009	$63,815.39	$178,634.59
APRIL, 2009	$63,815.39	$114,819.20
MAY, 2009	$63,815.39	$51,003.81
JUNE, 2009	$63,815.39	-$12,811.58

TOTALS	**$752,811.58**	**$0.00**

Prepared by: M. Villalobos 12-03-09

LOS ANGELES COUNTY

Sheriff's Department

EQUITY OVERSIGHT PANEL

30th QUARTERLY REPORT

APRIL – JUNE 2010

ATTACHMENT INDEX

ATTACHMENT A: Policy of Equality Best Practices

ATTACHMENT B: EOP hearings--Memo to All Unit Commanders

ATTACHMENT C: Electronic Communications--Unit Commander Checklist

ATTACHMENT D: Everything Is Okay Until It's Not Okay

ATTACHMENT E: City of Ontario, California, et al. v. Quon et al.

Introduction

This is the Equity Oversight Panel Report for the second quarter, April thru June, 2010. We are continuing to provide the data and statistics that account for the Department's activities with respect to investigations and training to demonstrate the Department's ongoing efforts to enforce the Policy of Equality. In the Training Issues section of this report, we discuss personal/intimate relationships impacting the workplace. We provide two factual scenarios from cases heard during this quarter that highlight the need by supervisors or other employees to report and/or address inappropriate behavior in the workplace immediately. The founded charges for the involved parties, as well as the supervisors who had failed to monitor the workplace, could have been prevented if immediate corrective action had occurred.

This report also contains Attachments A through D from the first quarter because of their ongoing training value. Attachment E has been added and highlights the recent Supreme Court decision, City of Ontario, California, v. Quon, (Doc. 08-1332, June 17, 2010) addressing whether an employer can audit pager and cell phone texts. The Department has established very clear policies restricting the use of Department computers, cell phones and text messaging to County business, as well as appropriately requiring employees to refrain from sending dialog or images that contain disrespectful or inappropriate content using Department equipment. For the Department's purposes, there is no reason for there to be an expectation of privacy when the policy so clearly states that employees cannot use Department equipment for personal use and the Department has taken all reasonable steps to enforce its policy.

In addition, the EOP cannot place enough emphasis on the recommendation that the Department improve and enhance Respect-Based Leadership (RBL) and AB 1825 training. Adding more issue specific training, visual aids, scenario based exercises and current case histories can provide Department members with valuable information that illustrates what the Department's expectations are and what kind of behaviors are getting employees into trouble.

Ideally, all employees should have not only the initial eight hour RBL training, but should also be put through a refresher course in harassment prevention training every two years, similar to

that required of all supervisors. The culture change that we are beginning to see as a result of Respect-Based Leadership being in place for eight years would be positively impacted if everyone accepted their role in creating and maintaining a work environment free from harassment, discrimination and retaliation. Employees also need frequent re-enforcement in briefings and other settings in the workplace. The Department should consider the benefit of having **a supervisor selected by the unit commander to coach, teach and train within their unit** on Department expectations, as issues arise.

We say a fond farewell to our EOP Chairperson, Lynda Castro, who served with us for fifteen months after her retirement as the Equity Commander in 2009. The Equity Stipulation was extinguished during her tenure with the Panel and she has been instrumental in furthering the Department's efforts to demonstrate that the POE structure is in place, without Federal Court oversight, and that it will continue to evolve.

Mercedes Cruz, a partner in the Law Firm of Lewis, Brisbois, Bisgaard & Smith, LLP, has been appointed Interim Chairperson of the EOP with the expectation that our newest Panel member Marilyn Baker, Commander of Leadership and Training Division, will assume the Chairperson position upon Commander Baker's retirement. Ms. Cruz is on her sixth year with the Panel and has over twenty-five years of employment law experience.

Policy of Equality

The Stipulation Order

Average Length of Time for a Bouman Case in the Equity Process

According to the Equity Stipulation, which is no longer a mandatory requirement for the Department, a Bouman case may not exceed 90 calendar days total from the Department's first notification of a potential equity violation through the EOP hearing date. This average was maintained for the one-year period preceding the expiration of the two-year monitoring period.

Discussion: Of the nine investigations heard in the second quarter of 2010, four were Bouman cases. These four Bouman cases averaged 103.75 days in the equity process: the shortest number of days 49, and the longest 155. The average would have been about 86.66 days but for one complex case which took 155 days in the equity process. This case took 42 days in Intake: Two weeks due to the Complainant's unavailability, and the remainder due in part to its complexity and in part to what appears to have been a temporary backup in assignments to the intake specialist to whom it was assigned. This case also took 87 days to investigate due to the complexity of the case which resulted in two large volumes of investigative materials and resulted in a criminal companion case.

The EOP is working with the Equity Commander and the Intake Specialist Unit to find ways to streamline the intake process and make sure there is a proper distribution of assignments, in an effort to prevent delays in the intake process.

Length of Time for Any Single Bouman Case in the Equity Process

According to the Equity Stipulation, no single Bouman case in the equity process could exceed 120 calendar days absent extenuating circumstances. ("Extenuating circumstances" were limited to: (a) military service impacting the availability of a subject, complainant, or key witness; (b) a supervisor's failure to report the potential violation of the Policy for which the supervisor has been disciplined; (c) unavailability of a subject, complainant, or key witness due to "injury on

duty" or other administratively recognized leaves; (d) cases generated by an external source (e.g., DFEH, EEOC) except that no such case will exceed 120 days from the date it is referred by the external source; (e) cases returned by the EOP for additional investigation and/or interviews.

Discussion: There were three cases which exceeded 120 days during the second quarter of 2010, two Bouman and one non-Bouman case. They are explained in the EOP Activity section of this report.

Changes in EOP Recommended Findings

EOP recommendations regarding findings (founded, unfounded, unresolved, or exonerated) cannot be changed, to the extent consistent with the law and the Memoranda of Understanding between the Sheriff's Department and its employee unions, which were in effect as of September 13, 2007.

Discussion: The Department did not change any findings during the second quarter of 2010.

Changes in EOP Recommended Discipline

The Department may modify discipline (including holding days in abeyance) with the approval of the Undersheriff. The request must be supported by a Justification Letter from the concerned division chief which certifies that: the entire investigative file has been reviewed, including the audiotape of the complainant's interview; the EOP Chairperson has been consulted; and explains in detail the reasons for the proposed change in discipline.

Discussion: The Department did not change any discipline during the second quarter of 2010.

Intake Specialist Unit Complaint Assessments

The Equity Commander, with the written concurrence of the Undersheriff, will be the final decision maker when there is a disagreement between the Intake Specialist Unit and the EOP regarding the assessment on an intake.

Discussion: There were no disagreements regarding the Intake Specialist Unit assessments during the second quarter of 2010.

INTAKE ASSESSMENT: 2ND Quarter 2010

MONTH	PENDING ASSESSMENT	CASE CLASSIFICATION				
		A	B	C	N	TOTAL
April	0	3	7	5	0	15
May	0	5	5	4	2	16
June	4	5	9	4	1	23
TOTAL	4	13	21	13	3	54

(Provided by Intake Specialist Unit)

During the second quarter of 2010, 54 intakes were processed for assessment. 13 intakes were deemed "A" cases and IAB investigations were opened. 21 intakes were assessed as "B" cases that contained equity issues but did not rise to the level of investigation. These were returned to the unit commanders for appropriate resolution via training and documentation. There were also 13 cases deemed "C" cases where no equity issues were found. These were also returned to the unit for further handling as appropriate.

Policy of Equality

Training Issues

TRAINING STATISTICS: 2nd Quarter 2010

CLASS TYPE	# OF CLASSES GIVEN	TOTAL ATTENDEES
RESPECT-BASED LEADERSHIP I (8 hr)		
Recruit Academy	1	124
Security Assistant/Security Officer Academy	3	150
Civilian Orientation	5	121
Medical Services Bureau	1	13
Office of Public Safety Merge	5	217
Total	15	625
AB1825 FOR SUPERVISORS (2 hr)		
Supervisors	23	431
Total	23	431

(Provided by Professional Development Unit)

The Panel strongly supports the Department in its ongoing efforts to develop and maintain a comprehensive policy and training program to prevent and/or address complaints of harassment, discrimination and retaliation. Such a program benefits the Department enormously and reduces costs which result from law suits and from absenteeism of employees subjected to stress. The Department is moving forward in response to direct feedback from the Panel demonstrating their continued commitment to the Core Values. The Department is in a process of determining what works well and what needs to be updated. The Panel has suggested **adding more issue-specific training, visual aids, scenario-based exercises and current case histories**. We have also suggested that **all employees should ideally have not only the initial eight hour RBL training but should also be put through a refresher course** in harassment prevention training every two years, similar to that required of all supervisors.

The EOP has continued to assist with the development of Department training with respect to both Respect-Based Leadership and AB 1825. To this end, several EOP members were invited to attend a recent facilitators training session to share information and answer questions facilitators had regarding the POE process and issues that had come up in training regarding the POE.

The facilitators were also hungry for issue-specific scenario training based on examples from the actual cases heard by the Panel. We responded by giving them examples of actual cases and discipline without violating confidentiality. We have recommend that the facilitator trainings be repeated every quarter and that scenarios be provided by the EOP that share useful and consistent training information without compromising employee confidentiality. The EOP is also working with the Department to assist with their efforts to have subject matter experts review and update the Respect-Based Leadership curriculum which dates back to 2002.

The EOP further recommends that **all facilitators be given the opportunity to visit the SHARE (Stop Hate And Respect Everyone) Trailer** to show them how effective story-based training can be. The Trailer stands as an excellent example of how moving a training can be when it is personalized. The EOP often recommends a visit to the Trailer as part of Education-Based Discipline and has received reports that these visits are very effective.

Discussion: Personal/Intimate Relationships Impacting the Workplace

I. Case Specifics

A. Case One: She's Just Not That Into You

In the first case an employee ignored the signs that were telling him, "She's just not that into you." He had been flirting with another employee at work. The two ultimately attended an event as part of a group and apparently ended the evening by spending the night together.

Once they were back at work the woman apparently reconsidered whatever attraction she had felt toward her co-worker. The male continued to pursue her. There was inappropriate conduct and suggestive comments in front of co-workers.

There was no corroborating testimony of the more serious alleged conduct at work. The subject claimed he was in a consensual reciprocated relationship. He seemed surprised to learn that she did not want to be with him, in spite of her clear statements and actions to discourage him. Their perceptions of the situation were dramatically different.

In the investigation, both parties had problems with credibility because they had apparently not been completely forthcoming about **everything**. Each had denied certain allegations of behavior which were confirmed by third party witnesses.

Nonetheless, evidence of seriously inappropriate conduct was confirmed by more than one witness and resulted in substantial discipline. Discipline would have been higher if the *complainant* had not had credibility problems and it could have been lower if the *subject* had not had credibility problems.

More importantly, the entire series of incidents could have been avoided if one of the coworkers had simply told a supervisor about what was going on. There was a risk in that workplace and co-workers ignored it until it turned into a serious POE investigation.

B. Case Two: Is It Really Consent?

In an even more dramatic case an employee was having a long term relationship with her direct supervisor. Almost everyone in the workplace was aware of the relationship. Several employees complained to the next supervisor up the chain of command claiming that the woman's direct supervisor was showing her favoritism because of their relationship. These complaints were never reported to the intake unit. If they had been a series of more serious problems could have been averted.

The supervisor thought he was in a consensual relationship with the woman. Her flirtatious behavior toward him apparently had contributed to his perception.

The woman later alleged that she had never really consented to any of the sexual activity. She stated that she had only participated because she was afraid to say no to a supervisor. Serious discipline was imposed because the supervisor admitted to participating in repeated sexual activity in the workplace.

Contents

INTRODUCTION *1*

POLICY OF EQUALITY *THE STIPULATION ORDER* *3*
Average Length of Time for a Bouman Case in the Equity Process *3*
Length of Time for any Single Equity Case in the Equity Process *3*
Changes in EOP Recommended Findings *4*
Changes in EOP Recommended Discipline *4*
Intake Specialist Unit Complaint Assessments *4*

POLICY OF EQUALITY *TRAINING ISSUES* *5*
Discussion: Personal/Intimate Relationships Impacting the Workplace .. *7*
I. Case Specifics *7*
A. Case One: She's Just Not That Into You *7*
B. Case Two: Is It Really Consent? *8*
II. Lessons Learned from Cases *10*
A. Credibility *10*
B. The Importance of Reporting Violations Early *10*
C. Different Perceptions *11*
D. Differences in Rank and Status *12*
E. Do Not Have Sex in the Workplace *13*

POLICY OF EQUALITY *RECENT DEVELOPMENTS IN THE LAW* *14*
City of Ontario, California v. Quon *14*

EOP *ACTIVITIES* *17*
Hearings *17*
Review of Equity Process Time Frames *17*

EOP *RECOMMENDATIONS* *19*

Again, this is a case in which early reporting of inappropriate behavior in the workplace could possibly have avoided this situation escalating into a serious POE investigation. The complaints regarding a relationship that was leading to favoritism should also have been reported. Had the appropriate reporting taken place it is likely that the subject would have avoided the situations which led to discipline, and the complainant's behavior could have been addressed with support and mentoring.

II. Lessons Learned from Cases

Intimate relationships among coworkers and especially among supervisors and subordinates often come to the Panel's attention in the form of POE's when the relationship negatively impacts the workplace. The two cases discussed above, which came before the Panel, were significant enough to warrant further examination in this report. Five main lessons can be learned from these two cases:

A. Credibility

If you want to be believed during an investigation, you have to tell the truth about everything. In both of these cases the complainants and the subjects made statements which were later shown to be inaccurate thereby causing the Panel to question their credibility. Witnesses also stated that he or she could not remember events which were so dramatic that it was clear to the Panel that anyone who was there would have remembered the event. Thus, to the Panel, the witnesses should have been able to either confirm that the event occurred or that it did not. It would not be a question of memory. Witnesses who claimed they could not remember a dramatic or critical event were simply not credible. Their testimony on other facts had to also be questioned.

In both of the cases considered by the Panel, there could have been a very different result if the parties had been completely honest throughout their interviews so that nothing in the testimony was called into question.

B. The Importance of Reporting Violations Early

In both cases inappropriate behavior was overlooked and the behavior predictably escalated resulting in significant discipline and in one case a demotion. Co-workers in both workplaces

knew of the inappropriate behavior, but were not mandated reporters and did not want to "get involved". As a result, three careers have been badly damaged and the two complainants have needlessly suffered.

When an employee reports inappropriate conduct the employee is not just helping the complainant. In the end it may well be the subject who benefits the most from early detection and correction.

We have said it before and it is worth repeating. **Violations of the POE are like safety violations because they put people at risk of harm.** They create liability for the Department and risk of injury for everyone in the workplace. Recently the Department lost a court trial which resulted in a verdict of $350,000. Attorney's fees will likely be awarded and may be even more significant than the verdict. The behavior which gave rise to the complaint was long running and had not been reported by the many deputies in the workplace who saw it. Deputies are not mandated reporters. Nonetheless, if they had reported the behavior as soon as it began the Department could have avoided the damages which resulted.

Safety of all kinds is important. Any risks, including violations of the POE, should be reported by all Department members. Frequent briefing of the Department's anti-retaliation policy and the importance of addressing inappropriate behavior at its inception, may serve to encourage non-mandated reporters to feel more comfortable providing testimony and reporting inappropriate conduct which comes to their attention.

C. Different Perceptions

This could also be entitled, "Is It Really Consent?" Unfortunately this comes up repeatedly in a variety of contexts. Someone is flirting with someone else and thinks the affection is being returned, when it is actually unrequited. The affection may be returned for some period of time, or the object of the person's affection cannot find an easy way to say "no." Someone may at first be interested and then become uncomfortable and may no longer want to pursue the relationship.

Nonetheless, the flirting by the other party increases. Then there is an invitation to a social function, a Department function, or a date. The complainant feels awkward about refusing and

so accepts. Perhaps the complainant sees some short term gain for themselves in the workplace, and on that basis the complainant accepts.

This may then lead to unwanted physical contact, even unwanted sexual contact. Now the complainant is humiliated and scared and thinks that no one will believe him or her when they claim the conduct was unwelcome. If they are dating a supervisor they may think that the sexual contact has to continue or their job will be on the line. Alternatively, for whatever reason, the complainant simply decides they no longer want the relationship but the other person does not want to end it, and what was once a consensual relationship becomes harassment when it is pursued too long.

These different understandings and perceptions lead to conflict. The subject thinks that he or she is in a mutual relationship. Over time the complainant becomes more and more upset. The complaint usually comes after a seemingly minor or unrelated event, such as a less than outstanding evaluation. This causes all the stress and rage they have been feeling to come out and there is a POE charge filed. A supervisor may even notice negative behavior changes in the complainant and start to ask questions or observe inappropriate behavior in the workplace. Co-workers may also complain of third party harassment because they believe that the complainant is receiving preferential treatment due to the relationship, or the complainant may have had a change of heart and now claims harassment.

D. Differences in Rank and Status

Like all law enforcement agencies, the Department has a hierarchical structure for sworn and non-sworn alike. In addition, there are perceived status differences between sworn and non-sworn employees in the workplace. The Panel has seen repeated examples of these differences in rank and perceived status, exacerbating POE violations.

Whenever romance and the workplace intersect there is the risk of misunderstanding. This is exacerbated when there is a difference in rank, even if the subject is not a direct supervisor to the complainant. A custody assistant may be intimidated by a deputy, not knowing what his relationships in the Department may be. Similarly, a deputy may hesitate to say "no" to a sergeant, lieutenant, or captain. For this reason, relationships between supervisors and

subordinates, especially those in the same unit, expose supervisors to a higher risk of POE violations not only from that employee but from other members of their unit who are adversely affected by the relationship.

We also see this problem with jokes or racial slurs in the workplace. The subject takes a risk and engages in behavior in violation of the POE. The subject thinks it is all fun because no one is complaining. The complainant puts up with it until something causes them to reach their limit and the POE complaint gets filed.

The differences in status make the issue of consent to joking, flirting, dating or intimate activity very complicated. When a secretary accepts the invitation of a watch commander to lunch, is she doing so because she wishes to have lunch with that person, or because she feels it would be impolitic to refuse? As noted above, she may also do it because she hopes to garner some benefit from a closer relationship with a member of management. Whatever the motivation, the watch commander is at risk of a future POE charge.

As a result of these issues, Department employees must be even more careful about engaging in questionable conduct with employees who are lower on the chain of command. No matter how personally comfortable a sergeant feels with a custody assistant in their unit, they cannot forget the rank and status differences between them. When the lower status person "consents" to participate in questionable behavior, the consent may be challenged later when a complaint is filed. In addition, the Department has dramatically increased liability for questionable behavior by its managers.

E. Do Not Have Sex in the Workplace

Intimate physical contact in the workplace is not appropriate, even if it is consensual. It is not work related. There is nothing that can justify it.

During this quarter, we heard one case with repeated acts of intimate physical contact in the work place, numerous times by the subject's own admissions. This was not the first case we have heard alleging this type of activity in the workplace. Moreover, the prohibition against sexual conduct in the work place must, by definition, include trying to form an intimate relationship with a co-worker via e-mail at work or trying to find sexual partners on Internet sites

such as Craig's List or Tagged while using the Department computers. When an employee uses a Department computer for such activity the e-mail carries the LASD identification. This is an aggravating factor when the Panel considers discipline, because this behavior subjects the Department to possible ridicule and possible damage to the Department's reputation.

Sexual proclivities are something that everyone should want to keep private; but, when they are brought into the workplace, employees run the risk that their command staff, superiors, IAB investigators, and the EOP will have to read about them in detail. This alone should discourage employees from engaging in such conduct.

The EOP is committed to working collectively with the Professional Development Unit to ensure that training enhancement occurs so that situations such as those discussed above can be avoided in the future.

City of Ontario, California, et al. v. Quon et al.: Can an Employer Audit Pager and Cell Phone Texts? The Supreme Court Gives a Conditional Yes.

People often think that the Fourth Amendment only protects us from unreasonable searches by the government in the course of law enforcement. The Supreme Court, however, has previously held that it applies when the government is an employer, to protect employees from unreasonable searches.

A Sergeant on the SWAT team of the Ontario Police Department sued the City of Ontario after his supervisor reviewed text messages sent on his City issued pager. He claimed a violation of his right to privacy because he had very personal messages on the pager which he had sent to his ex-wife and his girlfriend. SWAT team members had been told that they could use the pagers for their personal messages as long as they either stayed under the character limit paid by the City, or reimbursed the City for extra charges. The Sergeant repeatedly exceeded the character limit and was asked to reimburse the City for the overage charges.

The Court refused to decide whether or not the Sergeant had "a reasonable expectation of privacy in the pager messages." At length the Court discussed the fact that communication methods are constantly evolving and that ruling now on what an employee's expectation of privacy would be in a pager message was not appropriate.

Instead the Court looked to the threshold question of any Fourth Amendment case: Was the search unreasonable? Warrantless searches are assumed to be a violation of the Fourth Amendment, unless they fall under an exception. The Court noted that the "special needs of the workplace" creates a limited exception to the Fourth Amendment.

After noting that there is a history of allowing employers to search the desks and computers of government employes, the Supreme Court held that because the employer had "a legitimate work-related purpose," and because the search "was not excessive in scope" it was allowed.

(The Court also stated that the employer does not have to use the "least intrusive search practical", but just has to act reasonably.) The Court relied on the fact that the supervisor was trying to determine if the character limit on the phone was unreasonably low, or if the Sergeant was sending too many personal messages during work hours. The Court specifically noted that the supervisor did not retrieve text messages from every month the Sergeant went over the character limit, but instead simply checked a couple of months as a sample.

Although the Court specifically did not rule on whether or not the Sergeant had an expectation of privacy in the text messages, it stated that in the future when a Court tries to determine if an employee has an expectation of privacy "employer policies concerning communications will of course shape the reasonable expectations of their employees, especially to the extent that such policies are clearly communicated."

The Court specifically stated: (1) The Court does not resolve the parties' disagreement over Quon's privacy expectation. Prudence counsels caution before the facts in this case are used to establish far-reaching premises that define the existence, and extent, of privacy expectations of employees using employer-provided communication devices. Rapid changes in the dynamics of communication and information transmission are evident not just in the technology itself but in what society accepts as proper behavior. At present, it is uncertain how workplace norms, and the law's treatment of them, will evolve. Because it is therefore preferable to dispose of this case on narrower grounds, the Court assumes, arguendo, that: (1) Quon had a reasonable privacy expectation; (2) petitioners' review of the transcript constituted a Fourth Amendment search; and (3) the principles applicable to a government employer's search of an employee's physical office apply as well in the electronic sphere.

The Court refused to consider whether or not a sender of a text message can have a reasonable expectation of privacy in a message he knowingly sends to someone's employer provided pager.

What Does The Case Mean For LASD? LASD can search the desks, computers, and cell phones of employees if it does so reasonably. An audit of e-mails or text messages is a search. When determining if an audit or a search is reasonable LASD has to consider:

1. Is there a legitimate business interest?
2. What is the employee's expectation of privacy?

3. Has that employee been informed that the department will audit text messages or e-mails when there is a legitimate business interest?
4. How can the audit or search be performed to avoid being excessive in scope?

Potential violations of the Policy of Equality are a legitimate business interest. The purpose of the Policy of Equality is to provide a workplace safe from discrimination or harassment. That is a very legitimate business interest.

If employees are informed, and reminded, that LASD considers their text messages and e-mails to be part of the work place and can be subject to an audit then the employees legally have a lower expectation of privacy. To protect the Department's right to use text messages and e-mails employees must be informed and reminded of the policy.

EOP
Activities

Hearings

During the second quarter of 2010, the EOP reviewed, conducted hearings, and made findings for 9 equity-related Internal Affairs Bureau investigations, involving 15 subjects; two of the cases (22 percent) involved misuse of the Department's computer system and/or Department issued cell phones.

Of those 9 investigations, the Panel deemed all 9 cases to be founded (100 percent) as to one or more charges, resulting in disciplinary recommendations for 14 subjects out of 15 named subjects.

Review of Equity Process Time Frames

The average number of days that a complaint was in the equity process during the second quarter of 2010 was 95 days. These averages include both Bouman and Non-Bouman cases.

AVERAGE NUMBER OF DAYS IN EQUITY PROCESS

2008	2009	1st Quarter 2010	2nd Quarter 2010
70 days	95 days	95 days	95 days

2nd QUARTER 2010

Time in Process	BOUMAN		NON-BOUMAN		Total	
121 to 199 days	2	50 %	1	20 %	3	33 %
90 to 120 days	0	0 %	1	20 %	1	11 %
Fewer than 90 days	**2**	**50 %**	**3**	**60 %**	**5**	**56 %**
Total	4 cases		5 cases		9 cases	

During the second quarter of 2010, three cases exceeded 120 days in the equity process. Two were Bouman cases.

IAB # 2262743 took 155 days to complete. The investigation was delayed in the intake process for approximately 42 days. Approximately 14 days were due to the complainant's unavailability. The remaining delay was caused in part by the case's complexity and having a criminal component being separately investigated and in part to what appears to have been a temporary overload in assignments to the intake specialist to whom it was assigned. It also took 87 days to investigate the matter resulting in two large volumes of investigative materials, 6 days for the administrative process, and 20 days for the EOP to hear the case. The EOP is working with the Equity Commander and the Intake Specialist Unit to find ways to streamline the intake process and to ensure the proper distribution of assignment in order to limit delays in the future.

IAB # 2263267 took 123 days in the POE process and was a rather minor email case which did not warrant the priority of more pressing investigations.

IAB # 2257967 was a non-Bouman which took 136 days in the POE process. This matter was delayed 52 days in intake and the investigation process due to the subject being off on IOD. The Subject was interviewed upon returning to work.

NOTE: "Bouman case" designation means that the equity case involves harassment or discrimination based upon sex, gender, or sexual orientation (excluding same sex male-on-male allegations) and must involve a sworn Department member as either a complainant or subject. Bouman cases also include supervisory responses and retaliation of sworn parties.

EOP
Recommendations

The EOP has made three previous recommendations to assist the Sheriff's Department in the two-fold goal of fully implementing the POE and effecting an organizational culture change based on the philosophy of Respect-Based Leadership (RBL). Recommendation (24.1) regarding a Department-wide audit to ensure that all employees have had the eight-hour RBL training is complete. The second part of the recommendation suggests that all employees have updated RBL training every two years. Implementation of the LMS system is the identified remedy for implementation of recurring sexual harassment prevention training for all employees. Recommendation (25.1) is being addressed as a work in progress. In this quarter, we have added a recommendation (30.1) that the Department explore the creation of a blogging policy which clearly sets forth the Department's expectations with respect to the use of this technology and its potential for negatively impacting the workplace especially with respect to the POE. The EOP welcomes the opportunity to work in partnership with the Department in working towards the formation of such a policy.

	RECOMMENDATION	STATUS/COMMENTS
24.1	Conduct a Department-wide audit to ensure that all employees, both supervisors and non-supervisors, have had the initial eight-hour RBL training and that all employees have had some RBL training within the past two years.	The audit has been addressed. Recommend "Early Warning System (EWS)" be added to RBL and AB 1825 Equity Training Data Base. EWS is part of the LMS package. Also recommend to unit commanders that equity training records be audited for delinquencies during command inspections. LMS content and software being tested in June 2010. Per Leadership and Training Division, projection date for completion and **implementation is approximately July 2010**.

25.1	Develop and implement a **Policy of Equality Training Plan** specific to professional staff, particularly at the supervisory and management level. There are several recent cases in at least five divisions involving professional staff who are alleged to have failed to report potential POE violations and/or who are alleged to have retaliated against reporting parties by moving them from their work location. In many instances, the professional staff have received RBL and AB 1825; however, due to the infrequent opportunities to use the skills and training in POE situations coupled with their primary focus on the business side and necessity of their duties, all professional staff supervisors and managers would benefit from the opportunity to be trained on a more frequent basis. An equity primer or check list is being developed by EOP members who have also offered to attend specific supervisor/manager training sessions. The Panel will coordinate with the Equity Commander.	Action plan developed by Administrative Services Division, Leadership and Training Division, and Intake Specialist Unit. A team of division representatives and ASD will develop a core ground of facilitators to teach RBL within the division. "Policy of Equality Best Practices" provided in Attachment A.
27.1	Develop and implement equity specific issue training materials, including a video and workbook that addresses the complicated issues of gender discrimination and sexual harassment.	EBD and RBL staff met with Equity Commander and EOP. Work in Progress.

29.1	Subject matter experts review/update RBL training and provide facilitators quarterly training.	Work in progress.
29.2	Every unit/bureau/facility select a designated sergeant or professional staff supervisor to be the "point person" for equity issues and training in their unit	The Panel will be meeting with the Equity Commander to explore the Department's direction with respect to this recommendation.
30.1	The Department should explore the possibility of creating a blogging policy which clearly sets forth the Department's expectations with respect to the use of such technology in a manner which does not negatively impact the workplace, especially with respect to the POE.	The Panel has met with the Equity Commander to discuss the potential need for such a policy and is prepared to continue to partner with the Department toward the development of such a policy. Complementary Law Seminar on "blogging and the law" will be offered again in October 2010, by Lewis Brisbois Bisgaard & Smith, LLP. The Equity Commander and other Department executives interested in this topic will be invited to attend.

ATTACHMENT A

March 2010

Los Angeles County
Sheriff's Department

Policy of Equality Best Practices

Proactive Managing to Prevent POE Investigations:

- Ensure each employee under your command clearly understands the Policy of Equality; most importantly, your expectations.
- Ensure each supervisor under your command recognizes his/her duty to monitor and report any potential violations in the work place.
- Do not engage in a conduct which may violate the POE, even in a joking manner.
- Be clear to others that you will not allow any conduct that potentially violates the POE. Silence is consent.
- Monitor emails in your workplace, including your own, for any potential POE violations. Report potential violations to ISU whether or not someone has complained about them.
- If you observe or hear about a behavior that may be a violation of POE, you are required to call ISU as soon as possible. Do not wait for someone to make a formal complaint.
- If an employee reports behavior to you that is a violation of the POE, as a supervisor/manager, you **must** report it even if the employee asks not to report, or insists there should be no report.
- Never threaten, punish, criticize, or chastise an employee for engaging in protected activity, i.e., reporting to the ISU directly, filing a claim, participating in an investigation, etc.

- Do not conduct your own investigation or attempt to determine whether equity related conduct rises to the level of a violation of the POE.

- If an employee asks to speak to you, do not "caution" them that you do not want to hear about anything that might cause you to have to file a report. Any employee coming to you for advice and counsel deserves to have your support and guidance whether it is POE situation or for any other issue. The Ombudsperson's Unit is also available to answer questions from employees.

- It is strongly recommended that each unit commander provide a POE brainbook and/or place all POE related training documents on the shared files, i.e., the POE policy handouts, training and educational material, supervisor's training videos, etc. Include issues or trends unique to your unit thereby further enhancing employees' knowledge and understanding of the POE process.

- Call ISU for clarification relating to any potential POE violations.

- Select a sergeant and/or professional staff supervisor to attend RBL facilitator training. They can oversee the POE brainbook process and be your "point person" for equity training in your unit.

- Walk the walk and talk the talk. We lead by example.

When a Violation or Potential POE Violation Occurs:

- If you receive an equity-related complaint, oral or written, call the Intake Specialist Unit for further instructions.

- Do not question the Involved Party/Potential Subject about the allegations.

- Do not ask complainants whether they did anything to elicit the unwanted response or if they participated in the conduct.

- Do not ask the complainant to write out the complaint.

- Do not question witnesses about allegations.

- Your duty as a supervisor or manager is to complete the POE notification and report it to the ISU immediately.

- Prepare a POE Notification based on the information reasonably available from a complainant the same day you receive the complaint.

- Let other supervisors who may have been present during a POE incident know that the POE has been filed.

- Separate the complainant from Subject/Involved party without punishing either.

- Do not force the Complainant and Involved Party/Subject to work together during the pendency of the investigation if either indicates they are uncomfortable or concerned for their well being.

- Do not move complainants from their assignment, desk location, shift or other conditions of employment even if they ask you to, without consulting with ISU or the Equity Commander.

- Do not discuss the specifics of the claim with others unless there is a business need-to-know. It is appropriate for shift supervisors to be made aware, excluding the confidential details, that a POE situation has occurred so they can monitor the environment to prevent retaliation.

- Ensure admonitions are made to prevent retaliation as well as to prevent the investigation from being discussed in the workplace.

- During and after the investigation, monitor the work environment to prevent the problem from recurring and to prevent retaliation.

- Conduct briefings and distribute information on applicable POE provisions to your unit.

- Never threaten, punish, berate or otherwise chastise an employee for engaging in protected activity, i.e., reporting to the ISU directly, filing a claim, participating in an investigation, etc.

- Do not conduct your own investigation or attempt to determine whether equity related conduct rises to the level of a violation of the POE.

- Do not give opinions as to whether something is or is not discrimination or harassment under the law. That is for a judge or jury to decide. The Department is only responsible for determining whether its own policy has been violated. The Equity Oversight Panel will determine findings as to whether POE violations occurred and make recommendations accordingly.

- Walk the walk and talk the talk. We lead by example.

After the Complaint is Reported, Investigated, and Heard by EOP:

- After the investigation is complete and has been heard by the EOP, monitor the work environment to ensure the problem is not recurring.
- Distribute applicable POE provisions and re-brief your unit.
- Do not threaten, punish, berate or otherwise chastise an employee for engaging in protected activity, i.e., reporting to the Intake Specialist Unit directly, filing a claim, participating in an investigation, etc.
- Do not give opinions as to whether something is or is not discrimination or harassment under the law. That is for a judge or jury to decide. The Department is only responsible for determining whether its own policy has been violated. The Equity Oversight Panel will determine findings as to whether POE violations occurred and make recommendations accordingly.
- Do not allow the subject to write a performance evaluation for the complainant either during the time period that the investigation is pending or immediately after it has been concluded.
- As the Unit Commander, separately bring in the parties to the investigation once the case has been heard by the Equity Oversight Panel. Do not disclose confidential information or violate the POBR; however, you can provide an overview of the points made by the Panel during the hearing as well as the information you shared with the Panel on behalf of involved employees. This is the opportunity to reinforce your expectations for respectful conduct and professionalism in the workplace. It is your opportunity to move everyone forward and get past the POE process in a positive manner.

ATTACHMENT B

[illegible]

COUNTY OF LOS ANGELES

SHERIFF'S DEPARTMENT

" A Tradition Of Service"

DATE November 18, 2009

OFFICE CORRESPONDENCE FILE NO.

FROM: ERIC K. HAMILTON, COMMANDER
OFFICE OF THE UNDERSHERIFF

TO: ALL UNIT COMMANDERS

SUBJECT: **EQUITY OVERSIGHT PANEL (EOP) HEARINGS**

As the Department Equity Commander, I have a sincere and deeply held interest in the effectiveness and credibility of the Policy of Equality (POE) process. I am committed to ensuring a credible process which benefits the Department and all of its members. I am also committed to improving the process wherever possible. To that end, I am offering some suggestions, a checklist perhaps, to Unit Commanders that will improve the EOP hearing process and the ultimate quality of the resulting POE cases.

- ❑ Read all case material and related documents. Be prepared to discuss your assessment of the facts of the case and potential corrective action.
- ❑ Review the involved employees' disciplinary and work histories.
- ❑ When possible, have the concerned Division Chief or Commander attend the hearing.
- ❑ Confer with your Chief and/or Commander regarding their assessment of the case.

The Panel will give an overview of the case's factual pattern and give findings and recommendations for corrective action. At this point, the Panel is very interested in the Unit Commander's input about the case, the involved personnel, and the recommended discipline, if applicable. The Unit Commander has a unique perspective and is often the person most knowledgeable about the incident and those involved. This invaluable information is welcomed and it can only improve the process.

Please feel free to contact either myself or Lieutenant David Whitham of the Bureau of Labor Relations and Compliance at (323) 526-5612 if you have any questions or concerns about this important matter.

EKH:DW:dw

ATTACHMENT C

Policy of Equality (POE)

Electronic Communications Unit Commander Checklist

The Policy of Equality is intended to preserve the dignity and professionalism of the workplace as well as protect the right of employees to be free from discrimination, harassment and retaliation.

The Policy applies to the use of any Departmental communication system or equipment, including but not limited to; e-mail, internet, intranet, JDIC, telephone lines, computers, facsimile machines, photo copy machines, voice mail, radio and mobile digital terminals.

In addition to supervisors and managers' responsibilities identified in the Policy, Unit Commanders should ensure appropriate measures are taken to address electronic communication misuse within units of assignments.

Use the following checklist to indicate actions taken at your unit to address electronic communication/ computer misuse:

- ☐ Supervisors are actively monitoring the work environment for computer misuse.
- ☐ I personally communicate with supervisors, sworn and professional staff about computer misuse issues.
- ☐ My expectations regarding appropriate use of LASD computer equipment and sanctions applied when violation are discovered have been codified in a unit order, etc.
- ☐ My unit issues regular warnings to staff about consequences of electronic communication misuse including; individual accountability and discipline for violations, loss of Department resources, liability, loss of productivity and the direct conflict with our Core Values.
- ☐ Supervisors have been added to every user group within my command.
- ☐ Supervisors continually re-brief the Policy of Equality and log APIS rosters into the Learning Management System (LMS).
- ☐ Supervisors initiate random computer checks when observing employees using County owned electronic equipment.
- ☐ I regularly send e-mail warnings to staff reminding them not to engage in inappropriate e-mail communication. I review and remove computer access as appropriate to the Department needs and/or when founded misconduct occurs.
- ☐ I have initiated targeted computer audits for previous violators.
- ☐ All supervisors have viewed the POE supervisor e-mail training video.
- ☐ Additional actions _____

The checklist shall be provided on a quarterly basis to the Bureau of Labor Relations and Compliance, attention Equity Commander. Refer to Sheriff's Bulletin #575.

Date _____ Signature of Unit Commander _____

Unit of Assignment _____ Printed Name of Unit Commander _____

Revised 02-05

ATTACHMENT D

(Excerpt from the EOP 28th Quarterly Report)

"Everything Is Okay Until It's Not Okay"

Department members who attend hearings before the EOP have often heard the Panel caution "everything is ok, until it is not ok." Some recent investigations have demonstrated that this old adage may be alive and well among some Department personnel. Employees and some supervisors in particular, have made themselves vulnerable to POE charges by engaging in conduct that is in violation of the POE under the mistaken impression that it is "ok" because no one appears to be offended by their conduct. Often this is because others are engaged in similar conduct or no one is complaining. The problem with this approach is that the conduct may be in fact a violation of the POE, regardless of whether or not anyone is complaining or is offended. For purpose of the POE, the Department is offended and if the violation is reported and is determined to be founded, that person will be disciplined regardless of whether anyone else was offended or not. This is a fundamental way that the POE is different and has a higher standard than both federal and state law.

We often see this come up in investigations when one employee complains about another employee's conduct and then the subject complains about everything they know the complainant has done in the past that may have violated the POE. We sometimes see this when a supervisor is about the discipline an employee, gives the employee a less than stellar evaluation or is called upon, as a mandated reporter, to report a potential POE violation. All of a sudden, conduct that has long been tolerated and/or accepted by the subordinate in the past is no longer "okay" and the subordinate often charges that they were in fact offended by the past conduct but did not report it because the person was their supervisor and the subordinate was afraid of possible retaliation for not going along with the conduct.

Often in this situation, the supervisor is left feeling ill treated because they believe the subordinate is only raising the past conduct to get out of whatever they may have done wrong or

somehow in retaliation for the supervisor's having reported the subordinate's own bad conduct. We see this in particular when a supervisor is called upon to "clean up" a unit by holding everyone to the expected standards that may have been relaxed. These supervisors can be especially vulnerable and need to be particularly careful they are operating within the POE guidelines or they will themselves predictably become the subjects of a POE charge.

Even when the EOP and the Department recognize that in any given investigation, the employee's complaint against their supervisor is motivated by a less than proper motive, neither the EOP nor the Department representatives can ignore that the supervisor has been involved in conduct that violates the POE.

We have also reviewed cases in which the subject and complainant have a prior relationship as friends or a romantic relationship. During that prior relationship certain behavior took place, usually comments, which violated the POE but was not reported because both parties viewed the activity as acceptable due to their romantic relationship or friendship. Then circumstances change. The romantic relationship may end. Or one friend takes the implied license to make teasing comments a step too far, and says something that seriously hurts the other person's feelings. We have seen this happen in cases where the comment or behavior was based on gender, sexual behavior, sexual orientation, race, religion, disability, age or national origin.

This problem is exacerbated when the relationship or friendship is between Department members of different rank. The greater the disparity in rank between the subject and complainant, the greater the increase in severity of misconduct and likely discipline.

To avoid becoming a subject in such a way, each Department member must remember that the POE prohibits certain behavior. There is no exception for behavior between two or more friends, for people involved in a romantic relationship, and particularly if there is a difference in rank of the involved parties.

Additionally, the risk of third party harassment is always present. This charge is taken very seriously by the EOP and the Department because it is so important to providing a bias free workplace for all employees. Department members who are friends may think it is funny to exchange comments about each other's ethnic backgrounds. But the person walking through the door, or sitting at the other desk may not think it is funny at all. Being exposed to inappropriate comments or behavior is enough to support a charge and a finding of third party harassment or of inappropriate conduct.

Therefore, employees and in particular supervisors, should be trained not to rely on whether or not they believe anyone is actually offended by their conduct. Instead, their conduct must be guided by the Policy of Equality itself. Conduct that is a violation of the POE is never "OK". To do otherwise will leave you vulnerable to future claims and in the case of supervisors will hamper their ability to effectively and freely supervise their subordinates.

ATTACHMENT E

OCTOBER TERM, 2009

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

CITY OF ONTARIO, CALIFORNIA, ET AL. *v.* QUON ETAL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 08-1332. Argued April 19, 2010—Decided June 17, 2010

Petitioner Ontario (hereinafter City) acquired alphanumeric pagers able to send and receive text messages. Its contract with its service provider, Arch Wireless, provided for a monthly limit on the number of characters each pager could send or receive, and specified that usage exceeding that number would result in an additional fee. The City issued the pagers to respondent Quon and other officers in its police department (OPD), also a petitioner here. When Quon and others exceeded their monthly character limits for several months running, petitioner Scharf, OPD's chief, sought to determine whether the existing limit was too low, *i.e.,* whether the officers had to pay fees for sending work-related messages or, conversely, whether the overages were for personal messages. After Arch Wireless provided transcripts of Quon's and another employee's August and September 2002 text messages, it was discovered that many of Quon's messages were not work related, and some were sexually explicit. Scharf referred the matter to OPD's internal affairs division. The investigating officer used Quon's work schedule to redact from his transcript any messages he sent while off duty, but the transcript showed that few of bis on-duty messages related to police business. Quon was disciplined for violating OPD rules.

He and the other respondents—each of whom had exchanged text messages with Quon during August and September—filed this suit, alleging, *inter alia,* that petitioners violated their Fourth Amendment rights and the federal Stored Communications Act (SCA) by obtaining and reviewing the transcript of Quon's pager messages, and that Arch Wireless violated the SCA by giving the City the transcript. The District Court denied respondents summary judgment on the

constitutional claims, relying on the plurality opinion in *O'Connor* v. *Ortega,* 480 U. S. 709, to determine that Quon had a reasonable expectation of privacy in the content of his messages. Whether the audit was nonetheless reasonable, the court concluded, turned on whether Scharf used it for the improper purpose of determining if Quon was using his pager to waste time, or for the legitimate, purpose, of determining the efficacy of existing character limits to ensure that officers were not paying hidden work-related costs. After the jury concluded that Scharf s intent was legitimate, the court granted petitioners summary judgment on the ground they did not violate the Fourth Amendment. The Ninth Circuit reversed. Although it agreed that Quon had a reasonable expectation of privacy in his text messages, the appeals court concluded that the search was not reasonable even though it was conducted on a legitimate, work-related rationale. The opinion pointed to a host of means less intrusive than the audit that Scharf could have used. The court further concluded that Arch Wireless had violated the SCA by giving the City the transcript.

Held: Because the search of Quon's text messages was reasonable, petitioners did not violate respondents' Fourth Amendment rights, and the Ninth Circuit erred by concluding otherwise. Pp. 7—17.

(a) The Amendment guarantees a person's privacy, dignity, and security against arbitrary and invasive governmental acts, without regard to whether the government actor is investigating crime or performing another function. *Skinner* v. *Railway Labor Executives' Assn.,* 489 U. S. 602, 613-614. It applies as well when the government acts in its capacity as an employer. *Treasury Employees* v. *Von Raab,* 489 U. S. 656, 665. The Members of the *O'Connor* Court disagreed on the proper analytical framework for Fourth Amendment claims against government employers. A four-Justice plurality concluded that the correct analysis has two steps. First, because "some [government] offices may be so open ... that no expectation of privacy is reasonable," a court must consider "[tjhe operational realities of the workplace" to determine if an employee's constitutional rights are implicated. 480 U. S., at 718. Second, where an employee has a legitimate privacy expectation, an employer's intrusion on that expectation "for non investigatory, work-related purposes, as well as for investigations of work-related misconduct, should be judged by the standard of reasonableness under all the circumstances." *Id.,* at 725-726. JUSTICE SCALIA, concurring in the judgment, would have dispensed with the "operational realities" inquiry and concluded "that the offices of government employees . .. are [generally] covered by Fourth Amendment protections,'[7] *id.,* at 731, but he wouid also have held "that government searches to retrieve work-related materials or

to investigate violations of workplace rules—searches of the sort that are regarded as reasonable and normal in the private-employer context—do not violate the ... Amendment," *id.,* at 732. Pp. 7-9.

(b) Even assuming that Quon had a reasonable expectation of privacy in his text messages, the search was reasonable under both *O'Connor* approaches, the plurality's and JUSTICE SCALIA's. Pp. 9—17..

(1) The Court does not resolve the parties' disagreement oveir Quon's privacy expectation. Prudence counsels' caution before the facts in this case are used to establish far-reaching premises that define the existence, and extent, of privacy expectations of employees using employer-provided communication devices. Rapid changes in the dynamics of communication and information transmission are evident not just in the technology itself but in what society accepts as proper behavior. At present, it is uncertain how workplace norms, and the law's treatment of them, will evolve. Because it is therefore preferable to dispose of this case on narrower grounds, the Court assumes, *arguendo,* that: (1) Quon had a reasonable privacy expectation; (2) petitioners' review of the transcript constituted a Fourth Amendment search; and (3) the principles applicable to a government employer's search of an employee's physical office apply as well in the electronic sphere. Pp. 9—12.

(2) Petitioners' warrantless review of Quon's pager transcript was reasonable under[1] the *O'Connor* plurality's approach because it was motivated by a legitimate work-related purpose, and because it was not excessive in scope. See 480 U. S., at 726. There were "reasonable grounds for [finding it] necessary for a non investigatory work-related purpose," *ibid.,* in that Chief Scharf had ordered the audit to determine whether the City's contractual character limit was sufficient to meet the City's needs. It was also "reasonably related to the objectives of the search," *ibid.,* because both the City and OPD had a legitimate interest in ensuring that employees were not being forced to pay out of their own pockets for work-related expenses, or, on the other hand, that the City was not paying for extensive personal communications. Reviewing the transcripts was an efficient and expedient way to determine whether either of these factors caused Quon's overages. And the review was also not "excessively intrusive." *Ibid.* Although Quon had exceeded his monthly allotment a number of times, OPD requested transcripts for only August and September 2002 in order to obtain a large enough sample to decide the character limits' efficaciousness, and all the messages that Quon sent while off duly were redacted. And from OPD's perspective, the fact that Quon likely had only a limited privacy expectation lessened the risk that the review would intrude on highly private details of Quon's life. Similarly, because the City had a legitimate reason for the search

and it was not excessively intrusive in light of that justification, the search would be "regarded as reasonable and normal in the private-employer context" and thereby satisfy the approach of JUSTICE ScALIA's concurrence, *id.,* at 732. Conversely, the Ninth Circuit's "least intrusive" means approach was inconsistent with controlling precedents. See, *e.g., Vernoniq School Dist. 47J* y. *Acton,* 5.15 U. S..646,663. Pp. 12-16.

(c) Whether the other respondents can have a reasonable expectation of privacy in their text messages to Quon need not be resolved. They argue that because the search was unreasonable as to Quon, it was also unreasonable as to them, but they make no corollary argument that the search, if reasonable as to Quon, could nonetheless be unreasonable as to them. Given this litigating position and the Court's conclusion that the search was reasonable as to Quon, these other respondents cannot prevail. Pp. 16-17.

529 F. 3d 892, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, THOMAS, GINSBURG, BREYER, ALITO, and SOTOMAYOR, <JJ., joined, and in which SCALIA, J., joined except for Part III—A. STEVENS, J., filed a concurring opinion. SCALIA, J., filed an opinion concurring in part and concurring in the judgment.

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

PROCEDURES, PRACTICES, AND POLICIES

I. OVERVIEW OF OAAC EFFORTS TO ADDRESS EMPLOYMENT DISCRIMINATION

It is the policy of the County of Los Angeles that all complaints of employment discrimination are investigated in a timely, thorough, and effective manner. Failure to meet these standards subjects the County to potential costs of legal liability. When left unresolved, these complaints also have hidden costs that affect employees' productivity, well-being and safety.

Consistent with the County's current efforts to reduce legal exposure, the Office of Affirmative Action Compliance (OAAC) has steadily implemented the following preventive measures designed to minimize the risk associated with employment discrimination:

A. Dispute Resolution Mediation of Employment Discrimination Complaints and Cost Avoidance

In 2001, the OAAC established a Dispute Resolution Mediation (DRM) Program to resolve complaints before they become lawsuits. In DRM, the employer and the employee work together, with the assistance of a mediator, to arrive at a mutually agreeable solution. The dispute resolution mediation process promotes communication, cooperation, and restoration of relationships by negotiating amicable settlement agreements. The terms of the settlement vary and do not always involve monetary concession. Some settlements involve simple solutions such as adjustment of work schedules, reasonable accommodations, sensitivity training on diversity issues in the workplace, etc. Mediated settlement agreements absolve the County of any further legal liability and require a full investigation be conducted to determine if an employee has violated County policy.

Information on "Why County Departments Should Use Mediation"; "Measuring the Cost of Conflict Involving Employment Discrimination"; and "Customer Satisfaction Survey Results" is located in Tab 3.

B. OAAC Equal Employment Opportunity, Civil Rights Training and Focus Groups

1. Training

Sexual Harassment, Employment Discrimination Prevention, and Disability Reasonable Accommodation related training is provided to all County employees on a regular basis in accordance with County and/or State regulations. In October 2010, the OAAC will introduce new E-Learning

internet-based Sexual Harassment Prevention Training (curriculum located in Tab 4) that focuses on the duties and responsibilities of County employees to prevent and report sexual harassment behavior. A detailed description of all OAAC's training courses is listed in the *OAAC's Training Guide: Keys to Compliance,* located in Tab 4.

2. Focus Groups

Focus groups are group interviews of target audiences (e.g., managers, supervisors, line staff) facilitated by a neutral third party to solicit cross-sections of opinions, perceptions, and recommendations related to employment discrimination issues impacting the workplace. Conducting focus groups is an effective risk aversion tool offered as a means of assisting departments to assess and constructively respond to employee diversity conflicts. Information on the focus group process is located in Tab 4.

C. An Effective Employment Discrimination Complaint Process

Over the past ten years, the OAAC has implemented a new complaint process with enhancements to meet the County's obligation to investigate complaints in a more timely, thorough, and effective manner. In 2003, the County's complaint process began to transition to a centralized shared services model with standardized policies and procedures consistent with Equal Employment Opportunity (EEO) investigative requirements. The shared services model delegates employment discrimination investigations responsibility to the OAAC. Currently the OAAC is responsible for conducting investigations for over 90% of the County workforce.

During this time, the investigations staff has increased from 5 Deputy Compliance Officers (DCOs) with monitoring responsibilities to a current staff of 27 DCOs responsible for hands-on investigations. For fiscal year (FY) 2009-10, the OAAC received and assessed 1,096 complaints alleging employment discrimination, of which 620 required investigations. Additionally for FY 2009-10, the OAAC conducted 140 dispute resolution mediation sessions, successfully resolving 88 or 63% of the mediated cases.

See Tab 7 graph.

II. OAAC'S EMPLOYMENT DISCRIMINATION COMPLAINT PROCESS

The purpose of the County's Employment Discrimination Complaint Process is to ensure that Los Angeles County meets its obligations to investigate complaints and reports of employment discrimination, harassment, and retaliation. The complaint process is designed to ensure investigations are timely and thorough, and appropriate corrective action is taken when violations of policy are found.

OAAC PROCEDURES, PRACTICES, AND POLICIES

The Complaint Process promotes the use of "dispute resolution" mediation as a method to resolve complaints and avoid the adversarial outcomes of litigation. Dispute resolution mediation further provides the opportunity for management and employees to engage in a dialogue to reconcile and improve fractured work relationships caused by employment discrimination issues.

The County's Employment Discrimination Complaint Process satisfies federal, State, and County regulations and policies for investigating employee complaints of discrimination. The County's complaint process is designed to:

- Immediately stop reported discriminatory harassment and retaliation, and prevent reoccurrence.
- Inform employees of their rights and responsibilities, and requires that a confidential, prompt, and thorough investigation be conducted.
- Implement appropriate corrective/disciplinary action when violations occur and take proactive remedial steps (i.e., training, policy changes, etc.) to prevent reoccurrence of discrimination, harassment, and/or retaliation.
- Conduct neutral investigations by centralized knowledgeable staff.
- Advise Complaining Parties (CP) and Subject of the Investigations (SOI) of the outcome of the investigation.

A. Intake Assessment and Triage

1. Reporting Complaints

County employees or applicants who believe they have been subjected to conduct that violates the County's EEO policies, or non-supervisory employees who have knowledge of possible discrimination, can report the matter to any County departmental supervisor or manager, departmental Affirmative Action Coordinator or Human Resources Manager, or the OAAC. Employees or applicants can also call the OAAC's employment discrimination complaint hotline at (213) 974-1251, or file a complaint online by visiting the OAAC's website at http://oaac.co.la.ca.us, or by U.S. mail.

County employees may also file their complaint with an external civil rights enforcement agency, such as the California State Department of Fair Employment and Housing (DFEH) or the United States Equal Employment Opportunity Commission (EEOC). The DFEH can be contacted at (800) 884-1684 or via their website at www.dfeh.ca.gov and the EEOC can be

contacted at (213) 894-1000 or (800) 669-4000 or via their website at www.eeoc.gov.

a. Duty to Report

Managers and supervisors have an affirmative duty to immediately report potential violations of the County's EEO policy to their Affirmative Action Coordinator or department's Human Resources Manager upon notification of a complaint or direct observation or knowledge of possible discriminatory conduct. All managers and supervisors are instructed of their duty to report in mandatory Sexual Harassment Prevention and Employment Discrimination Prevention Training. The OAAC has further strengthened the duty to report requirement in the new E-Learning Sexual Harassment Prevention Training for managers and supervisors. Once the department becomes aware of the complaint, it is required to inform the OAAC within two business days of receipt.

2. Intake Assessment and Case Classification

The OAAC has established a "Case Classification" procedure to determine if an employment discrimination complaint is jurisdictional and must be investigated. Under this procedure, the DCO conducts an intake assessment within 15 business days of receipt of the complaint and completes an Intake Assessment Form (located in Tab 1).

a. The intake assessment procedure includes, but is not limited to:

- Reviewing the complaint form and supporting documentation;
- Gathering and reviewing relevant documents;
- Interviewing the CP to obtain specific information about the alleged conduct; and
- Determining if there is a causal connection between the alleged act of harm and a protected basis.

During the intake assessment interview, the Deputy Compliance Officer provides the CP an overview of the investigative process and timeframes for completing the investigation process.

b. Effective October 2010, the OAAC will implement the following new intake assessment procedures:

- The CP is notified in writing of the investigative process and timeframe for completing the investigation using the "Acknowledgment of Complaint" letter located in Tab 1.

- The CP is notified in writing should the investigation extend beyond the stated timeframe using the "Investigation Status" letter located in Tab 1.

- The CP will be provided a DRM Program informational brochure (located in Tab 3), along with the "Acknowledgment of Complaint" letter, explaining their option to elect the OAAC's voluntary DRM process to resolve their concerns. The brochure clearly states that an investigation will be conducted regardless of their decision to use the DRM process.

3. Determining Jurisdiction

The DCO analyzes the documentation and testimonial information and assigns the complaint a numeric designation of Class 1 or Class 2 as defined below:

a. Class 1: Jurisdictional - Contains sufficient information to warrant OAAC investigation.

The "elements" of the prima facie (meaning *"at first look"* or *"on its face")* case are specific to the type of allegations being investigated. The prima facie elements of a specific type of complaint must include the following three components:

- The CP must be a member of at least one of the protected classes (race, sex, etc.) enumerated in the County's EEO Policy, OAAC's EEO Policy Guidance Volume 1: Equal Employment Opportunity, and OAAC's EEO Policy Guidance Volume 2: Elements of Proof (located in Tab 2).

- The CP's allegations must include being subjected to conduct which is prohibited by the County's EEO Policy, or the OAAC's EEO Policy Guidance; and

- There must be a demonstrable causal connection or causal link between the CP's membership in the protected class and the wrongful conduct to which he/she was subjected.

⇨ Hostile Work Environment Allegations

The DCO immediately assesses all hostile work environment allegations to determine if it is necessary to separate the CP from the SOI. In all hostile work environment complaints, SOIs are admonished of their responsibility to not retaliate, contact or communicate with the CP, and to stop the behavior if it is occurring. If there is a requirement to separate the parties, the preference is to move the SOI to another temporary work location, pending the outcome of the investigation. In special circumstances, where there may be a legitimate business reason the SOI cannot be relocated, the CP is asked if they will consider temporary relocation.

Failing to separate a CP from an alleged harasser may subject the County to strict liability because management was aware or should have been aware of the alleged conduct and failed to act.

⇨ Using "Elements of Proof"

Concurrent with determining the jurisdiction of the complaint, the DCO also identifies the applicable theory of employment discrimination alleged by the CP using the OAAC's "Policy Guidance Volume 2: Elements of Proof." These "Elements of Proof" are based on industry investigatory standards used by the EEOC and DFEH.

⇨ CP's Requested Remedy

Effective October 2010, a new standard operating procedure will require the DCO to ask the CP what their requested remedies are to resolve the CP's issues. The stated remedies will be noted on the Intake Assessment Form and a copy will be included in the referral to the DRM process.

b. Class 2: Non-jurisdictional - Does not contain sufficient information to warrant OAAC investigation as defined by the OAAC's EEO Policy Guidance. Examples include the following:

- The CP presented information concerning a protected basis; however, he/she did not identify any alleged act of harm;
- The CP did not show a link or nexus between the alleged act of harm and a protected basis; or

- The CP did not identify a protected basis (complaint may be tied to employee relations or other types of issues).

The assigned DCO submits an Intake Assessment Form to the Senior Deputy Compliance Officer (Senior DCO) for review and approval. The Senior DCO discusses any questions or concerns regarding the Intake Assessment Form with the assigned DCO. If necessary, the Senior DCO may ask the DCO to obtain additional information and/or revise the Intake Assessment Form.

4. Triaging Jurisdictional Cases for Priority Investigation

Effective October 2010, the OAAC implemented a triaging procedure that identifies cases that pose high risk to the County and will be given priority investigation status. Factors that the OAAC will consider include:

a. Sufficiently egregious conduct or acts of harm;

b. CP has legal representation and makes a claim for damages; and

c. The SOI is a supervisor or manager posing strict liability.

During the triaging process, any non-jurisdictional allegation possessing serious allegations of violations of County policy (i.e., criminal conduct, whistle-blowing, and other high profile issues) will be referred to the Chief Executive Officer, Director of Personnel, Auditor-Controller, and/or the affected Department Head. These matters will require the review and approval of the Director of the OAAC.

5. Jurisdictional Cases Identified as "High Risk" at Intake

During the intake assessment, a case may be identified as high risk by the DCO. The DCO will submit the case to the Senior DCO for review and approval as a designated high risk case. Upon approval by the Senior DCO, the high risk case is referred to the OAAC Risk Manager using the "Notification of Potential Liability" memo located in Tab 1.

The OAAC Risk Manager makes a determination as to the course of action for processing the designated high risk complaint (i.e., conduct a risk management assessment, convene a Roundtable, recommend priority investigation, etc).

6. Notification of Complaint Assessment

a. Department Notification

After the Senior DCO approves the intake assessment, the DCO provides written notice to the department of Class 1: Jurisdictional complaints using "Jurisdictional Assessment" memo (located in Tab 1) and Class 2: Non-jurisdictional complaints using the "Non-jurisdictional Assessment" memo (located in Tab 1).

All Class 2: Non-jurisdictional complaints are referred back to the respective department for review and follow-up action regarding the non-jurisdictional employee relations issues. In the written notice to the department, the DCO is responsible for recommending departmental review of other possible County policy violations. When appropriate, the DCO, with the concurrence of the Senior DCO, also recommends preventive and corrective measures.

b. CP Notification

When the complaint is determined jurisdictional, the DCO notifies the CP in writing of the investigative process and timeframe for completing the investigation using the "Acknowledgment of Complaint" letter.

When the complaint is non-jurisdictional, the DCO provides written notice to the CP using the "Letter of Determination – Non-jurisdictional" is located in Tab 1 which also serves as the CP's notice of case closure.

The intake assessment process, including Senior DCO review and approval, should not exceed 15 business days, unless the DCO receives prior approval from the Senior DCO.

7. Dispute Resolution Mediation Referral

After the Senior DCO approves a Class I: Jurisdictional complaint, the complaint is forwarded electronically to DRM Program using the OAAC's Investigations Tracking Management System (ITMS) database. Effective October 2010, the OAAC changed its process to conduct investigations simultaneously with dispute resolution mediation.

B. Dispute Resolution Mediation Process

1. Internal Voluntary Mediated Complaints

a. All jurisdictional complaints filed internally with County departments or the OAAC are referred to the DRM Program for voluntary dispute resolution mediation.

b. The assigned DCO provides in writing to the CP and the department (parties) an "Invitation to Mediate" letter (located in Tab 3). The DCO has 10 business days to secure voluntary election of dispute resolution mediation from the CP and County department. If no response is received within 10 business days, the mediation file is closed and the Investigations Division is notified electronically in the ITMS database.

c. Upon election by both parties, the Senior DCO assigns a neutral mediator selected from the Executive Office Board of Supervisors Master Agreement for Hearing Officers. OAAC selected six mediators from this panel based on their experience and knowledge of Title 7, Fair Employment and Housing Act (FEHA), and employment discrimination law. The assigned mediators are used exclusively for the OAAC's program and do not serve as Civil Service Commission Hearing Officers. The majority of mediators are practicing attorneys and all have extensive experience in dispute resolution and are professional mediators. A listing of mediators is located in Tab 3.

d. When both parties elect dispute resolution mediation, the DCO schedules and completes the dispute resolution mediation process within 30 business days from the date the DRM Program receives the referral.

e. When both parties elect dispute resolution mediation, a session is convened. Departments are represented by management and the CP may have a representative (i.e., relative, friend, union, etc.) present. On occasions when a CP has legal representation, OAAC notifies departments to have County Counsel present representing the County department.

f. Prior to the actual dispute resolution mediation session, the DCO provides department management County Counsel if necessary, and the assigned mediator a copy of the CP's allegations, complaint form, and requested remedy. If necessary, the DCO coordinates a pre-dispute resolution mediation meeting (pre-meet) prior to the actual date of the dispute resolution mediation session.

g. Monetary demands above $5,000 require a consultation with the OAAC Risk Manager prior to the session. The Risk Manager determines if a Roundtable with County Counsel is necessary to ensure if monetary settlement at this point is warranted. Any monetary demand above $5,000 requires approval by both the department management and County Counsel. It is important to note that 95% of the complaints that are settled in dispute resolution mediation do not involve monetary demands.

h. During the dispute resolution mediation session, the DCO functions as a neutral representative; assists the mediator in moving the parties toward resolution; answers questions regarding the DRM process and County policy; caucuses with both the CP and department management, as required; suggests solutions and assists the mediator in drafting No-Fault Settlement Agreements and reviews the terms to ensure compliance with County policy and Civil Service Rules.

i. During the dispute resolution mediation session, the mediator facilitates the dialogue between the department and CP. The mediator clearly defines the issues in dispute, guides the communication process, helps the participants explore resolution options, and facilitates an outcome which meets the specific interests of the parties involved. The mediator lays out the following ground rules all parties must agree to before the dispute resolution mediation session begins:

   - Signing a mandatory "Confidentiality Agreement" (located in Tab 3);
   - Stopping the session at anytime;
   - Agreeing to participate in the OAAC investigation process regardless of the outcome of the session to determine if County policy has been violated;
   - Accepting the No-Fault Settlement Agreement as legally binding, eliminating any future legal claims against the County involving the CPs allegations; and
   - Complying with the terms of the Agreement.

j. All No-Fault Settlement Agreements require the approval of the Director of the OAAC. Once the Agreement is fully executed, the dispute resolution mediation file is closed and the Investigations Division DCO will be notified electronically in the ITMS database. The DCO conducts follow-up with the department to determine compliance with the terms of the Agreement.

k. If mediation is not successful, an *impasse* will be declared by the mediator and the dispute resolution mediation file will be closed and the Investigations Division DCO will be notified electronically in the ITMS database.

2. External Voluntary Mediated Complaints

a. Complaints filed with EEOC or DFEH are also offered voluntary pre-investigation mediation, which is coordinated by the OAAC's DRM Program. The primary differences between the EEOC and DFEH programs and the OAAC program are as follows:

- EEOC and DFEH use their own contract professional mediators or OAAC's mediators;
- Successful mediation results in closure of the agency charge that the County may have violated State or federal law;
- The OAAC investigates the EEOC or DFEH charge regardless of the outcome of mediation to determine if County policy has been violated; and
- If an impasse occurs, the OAAC responds to the original charge.

C. Investigative Process

To ensure that investigations of discrimination, harassment, and retaliation complaints are conducted appropriately, OAAC investigators are expected to understand the "Case Analysis" system and the "Elements of Proof" required for determining whether a violation of the County's policy has occurred. Only cases that have been determined as jurisdictional require an OAAC investigation. As indicated previously, all the non-jurisdictional cases are referred back to the department for follow up action. The first step in the investigative process is for the DCO to develop an Investigative Action Plan (located in Tab 1).

1. Investigative Action Plan

The DCO develops an Investigative Action Plan for completing the investigation within 90-120 business days. The Investigative Action Plan lists the required activities for conducting the investigation and identifies the total number of days for completing each task. The purpose of the Investigative Action Plan is to provide both the Senior DCO and the DCO with a tool to track the progress of meeting the 90-120 business day investigation timeframe.

2. Case Analysis

Case Analysis is the process of gathering and evaluating evidence during the investigation of a complaint for the purpose of concluding whether such evidence is sufficient to establish a violation of County policy. For the investigating DCO, the analytical framework for analyzing, evaluating, and measuring the sufficiency of the available evidence is outlined in the OAAC's Policy Guidance Volume 1 and Volume 2. Case Analysis requires that the DCO understands and keeps informed on applicable law and legal precedents and decisions by the EEOC, DFEH, and the courts. OAAC makes sure staff stays informed through training classes, seminars and workshops attended each year.

If a complaint reveals a preponderance of credible and reliable evidence, then a violation of County policy exists and corrective action is required. The Case Analysis framework used by DCO investigators is similar to the analytical framework used by the EEOC and DFEH.

3. Steps in the Investigative Process

a. Interviewing the CP, SOI, and Relevant Witnesses

All interviews are documented by obtaining a signed affidavit. Currently only testimony from sworn employees are tape-recorded. However, effective October 2010, all interviews will be digitally-recorded and will be transcribed.

b. Gathering Evidence, Facts, and Supporting Documents

The DCO reviews all personnel files and other relevant County documents, electronic records, and other physical evidence. The DCO also requests the CP and SOI to provide any documents to support their position. The DCO reviews the ITMS database to conduct a common subject search to determine if there is a pattern of SOI conduct or a past history with the CP conduct. For complaints related to promotions or hiring, the DCO conducts statistical analysis of job examination data to determine if disparate treatment or adverse impact has occurred.

c. Conducting Credibility Assessments

In some cases, it may be difficult to reach a determination in the absence of witness statements and direct evidentiary documents. In these situations, the DCO may be required to conduct a credibility assessment of the CP, SOI, and witnesses. The factors used by the DCO in conducting credibility assessments are identified in California Evidence

Code Section 780, and the EEOC's Enforcement Guidance: Vicarious Employer Responsibility for Unlawful Harassment by Supervisors (located in Tab 1).

d. Analysis and Conclusion

The DCO analyzes all documentation, interviews, credibility assessments, and other relevant information obtained during the investigation and makes a determination, using the Elements of Proof, about whether or not a violation of County policy has occurred. The DCO prepares and submits a preliminary Report of Investigation (ROI) (located in Tab 1), supporting exhibits, and preliminary Letters of Determination (LODs) to the Senior DCO for review and approval.

e. Senior DCO Review and Approval

The Senior DCO reviews the preliminary ROI and supporting documentation. If necessary, the Senior DCO may require the DCO to conduct additional interviews, obtain additional documentation, and/or revise the ROI, accordingly. Once the Senior DCO concurs with the DCO's analysis and findings, the ROI is approved. Upon Senior DCO approval, the OAAC's investigation is complete.

f. Advising County Departments of Investigative Findings

The Senior DCO provides an approved copy of the ROI, LODs, exhibits, and recommended corrective action to the originating department management for review and comment. Department management must report back to the OAAC within 3-5 business days on any questions or concerns regarding the investigation. The OAAC withholds issuing the LODs until the designated review period ends, and the OAAC has addressed the department's concerns. If the department does not respond within the designated timeframe, the OAAC proceeds with case closure and issues LODs.

g. Case Closure

The DCO notifies each party of the outcome of the investigation using the "Letter of Determination – Jurisdictional" (located in Tab 1). The OAAC mails the LOD to the CP's and SOI's home addresses to ensure confidentiality with a copy to the department. All high risk substantiated cases are referred to the OAAC Risk Manager for review and recommendation before a final LOD is issued (see Risk Management Program section below for further details).

h. Corrective Action Plans (CAP)

When the OAAC investigation substantiates conduct in violation of the County's EEO Policy, the department is responsible for advising the OAAC of the proposed corrective and/or disciplinary action within ten business days following issuance of the LOD. Corrective action can be either discipline or other remedial action. Discipline can include written warning to discharge depending upon the severity of the violation. Remedial action can include counseling, re-briefing applicable policies, changing policies, training, reassignment, and monitoring work environment. In the past, departments were requested to provide documentation of the final corrective and/or disciplinary action. The CEO and OAAC will be issuing a memo to all department heads by the end of October 2010 that requires this documentation. OAAC will include the departmental actions as part of the file for each case.

i. Risk Management Referral

During the investigation, a complaint can become a high risk case. When this occurs, the complaint will be referred to the OAAC Risk Manager for risk assessment. The same risk factors used in the intake assessment triaging process are applied:

- Sufficiently egregious conduct or acts of harm;
- CP has legal representation and makes a claim for damages; and
- The SOI is a supervisor or manager posing strict liability.

Any non-jurisdictional allegation possessing serious allegations of violations of County policy (i.e., criminal conduct, whistle-blowing, and other high profile issues) will be referred to the Chief Executive Officer, Director of Personnel, Auditor-Controller, and/or the affected Department Head. These matters will require the review and approval of the Director of the OAAC.

It is important to emphasize that the OAAC Risk Manager's review is a separate process from the investigation. The Risk Management process runs concurrently and does not delay or prolong the OAAC investigation. It is designed to assess risk, identify opportunities for early resolution of the complaint, and to mitigate future legal cost and liability. More information is provided in the Risk Management Program section below.

j. Technical Assistance

In addition to conducting employment discrimination investigations, DCOs also provide technical assistance to departmental managers by responding to questions and requests for consultation regarding employment discrimination matters. DCOs provide guidance regarding regulatory changes, updates on emergent court decisions, and guidance on the Reasonable Accommodation Interactive Process. The OAAC provides these services to County departments to avoid future complaints and mitigate risk and legal exposure to the County.

D. Risk Management Program

1. Purpose

The OAAC established a Risk Management (RM) Program in 2007 as a best practice to ensure that County government takes all the necessary steps to minimize risk and liability involving employment discrimination complaints. The OAAC RM Program ensures that employment discrimination risk issues are effectively managed by utilizing the expertise of County Counsel's Litigation Cost Manager, Chief Executive Office Risk Manager, and department management to assess risk and liability, identify strategies to mitigate costs, and implement corrective action. The RM Program is also aligned with the Board of Supervisors efforts to minimize costs associated with all forms of potential legal liability by enhancing countywide risk management procedures, loss control and prevention programs, and development of CAPs.

In addition, the OAAC Director is a member of the Legal Exposure Reduction Committee and co-chairs the Employment Practices Subcommittee with the Director of Personnel.

2. Risk Management Process

Investigating all employment discrimination complaints in an effective, timely, and thorough manner is important; however, it is crucial that complaints that have egregious allegations with a high likelihood of being substantiated, or those that are substantiated, be a priority and assigned as a high risk case. Any complaint of employment discrimination identified as a high risk will be immediately referred to the OAAC Risk Manager for assessment.

a. A complaint may be identified as a high risk case during any of the following phases:

- Intake assessment process;
- Dispute resolution mediation process;
- Investigations process;
- Issuance of "Right-To-Sue" by State or federal enforcement agencies;
- Claims for Damages filed against the County.

3. Role of the OAAC Risk Manager

a. Identify and assess potential risk and liability of complaints of employment discrimination.

b. Advise departments of the potential risk.

c. Determine if a "Roundtable" meeting is required involving County Counsel, Department of Human Resources (DHR), Chief Executive Office (CEO) Risk Manager, OAAC, and department management.

d. Review and recommend to the OAAC Director approval of settlements.

e. Consult with departments and County Counsel on matters requiring Claims Board approval.

f. Represent OAAC at Claims Board meetings.

g. Ensure that all CAPs are effective.

h. Review all EEOC and DFEH "cause or merit" findings and recommend course of action.

i. Train departmental staff on risk management strategies.

4. Claims Board

The Risk Manager reviews and analyzes employment discrimination cases presented to the Claims Board for settlement. This includes reviewing the ROI and preparing the OAAC's position before the Claims Board. The OAAC Risk Manager works in concert with departments to ensure that Board of Supervisors-required CAP accurately addresses the employment discrimination issues. The Claims Board regularly communicates with the Risk Manager regarding OAAC's position on the proposed settlement. The

Risk Manager represents the OAAC and attends all County Claims Board meetings.

5. Roundtable Meetings

Roundtable meetings serve as a forum for review of egregious allegations of employment discrimination and facts that indicate that the discriminatory action is or will result in a probable violation of the County's Nondiscrimination Policy, and State and federal anti-discrimination employment laws. The Roundtable meetings identify remedial or disciplinary action, changes in policy and procedure, and provide the foundation for developing a formal CAP should a settlement require Board of Supervisors approval. The following are possible outcomes of Roundtable meetings:

a. No-Fault Settlement Agreement proposals;

b. Agree to engage in conciliation with EEOC and DFEH involving cause findings;

c. Continue to Dispute Resolution Mediation;

d. Monitor case during the investigation;

e. Recommended corrective and/or disciplinary action.

6. Claims for Damages

The RM Program reviews formal Claims for Damages referred by County Counsel involving employment discrimination issues within 5 business days of receipt. The purpose of the review is to determine the following:

a. Is the Claim for Damages jurisdictional to the OAAC?

b. Is there a completed or pending OAAC investigation on the same allegations?

c. Is further investigation required?

d. Is a Roundtable necessary?

e. Should settlement negotiations begin immediately?

In the event further investigation is needed, RM notifies County Counsel, outside counsel, the litigation cost manager and the involved department management. The RM's goal is to complete the investigation within 45

business days from the date the OAAC is notified. Risk Management's further investigation work generally falls within the overall 120-day OAAC investigation schedule unless significant new evidence is found toward the end of the 120-day period. A Roundtable may be convened at any time during this process.

7. Reasons Why Litigation Factors May Contradict OAAC Findings

There are many variables why a complaint of employment discrimination may not be substantiated by OAAC. For example, an investigation may not reveal any corroborating witnesses or independent evidence to make a substantiated finding; or investigations may not reveal credible circumstantial evidence to make a substantiated finding.

Additionally, complex legal factors may affect why the County may lose at the conclusion of trial based on OAAC's findings of an investigation not being substantiated. For example, jurors may have a disposition to punish or send a message to the government because it is viewed as a "deep pocket," irrespective of the substantive merits of a defensible position for the County.

All parties involved in litigation, including CP, SOI, and witnesses, may testify differently under penalty of perjury while at trial or being deposed, versus an administrative investigation procedure that does not have the contempt of court or subpoena authority. In the few instances where there has been a jury verdict, the common theme is that the CP refused to participate or cooperate in the investigation. Further, the memory and recall of relevant parties by the time it reaches trial may vary in degree, when compared to the memory and recall of these parties at or near the time the events occurred.

Cases in litigation may include additional allegations of discrimination and retaliation that were not alleged in the original OAAC complaint of investigation which would produce different outcomes. Other factors pertaining to the credibility of parties (i.e., witnesses, attorneys, subject matter experts, etc.) in a litigation setting are viewed differently by a panel of jurors as opposed to a single investigator's perspective.

All the above factors and variables may contribute to different outcomes at trial versus an administrative investigation.

III. RECENT PROGRAM ENHANCEMENTS AND NEW INITIATIVES

A. Program Enhancements

1. In October 2010, the following program enhancements will take effect:

OAAC PROCEDURES, PRACTICES, AND POLICIES

a. Introduction of new E-Learning internet-based Sexual Harassment Prevention Training with curriculum that focuses on the duties and responsibilities of County employees, supervisors, and managers to prevent and report sexual harassment behavior.

b. Implementation of the following new intake assessment procedures:

   - The CP is notified in writing of the investigative process and timeframe for completing the investigation using the "Acknowledgment of Complaint" letter.

   - The CP is notified in writing should the investigation extend beyond the stated timeframe using the "Investigation Status" letter.

   - The CP will be provided the DRM Program informational brochure along with the "Acknowledgement of Complaint" letter, explaining their option to elect voluntary dispute resolution mediation to resolve their complaint. The brochure clearly states that an investigation will be conducted regardless of their decision to use dispute resolution mediation.

c. Implementation of a triaging procedure that identifies cases that pose high risk to the County, which will be given priority investigation status. Factors used to determine priority status include:

   - CP allegations of egregious conduct or acts of harm.

   - CP has legal representation and makes a claim for damages.

   - SOI is a supervisor or manager posing strict liability.

   Any non-jurisdictional allegation possessing serious allegations of violations of County policy (i.e., criminal conduct, whistle-blowing, and other high profile issues) will be immediately referred to the Chief Executive Officer, Director of Personnel, Auditor-Controller, and/or the affected Department Head. These matters require the review and approval of the Director of the OAAC.

d. Conducting investigations simultaneously with all cases electing voluntary dispute resolution mediation.

e. Digitally recording all CP, SOI, and witness interviews, and transcribing as necessary.

f. Asking the CP of his/her requested remedy and documenting the remedy on the Intake Assessment Form. This information will be included in the referral to the voluntary DRM Program.

2. The following are recent program enhancements:

a. Claims for Damages referred by County Counsel involving employment discrimination issues are assessed and responded to by the Risk Manager within 5 business days.

b. Extensive use of the new ITMS database. The major advantages of this system are its ability to report accurately, manage cases, and access documents and its effective search capability. Since all documents and files are now fully automated, the ITMS promotes a paperless system. The processing of all documents, including dispute resolution mediation, is electronic and instantaneous, eliminating the need for staff to print and physically transfer case documents. The ITMS enables automatic searching and linking of cases with a common search feature. With ITMS, OAAC has access to information concerning repeat CPs and SOIs as well as departments and types of cases, to perform trend analysis.

Implementation of monthly investigations performance management case review procedure for both the Senior DCO and the DCO investigative staff. The procedure requires the completion of a "Case Review" Form (located in Tab 5). The Case Review Form documents performance evaluations and addresses areas for improvement, resulting in accountability of the investigator and supervisor. The Case Review Form is also aligned with Performance Net – Performance Work Plan (located in Tab 5).

c. Developing and publishing a comprehensive OAAC Policy Guidance Volume 1: Equal Employment Opportunity Policy; and OAAC Policy Guidance Volume 2: Elements of Proof.

d. Informing all parties related to the investigations of their responsibility to cooperate in the investigation, and advising them OAAC will proceed with or without their cooperation. Upon release of the proposed DHR Policy and Procedure Guideline (PPG) 911, which mandates the employees' cooperation in the Administrative Investigation and Hearing Process, DCOs will incorporate PPG 911 requirements during the OAAC investigative process.

B. New Initiatives and Lessons Learned

Consistent with the County's current efforts to reduce legal exposure, the OAAC will implement new initiatives to assist the County in taking proactive steps to prevent problems identified in discrimination complaints. These new initiatives involve disseminating information on lessons learned, complaint trend analysis, pattern and practice issues, and changes in employment discrimination law and policy.

1. The OAAC will incorporate in the January 2011 Quarterly Employment Discrimination Complaint Progress Report lessons learned from employment discrimination cases substantiated or settled in litigation; identify any department trends of employment discrimination; identify pattern and practice issues (i.e., supervisors' failure to report, failure to engage in the interactive process, retaliation, etc.); and providing legal updates. This report is copied to all department heads. Presentations to department heads, chief deputies, administrative deputies, departmental human resource managers memos to departments, work with CEO to make sure departments address problem areas.

   In addition, the OAAC will explore innovative methods for communicating lessons learned to County departments, such as the Sheriff's use of "pop up" reminders when computers are turned on each day.

   Effective November 2010, the OAAC will implement the CEO's recommendations to enhance the current employment discrimination investigations process by incorporating best approaches identified in the Sheriff's Equity Oversight Panel (EOP) model.

   Effective November 2010, consistent with adopting the best approaches from the Sheriff's EOP model, the OAAC will begin the process of transitioning its intake assessment procedure to model the OAAC/Sheriff's Equity Intake Unit procedure. OAAC will create a specialist intake unit which can more fully assess complaints at the front end to ensure that the cases that get referred to OAAC truly are jurisdictional.

IV. INVESTIGATIONS DIVISION STAFFING

The OAAC has a staff of 33 equal rights professionals responsible for conducting employment discrimination investigations. There are six Senior DCOs and 27 DCOs assigned to the Investigations Division. The DRM Program has one Senior DCO and three DCOs assigned to coordinate dispute resolution mediation. These professional staff members have skills and experience as follows:

OAAC PROCEDURES, PRACTICES, AND POLICIES

A. Staff Proficiencies

1. Knowledge

Possess and maintain a current, in-depth understanding of federal, state, County, and other applicable employment discrimination, harassment, and retaliation laws and policies; and significant developments in case law; have a thorough understanding and knowledge of human resources management and related County policy.

2. Skills

Possess competent skills in interviewing, analyzing facts and circumstances, evaluating credibility, and reaching logical conclusions.

3. Abilities

a. Non-judgmental and able to resist emotional involvement;

b. Distinguish facts from opinions;

c. Serve as a witness in a legal proceeding;

d. Ask relevant questions and evoke honest answers;

e. Be thorough and attentive to detail;

f. Demonstrate fair and impartial nature,

g. Demonstrate sensitivity and competency for valuing diversity; and

h. Demonstrate the ability to write a formal comprehensive investigative report.

B. Staff Training and Development

Listed below is a list of training that is offered to DCO staff on an annual basis (refer to Tab 4):

1. The EEOC's annual Technical Assistance Program training (mandatory).

2. DFEH's Southern California for Employers Roundtable Training.

3. California Association of Equal Rights Professionals Annual Training Workshop.

4. Internal OAAC Training on EEO Policy Guidance Volume 1: Equal Employment Opportunity, and OAAC's EEO Policy Guidance Volume 2: Elements of Proof (mandatory).

5. OAAC Employment Discrimination Complaint Process Training – County Counsel Training on conducting credibility assessment (mandatory).

6. EEOC Title VII Investigations Training.

7. Reasonable Accommodation Interactive Process Training (mandatory).

8. Chief Executive Office Risk Management Training (mandatory).

9. Supervision and Performance Management Training (mandatory for all supervisors).

10. Global Alliance - 7 Steps of Investigation.

11. Western Justice Center's Workshop "Working it Out At Work: Transforming Conflicts into Opportunities."

12. National Employment Law Institute – Employment Discrimination Legal Update.

V. PERFORMANCE METRICS

The following statistical data reflects employment discrimination complaints handled by the OAAC under shared services (OAAC investigated cases) and does not include data on monitored departments investigated cases or Sheriff's Department investigated cases.

A. Investigations

For FY 2009-10 the Investigations Division received and assessed 1,096 complaints of employment discrimination for jurisdiction; 620 or 57% of these complaints required an investigation. Of the complaints that required an investigation, 75 or 12% were found to have violated County policy.

During this period, 436 cases were closed; 313 cases or 72% were closed in 90-120 business days; 396 cases or 91% were closed in 180 business days or less. 40 cases or 9% were closed after 180 business days (See Tab 7 for detailed data).

B. Mediation

For FY 2009-10, the DRM Program received and offered voluntary dispute resolution mediation to 620 complaints. Of these complaints, 140 or 23% resulted in dispute resolution mediation sessions. Approximately 63% (88) of the mediations resulted in successful resolution of the complaint through a binding No-Fault Settlement Agreement (see Tab 7 for detailed data on department election rates).

Glossary of Acronyms

1. Chief Executive Office ..... CEO
2. Complaining Parties ..... CP
3. Corrective Action Plans ..... CAP
4. Department of Fair Employment and Housing ..... DFEH
5. Department of Human Resources ..... DHR
6. Deputy Compliance Officers ..... DCO
7. Dispute Resolution Mediation ..... DRM
8. Equal Employment Opportunity Commission ..... EEOC
9. Equal Employment Opportunity ..... EEO
10. Equity Oversight Panel (Sheriff's) ..... EOP
11. Fair Employment and Housing Act ..... FEHA
12. Investigations Tracking Management System ..... ITMS
13. Letters of Determination ..... LOD
14. Office of Affirmative Action Compliance ..... OAAC
15. Policy and Procedure Guideline 911 ..... PPG 911
16. Report of Investigation ..... ROI
17. Risk Management ..... RM
18. Senior Deputy Compliance Officer ..... Senior DCO
19. Subject of Investigations ..... SOI

CONTENTS

NO.1 Employment Discrimination Investigations

NO.2 Equal Employment Opportunity Policy Guidance

NO.3 Dispute Resolution Mediation

NO.4 Equal Employment Opportunity, Civil Rights Training, & Focus Groups

NO.5 Investigations and Mediation

NO.6 Investigations Tracking Management System

NO.7 Metrics

NO.8

NO.9

NO.10

IFS0545

AVERY® READY INDEX® DIVIDERS

EMPLOYMENT DISCRIMINATION INVESTIGATION

- Complaint Form
- Investigation Action Plan
- Intake Assessment Form
- Acknowledgement of Complaint Letter
- Investigation Status Letter
- Notification of Potential Liability
- Department Notification Letters of Assessment
- Letters of Determination
- EEOC Enforcement Guidance
    - California Evidence Code
- Report of Investigation (Redacted)

COMPLAINT FORM

Case No. _____

County of Los Angeles
Office of Affirmative Action Compliance

For the fastest, most convenient filing of your complaint, use our online complaint form!

DISCRIMINATION COMPLAINT FORM

Print or Type Your Information Below:

Name:	Job Title:	Employee Number:
Department:		
Home Address:		
Telephone: Home:	Work:	Cell:
What number from above do you prefer we use to contact you? ☐Home ☐Work ☐Cell		
E-mail Address:	Is this your ☐ personal or ☐ work e-mail address?	
Please indicate the most convenient time(s) and day(s) to reach you: Time(s) _____ _____ Day(s) _____ _____		
Are you a Peace Officer? ☐Yes ☐No		

I WISH TO FILE A COMPLAINT AGAINST:

Name(s) of person(s) you're complaining about?
Is/Are the person(s) you're complaining about (a) Peace Officer(s)? ☐Yes ☐No
Job Title(s) of person(s) you're complaining about?
1. I believe I've been discriminated against because of (race, sex, age, disability, religion, national origin, color, retaliation, etc.): _____
2. This discrimination resulted in the following unfair treatment (discharge, denial of promotion, harassment, etc.): _____ _____
3. Date discrimination occurred: _____

4. Why do you believe the unfair treatment you describe is discrimination?
Attach a separate sheet, if necessary.

5. What is your desired remedy?

6. List the names, job titles, and telephone numbers of witnesses, coworkers, or others you feel could provide evidence. *On a separate sheet, explain what you think each witness will be able to tell us.*

Name	Title	Telephone Number

7. Your Employment Information:

   A. Date hired or applied for job:

   B. Your job title at time of discrimination:

   C. Name and title of your immediate supervisor:

   D. Name of your department's Affirmative Action Coordinator?

8. Have you attempted to resolve your problem by discussing this matter with someone in management?

☐ Yes ☐ No

If yes, provide the name(s) and title(s) of the person(s) and state what happened:

9. Are you interested in resolving your complaint through Dispute Resolution Mediation?

☐ Yes ☐ No ☐ Not Sure

9A. Would you like additional information on our Dispute Resolution Mediation Program?

☐ Yes ☐ No

10. Have you filed this complaint with the U.S. Equal Employment Opportunity Commission or California Department of Fair Employment and Housing?

☐ Yes Date: _____ ☐ No

11. Do you have an attorney/representative concerning this complaint?

☐ Yes ☐ No

12. Optional: Please provide the information below for statistical purposes:

Sex: ☐ Female ☐ Male

Race/Ethnicity: ☐ White ☐ American Indian ☐ Black ☐ Other ☐ Asian & Pacific Islander ☐ Hispanic ☐ Filipino

I declare that the above statements are true to the best of my knowledge.

_____ Signature

_____ Date

Mail this completed form to:

County of Los Angeles
Office of Affirmative Action Compliance
500 West Temple Street, Room 780
Los Angeles, CA 90012-2723

Or fax to: (213) 626-7034

TTY Users: (888) 478-3502

For Office Use Only:

Received by: _____ Date: _____

rev. 9/10 bc

INVESTIGATION ACTION PLAN

COUNTY OF LOS ANGELES

OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

INVESTIGATIONS ACTION PLAN
CONCURRENT WITH MEDIATION

SHARED SERVICES/MONITORED			
ACTIVITY	**TOTAL # OF DAYS TO**	**Due Date**	**Actual Completion Date**
Receive Complaint from department or Charging Party (CP)	**1**	**9/30/10**	
Staff Assistant processes complaint into ITMS database Assigns number, creates case file and forwards to Senior to assign to deputy			
Complete Assessment	**10**	**10/14/10**	
Deputy schedules interview w/CP (conducts telephone or face-to-face interview), completes jurisdictional assessment/Clarifying interview with the CP (Face-to-face preferred) using OAAC Assessment Form and the Investigation Log	*5*	*10/7/10*	
Drafts Assessment Worksheet & Cover Letter to the department	*5*	*10/14/10*	
Submit Assessment for Senior Review	**2**	**10/16/10**	
Deputy attaches completed assessment to Senior for review and approval Senior reviews and/or approves assessment or returns for correction and/or further information	*2*	*10/16/10*	
No Mediation * *(Board, Anonymous or Fraud Hotline Complaint)*	**5**	**10/23/10**	
Deputy identifies Witnesses and drafts interview questions Deputy requests contact information and documents from the department Deputy drafts Letter of Inquiry (LOI) for monitored complaints			
Conduct Investigation	**36**	**12/13/10**	
Deputy interview/re-interviews CP, if necessary	*5*	*10/30/10*	
Deputy reviews documents	*1*	*11/1/10*	
Deputy schedules and conducts SOI and Witness Interviews and obtains signed statements	*30*	*12/13/10*	
Draft Report of Investigation	**10**	**12/27/10**	
Deputy drafts report Deputy assembles exihibits			
Submit Report for Senior Review	**10**	**1/10/11**	
Deputy submits report to Senior for review and approval Senior returns report to Deputy for correction and/or additional information, if necessary	*8*	*1/7/11*	
If applicable, submit draft report and LODs to department for courtesy review	*2*	*1/10/11*	
Finalize Report	**13**	**1/28/11**	
Deputy completes corrections and finalizes documents (report & LODs), gives to Staff Assistant to scan, mail out and attach to ITMS file Update notes in ITMS, prepare case file for case closure, submit to Senior for closure			

Note: A five day extension may be in writing and indicated in ITMS at anytime with Senior Deputy approval.

INTAKE ASSESSMENT FORM

County of Los Angeles
Office of Affirmative Action Compliance
INTAKE ASSESSMENT FORM

OAAC Case#
☐ External

Date County Dept. Notified
Case Number:

Date OAAC Received
Classification:

Complaining Party(ies):	Subject(s) of Investigation:
Dept/Unit:	Dept/Unit:

Theory(ies) of Discrimination:

☐ Harassment
☐ Disparate Treatment
☐ Disparate Impact
☐ Reasonable Accommodation
☐ Retaliation

Alleged Protected Basis(es):

☐ Sex
☐ Race
☐ Color
☐ Ancestry
☐ Religion
☐ Sexual Orientation
☐ Age (40 and Over)
☐ Marital Status
☐ National Origin
☐ Medical Condition
☐ Disability
☐ Retaliation for participating/opposing
☐ Association with a Protected Individual
☐ Other (Non-Protected Basis):

Act(s) of Harm:

☐ Hostile Work Environment Harassment
☐ Quid Pro Quo Harassment
☐ Differential Treatment
☐ Failure to Engage in Interactive Process
☐ Denial of Reasonable Accommodation
☐ Failure to Promote
☐ Demotion
☐ Involuntary Transfer
☐ Suspension
☐ Termination
☐ Denial of Leave
☐ Denial of Reinstatement
☐ Failure to Hire
☐ Other:

CONFIDENTIAL

Classification:

Based on the information in the complaint of employment discrimination, any data contained in this intake assessment form, and/or attachment(s), it has been determined that this complaint:

☐ **(Class 1): Jurisdictional (Contains sufficient information to warrant further investigation by OAAC).**

☐ **(Class 2): Non-Jurisdictional (Contains information concerning a protected basis, but the information or allegations did not rise to a level requiring a further investigation by the OAAC; information not sufficient to reveal the existence of a causal connection to a protected basis; or information provided does not reveal that the allegation(s) concerns a protected basis)**

CONFIDENTIAL

Persons Interviewed

Job #	Name	Emp #	Title	UOA
Persons to be Interviewed:				

Explanation/Comments:

Admonishment/Supervisory Actions:

Prior Related Discrimination Complaint(s):

☐ **None** ☐ **Prior Related Discrimination Complaint(s) Identified Below**

Explanation of Classification:

☐ **Refer for Investigation (Class 1 cases)**
☐ **Return to County Department for investigation/inquiry of personnel issues (Class 2 cases)**

Assessed by OAAC Deputy Compliance Officer:

	Date Assessed:	**Date Received:**

Approved by Senior Deputy Compliance Officer:

	Date:

☐ **Referred to Risk Manager** **Date Referred:**

Comments:

CONFIDENTIAL

ACKNOWLEDGEMENT OF COMPLAINT LETTER

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 780
Los Angeles, CA 90012
(213) 974-1080
Fax (213) 626-7034 TTY (888) 478-3502
www.oaac.lacounty.gov

Dennis A. Tafoya
Director

Members of the Board
Gloria Molina
Mark Ridley-Thomas
Zev Yaroslavsky
Don Knabe
Michael D. Antonovich

CONFIDENTIAL
PERSONNEL INFORMATION

[Date]

[CP Name]
[Address]
[City, State Zip Code]

Issued to CP to acknowledge receipt of a jurisdictional complaint

ACKNOWLEGMENT OF COMPLAINT
OAAC Case #

Dear Mr./Ms. [CP Last Name]:

This letter is to inform you that your above-referenced employment discrimination complaint reported to the Office of Affirmative Action Compliance (OAAC) on [Date], has been accepted for investigation. Please be aware that OAAC may take 90-120 business days to complete a thorough investigation of your complaint. Subsequently, you will be notified by U.S. mail of the outcome of the investigation.

Enclosed for your information is a brochure regarding OAAC's voluntary Dispute Resolution Mediation (DRM) program for your review. A DRM representative will be contacting you to answer any questions you may have.

As the assigned Investigator, I will be conducting the investigation of your complaint. I can be reached at [(213) XXX-XXXX], should you have any questions or concerns.

Sincerely,

DEPUTY NAME
Deputy Compliance Officer

[XX:XX:xx]
CP Complaint Acknowledgment ltr.docx

Enclosure

INVESTIGATION STATUS LETTER

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 780
Los Angeles, CA 90012
(213) 974-1080
Fax (213) 626-7034 TTY (888) 478-3502
www.oaac.lacounty.gov

Dennis A. Tafoya
Director

Members of the Board
Gloria Molina
Mark Ridley-Thomas
Zev Yaroslavsky
Don Knabe
Michael D. Antonovich

CONFIDENTIAL
PERSONNEL INFORMATION

[Date]

[CP Name]
[Address]
[City, State Zip Code]

Issued to CP when investigation extends beyond 90 business days on an as needed basis.

INVESTIGATIVE STATUS LETTER
OAAC Case #

Dear [CP Last Name]:

This letter is to inform you of the status of the investigation into your above-referenced employment discrimination complaint. Due to unforeseen circumstances, the completion of OAAC's investigation of your complaint allegations will exceed the normal 120-business days as noted in our Acknowledgement of Complaint letter sent to you on [Date].

Please be assured that we are making every effort to conduct a thorough investigation into your allegations, and will complete the investigation as expeditiously as possible. Subsequently, you will be notified by U.S. mail of the outcome of the investigation.

Should you have any questions or concerns, I may be reached at (213) XXX-XXXX.

Sincerely,

DEPUTY NAME
Deputy Compliance Officer

[XX:XX:xx]
CP Investigation status letter.docx

NOTIFICATION OF POTENTIAL LIABILITY

OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

INVESTIGATIONS DIVISION

Memo to Risk Manager from Senior DCO notification of potential liability

Date: [Date]

To: [OAAC Risk Manager]

From: [Name]
Senior Deputy

Subject: **Notification of Potential Liability**
Department Name
CP [Name] / [OAAC Case #]

This memo serves as notification that findings in this case, if substantiated, may pose a potential liability for the County.

Date Received:	[Date]
Date Response due to external agency:	N/A (if internal complaint)
Subject of Investigation:	SOI Name, Payroll Title
Protected Basis:	[Sex]
Allegations:	[Harassment]

[DCO Name] will be conducting an investigation of the above case and is expected to complete the investigation by [Date]. The case was sent to mediation on [Date]. [or Mediation was declined by CP/Dept/both parties.] A copy of the report will be forwarded to you for your review. Should you require additional information, please contact me at [(213) XXX-XXXX] or [DCO Name] at [(213) XXX-XXXX].

[XX:xx]
Risk Management Referral for Potential Liability.docx

c: Risk Management Staff Assistant

DEPARTMENT NOTIFICATION LETTERS OF ASSESSMENT

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 780
Los Angeles, CA 90012
(213) 974-1080
Fax (213) 626-7034 TTY (888) 478-3502
www.oaac.lacounty.gov

Dennis A. Tafoya
Director

Members of the Board
Gloria Molina
Mark Ridley-Thomas
Zev Yaroslavsky
Don Knabe
Michael D. Antonovich

CONFIDENTIAL
PERSONNEL INFORMATION

Departmental notification of a jurisdictional complaint and any non-jurisdictional issues that have been identified

[Date]

To: Affirmative Action Coordinator
Department Name

From: [Deputy Name]
Deputy Compliance Officer

Subject: **CP [NAME]**
OAAC CASE #

I have been assigned to investigate the above-referenced internal complaint of discrimination filed by [CP Name], Charging Party (CP). [CP Name] alleged that she was discriminated against based on [protected basis(es)].

A preliminary assessment determined the allegations [related to protected basis(es)] fall under the jurisdiction of the County's Non-Discrimination in Employment Policy. Accordingly, [this portion of] the complaint is being referred to mediation for possible resolution. [[However, the allegation(s) regarding... is(are) not jurisdictional to OAAC and is being referred to [Department name] for any necessary follow-up.]]

If you need further assistance or have any questions please call me at [(213) XXX-XXXX].

[XX:XX:xx]

Assessment Letter - A.doc

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 780
Los Angeles, CA 90012
(213) 974-1080
Fax (213) 626-7034 TTY (888) 478-3502
www.oaac.lacounty.gov

Dennis A. Tafoya
Director

Members of the Board
Gloria Molina
Mark Ridley-Thomas
Zev Yaroslavsky
Don Knabe
Michael D. Antonovich

CONFIDENTIAL
PERSONNEL INFORMATION

[Date]

Departmental notification of a non-jurisdictional complaint. Review and follow-up request.

To: Affirmative Action Coordinator
Department Name

From: [Deputy Name]
Deputy Compliance Officer

Subject: **[CP Name]**
OAAC Case #

The Office of Affirmative Action Compliance (OAAC) has completed its review of [CP] complaint of discrimination. The review determined that [CP] allegations are not jurisdictional to this office. In accordance with the Los Angeles County employment discrimination complaint process, the complaint is being returned to your department for further review and appropriate follow up action.

Please notify OAAC should you have any additional information relating to this matter that may be jurisdictional to our office.

If I can be of further assistance in this matter, please call me at [(213) XXX-XXXX].

[XX:XX:xx]
Assessment Letter - C - to Dept non-juris.docx

LETTERS OF DETERMINATION

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 780
Los Angeles, CA 90012
(213) 974-1080
Fax (213) 626-7034 TTY (888) 478-3502
www.oaac.lacounty.gov

Dennis A. Tafoya
Director

Members of the Board
Gloria Molina
Mark Ridley-Thomas
Zev Yaroslavsky
Don Knabe
Michael D. Antonovich

CONFIDENTIAL
PERSONNEL INFORMATION

[Date]

[CP Name]
[Address]
[City, State Zip Code]

Letter of Determination to CP, Substantiated

LETTER OF DETERMINATION
OAAC CASE #

Dear [CP Name]:

The employment discrimination complaint you recently filed was investigated by the Office of Affirmative Action Compliance (OAAC). The investigation, which included reviewing pertinent facts and interviewing witnesses regarding your allegations, substantiated a violation of County or departmental EEO policies. As a result, the Department will take corrective action that it believes to be sufficient to prevent any further violation of County policy from occurring.

If at any time there is another incident or you believe you have been retaliated against, please report it immediately to OAAC.

This concludes the investigation of your complaint. If I can be of additional assistance, please call me at [(213) XXX-XXXX].

Sincerely,

DEPUTY NAME
Deputy Compliance Officer

[XX:XX:xx]
CP LOD - Substantiated - 20C.doc

c: Department Affirmative Action Coordinator or designee, Department

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 780
Los Angeles, CA 90012
(213) 974-1080
Fax (213) 626-7034 TTY (888) 478-3502
www.oaac.lacounty.gov

Dennis A. Tafoya
Director

Members of the Board
Gloria Molina
Mark Ridley-Thomas
Zev Yaroslavsky
Don Knabe
Michael D. Antonovich

CONFIDENTIAL
PERSONNEL INFORMATION

Letter of Determination to CP, Unsubstantiated

[Date]

[CP Name]
[Address]
[City, State Zip Code]

LETTER OF DETERMINATION
OAAC CASE #

Dear [CP Name]:

The employment discrimination complaint you recently filed was investigated by the Office of Affirmative Action Compliance (OAAC). The investigation, which included reviewing pertinent facts and interviewing witnesses regarding your allegations, did not substantiate a violation of County or departmental EEO policies.

This concludes the investigation of your complaint. If you are dissatisfied with these findings, you have the right to file your complaint with the U.S. Equal Employment Opportunity Commission or the California Department of Fair Employment and Housing.

If I can be of additional assistance, please call me at [(213) XXX-XXXX].

Sincerely,

DEPUTY NAME
Deputy Compliance Officer

[XX:XX:xx]
CP LOD - Unsubstantiated - 20A.doc

c: Department Affirmative Action Coordinator or designee, Department

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 780
Los Angeles, CA 90012
(213) 974-1080
Fax (213) 626-7034 TTY (888) 478-3502
www.oaac.lacounty.gov

Dennis A. Tafoya
Director

Members of the Board
Gloria Molina
Mark Ridley-Thomas
Zev Yaroslavsky
Don Knabe
Michael D. Antonovich

CONFIDENTIAL
PERSONNEL INFORMATION

Letter of Determination to SOI, Substantiated

[Date]

[SOI Name]
[Address]
[City, State Zip Code]

LETTER OF DETERMINATION
OAAC CASE #

Dear [SOI Name]:

Thank you for your cooperation in the investigation recently conducted by the Office of Affirmative Action Compliance (OAAC). A thorough investigation of this matter substantiated a violation of County or departmental EEO policies. A separate letter will be forthcoming advising you of corrective measures to be taken by the Department.

Do not contact the Charging Party(ies) or conduct yourself in a manner that could be interpreted as retaliation. You are required to treat the complaint, the investigation, and the outcome as a confidential matter.

If you have any questions regarding this matter, please contact [Department Affirmative Action Coordinator or designee, title], at [(213) XXX-XXXX].

If I can be of additional assistance, please call me at [(213) XXX-XXXX].

Sincerely,

DEPUTY NAME
Deputy Compliance Officer

[XX:XX:xx]
SOI LOD - Substantiated - 21C.doc

c: Department Affirmative Action Coordinator or designee, Department

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 780
Los Angeles, CA 90012
(213) 974-1080
Fax (213) 626-7034 TTY (888) 478-3502
www.oaac.lacounty.gov

Dennis A. Tafoya
Director

Members of the Board
Gloria Molina
Mark Ridley-Thomas
Zev Yaroslavsky
Don Knabe
Michael D. Antonovich

CONFIDENTIAL
PERSONNEL INFORMATION

[Date]

[SOI Name]
[Address]
[City, State Zip Code]

Letter of Determination to SOI, Unsubstantiated

LETTER OF DETERMINATION
OAAC CASE #

Dear [SOI Name]:

Thank you for your cooperation in the investigation conducted by the Office of Affirmative Action Compliance (OAAC). A thorough investigation of the allegations did not substantiate a violation of County or departmental EEO Policies.

You can be assured that the records of the investigation will be treated confidentially. You are advised to treat the complaint, the investigation, and the outcome as a confidential matter.

If you have any questions in this regard, please contact me at [(213) XXX-XXXX].

Sincerely,

DEPUTY NAME
Deputy Compliance Officer

[XX:XXX:xxx]
SOI LOD - Unsubstantiated - 21A.doc

c: Department Affirmative Action Coordinator or designee, Department

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ENFORCEMENT GUIDANCE AND CALIFORNIA EVIDENCE CODE

The U.S. Equal Employment Opportunity Commission

		Number
EEOC	***NOTICE***	915.002
		Date
		6/18/99

1. SUBJECT: Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors

2. PURPOSE: This document provides guidance regarding employer liability for harassment by supervisors based on sex, race, color, religion, national origin, age, disability, or protected activity.

3. EFFECTIVE DATE: Upon receipt.

4. EXPIRATION DATE: As an exception to EEOC Order 205.001, Appendix B, Attachment 4, § a(5), this Notice will remain in effect until rescinded or superseded.

5. ORIGINATOR: Title VII/EPA/ADEA Division, Office of Legal Counsel.

6. INSTRUCTIONS: File after Section 615 of Volume II of the Compliance Manual.

6/18/99 /s/
Date Ida L. Castro
Chairwoman

Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors

I. Introduction

In *Burlington Industries, Inc. v. Ellerth*, 118 S. Ct. 2257 (1998), and *Faragher v. City of Boca Raton*, 118 S. Ct. 2275 (1998), the Supreme Court made clear that employers are subject to vicarious liability for unlawful harassment by supervisors. The standard of liability set forth in these decisions is premised on two principles: 1) an employer is responsible for the acts of its supervisors, and 2) employers should be encouraged to prevent harassment and employees should be encouraged to avoid or limit the harm from harassment. In order to accommodate these principles, the Court held that an employer is always liable for a supervisor's harassment if it culminates in a tangible employment action. However, if it does not, the employer may be able to avoid liability or limit damages by establishing an affirmative defense that includes two necessary elements:

- the employer exercised reasonable care to prevent and correct promptly any harassing behavior, and

- the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.

While the *Faragher* and *Ellerth* decisions addressed sexual harassment, the Court's analysis drew upon standards set forth in cases involving harassment on other protected bases. Moreover, the Commission has always taken the position that the same basic standards apply to all types of prohibited harassment.[1] Thus, the standard of liability set forth in the decisions applies to all forms of unlawful harassment. (See section II, below.)

Harassment remains a pervasive problem in American workplaces. The number of harassment charges filed with the EEOC and state fair employment practices agencies has risen significantly in recent years. For example, the number of sexual harassment charges has increased from 6,883 in fiscal year 1991 to 15,618 in fiscal year 1998. The number of racial harassment charges rose from 4,910 to 9,908 charges in the same time period.

While the anti-discrimination statutes seek to remedy discrimination, their primary purpose is to prevent violations. The Supreme Court, in *Faragher* and *Ellerth*, relied on Commission guidance which has long advised employers to take all necessary steps to prevent harassment.[2] The new affirmative defense gives credit for such preventive efforts by an employer, thereby "implement[ing] clear statutory policy and complement[ing] the Government's Title VII enforcement efforts."[3]

The question of liability arises only after there is a determination that unlawful harassment occurred. Harassment does not violate federal law unless it involves discriminatory treatment on the basis of race, color, sex, religion, national origin, age of 40 or older, disability, or protected activity under the anti-discrimination statutes. Furthermore, the anti-discrimination statutes are not a "general civility code."[4] Thus federal law does not prohibit simple teasing, offhand comments, or isolated incidents that are not "extremely serious."[5] Rather, the conduct must be "so objectively offensive as to alter the 'conditions' of the victim's employment."[6] The conditions of employment are altered only if the harassment culminated in a tangible employment action or was sufficiently severe or pervasive to create a hostile work environment.[7] Existing Commission guidance on the standards for determining whether challenged conduct rises to the level of unlawful harassment remains in effect.

This document supersedes previous Commission guidance on the issue of vicarious liability for harassment by supervisors.[8] The Commission's long-standing guidance on employer liability for harassment by co-workers remains in effect - - an employer is liable if it knew or should have known of the misconduct, unless it can show that it took immediate and appropriate corrective action.[9] The standard is the same in the case of non-employees, but the employer's control over such individuals' misconduct is considered.[10]

II. The Vicarious Liability Rule Applies to Unlawful Harassment on All Covered Bases

The rule in *Ellerth* and *Faragher* regarding vicarious liability applies to harassment by supervisors based on race, color, sex (whether or not of a sexual nature[11]), religion, national origin, protected activity,[12] age, or disability.[13] Thus, employers should establish anti-harassment policies and complaint procedures covering *all* forms of unlawful harassment.[14]

III. Who Qualifies as a Supervisor?

A. Harasser in Supervisory Chain of Command

An employer is subject to vicarious liability for unlawful harassment if the harassment was committed by "a supervisor with immediate (or successively higher) authority over the employee."[15] Thus, it is critical to determine whether the person who engaged in unlawful harassment had supervisory authority over the complainant.

The federal employment discrimination statutes do not contain or define the term "supervisor."[16] The statutes make employers liable for the discriminatory acts of their "agents,"[17] and supervisors are agents of their employers. However, agency principles "may not be transferable in all their particulars" to the federal employment discrimination statutes.[18] The determination of whether an individual has sufficient authority to qualify as a "supervisor" for purposes of vicarious liability cannot be resolved by a purely mechanical application of agency law.[19] Rather, the purposes of the anti-discrimination statutes and the reasoning of the Supreme Court decisions on harassment must be considered.

The Supreme Court, in *Faragher* and *Ellerth*, reasoned that vicarious liability for supervisor harassment is appropriate because supervisors are aided in such misconduct by the authority that the employers delegated to them.[20] Therefore, that authority must be of a sufficient magnitude so as to assist the harasser explicitly or implicitly in carrying out the harassment. The determination as to whether a harasser had such authority is based on his or her job function rather than job title (*e.g.*, "team leader") and must be based on the specific facts.

An individual qualifies as an employee's "supervisor" if:

- the individual has authority to undertake or recommend tangible employment decisions affecting the employee; *or*
- the individual has authority to direct the employee's daily work activities.

1. Authority to Undertake or Recommend Tangible Employment Actions

An individual qualifies as an employee's "supervisor" if he or she is authorized to undertake tangible employment decisions affecting the employee. "Tangible employment decisions" are decisions that significantly change another employee's employment status. (For a detailed explanation of what constitutes a tangible employment action, see subsection IV(B), below.) Such actions include, but are not limited to, hiring, firing, promoting, demoting, and reassigning the employee. As the Supreme Court stated,"[t]angible employment actions fall within the special province of the supervisor."[21]

An individual whose job responsibilities include the authority to recommend tangible job decisions affecting an employee qualifies as his or her supervisor even if the individual does not have the final say. As the Supreme Court recognized in *Ellerth*, a tangible employment decision "may be subject to review by higher level supervisors."[22] As long as the individual's recommendation is given substantial weight by the final decision maker(s), that individual meets the definition of supervisor.

2. Authority to Direct Employee's Daily Work Activities

An individual who is authorized to direct another employee's day-to-day work activities qualifies as his or her supervisor even if that individual does not have the authority to undertake or recommend tangible job decisions. Such an individual's ability to commit harassment is enhanced by his or her authority to increase the employee's workload or assign undesirable tasks, and hence it is appropriate to consider such a person a "supervisor" when determining whether the employer is vicariously liable.

In *Faragher*, one of the harassers was authorized to hire, supervise, counsel, and discipline lifeguards, while the other harasser was responsible for making the lifeguards' daily work assignments and supervising their work and fitness training.[23] There was no question that the Court viewed them *both* as

"supervisors," even though one of them apparently lacked authority regarding tangible job decisions.[24]

An individual who is temporarily authorized to direct another employee's daily work activities qualifies as his or her "supervisor" during that time period. Accordingly, the employer would be subject to vicarious liability if that individual commits unlawful harassment of a subordinate while serving as his or her supervisor.

On the other hand, someone who merely relays other officials' instructions regarding work assignments and reports back to those officials does not have true supervisory authority. Furthermore, someone who directs only a limited number of tasks or assignments would not qualify as a "supervisor." For example, an individual whose delegated authority is confined to coordinating a work project of limited scope is not a "supervisor."

B. Harasser Outside Supervisory Chain of Command

In some circumstances, an employer may be subject to vicarious liability for harassment by a supervisor who does not have actual authority over the employee. Such a result is appropriate if the employee reasonably believed that the harasser had such power.[25] The employee might have such a belief because, for example, the chains of command are unclear. Alternatively, the employee might reasonably believe that a harasser with broad delegated powers has the ability to significantly influence employment decisions affecting him or her even if the harasser is outside the employee's chain of command.

If the harasser had no actual supervisory power over the employee, and the employee did not reasonably believe that the harasser had such authority, then the standard of liability for co-worker harassment applies.

IV. Harassment by Supervisor That Results in a Tangible Employment Action

A. Standard of Liability

An employer is always liable for harassment by a supervisor on a prohibited basis that culminates in a tangible employment action. No affirmative defense is available in such cases.[26] The Supreme Court recognized that this result is appropriate because an employer acts through its supervisors, and a supervisor's undertaking of a tangible employment action constitutes an act of the employer.[27]

B. Definition of "Tangible Employment Action"

A tangible employment action is "a significant change in employment status."[28] Unfulfilled threats are insufficient. Characteristics of a tangible employment action are:[29]

1. A tangible employment action is the means by which the supervisor brings **the official power of the enterprise to bear on subordinates, as demonstrated by the following :**

- it requires an official act of the enterprise;
- it usually is documented in official company records;
- it may be subject to review by higher level supervisors; and

EVIDENCE CODE
SECTION 780-783

780. Except as otherwise provided by statute, the court or jury may consider in determining the credibility of a witness any matter that has any tendency in reason to prove or disprove the truthfulness of his testimony at the hearing, including but not limited to any of the following:

(a) His demeanor while testifying and the manner in which he testifies.

(b) The character of his testimony.

(c) The extent of his capacity to perceive, to recollect, or to communicate any matter about which he testifies.

(d) The extent of his opportunity to perceive any matter about which he testifies.

(e) His character for honesty or veracity or their opposites.

(f) The existence or nonexistence of a bias, interest, or other motive.

(g) A statement previously made by him that is consistent with his testimony at the hearing.

(h) A statement made by him that is inconsistent with any part of his testimony at the hearing.

(i) The existence or nonexistence of any fact testified to by him.

(j) His attitude toward the action in which he testifies or toward the giving of testimony.

(k) His admission of untruthfulness.

REPORT OF INVESTIGATION (REDACTED)

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

CONFIDENTIAL PERSONNEL INFORMATION

REPORT OF INVESTIGATION
OAAC Case # PHI_2010[redacted]

COMPLAINING PARTY: [redacted]
Epidemiologist

SUBJECT(s) OF INVESTIGATION: [redacted]
Physician Specialist, MF

DATE OF INCIDENT: April 27, 2010

LOCATION: Acute Communicable Disease Control Program [redacted]

THEORY(IES) OF DISCRIMINATION:
- Check Theory -
- ☐ Disparate Treatment
- ☐ Disparate Impact
- ☐ Reasonable Accommodation
- ☒ Harassment
- ☐ Retaliation

PROTECTED BASIS (ES):
- Check Basis -
- ☐ Race
- ☒ Sex
- ☐ Age
- ☐ Retaliation
- ☐ Other
- ☐ Religion
- ☐ Sexual Orientation
- ☐ Disability
- ☐ National Origin

ACT OF HARM: Hostile Work Environment

APPLICABLE POLICY(IES):
Los Angeles County Code Chapter:
- ☐ 5.08 "Equal Employment"
- ☒ 5.09 "Sexual Harassment"
- ☒ Board of Supervisors' EEO Non-Discrimination Policy & Poster

DHS Sexual Harassment Policy No. 749 &
Public Health Sexual Harassment Prevention Policy No. 742*

NOTIFICATION DATE: May 14, 2010

CLOSURE DATE: September 2, 2010

---

* The Department of Public Health (DPH) and the Department of Health Services (DHS) were a single County Department prior to June 7, 2006. DPH adhered to DHS Sexual Harassment Policy No. 749 pending promulgation of its own policy. Although Public Health Sexual Harassment Prevention Policy No. 742 superseded DHS Sexual Harassment Policy No. 749 on January 31, 2010, a review of CP [redacted] and SOI [redacted] personnel files did not reveal that either received a copy of the DPH policy at the time to complaint was filed.

CONFIDENTIAL PERSONNEL INFORMATION

OAAC INVESTIGATOR: Lelitia Ellison-Cooper
Deputy Compliance Officer

OAAC REVIEWER: Comelita Brown
Senior Deputy Compliance Officer

BACKGROUND:

On May 14, 2010, the Office of Affirmative Action Compliance (OAAC) received an "OAAC Monitored Complaint" (Internal) and Discrimination Complaint Form from DPH Human Resources (HR) in which CP [redacted] alleged SOI [redacted] subjected her to inappropriate conduct based on sex. (Exhibit 1)

On June 2, 2010, OAAC conducted an in-person clarifying interview and determined that the allegations were jurisdictional. The applicable theory is harassment; the protected basis is sex; and the act of harm is "hostile work environment".

On June 9, 2010, DPH HR declined OAAC mediation and the complaint was referred to the appropriate OAAC investigative section.

CP [redacted] Work History:

CP [redacted] (female) began working for DPH on June 28, 2005 as an Administrative Aid. She promoted to Epidemiologist Analyst on September 16, 2006 and to Epidemiologist on October 13, 2009. At the time she filed the complaint, she was assigned to the Acute Communicable Disease Control Program – Hepatitis, Antimicrobial Residence & Influenza (HARI) Unit under the supervision of SOI [redacted] Effective July 17, 2010, she separated from County service for reasons unrelated to the complaint. (Exhibit 2)

County records reflect CP [redacted] attended Sexual Harassment Prevention Training on November 29, 2006 and September 16, 2009 and Diversity Training on October 24, 2007. A review of CP [redacted] personnel file revealed no disciplinary history. A review of OAAC records revealed no prior employment discrimination complaints filed by or against her.

SOI [redacted] Work History:

SOI [redacted] (female) has been employed with DPH as a Physician Specialist since August 7, 2001. She is currently assigned to the Acute Communicable Disease Control Program – HARI unit under the supervision of [redacted] M.D., Program Director.

CONFIDENTIAL PERSONNEL INFORMATION

County records reflect SOI [redacted] attended Sexual Harassment Training on February 12, 2002, Diversity Training on August 22, 2002, Discrimination Prevention Training on December 5, 2002, and Sexual Harassment Prevention for Management/Executives on December 16, 2005 and January 30, 2008. A review of SOI [redacted] personnel file revealed no disciplinary history. A review of OAAC records revealed no prior employment discrimination complaints filed against her.

ALLEGATIONS:

CP [redacted] alleged SOI [redacted] subjected her to sexually inappropriate questions, comments, jokes, and e-mails at work.

OUTCOME OF THE INVESTIGATION:

The investigation revealed on at least five (5) occasions within a three-month span, SOI [redacted] HARI unit supervisor, engaged in unwelcome sexual conduct at work, which included jokes, e-mails, comments, and questions. The conduct was sufficiently egregious to create an intimidating, hostile, or offensive work environment for CP [redacted] and other HARI unit staff members. As such, the investigation disclosed a violation of the County's Sexual Harassment and Equal Employment Opportunity Non-Discrimination policies.

DISCUSSION OF THEORY:

Harassment

Harassment is a form of unlawful discrimination which is a violation of Title VII of the Civil Rights Act of 1964, as amended, and Chapter 6 of the California Fair Employment and Housing Act. It is policy of the County of Los Angeles that harassment related to any protected basis is unacceptable and will not be tolerated.

The OAAC considered the following factors in reaching its findings:

1. Basis: Was CP a member of a protected group?

2. Activity: Was CP subjected to unwelcome conduct?

3. Harm: Was CP subjected to "hostile work environment" harassment (i.e., was the unwelcome conduct sufficiently egregious to interfere with CP's work performance or to create an intimidating, hostile, or offensive working environment)?

CONFIDENTIAL PERSONNEL INFORMATION

4. Causal connection: Was there a causal connection between membership in a protected group and the unwelcome conduct?

5. Did DPH know or should DPH have known about the alleged harassment?

The information obtained from the complaint, witness interviews, signed statements, and documentary evidence are the basis for OAAC's findings:

As alleged, SOI [redacted] subjected CP [redacted] and two other female HARI staff to unwelcome sexual conduct at work. Witnesses [redacted] and [redacted] corroborated the following:

- In April 2010, SOI [redacted] asked the three HARI staff: "Are you more worried about contracting HIV or an atomic bomb blast?" When each of the staff answered: "Atomic bomb blast", SOI [redacted] inquired further. Witness [redacted] theoretically responded, "Why would you be concerned about HIV if you use condoms? Using condoms is safe sex." SOI [redacted] replied, "But condoms can break." When Witness [redacted] asked, "This is a public health question, right?", SOI [redacted] responded, "I want to know how you feel personally. Are afraid of contracting HIV? Are you going to use condoms?"

- On April 27, 2010, SOI [redacted] forwarded an e-mail to the HARI unit with the subject line, "Movie titles for the adult film industry" and the message, "for your amusement..." The e-mail attachment read, "If the CDC (Centers for Disease Control and Prevention) were in charge of porn titles," and depicted eight stacked movies or books with the following titles:
  - Barely Legal and Highly Contagious
  - Debbie Goes to the Clinic in Dallas
  - Naughty Nurses 8: Penicillin Party!
  - Hepatitis Hos IV: Burning Sensations
  - Big Dicks with Huge Herpes
  - Ass Pirates on Antibiotics
  - Backdoor Fever & Gonorrhea Chills
  - Beach Party XXII: Crab Infestation (Exhibit 3)

- During a staff meeting in April or May 2010, SOI [redacted] told the joke: A man and woman were having sex. The man was halfway inside. The woman repeatedly called his name, "Manny, Manny, you make my toes curl." The man and woman were having sex again. The man was further but not completely inside. The woman repeatedly called his name, "Manny, Manny, you make my toes curl." The man thought, "Wow, I must be pretty good," but wondered exactly what he was doing to make her toes curl. The punch line: The woman had not

CONFIDENTIAL PERSONNEL INFORMATION

taken off her panty hose. Witness [redacted] stated SOI [redacted] told the joke with "all of the tone and inflection of people having sex." During the investigation, SOI [redacted] voluntarily told the joke to the investigator, changing the tone and inflection of her voice to simulate a woman in the midst of having sex.

- In late May or early June 2010, SOI [redacted] sent an e-mail to the HARI unit with an attached New York Times article about a female condom "with teeth". The witnesses could not provide a copy of the article but stated it was a controversial topic with strong sexual content. The condom was used in areas of Africa with high incidents of rape. The "teeth" of the condom clamp down on the penis so that movement or withdrawal causes injury.

- On or about June 21, 2010, SOI [redacted] said:
  - "It is fitting that the mascot for my alma mater was a beaver since it was an all-girls school." The witnesses and SOI [redacted] explained the term "beaver" was sexual innuendo for female genitalia.
  - "I found my cats almost 69-ing each other."

The investigation did not reveal evidence sufficient to show that SOI [redacted] made inappropriate comments at work about vaginal dryness or CP [redacted] fiance's penis. Neither CP [redacted] nor the witnesses provided any specific facts or details regarding these allegations, and SOI [redacted] denied the allegations. Therefore, the investigation did not find proof these alleged incidents occurred.

CP [redacted] and the witnesses stated they had not engaged in any sexual conversation with her, and therefore gave her no reason to believe such conversation was welcome. CP [redacted] stated in her complaint that she felt offended by SOI [redacted] conduct. Although she and Witness [redacted] stated during the investigative interviews they were not offended, they described SOI [redacted] conduct as "distasteful" and "inappropriate". Witness [redacted] on the other hand, was unequivocally "appalled" and "offended" by the conduct. Witness [redacted] added she was from a conservative background and does not discuss sex even with her friends. All agreed the April 2010 survey, in particular, was "too personal" and "none of her (SOI [redacted]) business". Prior to the complaint, none of them specifically objected to SOI [redacted] conduct because the situation was already awkward and uncomfortable without the added difficulty of addressing it their supervisor. Despite CP [redacted] conflicting statements, the investigation revealed sufficient evidence from CP and the witnesses that SOI [redacted] conduct was, in fact, unwelcome.

SOI [redacted] admitted the joke was inappropriate and the adult movie titles e-mail was "on-the-line". However, in her opinion, the staff survey, adult movie titles e-mail, and female condom e-mail were work-related. She explained unprotected sex is one of the

CONFIDENTIAL PERSONNEL INFORMATION

causes of hepatitis, and therefore the e-mails, in particular, were within the scope of the HARI unit duties.

While witnesses verified they obtained information from patients regarding sexual activity or orientation for hepatitis screening, SOI [redacted] conduct was not presented in a work-related or clinical context. All agreed the survey crossed the line into their personal lives. Witness [redacted] stated she felt as if SOI [redacted] was "fishing" to see if they would divulge personal information about their sex lives. Although the adult movie titles e-mail referenced hepatitis, it was admittedly inappropriate for work based on sexually offensive language. The witnesses were "shocked" and "surprised" by the sexual joke told by their supervisor at a staff meeting which was completely unrelated to the staff meeting agenda. Although condoms are preventative measures to contracting sexually related infections or diseases, such as hepatitis, the witnesses believed the focus and content of the female condom article was strong for work. The investigation found no evidence to show the June 21st comments were related to work.

The investigation disclosed five (5) incidents of unwelcome sexual conduct within a three-month span, which were sufficiently egregious to create an intimidating, hostile, or offensive work environment. Each of the three (3) HARI unit staff members found the conduct "inappropriate" or "offensive". Each was reluctant to discuss this with SOI [redacted] because she was the supervisor. Witness [redacted] best expressed the precarious circumstances posed by SOI [redacted] conduct. Although she was obligated to discuss work issues with SOI [redacted] and to read SOI [redacted] e-mails, she was reluctant to do so for fear of being subjected to sexually inappropriate and offensive content. As a supervisor, SOI [redacted] knew or should have known of her responsibility to ensure a "harassment-free" work environment based on her attendance at sexual harassment prevention training. Based on this information, it was conceivable for a reasonable person under the circumstances to find SOI [redacted] conduct sufficiently egregious for the workplace in violation of the County's Sexual Harassment and Equal Employment Opportunity Non-Discrimination policies.

The investigation did not reveal any proof that DPH knew or should have known about SOI [redacted] sexually inappropriate conduct prior to the current complaint. The investigation did not reveal any prior complaints of this nature against SOI [redacted] CP [redacted] and the witnesses were admittedly reluctant and uncomfortable about filing a formal complaint. On April 28, 2010, after receiving the April 27th e-mail, CP [redacted] reported SOI [redacted] conduct to [redacted]. Dr. [redacted] took immediate and appropriate action by documenting and referring the matter to DPH Human Resources (HR) on April 29, 2010. (Exhibit 1)

CONCLUSION:

CP [redacted] is a member of a protected group based on her sex. The investigation

CONFIDENTIAL PERSONNEL INFORMATION

revealed that CP [redacted] and other staff members of the HARI unit were subjected to unwelcome comments, questions, jokes, and e-mails of a sexual nature by their supervisor which were sufficiently egregious to create an intimidating, hostile, or offensive work environment. Therefore, the investigation revealed a violation of the County's Sexual Harassment and Equal Employment Opportunity Non-Discrimination policies.

Based on the findings of the investigation, corrective action is warranted. OAAC respectfully requests that DPH submit a corrective action plan to OAAC within ten (10) business days.

L. Collum-Cooper
Deputy Compliance Officer

9/2/10
Date

Exhibit 1

OAAC MONITORED COMPLAINTS (INTERNAL)

Date Received: April 30, 2010

Charging Party: [redacted]

SOI: [redacted]

Department: Public Health, Environmental Health

Contact [redacted] **Telephone** [redacted]

Basis: Sexual Harassment

Issue: See attached additional information.

Date of Discrimination: 4/27/10

Comments: See attached emails and complaint form submitted.

Facsimile (213) -580-0014
Attention: Comelita Brown
Office of Affirmative Compliance

PHI-2010-231

Case No. _____

JEC

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

DISCRIMINATION COMPLAINT FORM

PLEASE PRINT OR TYPE

YOUR NAME: [redacted]	YOUR JOB TITLE: Epidemiologist
YOUR DEPARTMENT: Public Health	
ADDRESS: [redacted]	
TELEPHONE NO.: Wor[redacted] Hom[redacted]	
I prefer to be contacted by telephone at: Home: ☒ Work: ☐	
Please indicate the most convenient time(s) and day(s) to reach you: Time(s) 5^00 pm 11^30 am Day(s) Monday Tuesday	

I WISH TO COMPLAIN AGAINST:

NAME OF PERSON(S) YOU ARE COMPLAINING ABOUT: [redacted]

THEIR JOB TITLE(S): Medical Epidemiologist

1. I believe that I was discriminated against because of (race, sex, age, disability, religion, national origin, color, retaliation, etc.)

   I do not feel discriminated against but rather offended.

2. This discrimination resulted in the following unfair treatment (discharge, denial of promotion, harassment, etc.)

   I witnessed inappropriate emails being sent by [redacted] to members of our team along with inappropriate personal questions & jokes of a sexual nature being made at inappropriate times.

3. Date discrimination occurred: Email sent 4/27/10

4. Why do you believe the unfair treatment you listed above was discriminatory?

The comments, questions & email have been of a personal sexual nature and have offended members of our team. They have created an awkward and uncomfortable work environment at times.

Please attach a separate sheet, if necessary.

5. What is your desired remedy? I would like to speak directly to [redacted] to see if I can resolve the situation.

6. List the names, job titles and telephone numbers (if possible) of witnesses, or anyone else you feel could provide evidence.

On a separate sheet, please explain what you think each witness will be able to relate.

Name	Title	Telephone Number

7. EMPLOYMENT DATA:

A. Date hired or applied for job:
6/28/2005

B. Your job title at time of discrimination:
Epidemiologist

C. Name and title of your immediate supervisor:
[redacted] Medical Epidemiologist

D. Who is your department's Affirmative Action Coordinator?

8. Have you attempted to resolve your problem by discussing the matter with someone in management?

Yes ☒ No ☐

If yes, provide the name and title of the person(s) and state what happened.

[redacted] of Acute Communicable Disease Control. [redacted] is supportive of the situation.

9. Are you interested in resolving your complaint through mediation?

Yes ☐ No ☐ Not Sure ☒

9A. Would you like additional information on Mediation?

Yes ☐ No ☐

10. Have you filed this complaint with the Equal Employment Opportunity Commission or Department of Fair Employment and Housing?

Yes ☐ Date: _____ No ☒

11. Do you have an attorney concerning this complaint?

Yes ☐ No ☒

12. Personal Data - Please provide this information for statistical purposes.

Sex: Female ☒ Male ☐

Race/ Ethnicity: White ☒ American Indian ☐ Black ☐ Other ☐ Asian & Pacific Islander ☐ Hispanic ☐ Filipino ☐

I declare that the above statements are true to the best of my knowledge.

[redacted] Signature

4/29/10 Date

RETURN TO:

County of Los Angeles
Office of Affirmative Action Compliance
Department of Health Services Investigations
Attn: Dennis Tafoya
2011 N. Figueroa Street, Suite 575
Los Angeles, CA 90012-2700

For Office Use Only:

Received by: _____ Date: _____

29-Apr-10

To the record:

Yesterday at approximately 2:00 PM I was consulted by [redacted] concerning her supervisor, [redacted] alleged that [redacted] had transmitted a sexually offensive message via email [redacted] and 2 other staff in that section. She showed me a copy of the message.

Upon further questioning I was informed that at least two other times recently [redacted] heard [redacted] make some rude comments during staff meetings. [redacted] stated she discussed this with her coworkers but they were reluctant to bring the matter to management's attention. However when the email incident occurred [redacted] realized she needed to raise the situation with me. She states that while she personally is not offended with the content of the allegations, that her coworkers have been upset.

We discussed options for handling the complaint. I informed her that I was bound to inform the chief, [redacted] and to contact Human Resources [redacted] felt that she would like to take the matter personally to [redacted] I replied that she could do so if she wanted to but whatever she did would have no impact on my responsibility to make an official report. I determined later that [redacted] did not have time to speak to [redacted] on the matter prior to going home.

Shortly after my conversation with [redacted] I reported the complaint to my superior [redacted] We reviewed DPH policy dated 1/10 and DHS policy 749 dated 2005 for guidance. Together we notified [redacted] of the complaint. I informed our Staff Analyst [redacted] of the matter when she returned late in the day to her office.

Then I instructed [redacted] by voice mail since she had left work for the day to complete the complaint form as soon as possible. Today I met with her and provided a blank complaint form, which she completed and I reviewed with her. I reassured her that despite her reluctance it was necessary to file the complaint. I scanned the report in order to forward it to HR.
29 Apr 10 @ 3:16 PM

[redacted] - ACDC harassment complaint attached - CONFIDENTIAL

From: [redacted]
To:
Date: 4/29/2010 3:24 PM
Subject: ACDC harassment complaint attached - CONFIDENTIAL
CC: [redacted]
Attachments: [redacted]

Security: Confidential

CONFIDENTIAL

[redacted]

Attached please find two documents related to a sexual harassment claim agains[redacted] by subordinat[redacted]. For your background [redacted] reports me, and I report to [redacted] is the ACDC Staff Analyst and also reports to [redacted] Any one of us may be contacted regarding your investigation.

Thank you.

[redacted]
Acute Communicable Disease Control
[redacted]

Exhibit 2

JINQ COUNTY WIDE TI KEEPING AND PAYROLL PERSON L SYSTEM 07/28/10
M ECTOR JOB INQUIRY 10:58:22

EMPLOYEE NO: [redacted]

*** ENTER AN 'X' NEXT TO THE JOB KEY TO VIEW THAT JOB RECORD. ***

SEL CD	APPT DATE	STOP DATE	JOB CDE	DPT NO	ITEM NO	ITEM SUB	DESC ABBR
--	--------	--------	---	---	----	----	----------
_	[redacted]	[redacted]	A	295	[redacted]	A	[redacted]
_	[redacted]	[redacted]	A	295	[redacted]	A	[redacted]
_	[redacted]	[redacted]	A	295	[redacted]	N	[redacted]
_	[redacted]	[redacted]	A	295	[redacted]	O	[redacted]
_							
_							
_							
_							
_							

JUMP> ____

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10--PF11--PF12---
HELP TBLS RTRN CNCL PGUP PGDN JHST TITM JBON

5999I DATA SUCCESSFULLY RETRIEVED

```
JTER        COUNTY WIDE (MEKEEPING AND PAYROLL PERS(JEL SYSTEM        08/03/10
M ECTOR                    TERMINATION AND FINAL PAY                  07:51:35

EMPLOYEE NO>[redacted]
PROC CNTR: 29500 [redacted]  [redacted]

TERMINATION REASON------> 27
TERMINATION DATE--------> [redacted]    CORRECTED TERMINATION DATE> _______

EARLY SEPARATION PROGRAM> N
FINAL PAY INDICATOR-----> N
PAYMENT METHOD CODE-----> RP

PAY AS CODE-------------> A   PAY ALL NOW
DEFERRED PAYMENT DATE 1->
DEFERRED PAYMENT DATE 2->

LAYOFF SEQUENCE NO------> _____

                                                                  JUMP> ____
Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10--PF11--PF12---
      HELP  TBLS  RTRN  CNCL                            JREM        EPER
E999I   DATA SUCCESSFULLY RETRIEVED
```

```
.TER        COUNTY WIDE (  )EKEEPING AND PAYROLL PERS(  )EL SYSTEM        08/03/10
M ECTOR                    TERMINATION AND FINAL PAY                      07:51:35

EMPLOYEE NO> [redacted]
PROC CNTR: [redacted]                    [redacted]

TERMINATION REASON------> [redacted]
TERMINATION DATE--------> [redacted]    CORRECTED TERMINATION DATE> ________

     STATUS-REASON-CODE                    DESCRIPTION
_          27          TERMINATION - RETURNED TO SCHOOL
_          28          TERMINATION - MATERNITY
_          29          TERMINATION - IN LIEU OF DISCHARGE
_          30          TERMINATION - RELEASED TEMPORARY
_          31          TERMINATION - RETIREMENT
    STATUS-REASON-CODE __

                                                                    JUMP> ____
Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10--PF11--PF12---
      HELP  TBLS  RTRN  CNCL                          JREM        EPER
5999I   DATA SUCCESSFULLY RETRIEVED
```

Exhibit 3

From: [redacted]
To:
Date: Tuesday - April 27, 2010 6:38 PM
Subject: Movie titles for the adult film industry...

H[redacted]

I was reading a humor/cartoon book today by Colin Nissan, called 'Don't Be That Guy'. One of the cartoons in it seemed extremely appropos to our recent discussion on the SB policy- but quite possibly not to everyone on the SB's taste. So you get to be the lucky recipient...that's what happens when they give us these policies to review, you start seeing health messages everywhere.

[redacted]

From: [redacted]
To:
Date: Tuesday - April 27, 2010 7:05 PM
Subject: Fwd: Movie titles for the adult film industry...

---

for your amusement...

IF THE CDC

(CENTERS FOR DISEASE CONTROL AND PREVENTION)

WERE IN CHARGE OF PORN TITLES

Debbie Goes to the Clinic in Dallas

NAUGHTY NURSES 8: *Penicillin Party!*

BIG DICKS WITH HUGE HERPES

Ass Pirates on Antibiotics

Backdoor Fever & GONORRHEA GIRLS

Crab Infestation

OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

POLICY GUIDANCE

Volume 1
Equal Employment Opportunity Policy

Volume 2
Elements of Proof

Dennis A. Tafoya
Director

OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

POLICY GUIDANCE

Volume 1
Equal Employment Opportunity Policy

- Equal Employment Opportunity (EEO) Policy
- Sexual Harassment Policy
- Policy on Diversity
- Board of Supervisors' EEO Nondiscrimination Policy:
  - Statement
  - Poster

Dennis A. Tafoya
Director

§100.00 EQUAL EMPLOYMENT OPPORTUNITY (EEO) POLICY GUIDANCE 1

- OAAC's Mission, Vision and Responsibilities 1
- Purpose of OAAC's EEO Policy Guidance 1
- Los Angeles County's Equal Employment Opportunity (EEO) Policy 2
- Los Angeles County Board of Supervisors' Equal Employment Opportunity Non-Discrimination Policy 3
- Federal and State Civil Rights Laws 4
- County Departmental Responsibilities 4
- County Executive and Management Employees' Compliance with County Policies and Board Directives 5

§100.01 EEO POLICY GUIDANCE – PROHIBITED CONDUCT 5

- Civil Service Rule 18.031 (Discipline) 5

§100.02 EEO POLICY GUIDANCE – DISCRIMINATION 6

- Discrimination Defined 6
- Examples of Disparate or Adverse Treatment 6
- List is Not Exhaustive 7
- Gender Discrimination 7

§100.03 EEO POLICY GUIDANCE – DISABILITY ACCOMMODATION, THE GOOD FAITH INTERACTIVE PROCESS, AND DISABILITY DISCRIMINATION 7

- Reasonable Accommodation 7
- Interplay with Workers' Compensation and Return-To-Work 8
- Good Faith Interactive Process 8
- What Constitutes a Disability? 9
- Defenses in Disability Cases 10

§100.04 EEO POLICY GUIDANCE – RELIGIOUS ACCOMMODATION 12

§100.05 EEO POLICY GUIDANCE – PREGNANCY DISABILITY LEAVE (PDL) AND FAMILY MEDICAL LEAVE (FMLA)/CALIFORNIA FAMILY RIGHTS ACT (CFRA) 13

- Leave Requirements 14
- Guaranteed Return Rights 15
- FMLA Military Leave Rights 15

§100.06 EEO POLICY GUIDANCE – LANGUAGES IN THE WORKPLACE 16

§100.07 EEO POLICY GUIDANCE - MARITAL STATUS DISCRIMINATION 16

- Employment of Spouse 17
- Accommodation for co-employees who marry 17
- Fringe Benefits 17

§100.08 EEO POLICY GUIDANCE – SEXUAL AND OTHER FORMS OF HARASSMENT 18

- The Conduct Need Not Be Severe or Pervasive 18

§100.08 (A) – SEXUAL AND OTHER FORMS OF HARASSMENT - HOSTILE WORK ENVIRONMENT HARASSMENT (BASED ON PROTECTED CATEGORIES OTHER THAN SEXUAL) 18

§100.08 (B) – SEXUAL AND OTHER FORMS OF HARASSMENT - THIRD-PARTY HARASSMENT 18

§100.08 (C) – SEXUAL AND OTHER FORMS OF HARASSMENT - SEXUAL HARASSMENT 18

§100.08 (C)(1) – SEXUAL AND OTHER FORMS OF HARASSMENT - QUID PRO QUO HARASSMENT 19

§100.08 (C)(2) – SEXUAL AND OTHER FORMS OF HARASSMENT - HOSTILE WORK ENVIRONMENT HARASSMENT (BASED ON SEX) 19

- Harassment Because of Sex Includes 20
- Sexual Favoritism 20
- Fraternization 21
- Examples of Conduct that May Violate the EEO Policies 21
- Additional Information About the County's Policy on Sexual Harassment 23

§100.09 EEO POLICY GUIDANCE – DIVERSITY-RELATED CONDUCT 23

- LA County's Policy on Diversity 23

§100.10 EEO POLICY GUIDANCE – RETALIATION 24

- Adverse Actions 24
- Covered Individuals 25
- Protected Activity -- Opposition to a practice believed to be unlawful discrimination 25
- Protected Activity -- Participation in an employment discrimination proceeding 25

§100.11 EEO POLICY GUIDANCE – SCOPE OF COVERAGE 26

- County Employees 26
- Location 26
- OAAC Jurisdiction 26
- Jurisdictional Complaints 26
- Non-jurisdictional Complaints 27
- Communication System/Equipment 27

§100.12 EEO POLICY GUIDANCE – AFFIRMATIVE DEFENSES 27

- Bona Fide Occupational Qualification (BFOQ) affirmative defense 27
- Business Necessity affirmative defense 28
- Job-Relatedness affirmative defense 28
- Undue Hardship affirmative defense (in disability accommodation cases) 28
- Undue Hardship affirmative defense (in religion accommodation cases) 29
- Otherwise Required by Law affirmative defense 29
- Inability to Perform affirmative defense (in disability cases) 29
- Danger to self affirmative defense (in disability cases) 29
- Danger to the health and safety of others (in disability cases) 29

§100.13 EEO POLICY GUIDANCE – REPORTING COMPLAINTS PERTAINING TO THE COUNTY'S EEO POLICIES 30

- Duty to Report 30

§100.14 EEO POLICY GUIDANCE – PROCEDURES – DUTIES OF MANAGERS AND SUPERVISORS 31

- Duty of Managers and Supervisors to Report 31
- Additional Duties of Managers and Supervisors 31

§100.15 EEO POLICY GUIDANCE – DUTY TO COOPERATE 32

- Public Safety Officers Procedural Bill of Rights 33
- Firefighters Procedural Bill of Rights 33

§101.00 EEO POLICY GUIDANCE – PROCEDURES 34

- When Investigation Must Be Conducted 34

§101.02 EEO POLICY GUIDANCE – PROCEDURES – COMPLAINT PROCESS 35

- Reporting Complaints 35
- Jurisdictional Intake Assessment and Case Classification 35
  - Class 1 - Jurisdictional Case 35
  - Class 2 - Non-Jurisdictional Case 36
- OAAC Mediation 36
- Investigating Complaints 37
- Risk Management 38
  - Claims Board Matters 39
  - Settlement Agreements 39
- OAAC Corrective Action Process 40

§101.04 EEO POLICY GUIDANCE – PROCEDURES – CONFIDENTIALITY 40

§100.00 EQUAL EMPLOYMENT OPPORTUNITY (EEO) POLICY GUIDANCE

- OAAC's Mission, Vision and Responsibilities

  The Board of Supervisors created the Office of Affirmative Action Compliance (OAAC) in 1976 to assist County departments in the prevention of employment discrimination and provide programs that ensure equal employment opportunity in County government. The OAAC's "Mission" is *"To ensure equal opportunity and a respect for diversity in employment, programs, and services."* The OAAC's "Vision" is *"A County government that respects diversity and is free of discrimination."*

  Los Angeles County Code, Chapter 5.08.110 (OAAC–Created—Organization powers and duties) in Title 5 – Personnel, indicates that the OAAC is empowered to *"Investigate, monitor, regulate and enforce the County's affirmative action policies by: a) Issuing appropriate affirmative action directives to all county departments and agencies, and b) Reporting to the board, any identified noncompliance with these affirmative action directives by the county departments or agencies."*

  Los Angeles County Code, Chapter 5.09.030 (Responsibilities of County personnel) in Title 5 – Personnel, states it is the OAAC's responsibility to investigate *"employee complaints of sexual harassment or complaints of other types of employment discrimination, harassment, or related misconduct prohibited by federal or state law, or County ordinance, policy, or departmental regulation."* Chapter 5.09.030 also states the OAAC's responsibilities include, but are not limited to, *"[d]eveloping processes for conducting investigations of alleged violations."*

- Purpose of OAAC's EEO Policy Guidance

  Consistent with the OAAC's "Vision" and "Mission," as well as the relevant provisions of the Los Angeles County Code referenced herein, including, Chapter 5.08.110 and Chapter 5.09.030, this "Equal Employment Opportunity (EEO) Policy Guidance" is intended to reiterate that the County of Los Angeles and the OAAC are committed to a work environment of respect and mutual support, free of discriminatory harassment and inappropriate conduct toward others based on a protected category (race, color, religion, etc.), and free of sexual harassment and inappropriate sexual conduct toward others. All County employees are required to conduct themselves in accordance with the entirety of the County's EEO Policy (Chapter 5.08), the County's Policy on Sexual Harassment (Chapter 5.09), the County's Policy on Diversity (Chapter 5.10), the Board of Supervisors' *"Equal Employment Opportunity Non-Discrimination Policy"* statement and poster adopted on June 28, 1994 (hereinafter collectively referred to as the "EEO Policies"), and all applicable local, County, state, and federal civil rights laws, rules, and regulations.

The County of Los Angeles will not tolerate unlawful discrimination because of an individual's race, color, religion, sex (pregnancy or gender), sexual orientation, marital status, national origin (including language use restrictions), ancestry, disability (mental and physical, including HIV/AIDS), medical condition (cancer/genetic characteristics), age 40 and over; nor will the County of Los Angeles tolerate unlawful denial of family and medical care leave, denial of pregnancy disability leave; nor will it tolerate unlawful harassment based on sex or other protected category or retaliation for engaging in a protected activity.

All County employees are responsible for conducting themselves in accordance with the County's EEO Policies, and this associated "EEO Policy Guidance." Violation of the EEO Policies will lead to prompt and appropriate corrective action including, but not limited to, counseling, training, written warning, written reprimand, suspension, demotion, and/or discharge.

- Los Angeles County's Equal Employment Opportunity (EEO) Policy

The County's EEO Policy [Attachment 1], codified in 1976 in Title 5 – Personnel, Chapter 5.08 (Equal Employment) of the Los Angeles County Code, states, in pertinent part, the following: *"It shall be the policy of the County of Los Angeles to provide equal opportunity in county employment for all qualified persons, regardless of race, color, religion, sex, national origin, age or disability...ensure that the existence of equal employment opportunities by making it the responsibility of every appointing power to assure that:*

1) *Discrimination does not exist in the employment or discharge of any individual with respect to his/her compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex, national origin, age or disability; and*

2) *There is no limitation, segregation or classification of his/her employees or applicants for employment in any way which would deprive or tend to deprive an applicant of entering into county service, or an employee of promotional opportunities, or otherwise adversely affect his/her status because of race, color, religion, sex, national origin, age or disability; and*

3) *There exists no employment or personnel management practice or standard which would adversely affect persons of a protected group unless there is adequate justification in the form of a showing that the standard or practice is job-related. If a standard or practice excludes persons of a protected group on account of their membership in the group, such a standard or practice must be required as a business necessity. "Business necessity' is defined for purposes of [Chapter 5] as any practice that is essential to the safe and efficient operations of the county and without which there would be severe financial impact."*

- Los Angeles County Board of Supervisors' Equal Employment Opportunity Non-Discrimination Policy

In addition to the Los Angeles County Code, Chapter 5.08 (Equal Employment), on June 28, 1994, the Los Angeles County Board of Supervisors adopted an *"Equal Employment Opportunity Non-Discrimination Policy"* statement and poster for distribution to all Department and District Heads. The policy statement [Attachment 2], signed by Supervisor Yvonne Burke, Board Chairperson, reiterates the County's prohibition against discrimination toward applicants and employees in the work place. Specifically, the policy statement states the following:

"It is the policy of the County of Los Angeles to provide equal employment opportunity for all qualified persons, regardless of race, color, religion, sex, national origin, age, sexual orientation or disability. Our commitment includes ensuring a non-discriminatory workplace where individuals are valued for their differences as well as their similarities.

"Every Los Angeles County employee and all persons engaged in business with Los Angeles County have an ongoing responsibility to create a non-discriminatory work environment, through their personal conduct.

"Responsibility for the implementation of the County of Los Angeles EEO Non-Discrimination Policy rests with the Affirmative Action Compliance Officer. However, all Los Angeles County department heads are responsible for carrying out the County's policy within their department. The Board of Supervisors expects each department head, manager and supervisor to ensure compliance with this policy."

The poster [Attachment 2] adopted by the Board of Supervisors states that *"Discrimination (based on race, color, religion, sex, national origin, age, sexual orientation, disability); Sexual Harassment; Racial Harassment; Retaliation by management or peers for filing a complaint or speaking up about discrimination, sexual or racial harassment are illegal."* The poster indicates that *"[i]f you have a problem in any of these areas, do the following:*

1) Contact your immediate supervisor; or

2) Contact a higher level manager; or

3) Contact your department's Affirmative Action Coordinator at _____; or

4) Contact the OAAC at (213) 974-1251; or
5) Contact the DFEH or the EEOC."

As indicated, the County's EEO Policy enumerates race, color, religion, sex, national origin, age, and disability as protected categories. The Board of

Supervisor's *"EEO Non-Discrimination Policy"* statement and poster adopted on June 28, 1994, added sexual orientation as a protected category.

- Federal and State Civil Rights Laws

In addition to the EEO Policies and this "EEO Policy Guidance", County employees are responsible for conducting themselves in accordance with federal and state civil rights laws, including, but not limited to, the following:

1) Title VII of the U.S. Civil Rights Act, as amended, prohibits employment discrimination based on race, color, religion, sex, or national origin. The Age Discrimination in Employment Act of 1967 (ADEA), as amended, protects individuals who are 40 years of age or older. Title I of the Americans with Disabilities Act of 1990 (ADA), as amended, prohibits employment discrimination against persons with disabilities. The ADA, Title I is enforced by the EEOC.

2) The California FEHA, Government Code Section 12900, et.seq., as amended, provides protection from harassment or discrimination in employment because of age 40 and over, ancestry, color, religious creed, disability (mental and physical including HIV/AIDS), marital status, medical condition (cancer and genetic characteristics), national origin, race, religion, sex and sexual orientation. The FEHA also provides protection for denial of family and medical care leave and denial of pregnancy disability leave or reasonable accommodation. This state civil rights law is enforced by the DFEH.

- County Departmental Responsibilities

As previously mentioned, the Los Angeles County Code, Chapter 5.08 (Equal Employment), states that it shall be the policy of the County of Los Angeles *"to ensure the existence of equal employment opportunities by making it the responsibility of every appointing power to assure that. . . . [d]iscrimination does not exist in the employment of an individual with respect to his/her compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex, national origin, age, or disability...."*

Pursuant to Chapter 5.08 *"every appointing power"* (every County department) is to ensure that discrimination does not exist in the employment of an individual because of such individual's race or other enumerated protected category. Accordingly, every County department has the responsibility to cooperate with the OAAC's oversight of all investigations of employment discrimination complaints under the monitoring model or with the OAAC's direct investigations of such complaints under the shared services model.

For further details regarding the OAAC employment discrimination complaint process and County departmental responsibilities under the process, please refer to the OAAC Employment Discrimination Complaint Process Manual, which may be found on the OAAC's website at:

http://oaac.co.la.ca.us/invest/ComplaintProcessManual.pdf
("website currently under construction")

- County Executive and Management Employees' Compliance with County Policies and Board Directives

  County executive and management employees who are subject to the provision of the County's Management Appraisal Performance Plan (MAPP) are required to comply with County policies and Board Directives, including, but not limited to: 1) implementation and effective management of risk management, loss prevention, workers' compensation, environmental and occupational health and safety programs, and full conformance with Department Corrective Action Plans; and 2) employment discrimination complaint process.

  In accordance with the Los Angeles County Code, Chapter 5.08.010 (Policy Statement) and related policies, it is the duty of County executive and management employees to ensure that discrimination does not exist in the employment or discharge of an individual with respect to any enumerated protected basis. This duty requires County executive and management employees to cooperate with the OAAC in its responsibility to investigate, monitor, regulate, and enforce the EEO Policies, and related County policies and procedures, including, but not limited to, the OAAC's EEO Policy Guidance. Pursuant to the Los Angeles County Code, Chapter 5.08.010 (Affirmative Action program – Monitoring and evaluation), the County's Affirmative Action Compliance Officer is responsible for monitoring performance to ensure equal employment opportunity and affirmative action in County service.

§100.01 EEO POLICY GUIDANCE – PROHIBITED CONDUCT

Each County manager or supervisor is responsible for ensuring all of their employees are aware of the definitions of prohibited conduct contained in the "EEO Policy Guidance," as they will govern any disciplinary proceeding for violations of EEO Policies. In addition, County employees are reminded of Civil Service Rule 18.031 (Discipline).

- Civil Service Rule 18.031 (Discipline)

  Los Angeles County Civil Service Rule 18.031 (Discipline) [Attachment 3] states the following: *"Failure of an employee to perform his/her assigned duties so as to meet fully explicitly stated or implied standards of performance may constitute adequate grounds for discharge, reduction, or suspension. Where appropriate,*

such grounds may include, but are not limited to, qualitative as well as quantitative elements of performance, such as failure to exercise sound judgment, failure to report information accurately and completely, failure to deal effectively with the public, and failure to make productive use of human, financial and other assigned resources."

Civil Service Rule 18.031 also states: *"Grounds for discharge, reduction or suspension may also include any behavior or pattern of behavior which negatively affects an employee's productivity, or which is unbecoming a County employee; or any behavior or condition which impairs an employee's qualifications for his/her position or for continued County employment."*

Under County Civil Service Rule 18.031, inappropriate behavior, such as sexual harassment, discriminatory harassment based on a protected category (race, color, religion, etc.), and any form of retaliation by management or co-workers for filing a complaint or speaking up about discrimination, may constitute *"conduct unbecoming"* a County employee and violate the County's EEO Policy (Los Angeles County Code, Chapter 5.08) and/or the County's Policy on Sexual Harassment (Los Angeles County Code, Chapter 5.09). Pursuant to Civil Service Rule 18.031, County employees engaging in such conduct are subject to disciplinary action ranging from a warning and reprimand to suspension, demotion, or discharge.

§100.02 EEO POLICY GUIDANCE – DISCRIMINATION

- Discrimination Defined

"Discrimination" is defined as the *"disparate or adverse treatment"* of an individual based on or because of that individual's race, color, religion, sex (pregnancy or gender), sexual orientation, marital status, national origin (including language use restrictions), ancestry, disability (mental and physical, including HIV/AIDS), medical condition (cancer/genetic characteristics), or because the individual is age 40 or older.

- Examples of Disparate or Adverse Treatment

Examples of *"disparate or adverse treatment"* include when, based on an individual's race, sex, age or other protected status there is a refusal or failure to hire, termination or discharge from employment, denial of promotion or upgrade, denial of request for transfer or reassignment, involuntary transfer or reassignment to a less desirable position or assignment, denial of pregnancy disability leave, denial of family medical leave, denial of reinstatement from pregnancy disability leave, denial of reinstatement from family medical leave, refusal to reasonably accommodate, failure to engage in a good faith interactive process, unjustified negative performance evaluations, unjustified negative references, unjustified

write-ups, unjustified suspension, unjustified demotion, increased surveillance or monitoring, work environment harassment, and constructive discharge, etc.

- List is Not Exhaustive

  This list is not exhaustive. Any disparate or adverse treatment which is based on or because of race, color, religion, sex (pregnancy or gender), sexual orientation, marital status, national origin (including language use restrictions), ancestry, disability (mental and physical, including HIV/AIDS), medical condition (cancer/genetic characteristics), and age 40 and above may also violate the County's EEO Policies.

- Gender Discrimination

  Effective January 1, 2004, AB 196, amended Government Code Section 12926 and added Government Code Section 12949, to broaden the definition of "sex" to include a person's gender, as that term is defined in Penal Code Section 422.76. Gender is defined as the employee's actual sex, or the employer's perception of the employee's sex, and includes the employer's perception of the employee's identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with the employee's sex at birth. This law allows employers to require employees to comply with workplace appearance, grooming, or dress standards consistent with state and federal law. However, employers have to allow employees to dress in a manner consistent with the employee's gender identity.

§100.03 EEO POLICY GUIDANCE – DISABILITY ACCOMMODATION, THE GOOD FAITH INTERACTIVE PROCESS, AND DISABILITY DISCRIMINATION

- Reasonable Accommodation

  Under the EEO Policies, County managers and supervisors must provide reasonable accommodation for those applicants and employees with mental or physical disability, unless the County can show that to do so would cause an "undue hardship." Reasonable accommodation can include, but is not limited to, changing job duties or work hours, providing leave, relocating the work area, and/or providing mechanical or electrical aids. The failure to reasonably accommodate, unless an "undue hardship" exists, is a violation of the County's EEO Policies based on disability.

  If the County denies accommodation because it would be an "undue hardship," it must be shown that the accommodation requires significant difficulty or expense. Determination of undue hardship is based on a number of factors, including, but not limited to, the nature and cost of the accommodation needed, and the overall financial resources of the County.

For further details regarding establishing proof of an "undue hardship," refer to the DFEH booklet, "Disability Under the Fair Employment & Housing Act: What You Should Know About the Law" at pp. 5-6 [Attachment 4]. The aforementioned DFEH booklet may also be found on the DFEH's website at:

http://www.dfeh.ca.gov/DFEH/Publications/PublicationDocs/DFEH-208DH.pdf.

- Interplay with Workers' Compensation and Return-to-Work

  On many occasions, there may be an "interplay" (such as, interaction) between the County's affirmative duty to reasonably accommodate disabled workers, and the injured workers' rights to Workers' Compensation. Workers' compensation laws are designed to ensure employees are compensated for lost wages due to job-related injuries until they are able to return to work.

  The interplay may occur when the injured worker requests a reasonable accommodation. The interplay may also occur when someone other than the individual with a disability provides documentation to the County department that triggers the exploration of reasonable accommodation with the individual (employee). For example, an employee has been out-of-work for six months with a workers' compensation injury. The employee's doctor sends the County department documentation that the employee is released to return to work, with work restrictions. Such documentation may state that the employee is released to return to a "light duty" or "modified" position. Generally, this constitutes a request for reasonable accommodation. The County has an Early Return to Work Program that seeks to return employees back to work in safe "light duty" or "modified" positions. Early return to work efforts benefit the employee and reduce the County's exposure to worker's compensation time loss expenses. County managers and supervisors should attempt to find "light duty" or "modified" positions as soon as possible.

  The Chief Executive Office (CEO) Risk Management Branch may be consulted regarding workers' compensation or return-to-work issues.

  For further information regarding the CEO Risk Management Branch's Workers' Compensation Program and the Return-to-Work Program, call (213) 738-5479 or visit http://ceo.lacounty.gov/MPN/

- Good Faith Interactive Process

  County managers and supervisors must also engage in a timely, on-going, good faith interactive process with applicants or employees in need of reasonable accommodation. "Good faith" means the employer and employee must communicate directly with each other to share information that will assist in the exploration of a reasonable accommodation. Neither party can delay or interfere with this process. To demonstrate a "good faith," the County should have

documentation that reflects cooperative behavior that promotes the identification of an appropriate accommodation. Failure to do so is a separate violation of the County's EEO Policies based on disability.

For further details regarding the requirement, guidelines, and specific steps involved in the process of engaging County employees with a disability in a "good faith" interactive process when a request for reasonable accommodation is made, see the OAAC's Employment Guidelines for the Reasonable Accommodation Process, which is incorporated herein by reference. The OAAC's Employment Guidelines for the Reasonable Accommodation Process may be found on the OAAC's website at:

http://oaac.co.la.ca.us/ada/reasonableguidelines.pdf

- What Constitutes a Disability?

Prior to engaging applicants or employees in the interactive process, County managers and supervisors should have some understanding of what constitutes a "disability" under California law. Before an applicant or employee must be reasonably accommodated, he/she must establish the existence of a disability as defined under the Fair Employment and Housing Act (FEHA). However, please note that the California Legislature found and declared with the passage of the Prudence K. Poppink Act in 2000 that this state provides protection greater than the ADA of 1990, and has always afforded broader protection than federal law.

Under the Prudence K. Poppink Act, the Legislature clarified that the definitions of physical and mental disability only require a "limitation" upon a major life activity, but not a "substantial limitation" as required by the ADA of 1990. They further stated that when determining whether an employee's condition is a limitation, mitigating measures should not be considered, unless the mitigation itself limits a major life activity. Thus, while an applicant or employee must establish that they have a disability as defined under the FEHA before he/she is reasonably accommodated, it should be understood that definition of disability is to be interpreted broadly.

Additionally, please note that on September 25, 2008, the President signed the ADA Amendments Act of 2008 ("ADA Amendments Act" or "Act"). The Act emphasizes that the definition of disability should be construed in favor of broad coverage of individuals to the maximum extent permitted by the terms of the ADA and generally shall not require extensive analysis.

The Act makes important changes to the definition of the term "disability" by rejecting the holdings in several U.S. Supreme Court decisions and portions of the EEOC's ADA regulations. The effect of these changes is to make it easier for an individual seeking protection under the ADA to establish that he or she has a

disability within the meaning of the ADA. For further details regarding the ADA Amendments Act, please refer to the EEOC's website at:

http://www.eeoc.gov/laws/statutes/adaaa_info.cfm

The FEHA covers mental or physical disabilities (including HIV/AIDS), regardless of whether the conditions are presently disabling. It also covers medical conditions, which are defined as either cancer or genetic characteristics. Disability does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance abuse disorders resulting from the current illegal use of drugs.

The FEHA forbids employment discrimination against an individual because of his/her physical disability, mental impairment, or medical condition (cancer-related and genetic characteristics). A person is recognized as "disabled" if he/she:

- Has a physical or mental disability that limits (such as, it makes the achievement of the major life activity difficult) one or more major life activities (construed broadly to include physical, mental, and social activities and working); or

- Has a history of such an impairment known to the employer; or

- Is incorrectly regarded or treated as having or having had such an impairment; or

- Is regarded or treated as having or having such an impairment that has no presently disabling effects, but may become a qualifying impairment in the future.

For specific definitions of physical disability, mental disability, and medical condition as outlined in the FEHA, see the DFEH's booklet, at pp. 2-3, entitled "Disability Under the Fair Employment & Housing Act: What You Should Know About the Law" [Attachment 4]. The booklet includes on p. 9 a comparison chart showing the definitions of "disability" under the FEHA compared to the ADA definitions (prior to the ADA Amendments Act). The aforementioned booklet, which is incorporated herein by reference, may also be found on the DFEH's website at:

http://www.dfeh.ca.gov/DFEH/Publications/PublicationDocs/DFEH-208DH.pdf.

- Defenses in Disability Cases

Any employment-related or personnel decision (such as, refusal to hire) based on any of the following reasons is not discriminatory:

1) The person is unable to perform the essential functions of the job and no reasonable accommodation exists that would enable the person to perform the "essential functions" of the job. This is known as the "inability to perform" affirmative defense.

2) The person would create an "imminent and substantial" danger to self or others by performing the job and no reasonable accommodation exists that would remove or reduce the danger. This is known as the "danger to the health and safety of the individual with a disability" and the "danger to the health and safety of others" affirmative defenses.

3) "All or substantially all individuals in the class excluded" by the requirement, i.e. those with the same physical or mental disability or medical condition as the complainant (e.g. colorblindness), would be unable to "safely and efficiently" perform the essential duties of the position in question; and the exclusionary policy or mental or physical requirement is "reasonably necessary" to the essence of the employer's business. This is known as the "Bona Fide Occupational Qualification or BFOQ" affirmative defense.

4) It is required by a state or federal statute or valid order issued by a court of law to deny the employment opportunity or take the adverse action against the complainant. Stated differently, the County can show that its otherwise discriminatory actions are required by a statute or court order that overrides the FEHA's prohibitions on disability discrimination. This is known as the "otherwise required by law" affirmative defense.

Reasons which are <u>not</u> legally acceptable excuses for discriminating against persons with disabilities (such as, refusal to hire due to a disability or perceived disability) are:

1) Possibility of future harm to the person or to others; and

2) Employing such individuals will cause the County's insurance rates to rise.

For explanation of defenses in disability cases, see <u>Cal. Admin. Code</u> tit. 2, §7293.8 (Defenses). You may find §7293.8 of the FEHA Commissions' regulations, by going to dfeh.ca.gov and looking for the external link to "California Code of Regulations." The external link will take you directly to the Fair Employment and Housing Commissions' regulations, §7285.0, et.seq., including but not limited to, §7293.8 (Defenses).

Also, for detailed information regarding the legal standards and analysis of disability discrimination cases, see the <u>DFEH Case Analysis Manual</u>, Chapter 5, Disability, which may be found on the DFEH's website at:

http://www.dfeh.ca.gov/DFEH/Publications/CaseAnalysisManual2008Updt/Chapter%205%20Disability.pdf/.

The elements of the prima facie case and the "affirmative defenses" in disability discrimination cases are explained in Chapter 5 of the DFEH Case Analysis Manual. For more information about "affirmative defenses" generally, see pp. 28-31 herein.

§100.04 EEO POLICY GUIDANCE – RELIGIOUS ACCOMMODATION

The freedom to worship as one believes is a basic human right, and the accommodation of religious beliefs is protected by the County's EEO Policies, and by all applicable local, County, state, and federal civil rights laws, rules and regulations.

"Religious creed" includes any traditionally recognized religion as well as beliefs, observances, or practices which an individual "sincerely holds", and which occupy in his or her life "a place of importance parallel to that of traditionally recognized religions." Religious creed discrimination may be established by showing:

1) Employment benefits have been denied, in whole or in part, because of an applicant's religious creed or lack of religious creed.

2) The County department or its representatives has failed to reasonably accommodate the applicant or employee's religious creed despite being informed by the applicant or employee or otherwise having become aware of the need for reasonable accommodation.

The County department or its representatives shall make accommodation to the known religious creed of an applicant or employee unless the County department can demonstrate that the accommodation is "unreasonable" because it would pose an "undue hardship."

Reasonable accommodations may include, but are not limited to, job restructuring, job reassignment, modification of work practices, or allowing time off in an amount equal to the amount of non-regularly scheduled time the employee has worked in order to avoid a conflict with his/her religious observances.

In determining whether a reasonable accommodation would impose an "undue hardship" on the operations of the County department, factors to be considered include, but are not limited to, the size of the relevant facility with respect to the number of employees, the size of budget, and other matters; the overall size of the County with respect to the number of employees, number and type of facilities, and size of budget; the type of the facility's operations, including the composition and structure of the workforce or membership; the nature and cost of the accommodation involved;

reasonable notice to the County department or its representatives of the need for accommodation; and any available reasonable alternative means of accommodation.

Under Title VII, it is considered an "undue hardship" if a County department is expected to bear more than a "de minimis" cost in order to provide an accommodation. Trans World Airlines, Inc. v. Hardison (1977) 432 U.S. 63, 84. Merriam-Webster's Dictionary of Law, defines "de minimis" as "lacking significance or importance; so minor as to be disregarded." Therefore, under Title VII in order to provide a reasonable accommodation of an employee's religious belief or observance, a County department is required to bear only inconsequential or negligible cost(s).

Reasonable accommodation of religious beliefs includes, but not limited to the following: Scheduled times for interviews, examinations, and other functions related to employment opportunities shall be reasonably accommodated based on religious practices. Dress standards or requirements for personal appearance shall be flexible enough to take into account religious practices. A County department shall not require membership from any employee or applicant whose religious creed prohibits such membership. An applicant or employee's religious creed shall be reasonably accommodated with respect to union dues.

Pre-employment inquiries regarding an applicant's availability for work on weekends or evenings shall not be used as a pretext for ascertaining his/her religious creed. However, inquiries as to the availability for work on weekends or evenings are permissible.

[For further information regarding the legal standards for religious discrimination under the FEHA, see the DFEH Case Analysis Manual, Chapter 8, Religion, which may be found on the DFEH's website at:

http://www.dfeh.ca.gov/DFEH/Publications/CaseAnalysisManual2008Updt/Chapter%208%20Religion.pdf.]

The elements of the prima facie case and the "affirmative defenses" in religious discrimination cases are explained in Chapter 8 of the DFEH Case Analysis Manual. For more information about "affirmative defenses" generally, see pp. 28-31 herein.

§100.05 EEO POLICY GUIDANCE – PREGNANCY DISABILITY LEAVE (PDL) AND FAMILY MEDICAL LEAVE (FMLA)/CALIFORNIA FAMILY RIGHTS ACT (CFRA)

The Fair Employment and Housing Act (FEHA) contains provisions relating to Pregnancy Disability Leave (PDL). Under the FEHA, it is unlawful for an employer to discriminate in terms of compensation, conditions or privileges of employment because of pregnancy, which is discrimination based on sex. Accordingly, it is a violation of the County's EEO Policy to discriminate in terms of compensation, conditions or privileges of employment based on pregnancy.

The FEHA requires all employers to provide information about PDL rights to their employees and post this information in a conspicuous place where employees tend to gather. The Department Fair Employment and Housing (DFEH) 100-21 form "Notice B – Family Care and Medical Leave California Family Rights Act (CFRA) and Pregnancy Disability Leave" (Attachment 5) explains employees' PDL rights and obligations.

Leave Requirements

- PDL is available when a woman is actually disabled by her pregnancy. This includes time off needed for prenatal care, severe morning sickness, doctor-ordered bed rest, childbirth, recovery from childbirth or any pregnancy related medical condition.

- An employee that is disabled by pregnancy is entitled to up to four months of disability leave. Leave can be taken before or after the birth during any period of time the woman is physically unable to work because of pregnancy or a pregnancy-related condition. All leave taken in connection with a specific pregnancy counts toward computing the four month period.

- If an employee is disabled as the result of a condition related to pregnancy, childbirth or related medical conditions and requests

- If possible, an employee must provide her manager or supervisor with the notice of the need PDL or transfer and the estimated duration of the leave at least 30 days in advance of the first day of PDL or transfer.

- If 30 days advance notice is not possible due to a change in circumstances or a medical emergency, notice must be given as soon as practical. The leave may be modified as a woman's changing medical condition dictates. If a woman wants to return to work earlier than agreed, the manager or supervisor must reinstate her within two (2) business days of her notice with the proper documentation from her health care provider.

- The employee may use any earned or accrued benefit time to receive compensation during her PDL or she may take the leave off unpaid. The same guidelines for using paid and unpaid time still apply during a leave for pregnancy.

- If an employee is disabled as the result of a condition related to pregnancy, childbirth or associated medical conditions and requests a reasonable accommodation upon the advice of her health care provider, a manager or supervisor must provide a reasonable accommodation.

- As an accommodation, and with the advice of her health care provider, an employee can request a transfer to a less strenuous or hazardous position for the duration of her pregnancy.

Guaranteed Return Rights

After a PDL or transfer, employees are guaranteed a return to the same position and can request the guarantee in writing. If the same position is no longer available due to layoff, building closure, etc., a manager or supervisor must offer a position that is comparable in terms of pay, location, job content and promotional opportunities unless they can prove that no comparable position exists.

FMLA Military Leave Rights

The National Defense Authorization Act (NDAA) was signed in to law in 2008 and later expanded in 2010. These amendments expand the military family leave provisions added to the Family and Medical Leave Act to provide qualifying exigency and military caregiver leave for employees with family members who are covered military members.

Qualifying Exigency Leave

The NDAA provides the child, parent or spouse of a service member in any branch of the Armed Forces, National Guard or Reserves with 12 workweeks of unpaid leave to deal with any qualifying exigency related to a call to active duty to a foreign country. The U.S. Department of Labor defines activities that would constitute qualifying exigencies as short notice deployments, military events and activities, childcare or school arrangements, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities or other related activities agreed upon by the employee and employer.

Military Caregiver Leave

The NDAA provides the child, parent, spouse or next of kin (nearest blood relative) of an Armed Forced, National Guard or Reserves member that was injured in the line of duty with 26 workweeks of unpaid leave to care for the injured service member. The leave also covers active service members or veterans who are undergoing medical treatment, recuperation or therapy for a serious injury or illness that occurred any time during the five years preceding the date of treatment.

§100.06 EEO POLICY GUIDANCE – LANGUAGES IN THE WORKPLACE

An employer (such as, County department or its representatives) may not adopt or enforce a rule or policies that limit or prohibit the use of any language in the workplace, unless 1) there is a legitimate "business necessity" and 2) the employer effectively notifies the employees the circumstances and time when speaking only in English is required or when and where the foreign languages are restricted as well as the consequences for violating the rule or policy. Both requirements must be met.

["Business necessity" is where an employer (County department) must prove that there exists an "overriding legitimate business purpose" such that the practice (English only rule) is necessary to the "safe and efficient" operation of the business and the challenged practice effectively fulfills the business purpose it is supposed to serve. Los Angeles County Code, Chapter 5.08.010 (Policy Statement) indicates that "business necessity" is defined as "any practice that is essential to the safe and efficient operations of the County and without which there would be severe financial impact." The practice (English only rule) may still be impermissible where it is shown that there exists an alternative practice which would accomplish the business purpose equally well with a less discriminatory impact.]

§100.07 EEO POLICY GUIDANCE - MARITAL STATUS DISCRIMINATION

The County's EEO Policies does not list marital status as a protected category. However, the Los Angeles County Code, Chapter 5.09.030 (Responsibilities of County personnel) indicates, in part, that the OAAC is responsible for investigating employee complaints of sexual harassment "or complaints of other types of employment discrimination, harassment, or related misconduct prohibited by federal or state law, or County ordinance, policy, or departmental regulations."

Under the state's civil rights law, the FEHA, Government Code §12900, et. seq., discrimination and harassment based on marital status are prohibited. Accordingly, consistent with FEHA, the OAAC, pursuant to Los Angeles Code, Chapter 5.09.030, may investigate allegations of discrimination based on marital status and an employee may be disciplined pursuant to Civil Service Rule 18.031 for "conduct unbecoming a County Employee. It is, therefore, inappropriate for a County manager or supervisor, or other covered entity, to deny or grant employment benefits for the reason that an applicant or employee is either married or unmarried (single). It is also inappropriate to deny an applicant or employee an employment benefit because of the employment or lack of employment of an applicant or employee's spouse.

"Marital status" is defined as "an individual's state of marriage, non-marriage, divorce or dissolution, separation, widowhood, annulment, or other marital state. A "spouse" is defined as "a partner in marriage as defined in Civil Code Section 4100."
It is inappropriate to ask an applicant to disclose his/her marital status as part of a pre-employment inquiry unless pursuant to an "affirmative defense." For business reasons other than ascertaining marital status, an applicant may be asked whether he/she has

ever used another name, such as, to enable the County of Los Angeles (the employer) to check the applicant's past work record.

An employer or other covered entity shall not use job responsibilities such as travel, entertainment, or other non-office hour duties as a justification for discriminating on the basis of marital status. It is inappropriate to require a married female applicant or employee to use her husband's name.

It is appropriate to ask an applicant to state whether he/she has a spouse who is presently employed by the County of Los Angeles, but this information may not be used as a basis for an employment decision except under the following circumstances:

- Employment of Spouse

  An employment decision shall not be based on whether an individual has a spouse presently employed by the County of Los Angeles except in accordance with the following criteria:

  1) For business reasons of supervision, safety, security or morale, the County of Los Angeles manager, supervisor, or other covered entity may refuse to place one spouse under the direct supervision of the other spouse.

  2) For business reasons of supervision, safety, security or morale, the County of Los Angeles manager, supervisor, or other covered entity may refuse to place both spouses in the same department, division or facility if the work involves potential conflicts of interest or other hazards greater for married couples than for other persons.

- Accommodation for co-employees who marry

  If co-employees are married, the County shall make reasonable efforts to assign job duties so as to minimize problems of supervision, safety, security, or morale.

- Fringe Benefits

  The availability of benefits to any employee shall not be based on the employee's marital status. However, bona fide fringe benefit plans or programs may provide benefits to an employee's spouse or dependents.

  Bona fide benefit plans or programs may decline to provide benefits to any individual who is not one of the following: an employee of the employer, a spouse of an employee of the employer, or a dependent of an employee of the employer.

  Fringe benefits shall not be conditioned upon whether an employee is "head of household," "principal wage earner," "secondary wage earner," or other similar status.

§100.08 EEO POLICY GUIDANCE – SEXUAL AND OTHER FORMS OF HARASSMENT

Harassment of an individual because of the individual's sex, race, color, religion, sexual orientation, marital status, national origin (including language use restrictions), ancestry, disability (mental and physical, including HIV/AIDS), medical condition (cancer/genetic characteristics), and age 40 and above is also discrimination and prohibited by federal and/or state civil rights statutes. Under federal and state civil rights laws, "harassment" is conduct which has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, offensive, or abusive work environment.

- The Conduct Need Not Be Severe or Pervasive

  The conduct need not be "severe or pervasive" in order to violate the EEO Policies on harassment based on any protected category. If the conduct is considered sufficiently egregious for the workplace, it may violate this Policy.

§100.08 (A) – SEXUAL AND OTHER FORMS OF HARASSMENT - HOSTILE WORK ENVIRONMENT HARASSMENT (BASED ON PROTECTED CATEGORIES OTHER THAN SEXUAL)

Conduct other than sexual that substantially interferes with work performance or creates a hostile work environment is referred to as hostile work environment harassment. This is a type of harassment (based on protected categories other than sexual) that can take place between an employee and anyone with whom the employee is interacting during the performance of job responsibilities (supervisors, co-workers, contractors, suppliers, vendors, etc.)

§100.08 (B) – SEXUAL AND OTHER FORMS OF HARASSMENT - THIRD-PARTY HARASSMENT

"Third-Party harassment" is indirect harassment of a bystander, even if the person engaging in the conduct is unaware of the presence of the bystander. When an individual engages in harassing behavior, he/she assumes the risk that someone may pass by or otherwise witness the behavior. The County considers this to be the same as directing the harassment toward that individual.

§100.08 (C) – SEXUAL AND OTHER FORMS OF HARASSMENT - SEXUAL HARASSMENT

The Los Angeles County's Policy on Sexual Harassment [Attachment 8], codified in 1994 in Title 5 – Personnel, Chapter 5.09.010 (Sexual Harassment Prohibited) of the Los Angeles County Code, states, in pertinent part, the following:

"It is the policy of the County of Los Angeles that sexual harassment is unacceptable and will not be tolerated. It is improper and against this policy for a County officer or employee to ask for or receive sexual favors from another County employee or prospective employee in return for or as a condition of county employment, promotion, job retention, a particular job or duty assignment, or any other action relating to county employment."

Chapter 5.09.020 (Sexual harassment defined) in Title 5 – Personnel, of the Los Angeles County Code, defines *"sexual harassment"* as *"unwelcome sexual advances, requests for sexual favors and/or other verbal or physical conduct of a sexual nature"* when:

1) *It is an employment condition: submission to such conduct is made either explicitly or implicitly a term or condition of employment; or*

2) *It is an employment consequence: submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual; or*

3) *It is an offensive job interference: such conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile or offensive working environment."*

Sexual harassment is unwelcome conduct of a sexual nature that is directed toward a person because of their gender. It is either linked to their employment or substantially interferes with their work performance or creates an intimidating, hostile, or offensive work environment. There are two forms of sexual harassment Quid Pro Quo and Hostile Work Environment.

§100.08 (C)(1) – SEXUAL AND OTHER FORMS OF HARASSMENT - QUID PRO QUO HARASSMENT

Quid pro quo occurs when a person in authority such as a manager or supervisor makes an unwelcome sexual advance or request for a sexual favor to an employee and submission to or rejection of the advance is a condition of employment. The Latin term "*quid pro quo*" means "this for that" and is the exchange of a work favor for a sex favor. One version of this type of harassment is, "If you do this (sex favor) for me, I will do that (work favor) for you." The other version is, "If you don't do this (sex favor) for me, then I won't do that (work favor) for you."

§100.08 (C)(2) – SEXUAL AND OTHER FORMS OF HARASSMENT - HOSTILE WORK ENVIRONMENT HARASSMENT (BASED ON SEX)

Conduct of a sexual nature that substantially interferes with work performance or creates a hostile work environment is referred to as hostile work environment harassment. This is a type of harassment of a sexual nature that can take place

between an employee and anyone with whom the employee is interacting during the performance of job responsibilities (supervisors, co-workers, contractors, suppliers, vendors, etc.)

- Harassment Because of Sex Includes

  Consistent with Government Code Section 12940 (j)(4)(C), for purposes of this provision, §100.08 EEO Policy Guidance (Sexual and Other Forms of Harassment), "harassment" because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions. Harassment based on "gender identity" is also harassment under this provision.

- Sexual Favoritism

  The California Supreme Court, in Miller v. Department of Corrections (July 18, 2005), 36 Cal. 4th 446; 115 P.3d 77; 30 Cal. Rptr. 3d 797; 2005 Cal. LEXIS 7606, unanimously ruled that "widespread sexual favoritism" in the workplace may create a hostile work environment for other employees. The California Supreme Court noted in its decision that although an "isolated instance of favoritism on the part of a supervisor toward a female employee with whom the supervisor is conducting a consensual sexual affair" does not ordinarily constitute sexual harassment. However, when sexual favoritism is sufficiently widespread, it may create an actionable hostile work environment for those who are not engaged in the affair. The court found that favoritism toward paramours may convey the demeaning message to employees that management views them as nothing more than "sexual playthings" and implies "that the way required for women to get ahead in the workplace is by engaging in sexual conduct with their supervisors or the management."

The California Supreme Court quoted portions of the guidelines issued in 1990 by the EEOC. The EEOC guidelines state that "men and women" who find this conduct offensive can establish a violation if the conduct is "sufficiently severe or pervasive" to alter the conditions of employment and create an abusive working environment.

For additional information about sexual favoritism, see the Miller v. Department of Corrections court decision which may be found on the Internet at:

http://caselaw.lp.findlaw.com/data2/californiastatecases/s114097.pdf

Also, see the EEOC's "Policy Guidance on Employer Liability under Title VII for Sexual Favoritism," which may be found on the EEOC's website at:

http://www.eeoc.gov/policy/docs/sexualfavor.html

- Fraternization

  The County of Los Angeles is committed to fostering a professional work environment that prevents sexual harassment and sexual favoritism, and a workplace where all employees are treated fairly by executives, managers and supervisors. The County has not adopted a formal policy that prohibits consensual romantic relationships between employees, nor is there any state or federal laws that prohibit work place romantic relationships. It is important that executives, managers and supervisors not engage in romantic relationships with subordinate employees. These relationships can result in the following workplace problems:

  1) It creates perceptions that the paramour receives favored treatment in work assignments, performance evaluations, and promotional opportunities;

  2) It leads to sexual harassment complaints when the consensual relationship ends acrimoniously;

  3) It impacts the morale of employees and workplace productivity; and

  4) It can result in third party or sexual favoritism complaints by employees not engaged in the consensual relationship, but who believe that they are subject to a hostile work environment based on sex.

The OAAC treats these complaints seriously and will investigate the allegations in the very same manner as other harassment complaints. County executives, managers, and supervisors should refrain from dating or engaging in consensual romantic relationships with subordinate employees. The unfortunate outcome of failed consensual romantic relationships can result in liability; therefore, office romances are discouraged to the extent allowed by state privacy laws.

Some County departments have established policies that require the executive, manager, or supervisor to report their consensual romantic relationship with subordinate employees to management. Under these County departments' policies, failure to report this type of relationship may result in disciplinary action. Questions regarding these types of relationships should be directed to the departmental Human Resources Office.

- Examples of Conduct that May Violate the EEO Policies

  Depending on the facts and circumstances, the following are examples of conduct that may violate the EEO Policies:

  1) Posting, possessing, sending, delivering, storing, circulating, soliciting, or displaying in the workplace sexually suggestive, racist, hate-site related, or obscene letters, notes, invitations, pictures (still or moving), cartoons, graffiti, posters, facsimiles, electronic mail or web links;

2) Verbal conduct such as comments or gestures about a person's physical appearance which have a racial, sexual, disability-related, religious, age or ethnic connotation or derogatory comments about religious differences and practices;

3) Verbal conduct such as whistling and cat calls, using or making lewd or derogatory noises or making graphic comments about another's body, or participating in explicit discussions about sexual experiences and/or desires;

4) Verbal conduct such as using sexually, racially or ethnically degrading words or names, using or making racial or ethnic epithets, slurs, or jokes;

5) Verbal conduct such as spreading sexual rumors or sexual gossiping about an individual;

6) Verbal conduct such as using inappropriate terms of endearment, e.g. "honey," "hon," "love," "sweetheart," "sweetie," "doll," "dear," "babe," "stud," or "hunk."

7) Written conduct such as sexually suggestive, obscene or propositioning letters, notes, greeting cards or invitations, including but not limited to those transmitted via e-mail;

8) Physical conduct such as touching, pinching, massaging, hugging, kissing, rubbing or brushing the body, making sexual gestures, impeding or blocking an individual's passage or normal movements;

9) Visual conduct such as staring, leering, displaying or circulating sexually suggestive objects, pictures, posters, photographs, cartoons, calendars, drawings, magazines, computer images or graphics;

10) Sexual advances or propositions, including repeated and unwanted requests for a date;

11) Holding departmental functions in an inappropriate environment such as a strip club; inviting inappropriate guests to County-sponsored functions, e.g. strippers, exotic dancers; etc.

12) Retaliation in any form, including withholding work-related information, giving punitive work assignments, or denial of job benefits;

13) Hazing based on a protected status, including withholding assistance, giving demeaning, unattainable, or unnecessary job assignments, or ignoring the presence of a co-worker; and

14) Workplace bullying which adversely impacts one sex or other protected category more than another.

This list is not exhaustive. Any conduct which is retaliatory or based on or because of race, color, religion, sex (pregnancy or gender), sexual orientation, marital status, national origin (including language use restrictions), ancestry, disability (mental and physical, including HIV/AIDS), medical condition (cancer/genetic characteristics), and age 40 and above may also violate the EEO Policies.

- Additional Information About the County's Policy on Sexual Harassment

  Information regarding the County's Policy on Sexual Harassment can also be found in the OAAC's pamphlet entitled "Information for Employees on Sexual Harassment," which is available on the OAAC's website at:

  http://oaac.co.la.ca.us/invest/sxharassinfo.html

§100.09 EEO POLICY GUIDANCE – DIVERSITY-RELATED CONDUCT

- LA County's Policy on Diversity

  The Los Angeles County's Policy on Diversity [Attachment 9] is codified in its entirety in Title 5 – Personnel, Chapter 5.10 (Policy on Diversity) of the Los Angeles County Code. In section 5.10.020 (Purpose), it states, in pertinent part, that the purpose of the Policy on Diversity is "A. To foster an environment in every county department in which: 1) Groups, as well as individuals are appreciated for their differences and treat each other with respect; 2) Employees understand and appreciate the heritage and culture of many different groups and are responsive to the uniqueness of each individual; 3) Individuals reach beyond their own experience to appreciate and work effectively with people different from themselves; and 4) All employees reach their full potential in pursuit of organization objectives." Additionally, Section 5.10.020(C) states, in pertinent part, that "[i]n order to treat people fairly and provide equal opportunity, County departments must seek to accommodate and learn from the different perspectives and values that characterize diverse employees and clients."

  This provision is intended to stop inappropriate conduct directed to an individual regarding their characteristics or differences based on stereotypes and assumptions before the conduct becomes unlawful discrimination or harassment under the County's EEO Policies. This type of conduct in addition to violating the County's Policy on Diversity may also violate Civil Service Rule 18.031 (Discipline) when an employee fails to use sound judgment and/or meet the implied standards of performance.

  This conduct need not be pervasive or repeated in order to violate these other County policies. An isolated derogatory comment, joke, racial slur, sexual innuendo, etc., may violate these County policies and be grounds for discipline. Similarly, the conduct need not be unwelcome to the party against whom it is

directed; if the conduct reasonably would be considered inappropriate for the workplace, it will violate these County policies.

Any potential violation of the Policy on Diversity and/or Civil Service Rule 18.031 will be referred back to the department as an employee relations matter for appropriate follow-up and/or corrective action.

§100.10 EEO POLICY GUIDANCE – RETALIATION

This provision absolutely prohibits retaliation for engaging in a protected activity (see examples below). No person will be subjected to any form of retaliation for making a complaint of conduct that violates the County's EEO Policies, the OAAC's "EEO Policy Guidance," or the law, cooperating in any investigation or corrective action, or otherwise engaging in protected activities under these policies or the law. No County employee may be subjected to an "adverse action" (see examples below) for filing a complaint of discrimination, participating in a discrimination proceeding, or otherwise opposing discrimination.

This provision also protects employees from coercion, intimidation, threat, harassment, or interference in their exercise of their own rights (leave rights, reasonable accommodation rights) or their encouragement of someone else's exercise of rights granted by the federal ADA, the federal FMLA, the CFRA, the California Fair Employment and Housing Act's Pregnancy Disability Leave (PDL) law, and all applicable local, county, state, and federal civil rights laws, rules, and regulations.

- Adverse Actions

  Examples of "adverse actions" include, but not limited to: 1) employment actions, such as termination, refusal to hire, and denial of promotion; 2) other actions affecting employment, such as threats, unjustified negative evaluations, unjustified negative references, or increased surveillance; and 3) any other action such as an assault or unfounded civil or criminal charges that are "likely to deter reasonable people from pursuing their rights."

  Adverse actions do not include "petty slights and annoyances,' such as "stray negative comments" in an otherwise positive or neutral evaluation, "snubbing" a colleague, or negative comments that are justified by an employee's poor work performance or history.

  Employees are not excused, however, from continuing to perform their jobs or follow the County's legitimate workplace rules just because they have filed a complaint with the OAAC or opposed discrimination.

- Covered Individuals

  Covered individuals are people who, based on a protected category (race, color, sex, etc.), have opposed unlawful employment practices, participated in proceedings, or requested accommodations. Individuals who have a close association with someone who has engaged in such protected activity also are covered individuals. For example, it is inappropriate to terminate an employee because his or her spouse participated in employment discrimination investigation or litigation.

- Protected Activity -- Opposition to a practice believed to be unlawful discrimination

  Opposition is informing an employer that you believe he/she is engaging in prohibited discrimination. Opposition is protected from retaliation as long as it is based on a "reasonable, good-faith belief" that the complained of employment practice violates the County's EEO Policies or other anti-discrimination policy or law; and the manner of the opposition is reasonable.

  Examples of protected opposition include, complaining to anyone about alleged discrimination against oneself or others; threatening to file a charge or complaint of discrimination; picketing in opposition to discrimination; or refusing to obey an order reasonably believed to be discriminatory.

- Protected Activity -- Participation in an employment discrimination proceeding

  Participation means taking part in an employment discrimination proceeding. Participation is protected activity even if the proceeding involved claims that ultimately were found to be invalid.
  Examples of participation include, but are not limited to, filing a charge or complaint of employment discrimination; cooperating with an internal investigation of alleged discriminatory practices; or serving as a witness in an EEO investigation or litigation.

  Protected activity can also include requesting a reasonable accommodation based on religion or disability, requesting a family medical leave or pregnancy disability leave.

  It is a right for an employee to file a complaint of employment discrimination without fear of retaliation. Any employee found to have engaged in retaliatory conduct will be subject to discipline up to and including discharge.

§100.11 EEO POLICY GUIDANCE – SCOPE OF COVERAGE

- County Employees

  For purposes of the EEO Policies, "County employees" includes regular, full-time, part-time, permanent, non-probationary, probationary, temporary employees, and contract employees supervised by the County, as well as applicants for employment.

- Location

  The EEO Policies, and its related policy(ies) and procedure(s), prohibits discrimination, harassment, retaliation, and inappropriate conduct toward others in the workplace or in other work-related settings, such as "work-related" social events (retirement parties).

  Depending upon the facts and circumstances, the EEO Policies, and its related policy(ies) and procedure(s), also prohibits off-site, off-duty conduct where such conduct meets one of the foregoing definitions of prohibited conduct and has the purpose or effect of unreasonably interfering with an individual's employment or creating an intimidating, hostile, offensive, or abusive working environment.

- OAAC Jurisdiction

  The OAAC exists and operates pursuant to the Los Angeles County Code §5.08.110 (OAAC—Created—Organization and powers and duties). Under §5.08.10, Subsection (D)(2), the OAAC is empowered to *"[i]nvestigate, monitor, regulate, and enforce the County's affirmative action policies...."* Additionally, Los Angeles County Code §5.09.030 (Responsibilities of County personnel), Subsection (D)(3), provides that the OAAC is responsible for *"[i]investigating employee complaints of sexual harassment when filed with the OAAC"* and under Subsection (D)(5), "[i]nvestigating, at the request of a department head, employee complaints of sexual harassment or complaints of other types of employment discrimination, harassment or related misconduct.....

- Jurisdictional Complaints

  The OAAC conducts intake assessments to determine if the allegations made by the Complaining Party (CP) (employee/applicant) are within the parameters of the EEO Policies. The OAAC determines whether the alleged "adverse action" or "act of harm" is connected to one or more of the enumerated protected categories (race, color, sex, etc.) The OAAC will investigate jurisdictional complaints and determine if there is a violation of the EEO Policies.

- Non-jurisdictional Complaints

  If the allegation(s) is not connected to one or more of the enumerated protected categories, the complaint is non-jurisdictional to the OAAC and will be referred to the appropriate County department for action. These non-jurisdictional issues are referred to as "Employee relations" matters, unrelated to one or more of the enumerated protected categories (race, color, sex, etc).

- Communication System/Equipment

  The EEO Policies applies to the use of any County communication system or equipment, including but not limited to, electronic mail, internet, intranet, telephone lines, computers, facsimile machines, and voice mail. County employees will be disciplined in accordance with this provision for using any Departmental communication system or equipment to deliver, display, store, publish, circulate, or solicit material in violation of the EEO Policies.

§100.12 EEO POLICY GUIDANCE – AFFIRMATIVE DEFENSES

In circumstances where employment discrimination is proven (such as, the failure to hire occurred because of the CP's visual disability), the employment discrimination or alleged discriminatory conduct (failure to hire) may be lawful when a) a proper, relevant "affirmative defense" or "legally permissible excuse" exists (such as, CP is legally blind and would be in "imminent and substantial" danger to self if he/she were to perform the essential functions of the job of a truck driver); and b) a less discriminatory alternative is not available (such as, no reasonable accommodation exists which would permit the CP to perform the essential functions of the job without "imminent and substantial" danger to himself or others).

Except where otherwise specifically noted, one or more of the following "affirmative defenses" or "legally permissible excuses" may be appropriate in a given situation to justify the employment practice or alleged discriminatory conduct in question.

- Bona Fide Occupational Qualification (BFOQ) affirmative defense

  This affirmative defense is where an employer or other covered entity (the County of Los Angeles) must prove that a practice -- which on its face excludes an entire group of individuals based on a protected category (such as, all women or all individuals with lower back defects) -- is justified because "all or substantially all" of the excluded individuals are "unable to safely and efficiently perform" the job in question and because the essence of the business operation would otherwise be undermined.

- Business Necessity affirmative defense

  This affirmative defense is where an employer or other covered entity (the County of Los Angeles) has a *"facially neutral practice,"* which has an adverse impact (is discriminatory in effect), and which the employer or other covered entity must prove that there exists an *"overriding legitimate business purpose"* such that the practice is necessary to the *"safe and efficient operation"* of the business and that the challenged practice effectively fulfills the business purpose it is supposed to serve. The practice may still be impermissible if it is shown that there exists an alternative practice which would accomplish the business purpose equally well with lesser discriminatory impact.

- Job-Relatedness affirmative defense

  This affirmative defense is applicable in employee selection cases. Any selection and testing policy or practice of an employer or other covered entity (the County of Los Angeles) which has an adverse impact on employment opportunities of individuals based on a protected category is unlawful and inappropriate unless the policy or practice is job-related. A testing device or other means of selection which is facially neutral, but which has an adverse impact upon persons based on a protected category is permissible only upon a showing that the selection practice is sufficiently related to an essential function of the job in question to warrant its use. The County of Los Angeles adopts the "Uniform Guidelines on Employee Selection Procedures" promulgated by various federal agencies, including the EEOC and the Department of Labor. [29 CFR 1607 (1978)].

- Undue Hardship affirmative defense (in disability accommodation cases)

  This affirmative defense is applicable in disability accommodation cases. Under both the FEHA and the ADA, employers must make reasonable accommodations to the disability unless the employer can demonstrate that doing so would pose an "undue hardship." Cal. Code Reg., tit. 2, §7293.9. "Undue hardship" means an action requiring "significant difficulty or expense," when considered in light of the following factors: 1) the nature and cost of the accommodation needed; 2) the overall financial resources of the facilities involved in the provision of the reasonable accommodations, the number of persons employed at the facility, and the effect on expenses and resources or the impact otherwise of these accommodations upon the operation of the facility; 3) the overall financial resources of the covered entity with respect to the number of employees, and the number, type, and location of its facilities; 4) the type of operations, including the composition, structure, and functions of the workforce of the entity; and 5) the geographic separateness, administrative, or fiscal relationship of the facility or facilities. Cal Code Reg., tit. 2, §7293.9(b). The burden on proving that providing reasonable accommodations would constitute undue hardship is on the employer (County of Los Angeles).

- Undue Hardship affirmative defense (in religion accommodation cases)

  The "Undue Hardship" affirmative defense is also applicable in religion cases. Under both the FEHA and Title VII of the Civil Rights Act of 1964, as amended, employers must reasonably accommodate an applicant or employee's "religious creed," which includes any traditionally recognized religions as well as beliefs, observances, or practices that an individual "sincerely holds" and which occupy in his or her life "a place of importance parallel to that of traditionally recognized religions." The failure to reasonably accommodate, unless an "undue hardship" is shown, is inappropriate under the County's EEO policies. Factors relevant to the undue hardship may include the type of workplace, the nature of the employee's duties, the identifiable cost of the accommodation in relation to the size and operating costs of the employer, and the number of employees who will in fact need a particular accommodation. The DFEH indicates that in religion cases it is considered an "undue hardship" if the employer is expected to bear more than a *de minimis* cost in order to provide an accommodation. Trans World Airlines, Inc. v. Hardison (1977) 432 U.S. 63, 84. An accommodation would pose an undue hardship if it would cause more than *de minimis* cost on the operation of an employer's business.

- Otherwise Required by Law affirmative defense

  Notwithstanding a showing of discrimination, such an employment practice is lawful where required by state or federal law or where pursuant to an order of a state or federal court of proper jurisdiction.

- Inability to Perform affirmative defense (in disability cases)

  It is a permissible defense for an employer or other covered entity to demonstrate that, after reasonable accommodation has been made, the applicant or employee cannot perform the essential functions of the position in question because of his or her disability.

- Danger to self affirmative defense (in disability cases)

  It is a permissible defense for an employer or other covered entity to demonstrate that after reasonable accommodation the applicant or employee cannot perform the essential functions of the position in question in a manner which would not endanger his or her health or safety because the job imposes an "imminent and substantial degree of risk" to the applicant or employee.

- Danger to the health and safety of others (in disability cases)

  It is a permissible defense for an employer or other covered entity to demonstrate that after reasonable accommodation has been made, the applicant or employee cannot perform the essential functions of the position in question in a manner

which would not endanger the health or safety of others to a greater extent than if an individual without a disability performed the job.

Authority for the aforementioned affirmative defenses may be found in the California Fair Employment and Housing Commission's (FEHC's) regulations, specifically Cal. Admin. Code tit. 2, § 7286.7 (Affirmative Defenses in Employment Discrimination) and Cal. Admin. Code, tit. 2, § 7293.8 (Defenses), which may be found on the FEHC's web link at:

http://www.fehc.ca.gov/act/pdf/code_regulations.pdf

Additionally, Los Angeles County Code, Chapter 5.08.010 (Policy Statement), also provides authority for the "job-relatedness" and "business necessity" affirmative defenses. The Los Angeles County Code may be found on the Internet at:

http://search.municode.com/html/16274/index.htm

§100.13 EEO POLICY GUIDANCE – REPORTING COMPLAINTS PERTAINING TO THE COUNTY'S EEO POLICIES

County employees or applicants who believe they have been subjected to conduct that violates the County's EEO Policies, are strongly encouraged to report the matter to any County departmental supervisor or manager, departmental Affirmative Action Coordinator or Human Resources Manager, or the OAAC. Employees or applicants can call the OAAC's employment discrimination complaint hotline at (213) 974-1251, or file a complaint online by visiting the OAAC's website at:

http://oaac.co.la.ca.us.

- Duty to Report

  Non-supervisory County employees, who have knowledge of conduct that violates the County's EEO Policies, are strongly encouraged to report the matter.
  Managers and supervisors have an affirmative duty to report potential violations of the County's EEO Policies to their Affirmative Action Coordinator or Department's Human Resources Manager upon notification of a complaint.

  For more information regarding discrimination and harassment County employees may visit the OAAC website at:

  http://oaac.co.la.ca.us

OR

County employees may also contact the DFEH by calling (800) 884-1684 or visiting their website at:

www.dfeh.ca.gov

and may contact the EEOC by calling (213) 894-1000 or (800) 669-4000 or visiting their website at:

www.eeoc.gov.

§100.14 EEO POLICY GUIDANCE – PROCEDURES – DUTIES OF MANAGERS AND SUPERVISORS

- Duty of Managers and Supervisors to Report

  Managers and supervisors have an affirmative duty to report violations of the County's EEO Policies, even when a CP requests that no action be taken, by immediately reporting complaints to their departmental Affirmative Action Coordinator and/or Human Resources Manager.

- Additional Duties of Managers and Supervisors

  Managers and Supervisors are also responsible for:

  1) Being aware of and reviewing the County's EEO Policies, any related policy(ies), laws, rules and regulations, including, but not limited to, the OAAC's EEO Policy Guidance, as well as any modifications that may be made to them;

  2) Actively monitoring the work environment to ensure that discrimination, harassment, and/or retaliation are not occurring;

  3) Informing County employees under their supervision of the types of behavior prohibited, and the OAAC's procedures for reporting and resolving complaints arising under the County's EEO Policies, and any related policy(ies) and procedure(s), including, but not limited to, the OAAC's EEO Policy Guidance.

  4) Stopping conduct that violates the County's EEO Policies, and any related policy(ies) and procedure(s), including, but not limited to, the OAAC's EEO Policy Guidance, and taking immediate and appropriate action whether or not the involved County employees are within their line of supervision;

  5) Taking immediate action to prevent retaliation towards the CP (if there is one), and to deter and eliminate any hostile work environment. If a situation requires separation of the involved parties, particular care must be taken to avoid actions that appear to punish the CP.

Managers and Supervisors have the foregoing duties whether or not a complaint has been made or filed with the OAAC.

§100.15 EEO POLICY GUIDANCE – DUTY TO COOPERATE

County employees are required to fully cooperate with internal investigations and other administrative hearings in their respective departments as well as those being conducted by agencies within, or external to, the County. Employees shall make full, complete, and truthful statements during an investigation.

For purposes of this policy, an investigation shall include, but is not limited to, any criminal, civil, or administrative investigation, review, inquiry, inquest, hearing, trial, or similar activity conducted by representatives of the various departments of the County of Los Angeles or any other agency authorized by the County.

Civil Service Rule 18.031, *Discipline*, states, in part, that:

> *"Failure of an employee to perform his/her assigned duties so as to meet fully explicitly stated or implied standards of performance may constitute adequate grounds for discharge, reduction, or suspension. Where appropriate, such grounds may include, but are not limited to, qualitative as well as quantitative elements of performance, such as failure to exercise sound judgment, failure to report information accurately and completely, failure to deal effectively with the public, and failure to make productive use of human, financial and other assigned resources."*

California Labor Code §2856 states that:

> *"An employee shall substantially comply with all the directions of his employer concerning the service on which he is engaged, except where such obedience is impossible or unlawful, or would impose new and unreasonable burdens upon the employee."*

In Spielbauer v. County of Santa Clara, 45 Cal 4th 704; 199 P. 3d 1125; 88 Cal. Rptr. 3d 590 (2009), the California Supreme Court held that an employer can require a public employee, under threat of discipiine, to answer job-related questions as long as the employer does not require the employee to surrender his/her right against the use of any such statements in a subsequent criminal proceeding.

In Lybarger v. City of Los Angeles, 40 Cal 3d 822, 710 P. 2d 329; 221 Cal. Rptr. 529 (1985), the Supreme Court held that a police officer has no constitutional or statutory right to refuse, free of administrative sanction, to answer potentially incriminating questions posed by his employer. However, the court held, under Gov. Code, § 3303, subd. (g) (providing that, prior to or during interrogation, a public safety officer must be informed of his constitutional rights when it is deemed he may be charged with a criminal offense), the officer should have been advised that any statements he made

under compulsion or threat of discipline could not be used against him in any subsequent criminal proceeding.

A County employee may be interviewed as the CP, the subject of the investigation or as a witness. Employees shall not take any action that could intimidate or influence any participant in an investigation, nor engage in any conversation that could interfere with, delay, obstruct, or influence an investigation. Any employee who provides false evidence, withholds evidence, or interferes in any way during an investigation, or requests or encourages another to do so, shall be deemed to have obstructed the investigation.

The department head or designee shall provide written notification to the employee of his/her required participation in the investigation and of the consequences of his/her failure to cooperate in the investigation. The investigator should inform the employee at least five business days prior to the fact-finding meeting or interview. Employees have a right to have a representative present during the interview. To invoke the right, the employee must affirmatively request representation during the interview. The employee's representative may advise the employee, but should not be allowed to answer questions on behalf of the employee, as this may impair the integrity of the interview process. Also, the representative should not have any nexus to the matter under investigation, and cannot be in the chain of supervision of the employee.

Once the employee invokes his/her right to representation, the investigator must grant the employee's request, even if it requires that the interview be rescheduled. However, retention of representation should not cause a delay in the investigation.

Interviews with employees must take place during regular business hours, or while on-duty. Off-duty interviews must be compensated consistent with the provisions of the Fair Labor Standards Act.

Participation of employees who are on approved leave must be considered on a case by case basis depending on an employee's current physical or mental condition.

- <u>Public Safety Officers Procedural Bill of Rights</u>

  When interviewing employees from classifications covered by the Public Safety Officers Bill of Rights, investigators should conduct a comprehensive review of applicable provisions in California Government Code Section 3300-3311.

- <u>Firefighters Procedural Bill of Rights</u>

  When interviewing employees from classifications covered by the Firefighters Bill of Rights, investigators should conduct a comprehensive review of applicable provisions in California Government Code Section 3250-3262. Employees covered by the Firefighters Bill of Rights cannot be compelled to provide testimony

on potentially incriminating questions without a written offer of immunity from criminal prosecution.

§101.00 EEO POLICY GUIDANCE – PROCEDURES

County employees who have questions about the meaning or interpretation of the County's EEO Policies, and any related policy(ies) and procedure(s), including, but not limited to, the OAAC's EEO Policy Guidance, should contact the OAAC's Employment Discrimination Investigation (EDI) Division at (213) 893-2542. The OAAC shall respond to inquiries, including anonymous inquiries, about these policies and procedures, and provide information to County employees about their rights and responsibilities and complaint and investigation procedures concerning equity matters.

The OAAC's headquarters office is located at Kenneth Hahn Hall of Administration, 500 West Temple Street, Suite #780, Los Angeles, CA 90012. The OAAC may also be contacted, via e-mail, at:

info@oaac.lacounty.gov

or visiting our website at:

http://oaac.co.la.ca.us/.

The OAAC's goal is to complete investigations in 90-business days or less. However, the OAAC recognizes there are extenuating circumstances beyond the control of OAAC, that may extend the investigation beyond the 90-business day goal. In these instances, the CP will be notified of the extension and the projected completion date.

- When Investigation Must Be Conducted

  All complaints of employment discrimination must be investigated in a timely, thorough, and effective manner regardless of where they are filed. "Internal complaints" are those submitted to the County or one of its departments, as opposed to "external complaints" that are filed with an external agency such as the EEOC, the DFEH, Department of Justice, etc.

  Upon notification of a complaint of employment discrimination, the OAAC goal is to complete investigations in 90-business days or less. In §101.03 EEO Policy Guidance – Procedures – Complaint Process (see below), a general discussion of the complaint process is provided. The specific procedures, however, for reporting and processing of internal as well as external complaints of employment discrimination are set forth in the attached "Guide to When an Investigation Must Be Conducted "[Attachment 12], which is incorporated herein by reference.

§101.02 EEO POLICY GUIDANCE – PROCEDURES – COMPLAINT PROCESS

- Reporting Complaints

  County employees who believe they have been subjected to conduct that violates the County's EEO Policies, and any related policy(ies) and procedure(s), including, but not limited to, the OAAC's EEO Policy Guidance, are encouraged to report the matter to:

  - Any County departmental manager or supervisor (whether or not in the County employee's chain-of-command); or

  - The OAAC at (213) 974-1251

  All County employees are encouraged to report identified potential violations of the County's EEO Policies to a manager, supervisor, or to the OAAC, at the number provided above.

- Intake Assessment and Case Classification

  The OAAC's Shared Services Employment Discrimination Investigations (SSEDI) Division currently consists of the Consolidated Departments Investigations (CDI) Section; the Fire Department Investigations (FDI) Section; the Public Health Investigations (PHI) Section; the Public Social Services Investigations (PSSI) Section; the Public Works Investigation (PWI) Section; and the Sheriff's Intake (SI) Section. Each section is staffed by Deputy Compliance Officers (DCOs) responsible for assessment and investigation of complaints; Senior Deputy Compliance Officers (SDCO) responsible for oversight and supervision; and Staff Assistants responsible for staff support.

  Each section is responsible for assessing complaints for OAAC jurisdiction. A "Case Classification Process" has been established to determine if an employment discrimination complaint is jurisdictional to OAAC and must be investigated. Under this process, an "assessment" is conducted by a DCO to determine if the complaint is jurisdictional. The assessment includes, but is not limited to: 1) reviewing the Employment Discrimination Complaint Form and supporting documentation; 2) gathering and reviewing relevant documents; 3) interviewing the CP to obtain specific information about the alleged conduct; and 4) determining if there is a causal connection between the alleged act of harm and the protected basis.

  The documentation and testimonial information gathered is analyzed and assigned a numeric designation of Class 1 or Class 2 as defined below:

  Class 1 - Jurisdictional Case -
  Contains sufficient information to warrant OAAC investigation

Definition: *Information reveals an applicable theory of discrimination; the CP is a member of a protected class, and CP identified an act of harm which is serious or egregious enough to warrant investigation.*

Class 2 - Non-Jurisdictional Case –
Does not contain sufficient information to warrant OAAC investigation

Examples include but are not limited to the following:

- *Information reveals a protected basis; however, the act of harm was not serious or egregious.*
- *Information does not reveal a link or nexus between the act of harm and protected basis; or*
- *Information reveals the act of harm, if any, was for reasons other than a protected basis.*

All Class 2 complaints must be referred back to the involved department for their follow-up action on the non-jurisdictional employee relations issues. The DCO is responsible for preparing a transmittal memorandum to the department, with any appropriate recommendations. A copy of the transmittal is to be retained in the permanent case record. When appropriate, preventative and corrective measures will be recommended with the concurrence of the SDCO.

The process also provides for a procedure for referring identified "high-risk" jurisdictional cases to the OAAC Risk Manager upon approval of the SDCO. The Risk Manager will determine the course of action for processing these high risk cases and will decide if pre-investigation mediation is appropriate.
The new "Case Classification Process" will create greater efficiency in the processing of complaints which will benefit all concerned parties, and will ensure that all investigations are conducted in a timely and effective manner.

- OAAC Mediation

When a complaint is determined to be jurisdictional it will be referred to the OAAC's Employment Discrimination Mediation Section (EDM). The exception to this rule is if the complaint was filed anonymously. The OAAC Employment Discrimination Complaint Process promotes the use of mediation as the preferred option to resolve complaints, inasmuch as mediation avoids adversarial relations and encourages early solutions. The EDM Program is a voluntary alternative dispute resolution method used to facilitate the resolution of complaints of employment discrimination, harassment, and retaliation.

In EDM, the County department (employer) and the employee work together with the assistance of an outside mediator, to arrive at a mutually agreeable solution. The EDM process promotes communication, cooperation, and restoration of relationships by negotiating amicable settlements. The terms of settlements vary and do not usually lead to monetary payments. Oftentimes, resolution entails simple solutions such as adjustment of working shifts, reasonable accommodation, and training on diversity issues at work, among others. In EDM, the participants explore options and choose a creative solution that meets their basic needs and is consistent with their sense of fairness.

The OAAC's EDM may be contacted at (213) 202-5829. For further information regarding the OAAC Mediation Program, see the OAAC's website at:

http://oaac.co.la.ca.us/mediation/mediatemain.html.

- Investigating Complaints

All cases referred to EDM will be returned for investigations regardless of the mediation outcome. Even in instances where the complaint is resolved through a No-Fault Settlement Agreement, an investigation is still required to determine if there was a violation of the County's EEO Policies.

Upon return from EDM the investigation DCO will review the "initial assessment" information gathered during the intake process, and determine if there is any additional documentary evidence and/or witness information to obtain.

Once all the evidence is gathered, interviews are finalized, and credibility issues are resolved, the investigating DCO will make a determination, in conjunction with the SDCO who reviews the investigator's report, as to whether the alleged conduct occurred. The investigating DCO, with the concurrence of SDCO, will determine whether the investigation disclosed a violation of the County's EEO policies.
In some circumstances, it may be difficult to reach a determination because of direct contradictions between the parties and a lack of documentary or eye-witness or ear-witness corroboration. In such cases, a credibility assessment may form the basis for a determination, based on factors explained under California Evidence Code Section 780, including, but not limited to, demeanor while testifying, character of testimony, extent of capacity to perceive, recollect or to communicate, character for honesty or veracity, etc.

Credibility assessments can be critical in determining whether the alleged conduct in fact occurred. The EEOC explains in its Enforcement Guidance: Vicarious Employer Responsibility for Unlawful Harassment by Supervisors, which may be found at:

http://www.eeoc.gov/policy/docs/harassment.html.

The factors to consider in weighing each party's credibility include: 1) inherent plausibility, 2) demeanor, 3) motive to falsify, 4) corroboration, and 5) past record. The EEOC notes that none of the above factors are determinative as to credibility; and that if no determination can be made because the evidence is inconclusive, the employer should still undertake further preventative measures, such as training and monitoring.

Each party will be informed of the outcome of the investigation and receive a letter of determination letters. The DCO will follow-up within 30 days with the CP to assure that there is no further violation and retaliation.

- Risk Management

The OAAC established a Risk Management (RM) Program as a best practice to ensure that County government takes all the necessary steps to minimize risk and liability involving pre-litigation (prior to lawsuit being filed in court) employment discrimination complaints. The OAAC RM Program ensures that pre-litigation employment discrimination risk issues are effectively managed by utilizing the expertise of County Counsel's Litigation Cost Manager, CEO Risk Manager, and department management to assess risk and liability, identify strategies to mitigate costs, and implement corrective action. The OAAC RM Program is also aligned with the Board of Supervisors' efforts to minimize costs associated with all forms of potential legal liability by enhancing Countywide risk management procedures, loss control and prevention programs, and development of corrective action plans.

The Board of Supervisors and the OAAC have adopted numerous policies and program initiatives designed to prohibit and prevent discrimination; educate on its causes; and effectively investigate employment discrimination complaints. All of these initiatives when used together represent a comprehensive good-faith effort by the County to prevent and respond to employment discrimination. Effective implementation of these policies and initiatives can provide the County a measure of an "affirmative" defense to minimize damages involving employment discrimination in the event a legal judgment is rendered against the County.

The most effective affirmative defense; however, is the application of good risk management strategies. These strategies include: using pre-investigation mediation; investigating complaints in an effective, timely, thorough manner; taking appropriate corrective and disciplinary action against those who violate policy; and convening "Roundtable" meetings with experts to explore early settlement possibilities.

Investigating all employment discrimination complaints in an effective, timely, and thorough manner is important; however, it is crucial that complaints that have egregious allegations with a high likelihood of being substantiated, or those that are substantiated be a priority and assigned as a "High Risk Case". Any complaint of employment discrimination identified as a high risk will be immediately referred to the OAAC Risk Manager for assessment.

- **Claims Board Matters**

The Los Angeles County Claims Board reviews and approves settlements of claims and lawsuits for monetary damages. The Claims Board approves settlements above $20,000, up to and including $100,000. The Claims Board also reviews proposed settlements over $100,000, and refers settlements, with a recommendation to the Board of Supervisors for approval. All settlements above $20,000 require a formal Corrective Action Plan (CAP) or Summary Corrective Action Plan (SCAP).

The OAAC Risk Manager reviews and analyses all employment discrimination cases presented to the Claims Board for settlement. This includes the Risk Manager's review of internal investigative reports and findings in preparation before the Claims Board.

The OAAC Risk Manager attends all Los Angeles County Claims Board meetings involving employment discrimination matters.

The OAAC Risk Manager reviews all High Risk cases to determine if the case warrants convening a Roundtable meeting. Roundtable meetings serve as a forum for review of egregious allegations of employment discrimination [and facts that indicate that the discriminatory action is or will result in a probable violation of the County's EEO Policies, and State and Federal anti-discrimination employment laws]. The Roundtable meetings are interactive sessions where department representatives, County Counsel, and OAAC Risk Manager discuss resolution and/or investigation strategy. In certain instances, the CEO Risk Manager and County Counsel's Litigation Cost Manager also attend. The Roundtables can also serve to identify remedial or disciplinary action, changes in policy and procedure, or provide the foundation for developing corrective action.

- **Settlement Agreements**

A settlement is a legal agreement between the CP and the County that resolves complaints. Settlement agreements may include, but are not limited to, monetary payments, promotions, transfers, reasonable accommodation, cease and desist orders, training, discipline, etc. The OAAC Risk Manager is consulted in pre-litigation and litigated settlements in connection with employment discrimination.

As mentioned earlier, the Los Angeles County Claims Board approves settlements greater than $20,000 to $100,000, and the Board of Supervisors approves settlements in excess of $100,000. Departments are required to develop and implement a SCAP for all settlements above $20,000 and a CAP for all settlements above $100,000 to remedy the identified violations and to prevent future occurrences.

The Claims Board regularly consults with the OAAC for opinions as to the merits of the discrimination allegations, the efficacy of the CAP, and assessment of the effectiveness of the investigation. Therefore, it is important that the department, County Counsel, and the OAAC are in agreement with the appropriate corrective action plan based on the findings of the investigation.

The OAAC Risk Manager is responsible for reviewing and providing a recommendation on all settlements, including CAPs and SCAPs.

For further details regarding the OAAC Risk Management process, see the attached Risk Management Flow Chart [Attachment 13].

- OAAC Corrective Action Process

  When conduct is in violation of the County's EEO Policies corrective action (which typically is disciplinary action, including, but not limited to, formal written reprimand, suspension, demotion and discharge) is necessary. Corrective actions, in lieu of formal disciplinary action may also include, but are not limited to, counseling with written documentation regarding the conduct in question, re-briefing applicable policies, training, and monitoring work environment. The OAAC requires notification of proposed corrective action from departments within 10 business days following issuance of the letter of determination.

§101.04 EEO POLICY GUIDANCE – PROCEDURES – CONFIDENTIALITY

Allegations of discrimination, harassment and retaliation and resulting investigations are complicated. People who do not have access to all of the information risk forming opinions that are often inaccurate. It is, therefore, essential that confidentiality during such investigation is followed. Complaining Parties, Subjects of Investigations, and Witnesses are to be routinely admonished to not discuss information, concerns, or issues they may have with other witnesses, potential witnesses, or the parties involved in a complaint pending the conclusion of the inquiry or investigation. The confidentiality rules are intended to protect Complaining Parties and Subjects of Investigation alike and to avoid disruption in the workplace.

The OAAC shall maintain all complaint-related information in confidence to the extent possible given the OAAC's obligation to conduct a full and effective investigation. The OAAC shall also keep all information and material reviewed confidential in accordance with any applicable California law requiring employee personnel files and records be sufficiently protected from third party disclosure. Employee records will be kept and stored in such manner that restricts access to a few, or even a single authorized individual, and OAAC will take care to ensure confidentiality of employee records at all times.

The OAAC has implemented a protocol requiring all OAAC employees to sign a Confidentiality Policy Statement acknowledging their understanding of the strict

confidentiality requirements associated with employment discrimination investigations, and disciplinary action that will be taken for policy violations [Attachment 14].

DAT:HH:SE:se/dk
L:\ADMIN\0-DENNIS\Elements of Proof 2009\OAAC (draft) PG on Cty EEOSH Policies 042610 revision.doc

VOLUME 2

OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

POLICY GUIDANCE

Volume 2
Elements of Proof

- Equal Employment Opportunity (EEO) Policy
- Sexual Harassment Policy
- Policy on Diversity
- Board of Supervisors' EEO Nondiscrimination Policy:
  - Statement
  - Poster

Dennis A. Tafoya
Director

§200.00 ELEMENTS OF PROOF POLICY GUIDANCE 1

Purpose of the Elements of Proof Policy Guidance 1
Authority for the Elements of Proof Policy Guidance 1
What is Case Analysis and Why Do We Need It? 2

§200.01 ELEMENTS OF PROOF POLICY GUIDANCE – THE MAJOR ISSUES FRAMEWORK DEFINED 3

Jurisdiction: 3
- Procedural jurisdiction 3
- Subject matter jurisdiction 4

Discrimination 4
Affirmative Defenses 6
Remedy 7

§200.02 ELEMENTS OF PROOF POLICY GUIDANCE – THEORIES OF DISCRIMINATION DEFINED 7

Disparate Treatment Theory 7
Disparate Impact or Adverse Impact Theory 8
Harassment Theory 9
Sexual Harassment Theory 11
Retaliation Theory 12
Reasonable Accommodation Theory 13

§200.03 ELEMENTS OF PROOF POLICY GUIDANCE – ELEMENTS OF PROOF FOR SELECT TYPES OF EMPLOYMENT DISCRIMINATION CASES UNDER THE EEO POLICIES AND THE OAAC'S EEO POLICY GUIDANCE 14

Disparate Treatment Theory
- *General Adverse Employment Action Cases* 15
- *Hiring/Promotion Cases* 16
- *Discharge/Discipline Cases* 17
- *Disability Cases* 18

Harassment Theory
- *Harassment Cases* 21

Retaliation Theory
- *Retaliation Cases* 22

Reasonable Accommodation Theory
- *Failure to Provide a Reasonable Accommodation Based on Disability Cases* 23
- *Failure to Provide a Reasonable Accommodation Based on Religion Cases* 24

§200.04 ELEMENTS OF PROOF POLICY GUIDANCE – PREPARING THE SUMMARY FINDINGS OR CONCLUSION OF THE COMPLAINT IN THE INTAKE ASSESSMENT AND INVESTIGATION REPORTS 26

• Policy 26
Example *26*
• Description of Alleged Conduct 26
Example 27
• Analysis of the Facts/Evidence 27
Example 27
• Conclusion 27
Example for Intake Assessment Report 27
Example for Investigation Report 28

§200.05 ELEMENTS OF PROOF POLICY GUIDANCE – CREDIBILITY ASSESSMENTS 28

§200.00 ELEMENTS OF PROOF POLICY GUIDANCE

Purpose of the Elements of Proof Policy Guidance

The purpose of this "Policy Guidance on the Elements of Proof Relating to the County of Los Angeles' Equal Employment Opportunity (EEO) Policy, Chapter 5.08; the County's Policy on Sexual Harassment, Chapter 5.09; the County's Policy on Diversity, Chapter 5.10; and the Board of Supervisors' 'EEO Non-Discrimination Policy' Statement and Poster" ("hereinafter referred to as the "EEO Polices") is to explain the analytical process for conducting investigations of alleged violations of the County's discrimination, harassment, and retaliation policies. All Office of Affirmative Action Compliance (OAAC) employees, particularly the investigations staff, are expected to be familiar with the County policies OAAC is responsible for enforcing, including, but not limited to, the County's EEO policies, the OAAC's "EEO Policy Guidance," and this "Policy Guidance on the Elements of Proof" (hereinafter referred to as "Elements of Proof Policy Guidance").

This policy guidance on the "elements of proof" describes the "case analysis" system or analytical process OAAC investigators, i.e. the Deputy Compliance Officers (DCOs), are expected to use for conducting investigations of employment discrimination cases. The creation of this policy guidance is to assure that the highest level of customer service is provided with respect to the investigation of complaints alleging violations of the County's EEO Policies, and all applicable County, state and federal civil rights laws, rules, and regulations.

Authority for the Elements of Proof Policy Guidance

Los Angeles County Code, Chapter 5.09.030 (Responsibilities of County personnel) in Title 5 – Personnel, states it is the responsibility of the Office of Affirmative Action Compliance (OAAC) to investigate *"employee complaints of sexual harassment or complaints of other types of employment discrimination, harassment or related misconduct prohibited by federal or state law, or County ordinance, policy, or departmental regulation."* Chapter 5.09.030 also states that the OAAC's responsibilities include, but is not limited to, *"[d]eveloping processes for conducting investigations of alleged violations."*

Consistent with the Los Angeles County Code, Chapter 5.09.030, this "Policy Guidance on the Elements of Proof" is being established as an example of the OAAC's obligation to develop processes for conducting investigations of alleged violations of the County's EEO Policies.

Under these County policies, all persons are entitled to a work environment of respect and mutual support, free of discriminatory harassment, and inappropriate conduct toward others based on a protected category (race, color, religion, etc.), and free of sexual harassment and inappropriate sexual conduct toward others. The OAAC takes

seriously its obligation to investigate complaints alleging violations of the County's EEO Policies and all applicable County, state, and federal civil rights laws, rules, and regulations. To ensure that investigations of discrimination, harassment, and retaliation complaints are conducted appropriately, OAAC investigators are expected to understand the "Case Analysis" system and the "elements of proof" required for determining whether a violation of the County's aforementioned policies has occurred.

What is Case Analysis and Why Do We Need It?

"Case Analysis" is the process of gathering and evaluating evidence during the investigation of a complaint for the purpose of concluding whether such evidence is sufficient to establish a violation of policy, including, but not limited to, the County's EEO Policies. For the investigating DCO, the analytical framework for analyzing, evaluating, and measuring the sufficiency of the available evidence are these policies, as well as the OAAC's "EEO Policy Guidance."

"Case Analysis" requires that the investigating DCO understand these policies and any OAAC policy guidance regarding these policies. It is also important that the OAAC investigator keep informed on applicable law and legal precedents (decisions by administrative agencies and the court), any policy guidance from administrative agencies (California Department of Fair Employment Housing [DFEH], U.S. Equal Employment Opportunity Commission [EEOC]) concerning the theories of discrimination and the elements of proof, prior investigations of complaints with similar factual underpinnings, logic and common sense. **Correct investigative conclusions must be based on the application of the relevant policy(ies) to the evidence gathered during an investigation.**

If a complaint "reveals" by a preponderance of credible, reliable evidence, a violation of the applicable County policy(ies), corrective action is required. This "case analysis" framework to be used by OAAC investigators is similar to the analytical framework used by the DFEH, the Fair Employment and Housing Commission (FEHC), the EEOC, and the courts, except that the **OAAC determines whether a violation of County policy occurred, while the enforcement agencies and courts, determine whether violation(s) of state or federal law occurred.**

In addition to using the same or similar analytical framework as the enforcement agencies and the courts in determining if a violation of County policy occurred, the application of the "elements of proof" for employment discrimination cases and this "case analysis" system ensures that every complaint filed with the OAAC will be processed and analyzed in the same manner, thereby providing equal treatment to complaining parties and subjects of investigation irrespective of the OAAC staff member assigned to assess and/or investigate the complaint.

§200.01 ELEMENTS OF PROOF POLICY GUIDANCE – THE MAJOR ISSUES FRAMEWORK DEFINED

Every employment discrimination complaint filed or received under the County's EEO Policies, or applicable County, state, and federal civil rights laws, rules, and regulations can be analyzed under the following major issues framework:

I. Jurisdiction
II. Discrimination
III. Affirmative Defense
IV. Remedy

Jurisdiction

The OAAC exists and operates pursuant to the Los Angeles County Code §5.08.110 (Office of Affirmative Action Compliance—Created—Organization and powers and duties). Under §5.08.10, subsection (D) (2), the OAAC is empowered to *"[i]nvestigate, monitor, regulate and enforce the County's affirmative action policies...."* Additionally, Los Angeles County Code §5.08.110 (Responsibilities of County personnel), subsection (D)(3), provides that the OAAC is responsible for *"[i]investigating employee complaints of sexual harassment when filed with the OAAC"* and under subsection (D)(5), "[i]nvestigating, at the request of a department head, employee complaints of sexual harassment or complaints of other types of employment discrimination, harassment or related misconduct prohibited by federal or state law, or County ordinance, policy, or departmental regulation."

There are two basic types of jurisdictional issues to be considered:

"*Procedural jurisdiction*" refers to procedures that must be followed for the filing of complaints as set forth in any applicable policy, regulation, or law. If these procedures are not followed, the OAAC may be deprived of jurisdiction to proceed. Procedural aspects of jurisdiction include whether the complaint was filed within the applicable statute of limitations, properly verified, and timely served.

However, under the County policies the OAAC is responsible for enforcing, there is no statute of limitations (except for former County employees who have separated from County service beyond 12 months from the date of separation). If a complaint is received, via a complaint form, a letter, e-mail, or by telephone, which concerns an allegation of discrimination, harassment, and/or retaliation based on a protected category, the OAAC typically will not be deprived of jurisdiction to investigate the complaint. As indicated in the OAAC's "EEO Policy Guidance," §100.15 (Scope of Coverage), any "adverse action" alleged to have occurred, within any time period, based on, or because of, an enumerated protected category (race, color, sex, etc.) in the "workplace" or other work-related settings, such as work-related social events (e.g. retirement parties), involving a County employee, shall be addressed.

"*Subject matter jurisdiction*" refers to the fact that the complaining party (CP) or the Subject of Investigation (SOI), and the violation(s) the SOI is alleged to have committed must all fall within the parameters of the County's EEO Policies or the OAAC's "EEO Policy Guidance." Subject matter jurisdiction addresses the question of whether the alleged "adverse action" concerns an issue pertaining to one or more of the enumerated protected categories (race, color, sex, etc.).

If the violation(s) the SOI is alleged to have committed does not concern an issue pertaining to one or more of the enumerated protected categories, the complaint is non-jurisdictional to the OAAC and should be referred to the appropriate County department for action, as appropriate. "Employee relations" issues which are unrelated to an issue pertaining to one or more of the enumerated protected categories (race, color, sex, etc.) are not jurisdictional to the OAAC.

[Note: Although a complaint may be jurisdictional to the OAAC, the "Intake Process and Case Grading System" described in the OAAC's "EEO Policy Guidance (Procedures – Complaint Process)," §101.03, at pp. 33-35, permits the designation of complaints as "2" classification cases (e.g. isolated occurrences, non-aggravating incidents, etc.) and the return of such complaints to the involved County department for follow-up action, as appropriate.]

Discrimination

This major issue evaluates the evidence presented by the parties to determine whether a violation of the County's EEO Policies or the OAAC's "EEO Policy Guidance" occurred. Discrimination is established if OAAC determines that a preponderance of all the evidence demonstrates a "causal connection" between the CP's protected category (race, sex, etc.) and the alleged adverse treatment, adverse action, or act of harm (termination, failure to hire, inappropriate comment, etc.). It need not be shown that the CP's protected category was the sole or even the dominant cause of the alleged adverse treatment, adverse action, or act of harm. Intentional discrimination is established if the CP's protected category was at least one of the factors that influenced the SOI to act against him/her.

When analyzing the major issue of whether the alleged discrimination or adverse treatment occurred based on a protected category, the OAAC investigator will consider all pieces of information or evidence gathered during the investigation. For example, in a harassment based on race (African American/Black) case, obtain and consider the testimonies of the CP, the SOI, witnesses, and any relevant documentation. Resolve any credibility issues, and make a determination whether a "preponderance of evidence" (51% or "more likely than not") discloses or not that a violation occurred of the County's EEO Policies or the OAAC's "EEO Policy Guidance." It is important that the investigating DCO assess all the relevant evidence together. Although one piece of evidence may not be determinative alone, all the information is weighed together.

If the evidence does not disclose that the alleged conduct occurred, then there is no discrimination or harassment, and therefore, no violation of the relevant County policy(ies). During the investigation stage, such a complaint would be determined to be "unsubstantiated;" but during the intake stage, such a complaint would receive a "2" classification under the OAAC's "Case Grading System" because the CP's clarifying interview and available documentation did not reveal the existence of a causal connection between the alleged conduct and a protected basis enumerated under the relevant County policies.

The "elements" (meaning *"a component or constituent of a whole or one of the parts into which a whole may be resolved by analysis"*) of the prima facie (meaning *"at first look"* or *"on its face")* case are specific to the type of allegations being investigated. In other words, when deciding whether or not a prima facie case has been made, the investigating DCO must refer to the "elements" or component parts for the specific type of complaint in question and determine, as to each and every element or component part, whether the evidence proves each element or component. The prima facie elements of a specific type of complaint include three components:

1) The CP must be a member of at least one of the protected classes (race, sex, etc.) enumerated in the County's EEO Policies or the OAAC's "EEO Policy Guidance."

2) The CP must have been subjected by the SOI to conduct which is prohibited by the County's EEO Policies, or the OAAC's "EEO Policy Guidance."

3) There must be a demonstrable causal connection or causal link between the CP's membership in the protected class **and** the wrongful conduct to which he/she was subjected. [The causal connection is based on the evidence obtained during the investigation or assessment.]

For example, the prima facie elements of a complaint alleging discrimination because of a CP's physical disability are:

a) The CP is a person with a physical "disability," which is one of the protected classes enumerated in the County's EEO Policies or as defined in the OAAC's "EEO Policy Guidance," §100.03 (Disability Accommodation, the Good Faith Interactive Process, and Disability Discrimination), at p. 7-11.

b) The SOI denied the CP an employment opportunity (e.g., took an "adverse action" against the complaint by refusing to hire him/her, terminating his/her employment, etc.).

c) A "causal connection" exists between the CP's physical disability and the denial of an employment opportunity (based on direct or

circumstantial evidence). In other words, the employment decision was based, at least in part, upon the CP's disability.

In the above example, the existence of each of the three "elements" or component parts must be established to make a prima facie showing that the SOI engaged in inappropriate discrimination, (such as, refusal to hire) because of the CP's physical disability.

In another example, the prima facie elements of a complaint alleging discrimination because of a CP's religion are:

a) The CP is a person with a "sincerely held" religion or religious practice (for example, Jehovah's Witness)," which is one of the protected classes enumerated in the County's EEO Policies or the OAAC's "EEO Policy Guidance."

b) The SOI denied the CP a request for time-off to attend a two-day religious conference (such as, took an "adverse action" against the complaint by refusing a request for accommodation or time off).

c) A "causal connection" exists between the CP's religion and the denial of reasonable accommodation (based on direct or circumstantial evidence). In other words, the request for time-off was denied, at least in part, upon the CP's religion.

In the above example, the existence of each of the three "elements" or component parts must also be established to make a prima facie showing that the SOI engaged in inappropriate discrimination (such as, refusal to accommodate) because of the CP's religion.

Affirmative Defenses

An "affirmative defense" is a legally permissible reason for basing an employment decision on an individual's protected basis; it is a legal excuse for the discrimination or adverse treatment based on a protected category. Even if the prima facie (meaning *"at first look"* or *"on its face"*) elements of a case are proven, a legal excuse may exist for the employment decision to excuse the discriminatory treatment.

There is no affirmative defense for sexual harassment, discriminatory harassment based on a protected category, and inappropriate conduct toward others based on a protected category. However, affirmative defenses are available in other types of cases, such as disability discrimination cases and religious discrimination cases.

For example, as indicated in the OAAC's "EEO Policy Guidance," §100.03 (Disability Accommodation, the Good Faith Interactive Process, and Disability Discrimination), at p. 10, the following are affirmative defenses to any disability-related adverse action:

1) Inability to perform affirmative defense

2) Danger to self or others affirmative defense

3) Bona Fide Occupational Qualification (BFOQ) affirmative defense

4) Otherwise required by law affirmative defense

[See the OAAC's "EEO Policy Guidance," §100.03, at page 10, for definitions of the aforementioned disability-related affirmative defenses.]

In another example, as indicated in the OAAC's "EEO Policy Guidance," §100.04 (Religious Accommodation), the County department or its representatives shall make accommodation to the known religious creed of an applicant or employee unless the County department can demonstrate that the accommodation is "unreasonable" because it would pose an "undue hardship" on the operations of the County department. This is the "undue hardship" affirmative defense. The factors to be considered (such as, size of the budget, etc.) are listed in §100.04 of the "EEO Policy Guidance."

Remedy

The final step in the process of case analysis is consideration of an appropriate remedy or corrective action for the CP and/or the County. If after an investigation the evidence discloses the allegation(s) have been substantiated, the OAAC will require the County department to make recommendations or take corrective action and/or appropriate disciplinary action. Other recommendations, such as rebriefing applicable policies, training, monitoring, etc., may be appropriate, and if so, such recommendations will be conveyed in a separate transmittal memo, but are not to be included in the report of investigation.

§200.02 ELEMENTS OF PROOF POLICY GUIDANCE – THEORIES OF DISCRIMINATION DEFINED

An understanding of the "elements of proof" and case analysis of discrimination, harassment and retaliation cases under the County's EEO Policies or the OAAC's "EEO Policy Guidance" requires an explanation of the theories of discrimination, which includes, but not limited to, the following:

Disparate Treatment Theory

"Disparate treatment," in the employment context, refers to when a person is treated differently from others. The different treatment (such as, failure to hire/promote, termination) is based on one or more of the protected categories (such as, race, sex, etc.) and the different treatment is intentional. For example, "disparate treatment" occurs when a supervisor allows the majority of his/her employees to enjoy a particular job

benefit, but denies a single employee that same benefit based on that employee's protected status (such as, race, sex, etc.).

Under the County's EEO Policies or the OAAC's "EEO Policy Guidance," protected bases include: race, color, religion, sex (pregnancy or gender), sexual orientation, marital status, national origin (including language use restrictions), ancestry, disability (mental and physical, including HIV/AIDS), medical condition (cancer/genetic characteristics), and age 40 and over.

As indicated in the OAAC's "EEO Policy Guidance," §100.02, Discrimination, "discrimination" is defined as the "disparate or adverse treatment" of an individual based on or because of that individual's race, color, religion, sex (pregnancy or gender), sexual orientation, marital status, national origin (including language use restrictions), ancestry, disability (mental and physical, including HIV/AIDS), medical condition (cancer/genetic characteristics), and age 40 and above. The "disparate treatment" theory is a discrimination theory that applies to the County's EEO Policies and the OAAC's "EEO Policy Guidance."

[For additional information regarding the "disparate treatment" theory under federal law, see the EEOC's Compliance Manual, Section 15: Race and Color Discrimination, "Racial Disparate Treatment" under federal law, which may be found on the EEOC's website at:

http://www.eeoc.gov/policy/docs/race-color.html.]

Disparate Impact or Adverse Impact Theory

"Disparate impact" is a legal phrase used in employment law to describe when a facially neutral practice has an unjustified "adverse impact" (discriminatory effect) on members of a protected class. This occurs when a decision, practice or policy has a "disproportionately negative effect" on a protected group. The "adverse impact" may be unintentional. Under the EEOC's guidelines, "adverse impact" is defined as a "substantially different rate of selection in hiring, promotion, or other employment decision which works to the disadvantage of members of a race, sex, or ethnic group."

Examples of employment practices that may be claimed to have a "disparate impact" include written tests, height and weight requirements, educational requirements, and subject procedures, such as interviews. The employee challenging the employment practice must prove that the practice or selection device has a substantial "adverse impact" on a protected group. Typically, this proof is offered through statistical comparisons, which may be challenged by the employer.

The EEOC has adopted a general rule under which they will consider a selection rate for any race, sex, or ethnic group which is less than four-fifths or 80 percent of the selection rate for the group with the highest selection rate as a "substantially different" rate of selection. The selection rates for males and females are compared, and the

selection rates for the race and ethnic groups are compared with the selection rate of the race or ethnic group with the highest selection rate.

It is an affirmative defense if the employer shows the practice is "job-related" for the position in question and "consistent with business necessity." However, the employee challenging the practice may still prevail by showing that the employer has refused to adopt an alternative employment practice, which would satisfy the employer's legitimate interests without having a "disparate impact" on a protected class.

As indicated in the OAAC's "EEO Policy Guidance," §100.02, Discrimination, "discrimination" is defined as the "disparate or adverse treatment" of an individual based on or because of that individual's race, color, religion, sex (pregnancy or gender), sexual orientation, marital status, national origin (including language use restrictions), ancestry, disability (mental and physical, including HIV/AIDS), medical condition (cancer/genetic characteristics), and age 40 and above. The "disparate impact" theory is also a discrimination theory that applies to the County's EEO Policies and the OAAC's "EEO Policy Guidance."

[For additional information about the "disparate impact" or "adverse impact" theory under federal law, see EEOC's Compliance Manual, Section 15: Race and Color Discrimination, "Racial Disparate Impact," which may be found on the EEOC's website at:

http://www.eeoc.gov/policy/docs/race-color.html#VB

Also, additional information on the adverse impact theory is available from the EEOC's "Uniform Employee Selection Guidelines Interpretation and Clarification (Questions and Answers)," which may be found on the Internet at:

http://www.uniformguidelines.com/qandaprint.html

and

www.adverseimpact.org

which provides a description of "adverse impact," an explanation regarding "calculating adverse impact," and a list of resources and references.]

Harassment Theory

In the employment context, work-environment or workplace "harassment" refers to situations in which the acts of harassment create an "intimidating, oppressive, hostile, or offensive working environment" thereby causing the CP to lose the intangible employment benefit of a discrimination-free workplace.

Work-environment "harassment" is shown if the acts qualifying as racial (national origin, religious, etc.) harassment occurred. Harassing acts will so qualify if the focus and/or content of the harassing acts is the CP's protected status (national origin, religious, etc.); and these harassing acts created an "intimidating, oppressive, hostile, or offensive working environment" or otherwise interfered with the CP's emotional well-being or ability to perform his/her work; and the employer is liable for the acts of harassment that occurred if a supervisor or agent of the employer was the harasser, or a nonsupervisory employee was the harasser, and the employer had actual or constructive knowledge (such as, "should have known" or did not take preventative measures to keep the harassment from occurring) of the harassment. If the employer had actual knowledge of the harassment by its nonsupervisory employee, the employer will not be liable for this harassment if it took immediate and appropriate corrective action.

As indicated in the OAAC's EEO Policy Guidance §100.08 (Sexual and Other Forms of Harassment), harassment of an individual because of their race, color, religion, sex (pregnancy or gender), sexual orientation, ancestry, disability (mental and physical, including HIV/AIDS), medical condition (cancer/genetic characteristics), and age 40 and above) is also discrimination and prohibited by federal and/or state civil rights statutes. EEO Policy Guidance §100.09 states that "discriminatory harassment" is conduct which has "the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, offensive, or abusive work environment."

Although the "harassment theory" under federal and state law requires that the harassing acts amount to "severe or pervasive" conduct, EEO Policy Guidance §100.09 specifies that **the conduct need *not* be "severe or pervasive" in order to violate the County's policy** prohibiting discriminatory harassment based on a protected category; and that if the conduct would be considered sufficiently egregious for the workplace, it will violate this provision of the County's policy.

[For additional information about the "harassment theory" under state law, see the DFEH's Case Analysis Manual, Harassment Cases, Chapter VIII, and the update, which may be found on the DFEH's website at:

http://www.dfeh.ca.gov/DFEH/Publications/CaseAnalysisManual/Chapter%20VII-Sec%205%20Harassment.pdf

and

http://www.dfeh.ca.gov/DFEH/Publications/CaseAnalysisManual/Harassment%20Update.pdf.]

Also, see the EEOC's Compliance Manual, Section 15: Race and Color Discrimination, for information about "racial harassment" under federal law, which may be found on the EEOC's website at:

http://www.eeoc.gov/policy/docs/race-color.html.

Sexual Harassment Theory

The DFEH's pamphlet entitled "Sexual Harassment: The Facts About Sexual Harassment," which may be found on the DFEH's website at:

http://www.dfeh.ca.gov/DFEH/Publications/PublicationDocs/DFEH-185.pdf

indicates that the Fair Employment and Housing Act (FEHA) defines "sexual harassment" as "harassment based on sex or of a sexual nature; gender harassment; and harassment based on pregnancy, childbirth, or related medical conditions." The DFEH pamphlet indicates that the definition of "sexual harassment" includes "many forms of offensive behavior, including harassment of a person of the same gender as the harasser." The DFEH pamphlet provided a partial list of types of sexual harassment, including, unwanted sexual advances; offering employment benefits in exchange for sexual favors; actual or threatened retaliation; leering; making sexual gestures; displaying sexually suggestive objects, pictures, cartoon, or poster; making or using derogatory comments, epithets, slurs, or jokes; sexual comments including graphic comments about an individual's body; sexually degrading words used to describe an individual; suggestive or obscene letters, notes, or invitations; and physical touching or assault, as well as impeding or blocking movements.

EEO Policy Guidance §100.08(c) - Sexual Harassment and Other Forms of Harassment – Sexual Harassment, at p. 18, reiterates the definition of "sexual harassment" under the Los Angeles County Code, Chapter 5.09.020 (Sexual Harassment defined), as "unwelcome sexual advances, requests for sexual favors and/or other verbal or physical conduct of a sexual nature" when "[s]ubmission of such conduct is made either explicitly or implicitly a term or condition of employment; or [s]ubmission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual; or [s]uch conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile or offensive working environment."

Although the "sexual harassment theory" under federal and state law requires that the sexually harassing acts amount to "severe or pervasive" conduct, **EEO Policy Guidance §100.08 (Sexual and Other Forms of Harassment), at p. 17, specifies that the conduct need *not* be "severe or pervasive" in order to violate the County's Policy on Sexual Harassment**; and if the conduct would be considered "sufficiently egregious" for the workplace, it will violate this policy.

[For additional information about sexual harassment under state law, see the DFEH Case Analysis Manual, Chapter 9, Sexual Harassment, which may be found on the DFEH's website at:

http://www.dfeh.ca.gov/DFEH/Publications/CaseAnalysisManual2008Updt/Chapter%209%20Sexual%20Harassment.pdf.

For additional information about sexual harassment under federal law, see the EEOC's Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors, which may be found on the EEOC's website at:

http://www.eeoc.gov/policy/docs/harassment.html.]

Retaliation Theory

The EEOC states that retaliation occurs when an employer or other covered entity takes an "adverse action" against a "covered individual" because he/she engaged in a "protected activity."

The EEOC defines an "adverse action" as an action taken to try to keep someone from opposing a discriminatory practice, or from participating in an employment discrimination proceeding. Examples of "adverse actions" include termination, refusal to hire, and denial of promotion; other actions affecting employment such as threats, unjustified negative evaluations, unjustified negative references, or increased surveillance; and any other action such as assault or unfounded civil or criminal charges that are "likely to deter reasonable people from pursuing their rights."

The EEOC states that "covered individuals" are people who have opposed unlawful practices, participated in proceedings, or requested accommodations related to employment discrimination based on race, color, sex, religion, national origin, age, or disability.

The EEOC defines "protected activity" to include "opposition to a practice believed to be unlawful discrimination" (such as, complaining to anyone about alleged discrimination against oneself or others; threatening to file a complaint of discrimination) and "participation in an employment discrimination proceeding" (such as, filing a complaint of discrimination, cooperating with an internal investigation of alleged discriminatory practices, serving as a witness in an EEO investigation or litigation).

Under the County's EEO Policies, and the OAAC's EEO Policy Guidance §100.10 (Retaliation), any form of retaliation for making a complaint of conduct that violates the County's EEO Policies, cooperating in any investigation or corrective action, or otherwise engaging in protected activities under these policies or the law is prohibited. EEO Policy Guidance §100.10 (Retaliation) specifies that no County employee may be fired, demoted, harassed, or otherwise subjected to retaliation for filing a complaint of discrimination, participating in a discrimination proceeding, or otherwise opposing discrimination.

[For additional information about the "retaliation theory" under state law, see the DFEH Case Analysis Manual, Retaliation, Chapter VII, which may found on the DFEH's website at:

http://www.dfeh.ca.gov/DFEH/Publications/CaseAnalysisManual/Chapter%20VII-Sec%204%20Retaliation.pdf

and under federal law, see the EEOC's Compliance Manual, Section 8: Retaliation, which may be found on its website at:

http://www.eeoc.gov/policy/docs/retal.html.]

Reasonable Accommodation Theory

"Reasonable accommodation," in the employment context, refers to an employer's affirmative duty, under federal and state law, to reasonably accommodate applicants and employees with a mental or physical disability, unless it can be shown that to do so would cause an "undue hardship." Reasonable accommodation can include, but is not limited to, changing job duties or work hours, providing leave, relocating the work area, and/or providing mechanical or electrical aids. The employer, who denies accommodation because it would be an "undue hardship," must show that the accommodation requires significant difficulty or expense, when considered in light of a number of factors, including, but not limited to, the nature and cost of the accommodation, and the overall financial resources of the employer. The failure to reasonably accommodate, unless an "undue hardship" is shown, is unlawful under state and federal law. The "failure to engage in a good faith interactive process" is also unlawful under state and federal law.

The duty to reasonably accommodate is also an affirmative duty for County supervisors and managers under the County's EEO Policies and the OAAC's "EEO Policy Guidance §100.03 (Disability Accommodation, the Good Faith Interactive Process, and Disability Discrimination). The failure to engage in a good faith interactive process or the failure to reasonably accommodate is a violation of the County's aforementioned policies. If the County supervisor or manager, as the employer, denies an accommodation because it would be an "undue hardship," it must be shown that the accommodation requires significant difficulty or expense, when considered in light of a number of factors, including, but not limited to, the nature and cost of the accommodation; and the overall financial resources of the County.

[For additional information regarding the "reasonable accommodation" theory based on disability and establishing proof of an "undue hardship," see the DFEH's booklet, "Disability Under the Fair Employment & Housing Act: What You should Know About the Law," which may be found on the DFEH's website at:

http://www.dfeh.ca.gov/DFEH/Publications/PublicationDocs/DFEH-208DH.pdf

and also the OAAC's Employment Guidelines for the Reasonable Accommodation Process, which is incorporated herein by reference, and may be found on the OAAC's website at:

http://oaac.co.la.ca.us/ada/reasonableguidelines.pdf.]

The "reasonable accommodation" theory, in the employment context, also refers to an employer's duty, under federal and state law, to reasonably accommodate an applicant or employee's "religious creed," which includes any traditionally recognized religions as well as beliefs, observances, or practices that an individual "sincerely holds" and which occupy in his/her life "a place of importance parallel to that of traditionally recognized religions."

Reasonable accommodation may include, but is not limited to, job restructuring, job reassignment, modification of work practices, or allowing time off in an amount equal to the amount of non-regularly scheduled time the employee has worked in order to avoid a conflict with his or her religious observances. The failure to reasonably accommodate, unless an "undue hardship" is shown, is inappropriate under the County's aforementioned policies. "Undue hardship" on the operations of the County department include, but is not limited to, size of the relevant facility with respect to the number of employees, the size of budget, etc.

The failure to reasonably accommodate, unless an "undue hardship" is shown, the applicant or employee's religious creed despite being informed by the applicant or employee or otherwise having become aware of the need for reasonable accommodation is inappropriate under the County's EEO Policies and the OAAC's "EEO Policy Guidance" §100.04 (Religious Accommodation).

[For additional information the "reasonable accommodation theory" based on religion under federal and state law, see the EEOC's Compliance Manual, Section 12: Religious Discrimination, which may be found on the EEOC's website at:

http://www.eeoc.gov/policy/docs/religion.html

and the DFEH's Case Analysis Manual, Chapter 8, Religion, which may be found on the DFEH's website at:

http://www.dfeh.ca.gov/DFEH/Publications/CaseAnalysisManual2008Updt/Chapter%208%20Religion.pdf.]

§200.03 ELEMENTS OF PROOF POLICY GUIDANCE – ELEMENTS OF PROOF FOR SELECT TYPES OF EMPLOYMENT DISCRIMINATION CASES UNDER THE EEO POLICIES AND THE OAAC'S EEO POLICY GUIDANCE

Disparate Treatment Theory

- General Adverse Employment Action Cases

  Prima Facie Elements

  1) Was the CP a member of a protected class (race, sex, etc.)?

  2) Was the CP treated differently (such as, denial of time-off, denial of transfer, or other adverse employment action) from "similarly situated" employees not in the same protected class?

     a) Were the compared employees in the same chain of command as the CP?

     b) Were the compared employees in the same work unit as the CP?

  [Note: **The term "similarly situated" refers to persons who are alike in *all* relevant ways for purposes of a particular decision or issue**. This term is often used in employment discrimination cases, in which the CP may seek to show that he/she was treated differently from others who are "similarly situated" except for the alleged basis of discrimination. For example, a CP who claims that she was not promoted because she is a woman would seek to show that "similarly situated" men -- that is, men with similar qualifications, experience, and tenure with the company -- were promoted. This term is also used to define the group of people on whose behalf a class action may be brought: Everyone in the group must be "similarly situated" as to the issue(s) litigated. For example, in a case alleging that a credit card company charged improper fees, only people who had a credit card with that company during the time when the improper fees were imposed could be members of the class.]

  OR

  In the absence of comparative evidence, is there other evidence that indicates the SOI may have been motivated by racial bias?

  OR

  3) Is there other direct evidence that shows discriminatory intent?

SOI's Rebuttal (Defenses)

What did the SOI say was the reason for its treatment of CP and the compared employees/applicants? How did the SOI respond to other evidence, if any, of discrimination? Does the stated reason for the different treatment seem to be factually accurate? Is the stated reason supported by witnesses or documentation?

Evidence of Pretext

Is there direct or circumstantial evidence that the SOI's reason for its treatment of the CP is "pretextual"?

[Note: **In the context of employment discrimination, "pretext" generally refers to a reason for an action which is false**, and offered to cover up true motives or intentions. Pretext can be found based on (a) statistics, (b) comparators similarly situated, (c) written or oral statement(s) indicating bias, or (d) just plain false reason. If the employment discrimination CP establishes its prima facie case, the burden then shifts to the SOI to articulate some legitimate, nondiscriminatory reason for the employer's actions ("rebuttal"). If the SOI carries this burden, the CP must prove that the proffered reasons were "pretextual." Pretext is established by a direct showing that a discriminatory reason more likely motivated the employer or by an indirect showing that the employer's explanation is not credible.]

- Hiring/Promotion Cases

Prima Facie Elements

1) Was the CP a member of a protected class (race, sex, etc.)?

2) Was there a vacancy?

3) Did the CP apply?

4) Was the CP qualified?

5) Was the CP rejected?

6) Was the vacancy filled? If so, was the selected individual a member of the CP's protected group?

OR

Is there direct evidence that shows discriminatory intent?

SOI's Rebuttal (Defenses)

What did the SOI (decision-maker) say was the reason for rejecting the CP? Does the stated reason (such as, person hired/promoted has superior qualifications) for the alleged failure to hire/promote seem to be factually accurate? Is the stated reason supported by witnesses or documentation?

Evidence of Pretext

Is there direct or circumstantial evidence that the SOI's (decision-maker's) reason for rejecting the CP is pretextual?

[Pretext may be shown by evidence that the SOI's (decision-maker's) reasons are not reasonable or believable; that the SOI has a history of making biased decisions or comments regarding persons in the same protected group; that persons of a different protected group are given preferential treatment; that the CP's qualifications are better than the individual hired for the position in question; or that the statistics show under-employment of persons in the CP's protected group.]

- Discharge/Discipline Cases

Prima Facie Elements

1) Was the CP a member of a protected class (race, sex, etc.)?

2) Was the CP qualified for the position he/she was performing?

3) Was the CP satisfying the normal requirements of the position?

4) Was the CP discharged or otherwise disciplined?

5) Was the CP replaced by an employee in a different protected group or was he/she singled out for discharge or discipline while similarly situated employees were retained or not comparably disciplined?

OR

Is there direct evidence that shows discriminatory intent?

SOI's Rebuttal (Defenses)

What did the SOI (decision-maker) say was the reason for disciplining the CP? Does the stated reason (such as, poor work performance, misconduct, etc.) seem to be factually accurate? Is the stated reason supported by witnesses or documentation?

Evidence of Pretext

Is there direct or circumstantial evidence that the SOI's (decision-maker's) reason for discipline or discharge of CP is pretextual? For example, did the SOI (decision-maker) treat other individual's with similar performance problems more favorably than the CP?

[Pretext may be shown by evidence that the SOI's (decision-maker's) **reasons are not reasonable or believable**; that the SOI has a history of making biased decisions or biased comments regarding persons in the CP's protected group; that the CP's performance rating deteriorated immediately after the new supervisor was assigned; or by statistical evidence revealing unequal discipline/discharge of persons in the CP's protected group.]

- Disability Cases

Prima Facie Elements

1) Did the CP have a physical or mental disability, as defined under the FEHA?

2) Did the impairment "limit" (such as, it makes the achievement difficult) the CP's ability to perform one or more major life activities (construed broadly to include physical, mental, and social activities and working)? Obtain evidence on the activities affected, how they are affected, and the degree to which they are affected (cannot do the activity at all, can only do the activity with assistive devices or equipment, can only do the activity for a limited period of time, etc.).

[Under the FEHA, a disability must only "limit" a major life activity. The disability does not have to involve a "substantial limitation" to be considered a disability. Whether a condition or disability "limits" a major life activity is determined regardless of any mitigating measure, such as medication, prosthesis, etc., unless the mitigating measure itself limits a major life activity. Specific definitions of physical disability, mental disability, and medical condition, as outline in the FEHA, is included in the DFEH's booklet entitled "Disability Under the Fair Employment & Housing Act: What You Should Know About the Law," which may be found on the DFEH website at:

http://www.dfeh.ca.gov/DFEH/Publications/Publication Docs/DFEH-208DH.pdf.]

3) Did the CP have a record or history of such an impairment known to the SOI?

4) Was the CP incorrectly regarded or treated as having or having had such an impairment?

5) Was the CP regarded or treated as having or having had such an impairment that has no presently disabling effects, but may become a qualifying impairment in the future

Under the FEHA, physical disabilities, medical condition, and mental disabilities are defined as follows:

"Physical disabilities" include, but are not limited to, any physiological disease, disorder, condition, cosmetic disfigurement or anatomical loss that affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine systems.

"Medical condition" is defined as including any health impairment associated with a diagnosis of cancer when competent medical evidence indicates that the cancer victim has been cured or rehabilitated. It also includes certain genetic characteristics as defined in the statute.

"Mental disabilities" include, but are not limited to, any mental or psychological disorder or condition, such as mental retardation, organic brain syndrome, emotional or mental illness, specific learning disabilities, or any other mental or psychological disorder or condition that requires special education or related services.

Under the FEHA, physical and mental disabilities do not include the following: Sexual behavior disorders (e.g. transvestism, transexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments); or compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

6) Did the SOI know of the CP's disability?

7) Is the CP qualified to perform the essential functions of the job with or without reasonable accommodation?

   a) If the CP is otherwise qualified (such as, does the CP meet the educational and experience requirements of the job)?

   b) What are the essential functions of the CP's job?

   c) Can the CP perform the essential functions of the job with or without reasonable accommodation? [If accommodation is necessary, see the

aforementioned elements of proof for the Failure to Reasonably Accommodate Based on Disability.]

8) Was the CP treated differently from similarly situated employees who were not disabled or who had different disabilities?

   a) Were compared employees in the same chain of command?

   b) Were compared employees in the same work unit?

OR

Was there direct evidence which showed discriminatory intent?

SOI's Rebuttal (Defenses)

What did the SOI say was the reason for treating the CP differently than other similarly situated employees who were not disabled or who had different disabilities?

[Note: In disability cases involving certain employment-related decisions, such as the refusal to hire, the decision-maker may assert that the CP was not selected because of his/her disability. In such cases, California law permits, if proven, the "inability to perform affirmative defense," the "danger to self" affirmative defense, the "danger to others" affirmative defense, the "Bona Fide Occupational Qualification (BFOQ)" affirmative defense, and the "otherwise required by law" affirmative defense.] For further details regarding these defenses, see OAAC's EEO Policy Guidance §100.03 (Disability Accommodation, the Good Faith Interactive Process, and Disability Discrimination); Cal. Admin. Code tit. 2, §7293.8 (Defenses) of the Fair Employment and Housing Commissions' (FEHC's) regulations, which may found by going to

http://www.dfeh.ca.gov/DFEH/default/

and looking for the external link to "California Code of Regulations." The external link will take you directly to the FEHC's regulations, §7285.0, et. seq., including, but not limited to §7293.8 (Defenses); and also the DFEH's Case Analysis Manual, Chapter 5, Disability, which may be found at:

http://www.dfeh.ca.gov/DFEH/Publications/CaseAnalysisManual2008Updt/Chapter%205%20Disability.pdf.]

Evidence of Pretext

Was there direct or circumstantial evidence that the SOI's reason for its treatment of the CP was pretextual?

Harassment Theory

- Harassment Cases

Prima Facie Elements

1) Was the CP subjected to unwelcome comments or conduct based upon his/her protected class (race, ancestry, sex, etc.)? [In sexual harassment cases, did the SOI (alleged harasser) engage in sexual conduct which is "sufficiently egregious" for the workplace or offer to provide or provided a job benefit to the CP or co-worker in exchange for sexual favors?]

2) Did the alleged conduct have "the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, offensive, or abusive work environment"?

[Note: Although the "harassment theory" under federal and state law requires that the harassing acts amount to "severe or pervasive" conduct, OAAC's EEO Policy Guidance §100.08 (Sexual and Other Forms of Harassment) specifies that the conduct need ***not*** be "severe or pervasive" in order to violate the County's policy prohibiting discriminatory harassment based on a protected category; and that if the conduct would be considered "sufficiently egregious" for the workplace, it will violate this provision of the County's policy. Although the conduct may be "unwelcome" or cause the CP to feel "uncomfortable," the key requirement is that the conduct is "sufficiently egregious" for the workplace.]

3) Does a basis exist for holding the County (the employer) liable for the harassment?

   a) Liability for supervisory/management harassment: The employer (such as, the County) is "strictly liable" or automatically liable if the harassment resulted in a "tangible employment action." If it did not, the employer is still liable unless it proves that it took reasonable care to prevent and correct the harassment promptly and the CP unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer.

   b) Liability for co-worker harassment: The employer (the County) is liable if it knew or should have known of the harassment and failed to take immediate and appropriate corrective action.

   c) Liability for non-employee harassment: The employer (the County) is liable if it knew or should have known and failed to take immediate and appropriate corrective action and the employer had some control over the harasser.

SOI's Rebuttal (Defenses)

There is no "affirmative defense" for discriminatory harassment based on a protected category or sexual harassment based on sex. The defense typically asserted by the alleged harasser is that the alleged harassment did not actually occur. The employer typically attempts to prove the harassment did not happen, the CP welcomed the conduct, it was not sufficiently "severe or pervasive", or that it did not know about the harassment and therefore cannot be held liable.

Retaliation Theory

- Retaliation Cases

Prima Facie Elements

1) Did the CP previously engage in a protected activity or oppose a discriminatory employment act?

[Examples of protected opposition include complaining to anyone about alleged discrimination against oneself or others; threatening to file a charge or complaint of discrimination; picketing in opposition to discrimination; or refusing to obey an order reasonably believed to be discriminatory, etc. Examples of participation include filing a complaint of employment discrimination; cooperating with an internal investigation of alleged discriminatory practices; or serving as a witness in an EEO investigation or litigation, etc. Protected activity also includes requesting a reasonable accommodation based on religion or disability, or requesting a family medical leave or pregnancy disability leave.]

2) Was the SOI aware of the CP's activity?

3) Was the CP subsequently adversely affected by some action (e.g. termination, refusal to hire, discipline, denial of promotion, assault, threats, unjustified evaluations, references, surveillance, etc.) of the SOI?

4) Did some connection exist between the CP's activity and the adverse employment decision or action (such as, the adverse employment decision occurred within such a period of time that a retaliatory inference arises)?

OR

Was there direct evidence that shows discriminatory intent?

SOI's Rebuttal (Defenses)

What did the SOI say was the reason for the adverse employment decision or action?

[The SOI may assert that the adverse action did not occur; that the adverse action only involved "petty slights" in a written evaluation; that the adverse action involved isolated comments in an evaluation; or the adverse action was justified by the CP's poor work performance or work history.]

Evidence of Pretext

Was there direct or circumstantial evidence that the SOI's reason for the employment decision or action is pretextual?

Reasonable Accommodation Theory

- Failure to Provide a Reasonable Accommodation Based on Disability Cases

Prima Facie Elements

1) Did the CP have a physical or mental disability, as defined under the FEHA?

2) Did the impairment "limit" (such as, it makes the achievement difficult) the CP's ability to perform one or more major life activities (construed broadly to include physical, mental, and social activities and working)? Obtain evidence on the activities affected, how they are affected, and the degree to which they are affected (cannot do the activity at all, can only do the activity with assistive devices or equipment, can only do the activity for a limited period of time, etc.).

[Under the FEHA, a disability must only "limit" a major life activity. The disability does not have to involve a "substantial limitation" to be considered a disability. Whether a condition or disability "limits" a major life activity is determined regardless of any mitigating measure, such as medication, prosthesis, etc., unless the mitigating measure itself limits a major life activity. Specific definitions of physical disability, mental disability, and medical condition, as outlined in the FEHA, is included in the DFEH's booklet entitled "Disability Under the Fair Employment & Housing Act: What You Should Know About the Law," which may be found on the DFEH website at:

http://www.dfeh.ca.gov/DFEH/Publications/Publication Docs/DFEH-208DH.pdf.]

3) Did the SOI know of the CP's disability?

4) Was the CP otherwise qualified (such as, does the CP meet the education, skills, and experience requirements of the job)?

5) What were the essential functions of the CP's job?
6) Did the CP request accommodation? What accommodation, if any, did the CP suggest?

7) What action did the SOI (decision-maker) take to identify possible accommodation or attempt accommodation? Did the SOI make an individualized assessment of the CP, comparing his/her qualifications and limitations with the job requirements? What actions did the SOI take to consider the CP's suggestions?

8) If an accommodation was identified, did this accommodation allow the CP to perform the essential functions of the job (was it effective?)

9) Did the SOI provide an accommodation?

10) If the SOI did not provide an accommodation, what reason was given for the refusal to accommodate?

11) If the SOI contended that a particular accommodation did impose an undue hardship on its operations, were the reasons sufficient to establish an undue hardship defense given:

    a) The overall size of the County of Los Angeles (the number of employees, number and type of facilities, and size of budget);

    b) Type of County operation (composition and structure of work force);

    c) Nature and net cost of accommodation.

12) Was the CP qualified for the position he/she was performing?

13) Was the CP satisfying the normal requirements of the position?

14) Was the CP discharged or otherwise disciplined?

- <u>Failure to Provide a Reasonable Accommodation Based on Religion Cases</u>

<u>Prima Facie Elements</u>

1) Did the CP hold a religious belief which conflicted with employment requirements?

[Note: The EEOC states that only in the rarest of cases, where the evidence appears very clear that the CP does not sincerely hold the religious belief or does not sincerely engage in the religious practices that may need an accommodation should an investigator challenge the sincerity of the belief or practice.]

2) Did the CP inform his/her superior of a conflict?

3) Was the CP penalized for failing to comply with employment requirements?

[Note: Under the County's EEO Policies and the OAAC's EEO Policy Guidance, the County of Los Angeles, through their managers and supervisors, is under a duty to reasonably accommodate employees' sincerely held religious practices unless doing so would impose an undue hardship on the employer. **A reasonable religious accommodation is any adjustment to the work environment that will allow the employee to practice his religion. County managers and supervisors might accommodate an employee's religious beliefs or practices by allowing: flexible scheduling, voluntary substitutions or swaps, job reassignments and lateral transfers, modification of grooming requirements, and other workplace practices, policies and/or procedures.]**

SOI's Rebuttal (Defenses)

1) The CP's belief or practice was not of a religious nature.

2) The SOI could not accommodate without undue hardship.

The EEOC states that in religion cases, an employer can show "undue hardship" if accommodating an employee's religious practices "requires more than ordinary administrative costs, diminishes efficiency in other jobs, infringes on other employee's job rights or benefits, impairs workplace safety, causes co-workers to carry the accommodated employee's share of potentially hazardous or burdensome work, or if the proposed accommodation conflicts with other law or regulation." See the EEOC Compliance Manual, Section 12: Religious Discrimination, which may be found on the EEOC's website at:

http://www.eeoc.gov/policy/docs/religion.html.

[The DFEH states that in religion cases, it is considered an undue hardship if the employer is expected to bear more than a *de minimis* cost in order to provide an accommodation. Trans World Airlines, Inc. v. Hardison (1977) 432 U.S. 63, 84. In Merriam-Webster's Dictionary of Law, "*de minimis*" is defined as "lacking significance or importance; so minor as to be disregarded." Therefore, to provide a reasonable accommodation of an employee's religious belief or observance, the employer (the County) is required to bear only inconsequential or negligible cost(s). For detailed information regarding the legal standards for religious

discrimination under the FEHA, see the DFEH Case Analysis Manual, Chapter 8, Religion, which may be found on the DFEH's website at:

http://www.dfeh.ca.gov/DFEH/Publications/CaseAnalysisManual2008Updt/Chapter%208%20Religion.pdf.]

§200.04 ELEMENTS OF PROOF POLICY GUIDANCE – PREPARING THE SUMMARY FINDINGS OR CONCLUSION OF THE COMPLAINT IN THE INTAKE ASSESSMENT AND INVESTIGATION REPORTS

OAAC investigation staff, responsible for conducting intake assessments and/or conducting administrative investigations, should include the following information in their summary of findings or conclusion of the complaint in the Intake Assessment and Investigation Reports, which may be known by an acronym "PDAC" (Policy, Description, Analysis and Conclusion).

- Policy

  Identify/state the relevant sections of the applicable EEO Policies or the OAAC's EEO Policy Guidance, and any other County, state, and federal civil rights laws, rules, and regulations, which apply to the complaint under investigation.

  - *Example*

    EEO Policy Guidance §100.08(c) and Los Angeles County Code, Chapter 5.09 (Sexual Harassment) indicates that "sexual harassment" is defined as "unwelcome sexual advances, requests for sexual favors and/or other verbal or physical conduct of a sexual nature" when "[s]uch conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile, or offensive working environment."

    EEO Policy Guidance §100.08(c) EEO Policy Guidance – Sexual and Other Forms of Harassment – Hostile Work Environment Harassment states that "physical conduct such as touching, pinching, massaging, hugging, kissing, rubbing or brushing the body, making sexual gestures, impeding or blocking an individual's passage or normal movements," verbal conduct such as comments about a person's physical appearance which have a sexual connotation, and visual conduct such as "staring" and "leering" are examples of conduct that may violate the EEO Policies.

- Description of Alleged Conduct

  Based on your analysis of the complaint form, the CP's interview and Witness interviews, describe the SOI's alleged conduct. Include, when appropriate, direct quotes of significant statements by the CP and/or Witnesses.

- *Example*

  The CP said that on Thursday, March 26, 2009, sometime after her lunch hour, the SOI blocked her passage way out of his office and attempted to kiss her on the lips and hug her. She said the SOI also touched and massaged her right breast with his right hand. She also said the SOI commented, "your lips are luscious," and when she resisted, said "come on, you know you want it."

- Analysis of the Facts/Evidence

  Analyze the information gathered, including direct quotes from relevant testimony from pertinent witnesses, description of the CP and Subject's testimonies, and discussion of facts and other matters which cause the OAAC investigator to credit or discredit factual evidence or statements from the CP, Witnesses, or SOI(s).

  - *Example*

    The CP reported the March 26th incident to the reporting party, Witness A, a supervisor, immediately after the incident. Witness A said that she did not witness the incident in question, but said she saw the CP was "visibly upset" sometime after 1:30 pm. Witness A said that the CP told her the SOI was "bothering" her and that she wanted to go home early. Witness A and Witness B, co-workers, said that they have heard the SOI make suggestive comments in the past to the CP, such as "you look hot in that dress," and "if we weren't married, would you consider hooking up with me?" They also said they have witnessed the SOI frequently "ogle" the CP.

- Conclusion

  If at the intake stage, the conclusion for the assessment report must state whether the alleged conduct concerns a protected category and whether the allegations are otherwise jurisdictional to the OAAC.

  - *Example for Intake Assessment Form*

    Thus, the alleged harassing conduct toward others appear to concern a protected category (sex) enumerated under the County's EEO Policies and/or the OAAC's EEO Policy Guidance. The alleged conduct also appears to rise to a level requiring a further investigation by the OAAC's Investigations Division. Accordingly, a "1" classification and referral for further OAAC investigation is recommended.

    [Note: During the intake assessment process, the SOI is not interviewed.]

- *Example for Report of Investigation*

  Thus, the harassing conduct based on sex alleged by the CP appears to concern a protected category (sex) enumerated under the County's EEO Policies or the OAAC's EEO Policy Guidance. Although the SOI denied during the SOI interview any harassing conduct occurred, the CP credibly described the incidents in questions, including the March 26th incident. Also, Witness A and B provided corroboration that indicates the alleged harassing and/or inappropriate conduct occurred. Accordingly, based on the available evidence, a violation of the County's EEO Policies and/or the OAAC's EEO Policy Guidance occurred.

§200.05 ELEMENTS OF PROOF POLICY GUIDANCE – CREDIBILITY ASSESSMENTS

If there were conflicting versions of relevant events, the DCO should weigh each party's credibility. The EEOC explains credibility assessments can be critical in determining whether the alleged conduct in fact occurred in its Enforcement Guidance: Vicarious Employer Responsibility for Unlawful Harassment by Supervisors, which may be found at:

http://www.eeoc.gov/policy/docs/harassment.html.

Factors to consider are:

- **Inherent plausibility**: Was the testimony believable on its face? Did it make sense?
- **Demeanor:** Did the person seem to be telling the truth or lying?
- **Motive to falsify:** Did the person have a reason to lie?
- **Corroboration:** Was there **witness testimony** (such as testimony by eye-witnesses, people who saw the person soon after the alleged incidents, or people who discussed the incidents with him/her at around the time that they occurred) or **physical evidence** (such as written documentation) that corroborates the party's testimony?
- **Past record:** Did the alleged harasser have a history of similar behavior in the past?

None of the above factors are determinative as to credibility. For example, the fact that there were no eyewitnesses to the alleged discrimination did not negate the complaining party's credibility. Furthermore, the fact that the alleged harasser engaged in similar behavior in the past does not necessarily mean that he/she did so again.

Once all of the evidence has been obtained, interviews finalized, and credibility issues are resolved, the DCO should make a determination as to whether the discriminatory act occurred.

DAT:ER:HH:SE:se/nr/03.16.10
G:\0-DENNIS\Elements of Proof 2009\OAAC PG Elements of Proof FINAL 5-04-10.doc

DISPUTE RESOLUTION MEDIATION

- Information Brochure
- Invitation to Mediate Letter
- List of Mediators/Biographies
- Confidentiality Agreement
- Customer Satisfaction Survey Results
- Why Departments Should Use Mediation
- Measuring the Cost of Conflict

INFORMATION BROCHURE

OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

DISPUTE RESOLUTION MEDIATION PROGRAM

County of Los Angeles
Board of Supervisors

Gloria Molina
First District

Mark Ridley-Thomas
Second District

Zev Yaroslavsky
Third District

Don Knabe
Fourth District

Michael D. Antonovich
Fifth District

Dennis A. Tafoya
Director

OFFICE OF AFFIRMATIVE ACTION COMPLIANCE
780 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

What is OAAC's Dispute Resolution Mediation Program?

In dispute resolution mediation, the employer and the employee work together, with the assistance of a mediator, to arrive at a mutually agreeable solution. The dispute resolution mediation process promotes communication, cooperation, and restoration of relationships by negotiating amicable settlements. The terms of settlement vary and do not always involve monetary concession. Some settlements involve simple solutions such as adjustment of work schedules, reasonable accommodations, sensitivity training on diversity issues in the work place, etc.

Mediation is:

VOLUNTARY

Dispute resolution mediation is a method used to reduce risks of liability and expedite resolution of complaints of employment discrimination, harassment, and retaliation.

CONFIDENTIAL

Dispute resolution mediation is a process that protects the interests of both the employer and the employee and encourages the free exchange of information in a secure environment.

EMPOWERING

Dispute resolution mediation allows employers and employees to maintain control of the decisions that affect their future and minimizes the human and financial costs associated when complaints are filed with County, state, and/or federal courts.

Frequently Asked Questions

What types of complaints are eligible for dispute resolution mediation?

Any complaint alleging employment discrimination, harassment, or retaliation filed internally with the County's Office of Affirmative Action Compliance (OAAC), Board of Supervisors, or departments; or filed externally with the U.S. Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing (DFEH).

What can I expect in a dispute resolution mediation session?

The mediator assists the employer and employee in clearly defining the issues in dispute, guides the communication process, helps participants resolve misunderstandings, walks the participants through exploring options, and facilitates an outcome which meets the specific interests of the parties involved. Dispute resolution mediation does not determine guilt or innocence.

Is a dispute resolution mediation agreement legally binding?

Yes. An agreement reached in dispute resolution mediation is expressed in a written document outlining solutions adopted by both parties. The agreement is legally binding upon both parties signing the document.

Do I need an attorney?

No. However, either party can choose to have legal representation.

Frequently Asked Questions

Does the OAAC's dispute resolution mediation work?

Yes. During the past two years, the OAAC has successfully mediated an average of 70% of complaints electing dispute resolution mediation. The OAAC's success rate is similar to that of the EEOC's Mediation Program. Dispute resolution mediation is successful because it allows participants to explore their interests, identify the sources of conflict, and consider **any** possible solution. Dispute resolution mediation also works because it empowers participants to retain ultimate control of the decision-making process.

How long does dispute resolution mediation take?

Many disputes can be resolved in a single session lasting only a few hours. More complex matters may require more than one session depending on the nature and scope of the issues in dispute.

What is the mediator's role?

The mediator is an impartial third party possessing conflict resolution skills who assists the parties in arriving at a mutually agreed-upon solution. The mediator facilitates discussion of possible solutions and assists the parties in achieving a legally binding no-fault settlement agreement.

Who manages the dispute resolution mediation process?

The OAAC. Dispute resolution mediation begins when the OAAC secures both the complainant's and the County department's election to participate. When approval has been obtained, the OAAC assigns a professional mediator to convene the mediation session. The OAAC coordinates all aspects of the mediation process and works to ensure that all provisions of the settlement are in compliance.

Frequently Asked Questions

How does the OAAC's dispute resolution mediation process work?

The dispute resolution mediation process involves the following steps:

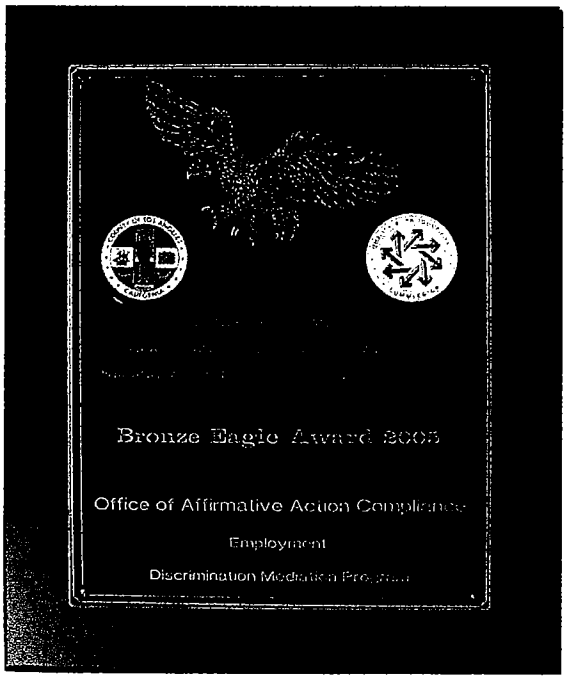
1. Employee files a complaint of employment discrimination. OAAC contacts both the complaining party and the department involved with an *Invitation to Mediate*, which must be responded to within 10 days of receipt. Mediation cannot be conducted unless both parties agree.
2. Upon agreement, the OAAC assigns a professional mediator to the complaint.
3. When mediation is successful, a no-fault settlement agreement, resolving the complaint, is signed by both parties.
4. **It is important to note that whether or not the mediation is successful, an investigation will be conducted to ensure that corrective and/or disciplinary action is taken whenever violations of County policy are found.**

Summary

The OAAC's dispute resolution mediation program offers voluntary, alternative dispute resolution as a "best practice" to resolving employment discrimination complaints. Dispute resolution mediation reduces employer risk and liability, works to restore employer/ employee relationships, and improves workplace harmony and productivity.

Dispute resolution mediation has a proven track record of success and is strongly endorsed by the EEOC, DFEH, the County's Risk Manager, and the County's Litigation Cost Manager.

Awards



The OAAC's Dispute Resolution Mediation (DRM) Program was the recipient of the 2005 National Association of Counties Achievement Award for its unique and innovative approach to resolving employment discrimination complaints in government. In the same year, the Los Angeles County **Quality & Productivity Commission** recognized the DRM Program with its coveted "Bronze Eagle" and "Top Ten" awards for effectively using mediation to reduce the lost productivity and costs associated with unresolved discrimination complaints. The DRM Program was also the recipient of the "2005 National Association of Counties Achievement Award" for its unique and innovative approach to resolving employment discrimination complaints in government.

FOR MORE INFORMATION CONTACT:

Dispute Resolution Mediation Section *

(213) 202-5829

E-mail: fmcdonald@oaac.lacounty.gov

Website: http://oaac.lacounty.gov

TTY (888) 478-3502

Fax (213) 580-0016

* Formerly Employment Discrimination Mediation Section

Revised 9/10 bc

INVITATION TO MEDIATE LETTER

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

Executive Offices
500 West Temple Street, Room 780
Los Angeles, CA 90012
(213) 974-1080
Fax (213) 626-7034 TTY (888) 478-3502
www.oaac.lacounty.gov

Dennis A. Tafoya
Director

Address all correspondence to:
DISPUTE RESOLUTION MEDIATION
Figueroa Plaza
201 N Figueroa Street, Suite 1440
Los Angeles, CA 90012

Date

CP Name
Address
City, State, Zip Code

INVITATION TO MEDIATE – [OAAC Case Number]
[COMPLAINANT/ DEPARTMENT NAME]

Dear CP:

This Office has received the above referenced complaint of employment discrimination that you filed against the Department. The County's Employment Discrimination Complaint Process provides a Dispute Resolution Mediation (DRM) Program for you to consider mediation as an effective way to successfully resolving your complaint.

The mediation process is informal and confidential. Mediation is not a litigation process and does not require the presence of an attorney, although the parties may have an attorney present if they wish. Sessions are conducted by impartial professional mediators with extensive experience in conflict resolution. If for any reason you are dissatisfied with the mediation proceedings, you and/or the Department have the option to conclude your participation from the process without any bias to the investigation of your complaint. For more information on the DRM, please refer to the enclosed information on the DRM or visit us on the OAAC website at www.oaac.lacounty.gov.

If you wish to participate in the DRM, complete the enclosed ***Mediation Election Form*** and return it to my attention via fax at **(213) 580-0016** within 10 days of receipt of this letter. If you decide not to elect mediation, or if we do not have a response from you by the above referenced 10 days, your complaint will be returned to the OAAC Investigation Section for investigation. It is important to note that whether or not the mediation is successful, an investigation will be conducted to ensure that corrective and/or disciplinary action is taken whenever violations of County policy are found.

If you have any questions on the mediation process, please feel free call me at (213) 202-XXXX.

Sincerely,

MEDIATION DEPUTY NAME
Deputy Compliance Officer

DAT:XX:xx
invitation to mediate to CP.docx

Enclosures (2)

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

Executive Offices
500 West Temple Street, Room 780
Los Angeles, CA 90012
(213) 974-1080
Fax (213) 626-7034 TTY (888) 478-3502
www.oaac.lacounty.gov

Dennis A. Tafoya
Director

Address all correspondence to:
DISPUTE RESOLUTION MEDIATION
Figueroa Plaza
201 N Figueroa Street, Suite 1440
Los Angeles, CA 90012

Date

To: Department Contact
Department

From: Insert Name Here
Deputy Compliance Officer

Subject: **INVITATION TO MEDIATE – [OAAC Case Number]**
[COMPLAINANT/ DEPARTMENT NAME]

This Office has received the attached complaint of employment discrimination filed by [Complaining Party] against your Department. I would like to invite you to engage in the mediation process through the County's Dispute Resolution Mediation Program (DRM) to resolve this complaint.

The mediation process is informal and confidential. The proceedings are non-evidentiary and the sessions are not recorded. Mediation is not a litigation process and does not require the presence of an attorney, although the parties may have an attorney present if they wish. Sessions are conducted by impartial professional mediators with extensive experience in conflict resolution. If for any reason you are dissatisfied with the mediation proceedings, your Department and/or the Complaining Party have the option to conclude your participation from the process without any bias to the investigation of the complaint. An objective investigation of the complaint will proceed regardless of the mediation outcome. For more information on the mediation program please refer to the attached information sheet or visit the County Dispute Resolution Mediation Program website at www.oaac.lacounty.gov.

Please complete the enclosed ***Mediation Election Form*** and return to my attention via fax at **(213) 580-0016** within 10 days of receipt of this letter. Please note that there is a very strict time table for initiating mediation. If you decide not to elect mediation, or if we do not have a response from you by the above referenced 10 days, this complaint will be forwarded to the OAAC Investigation Section for investigation. It is important to note that whether or not the mediation is successful, an investigation will be conducted to ensure that corrective and/or disciplinary action is taken whenever violations of County policy are found.

Should you have any questions regarding the mediation process, please call me at (213) XXX-XXXX.

DAT:XX:xx
invitation to mediate to department.docx

Enclosures (2)

LIST OF MEDIATORS/ BIOGRAPHIES

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

DISPUTE RESOLUTION MEDIATION

Mediators

Angela E. Oh, Esq.
Executive Director of the Western Justice Center, and Mediator

Lynne Bassis
Attorney at Law

Richard D. Klinger
Attorney at Law

Myra Schegloff
Contract Mediator

Robert L. Basso
Contract Mediator

Angela Shaw
Contract Mediator

Angela Shaw
The ADR Coach
3782 Wellington Rd. Los Angeles, CA 90016 Office (323) 810-0626 Fax (323) 294-3396
theadrcoach@aol.com

EXECUTIVE SUMMARY

Angela Shaw, Principal for The ADR Coach, is a professional mediator, negotiator, fact-finder, former federal investigator, and an alternative dispute resolution consultant. Since 2002, Angela has provided services that include but are not limited to the following: Hearing Officer Services, EEO Investigations, and mediations for public and private sector agencies.

Professionally, Angela served as an adjudicator and enforcer of federal regulations as Social Insurance Claims Representative, Supervisory Insurance Representative and Field Representative for over 8 years with the Social Security Administration; in addition to 15 years as an EEO Investigator, Sr. Equal Opportunity Specialist and Federal Mediator with the Equal Opportunity Commission; Department of Transportation; and a Rating Specialist of veteran disability claims. Prior experience afforded Angela opportunities to conduce onsite investigations, EEO training, handle Alternative Dispute Resolution (ADR) matters which included (designing a multi-party/ multi-issue mediation model) and representing federal agencies throughout the western region of the United States for the Department of Transportation including Alaska and Hawaii; and the southeastern region for the United States EEOC.

As an EEO Investigator for EEOC, Angela investigated private sector discrimination complaints and issued written decisions on behalf of the Director. Duties included analyzing, interpreting and applying applicable Code of Federal Regulations; issuing investigative memorandums; legal recommendations; drafting final agency decisions in addition to conducting fact-finding/settlement and conciliation conferences. As a full-time mediator, Angela served as a dialogue facilitator in employment disputes; convened mediations; conducted preventative and post mediation activities and negotiated settlement agreements.

Currently as a hearing officer, Angela has conducted formal hearings Long Term Disability (LTD) for the CEO of Los Angeles County Risk Management Branch and the Civil Service Commission of Los Angeles County. Each position requires a working knowledge and application of the Rules of Evidence and issuance of Formal Administrative Hearing Decisions at the close of hearings. Under a Hearing Officer contract to the County of Los Angeles Board of Supervisors, Angela Shaw also provides mediation services to the Office of Affirmative Action Compliance.

Angela Shaw has convened informal hearings for the Housing Authority of the County of Los Angeles at the Santa Fe Springs, Monterey Park and Lancaster, CA offices since 2002; the Housing Authority of the City of Los Angeles since 2008, and also the Housing Authority of the City of Santa Monica. During two separate contract periods with each Housing Authority, Angela Shaw has demonstrated the knowledge, skill and ability to meet the needs of each agency by conducting effective hearings and providing decisions in a timely manner.

Additional clients of The ADR Coach include the the County of Alameda and the West Angeles Community Development Corporation.

ROBERT L. BASSO

7871 Mission Grove pkwy .s Apt.204 • Riverside CA 92508 • (951) 790-9076 •
we3cantalk@aol.com

OBJECTIVE

To offer a proven mediation service in resolving employee to employer conflicts as well as potential civil rights violations. A Mediator and mediation process with a proven track record of sound mediation decisions, demonstrated supervisory skills and working with all levels of employees and management.

PROFESSIONAL PROFILE

1 Successful track record of efficient management and operational goals consistently exceeded.
2 Diverse experience in establishing and maintaining federal and state law as it relates to employee conflicts.
3 Ability to reduce and/or eliminate litigation costs. Decrease outside legal services while successfully resolving conflicts.
4 Exceptionally well-organized with a track record that demonstrates proven self-motivation, high follow through, and attention to detail with initiative and creativity.
5 Mediation service skills beyond reproach with a clear vision of employee/employer needs.
6 Ability to establish relationships and build rapport with parties involved in on the job conflicts as well as people on all levels, and in multi-cultural environments.
7 Respond well in high-pressure mediation situations calling for excellent organizational skills and attention to detail.
8 Produce successful operational implementation strategies with anticipation and adaptation to change.

PROFESSIONAL EXPERIENCE

L.A. COUNTY (LAOAAC) SENIOR MEDIATOR PANEL MEMBER

L.A. County Office of Affirmative Action Compliance/Sheriff's Protocols Mediation Program, Los Angeles, California (2002-Present)

USPS "REDRESS PROGRAM" E.E.O. SENIOR MEDIATOR PANEL MEMBER

United States Postal Service, State of California (1999 – Present)

WEST REGION EARLY INTERVENTION MEDIATION PANEL MEMBER

United States Dept. of Agriculture Forest Service, Los Angeles, California (2004-2006)

CONTINUING LEGAL EDUCATION PROGRAM (CLE) PRODUCT SALES MANAGER/SUPVR

Los Angeles County Bar Association (LACBA), Los Angeles, California (Feb 2001- June 2001)

DISPUTE RESOLUTION SERVICES (DRS) MEDIATION COORDINATOR

Los Angeles County Bar Association (LACBA), Los Angeles, California (1999 – 2000)

LOCAL 1111 (IAMAW) CONTRACT NEGOTIATING TEAM/CHIEF STEWARD

International Association of Machinists and Aerospace Workers, Hawthorne, CA (1994-1998)

SENIOR RESERVATIONS/STATION SALES REPRESENTATIVE

Mexicana Airlines, Los Angeles, California (1976 – 1998)

EDUCATION

Mediating Mortgage Foreclosures Seminar 2009
Annual Interactive Conference of the Southern California Mediation Assoc. 2004-2008
Attorney-Client Rules of Conduct/Fees Dispute Mediation Course 2002
Americans with Disabilities Act (ADA) Mediation Training 2001
Private Sector Technical Assistance Program Seminar (EEOC) 2001
University of West Los Angeles Mini Law Series Training 1999
Appellate Court Mediation Seminar 1999
Advanced Transformative Mediation (USPS) "Redress Program" Training 1999
Commercial and Workplace Mediation Seminar 1998
Divorce and Family Mediation Seminar 1998
Basic Mediation Course 1998
Advanced Certified Training I & II in Machinist Leadership in areas of Contract Negotiations/Contract Interpretation/Arbitration/Sexual Harassment/Discrimination Origin and Employee/Management Communication, Placid Harbor School, MD 1994-1995

COMMUNITY VOLUNTEER SERVICES (OVER 300 PRO-BONO HRS)

LAW PRACTICE MEDIATION PROGRAM PANEL MEMBER

Los Angeles County Bar Association, Los Angeles, California (2006-2007)

ATTORNEY-CLIENT MEDIATION AND ARBITRATION PANEL MEMBER

Los Angeles County Bar Association, Los Angeles, California (2004-2005)

ALTERNATIVE DISPUTE RESOLUTION PROGRAM (ADR) PANEL MEMBER

Los Angeles Superior Courthouse, Los Angeles, California (2003-2005)

DISABILITY MEDIATION CENTER, WESTERN CENTER FOR DISABILITY LAW MEDIATOR

Loyola Law School, Los Angeles, California (Sep 2001-2002)

CENTINELA VALLEY JUVENILE DIVERSION PROJECT (CVJDP) MEDIATOR

CA Probation Dept. Mediation Program for Youthful Offenders, Hawthorne, CA (Jul 2001-2003)

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC) MEDIATOR

Los Angeles District Office (LADO) Mediator Program, Los Angeles, CA (Jul 2001-2002)

SHARED EEO MEDIATOR TEAM PROGRAM (SMART) PANEL MEMBER

Greater Los Angeles Federal Executive Board (FEB), Los Angeles, California (Nov 2000-2002)

COMMUNITY MEDIATION CENTERS COORDINATOR

Mediation Centers in Santa Monica & Los Angeles, California (1998-1999)

ALTERNATIVE DISPUTE RESOLUTION PROGRAM (ADR) CO-MEDIATOR

Santa Monica Superior Courthouse, Santa Monica, California (1998-1999)

PERSONAL STRENGTHS

- Excellent listening skills
- Strong negotiation skills
- Read, speak and write Spanish fluently
- U.S. Army, Honorable Discharge

REFERENCES AVAILABLE UPON REQUEST

MYRA SCHEGLOFF
DISPUTE RESOLUTION

20029 Grand View Dr.
Topanga, CA 90290
(310)455-8769
(310)455-8772(fax)
schegloff@verizon.net

MEDIATION/MANAGERIAL EXPERIENCE:

Contract Mediator, L.A. County, Civil Service Commission, 2004-present, Office of Affirmative Action Compliance, 2001-2002.

Contract Mediator, 2001-2010, U.S. Equal Employment Opportunity Commission, Mediation Panel, 1997-1998, 2000.

Mediator, Los Angeles Superior Court, 2000-2007, 1995-1998.

Mediator, Arts Arbitration and Mediation Services, California Lawyers for the Arts, 2000 -2007, 1995-1998.

Mediator, Court of Appeals, Second Appellate District, 2002-2004.

Mediator, U.S. Government, Postal Service, 2000-2002.

Consultant (Staff), California Department of Fair Employment & Housing, Employment Division, 1998-2000.

Facilitator, Days of Dialogue on Race Relations, Los Angeles City Attorney's Office, 1995-1998.

Mediator, Martin Luther King Dispute Resolution Center, 1995-1998.

Mediator, Disability Mediation Center, Western Center for Disability Law, Loyola Law School, 1995-1998.

Mediator, Los Angeles County, Department of Consumer Affairs, 1990-1998.

Mediator, Los Angeles City, Equal Employment Opportunity Office, Department of Water & Power, 1997.

Facilitator, NCCJ (formerly National Conference of Christians & Jews), Neighbor-to-Neighbor Dialogue, 1997.

Mediator, Program Coordinator, Dispute Resolution Services, Los Angeles County Bar Association, Santa Monica, CA, 1990-1995.

Staff Mediator/Mediation Coordinator, Claremont Dispute Resolution Center, Glendora, CA, 1990-1991.

MEDIATION EDUCATION:

Advanced Mediation Training, Court of Appeals, Second Appellate District, 2002.

Transformative Mediation Training, U.S. Postal Service, 1998.

Facilitator Skills Training, NCCJ (formerly National Conference of Christians & Jews), 1997.

Disability Mediation Orientation, Disability Mediation Center, Loyola Law School, Western Center for Disability Rights, 1997.

Advanced Mediation Training, Pepperdine Institute for Dispute Resolution, 1996.

Human Relations Training, NCCJ (formerly National Conference of Christians & Jews), 1996.

Advanced Mediation Training, Los Angeles County Bar Association, Dispute Resolution Services, 1995.

Advanced Mediation Skills Training (Resourceful Mediation), Dispute Resolution Services, 1993.

Arbitration Training, Better Business Bureau, Auto Line, 1992.

Mediation Training, Law School, University of California, Los Angeles, 1990-91.

Mediation Training, Voluntary Mediation Services and Dispute Resolution Services, Santa Clarita and Santa Monica, CA, 1990.

Mediation Training, Claremont Dispute Resolution Center, Glendora, CA, 1990.

Mediation Training, Federal Mediation and Conciliation Services, Los Angeles, CA, Joint training for Los Angeles County Dept. of Consumer Affairs and L.A. City Attorney's Office, 1990.

Mediation Training, Campus Mediation Service, University of California, Los Angeles, CA, 1989.

HONORS:

President, Southern California Mediation Association, 1999.

Volunteer Mediator of the Year, Los Angeles County Board of Supervisors, 1996.

Mediator of the Year, The Southern California Mediation Association, Third Annual Pepperdine Conference on Dispute Resolution, 1991.

PROFESSIONAL MEMBERSHIPS:

The Southern California Mediation Association, Charter Member, Chair, Public Education and Marketing Committee, Board of Directors 1995-2000, Secretary, Vice President, President (1999), Past President (2000).

Association for Conflict Resolution

PROFESSIONAL PRESENTATIONS:

Guest Speaker, Pepperdine University, Course on Selected Issues in ADR: Employment, Discussion of EEOC & DFEH, 2007.

Panelist, Stakeholders in Action: Reframing the Adversary To A Handshaker, Negotiation, Conflict Resolution & Peacebuilding Affinity Association (NCRPAA), 9th Annual Conference, 2007.

Panelist, Mediating Workplace/Employment Disputes, Southern California Mediation Association, 2001.

Panelist, How to Conduct a Successful EEOC/DFEH Mediation, Southern California Mediation Association, 1998.

Panelist, Mediating Employment Disputes, Southern California Mediation Association, Annual Conference, Pepperdine Law School, Malibu, CA, 1997.

Panelist, The Business of Mediation, Southern California Mediation Association, Los Angeles, CA, 1994.

Panelist, Mediation in the Courts, Southern California Mediation Association, Annual Conference, Pepperdine Law School, Malibu, CA, 1993.

Panelist, "Getting People to Negotiate", Los Angeles County Mediation and Peacemaking Day 1991.

REFERENCES: Will be furnished upon request.

Richard D. Klinger

4446 Stern Avenue
Sherman Oaks, CA 91423
Tel: 818-907-8900

Professional Highlights

Legal & Business Affairs

Admitted to the Bars of New York and Montana
CEO, I-mediate Solutions, Mediation services
Mediator, LA County, Office of Affirmative Action Compliance
Center for Conflict Resolution, affiliated mediator, Los Angeles County Superior Court
Assistant Attorney-General, State of Montana
Staff Counsel, Montana Environmental Quality Council
Special Editor and Writer for Montana Law Code revision
Special Counsel, Beartooth Tri-Country Hard-Rock Mining Revision
Special Counsel, Regional Planning Groups, Federal Water Pollution Control Act
Director, Business Affairs, CBS Television Network
Vice President, Business Affairs, CBS (SONY) Records (West Coast)
Vice President, Business Affairs, Paramount Pictures, Television Div.
Vice President, Programming and Business Affairs, RCA Video
Vice President, Business Affairs, Brilliant Digital Entertainment, Inc.

Other Executive Positions

Vice President, Home Video, Taft Entertainment Company
President, King World Home Video (King World Productions, Inc.)
President, Robin Road Productions

Service on Mediation Panels / Boards / Organizational Affiliations

Los Angeles County Bar Association: Attorney-Client Fee Arbitration and Mediation Panel
Institute for Mental Health Initiatives; seven years on Advisory Board
Eco-Home; four years on Board of Directors
Southern California Mediation Association
Montana Bar Association
Center for Conflict Resolution

Awards

RIAA: Twelve Platinum and twelve Gold Video awards for retail video sales
Best Aerobics Video of 1996 (Consumer Reports Magazine)
Special Award of Recognition from VSDA for Jane Fonda Workout Series
Shared Emmy Award for "William Faulkner's Mississippi" (TV special)
Shared Peabody Award, International Children's Film Festival" (CBS series)

Consultation clients

ABC Television Network; Avon Cosmetics; American Greeting Cards; Goodtimes Entertainment; Nelvana Entertainment; Taft/Hardy Group (Australia); King World Productions; VideoTours, Inc; Live Entertainment; Columbia (SONY) Pictures; Columbia /Tri-Star Home Video; Little Gym International, Inc; Crow Tribe; Northern Cheyenne Tribe; State of Montana; DMB&B advertising agency; Brilliant Digital Entertainment, Inc.; Direct Source Special Products (Canada); Think Digital, Inc.; Synapse Solutions, Inc. (div. of Warner Bros.); TMC Entertainment; Utopia Productions, Inc.; Promenade Pictures, Inc.

Education / Military

Dwight Englewood School, Cum Laude Society
Harvard University, B.A. , English Lit.
Sorbonne University, Certificat, French Language Studies
Columbia University, School of Law, J.D.
U.S. Army, First Lieutenant, Field Artillery, Honorable Discharge

LYNNE BASSIS

ATTORNEY AT LAW MEDIATOR MEDIATION FACULTY ADR DESIGN CONSULTANT

Lynne S. Bassis, Esq.

TESTIMONIALS:
WWW.LYNNEBASSIS.COM

Bassis Mediation Group

Lynne S. Bassis, Esq., named ADR Super Lawyer in 2007, 2008, 2009 and 2010, is an accomplished mediator, mediation trainer, President of and ADR design consultant for Workplace Resolution Group and guest speaker. A past director of the Disability Mediation Center at Loyola Law School, her private mediation practice areas are: employment (including class action), disability, wage & hour, trusts and estates, elder law, legal and professional malpractice, real estate, business/partnership, catastrophic injury, commercial and intra-family disputes.

Ms. Bassis is a panel mediator for: California Academy of Distinguished Neutrals (CADN), American Arbitration Association (AAA), Alternative Resolution Centers (ARC), Inland Valley Arbitration & Mediation Services (IVAMS), Redlands Arbitration & Mediation Services (RAMS), Office of Affirmative Action Compliance, County of Los Angeles (OAAC); Pasadena Police Department Mediation Panel and Los Angeles and San Diego Superior Courts. She is also an arbitrator for FINRA. Other clients have included: United States Postal Service; US Department of Navy; National Conflict Resolution Center's Elder Care Mediation Panel (San Diego); California Department of Fair Employment and Housing; and Equal Employment Opportunity Commission.

As observed by all parties at the table, Ms. Bassis is tenacious and skilled in her handling of the sensitive issues that arise in mediation. The quality of her services is reflective of her 20 years as a practicing mediator and 18 years as a mediation trainer for the Los Angeles County Bar Association, Loyola and Southwestern Law Schools and other entities. She is a Distinguished Fellow of the International Academy of Mediators (IAM) and former member of the California State Bar Labor & Employment Executive Committee. A student of the neurosciences who works "at the intersection of law and human emotion," she is recognized as a Certified Mediator by the International Mediation Institute (IMI) and is an invited Colleague of the Master Mediator Institute (MMI).

Ms. Bassis' 24-year legal career includes work in both the private and public sectors. Her private practice includes work for municipal defense and employment-labor law firms. Her public service includes work for the California Supreme Court's State Bar Court. She also held the position of prosecutor for the State Bar of California and was a staff attorney for the Legal Services Corporation.

500 South Oak Knoll Avenue Suite 29 Pasadena, CA 91101 626 577-7807 Fax 626 577-4991 Lbassis@mediate.com

Angela E. Oh, Esq. - Executive Director of the Western Justice Center, and Mediator

626-584-7494, ext. 36
angela@westernjustice.org

Angela E. Oh previously served on the Western Justice Center Board of Directors and was active with various committees, the most recent being Chair of the Program Committee. She has served as a Mediator for the Office of Affirmative Action Compliance in the County of Los Angeles, presiding over matters involving Title VII complaints. As an attorney in private practice, Ms. Oh specialized in litigation, both criminal defense and civil rights. She has maintained service on select boards including, Women's Policy, Inc. in Washington, D.C., Lawyers Mutual Insurance Company, and the Korean American Bar Association of Southern California. She was viewed as a spokesperson on behalf of Asian Americans who were the target of looting, vandalism, and violence following the acquittals of the officers in the state court trial presented by the Los Angeles County District Attorney. In 1997, President William Jefferson Clinton appointed Ms. Oh as one of seven advisors to the President's Initiative on Race. Ms. Oh has lectured nationally and internationally on the subjects of race relations, diversity, leadership in the 21st century, and Asian Americans and civil rights. Her lectures have taken her to the Middle East, China, Korea, the United Kingdom, and Northern Ireland.

More information about the Western Justice Center in Pasadena California can be found at: www.westernjustice.org

CONFIDENTIALITY AGREEMENT

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

MEMBERS OF THE BOARD

GLORIA MOLINA
MARK RIDLEY THOMAS
ZEV YAROSLAVSKY
DON KNABE
MICHAEL D. ANTONOVICH

DENNIS A. TAFOYA
Director

MEDIATION CONFIDENTIALITY AGREEMENT

CHARGING PARTY:

RESPONDENT:

OAAC COMPLAINT #:

1. The parties agree to participate voluntarily in mediation in an effort to resolve their dispute filed with the Office of Affirmative Action Compliance (OAAC).

2. The parties agree that all matters discussed during the mediation are confidential, unless otherwise discoverable and cannot be used as evidence in any subsequent administrative or judicial proceeding. Confidentiality, however, will not extend to threats of imminent physical harm or incidents of actual violence that occur during the conflict resolution meeting.

3. Any communications between the OAAC and the mediator/facilitator and/or parties are considered dispute resolution communications and will be kept confidential.

4. The parties agree not to subpoena the mediator(s) to produce any documents provided by a party in a pending or future administrative or judicial proceeding. The mediator/facilitator will not voluntarily testify on behalf of a party in any pending or future administrative or judicial proceeding. The parties further agree that the mediator/facilitator will be held harmless for any claim arising from the dispute resolution process.

5. Mediation session(s) will not be tape-recorded or transcribed by the mediator or any of the participants. Parties or their representatives are not prohibited from retaining their own notes.

6. If a settlement is reached by all parties, the agreement shall be reduced to writing and when signed shall be binding upon all parties to the agreement.

CHARGING PARTY	DATE	RESPONDENT	DATE
CHARGING PARTY	DATE	RESPONDENT	DATE
CHARGING PARTY REPRESENTATIVE	DATE	RESPONDENT	DATE
CHARGING PARTY REPRESENTATIVE	DATE	RESPONDENT REPRESENTATIVE	DATE
		RESPONDENT REPRESENTATIVE	DATE

MEDIATOR DATE

OAAC REPRESENTATIVE DATE

CUSTOMER SATISFACTION SURVEY RESULTS

Office of Affirmative Action Compliance

DISPUTE RESOLUTION MEDIATION CUSTOMER SERVICE SURVEY STATISTICS FOR PERIOD MARCH 2008 TO MARCH 2009

SATISFACTION LEVEL FOR THE CATEGORY: *"YOUR OVERALL SATISFACTION WITH THIS MEDIATION"*:

From the 123 mediations held during the period March 2008 to March 2009, 354 Surveys from both Complainants and Department Representatives were reviewed.

On a scale from 1 (Very Dissatisfied) to 5 (Very Satisfied) with 3 being Neutral the average participant rating was 4.8 (Very Satisfied)

95% of the participants gave a rating of either 5 (Very Satisfied) or 4 (Satisfied)

81% of the participants gave a rating of 5 (Very Satisfied)

1% of the participants gave a rating of either 1 (Very Dissatisfied) or 2 (Dissatisfied)

Of the participants answering the question, *"Would you use the OAAC Mediation Program in the future?* 99% said yes.

SAMPLE PARTICIPANT COMMENTS FOR THE ABOVE PERIOD:

"I liked that it mostly empowered my staff member and made him feel special and important."

"Thank you for making my issue important"

"Informative....the complaint was explained by the mediator which was necessary for my understanding."

"I am extremely satisfied with the results and felt respected and appreciated."

"Excellent mediation procedures to arrive at an exceptional resolution..."

"Made the experience very comfortable."

"I am very pleased about the process and felt it is a very useful tool in resolving important personnel conflicts".

"I am very impressed with the entire process and the extra time spent to resolve this matter."

"Very professional, friendly, helpful mediator. OAAC staff was very competent."

"Excellent"

"Very comfortable, thank you for everything."

"Very helpful, useful."

"The mediator and OAAC staff were wonderful and vey helpful in acclimating me to this process. Thank you."

"I feel as though I can use this OAAC Mediation Program in the future if anything should ever happen in the future. It was very comfortable."

"Facilitators are extremely affable, excellent demeanor, make you feel at ease."

"Very professional job by all."

"Excellent opportunity to clarify the process."

"The OAAC staff and mediator were very excellent. Initially I was very uncomfortable but both the OAAC staff and mediator made me feel very comfortable.....Thanks again."

"They did a great job."

".....My mediator's diligence in seeking a resolution should be commended."

" Very informative mediators as well as professional and knowledgeable of the process, procedures, and regulations."

"Painless and wonderful."

"The mediator is very open and covers all points that are important...."

"Everything was great."

"I was impressed with all of the Parties involved in the mediation."

"I want to thank everyone for listening."

"The mediator and Deputy worked well together.....to arrive at a resolution."

"Thank you.....the mediator and staff were very sensitive to my situation."

"I'm very satisfied with the outcome."

"It was very professional and helpful. It was more successful than I thought it would be, and it was very helpful in getting to know the other person to work things out and move on."

"The judgment of the coordinator in achieving a result are worthy of recommending this method for all problem solving."

"Supportive environment conducive to success."

"The OAAC staff was excellent and provided a pleasant and professional environment for resolution."

"Very good service.....calm and productive process."

"The mediator did a great job in bringing candid dialogue between the participants."

WHY DEPARTMENTS SHOULD USE MEDIATION

Office of Affirmative Action Compliance

Why Departments Should Use Dispute Resolution Mediation

Dispute Resolution Mediation is a problem-solving process in which a neutral and skilled third party with dispute resolution skills (the mediator), helps the Parties involved in a dispute work toward a voluntary resolution. The mediator does not decide how the dispute should be resolved but instead helps the Parties identify the real issues, and then helps them work toward a mutually agreeable solution.

Mediation has many advantages over the alternatives (litigation or arbitration):

- Mediation is less expensive and less time-consuming than litigation.
- Mediation leaves control of the outcome in the hands of the disputing parties rather than in the hands of a judge, jury, or arbitrator.
- In mediation the parties are free to fashion their own solutions to the conflict, including solutions that a court or arbitrator would not be able to order.
- When ongoing relationships are important, as for example in the case of a dispute amongst co-workers, mediation provides an opportunity to resolve the dispute in a non-adversarial way so that important working relationships can be repaired and preserved.

Participants in the Dispute Resolution Mediation (DRM) Program have overwhelmingly felt very satisfied with their experience in the mediation process. A review of the Customer Service Surveys completed by the DRM Program participants for a one year period from March 2008 to March 2009 found that the average rating [on a scale from 1 (Very Unsatisfied) to 5 (Very Satisfied)] was 4.8 (Very Satisfied). 95% of the participants gave a rating of either Very Satisfied or Satisfied, and only 1% of the participants gave a rating of Very Dissatisfied or Dissatisfied. Some of the Survey comments include:

"I liked that it mostly empowered my staff member and made him feel special and important."

"Thank you for making my issue important."

"Informative....the complaint was explained by the mediator which was necessary for my understanding."

"I am extremely satisfied with the results and felt respected and appreciated."

"Excellent mediation procedures to arrive at an exceptional resolution..."

"Made the experience very comfortable."

"I am very pleased about the process and felt it is a very useful tool in resolving important personnel conflicts".

MEASURING THE COST OF CONFLICT

Office of Affirmative Action Compliance

The Cost of Conflict involving Employment Discrimination Complaints

Every conflict has a cost. County Counsel estimates that the average cost of litigating one employment discrimination complaint is $148,000 dollars. There are also "hidden costs" associated with unresolved discrimination complaints, such as disruptive work environments, lost productivity, sub-standard work performance, and loss of investment in skilled employees. These costs are difficult to assess, but nonetheless take a dramatic toll on all parties involved and directly impact the quality of service delivered to the public.

The Dispute Resolution Mediation (DRM) Program is currently studying the feasibility of measuring the cost of conflict by utilizing a benchmarking instrument designed by the Dana Institute called the *"Dana Measure of Financial Cost of Conflict"* (the *"Dana Measure"*). The *"Dana Measure"* uses a combination of statistical sampling techniques to benchmark the current cost of preventable conflict incurred by employers. One of the elements of measured cost is loss of productivity. Employment discrimination complaints not resolved early always have varying degrees of lost productivity.

Without early resolution through mediation, discrimination complaints can result in the following adverse impacts on those involved:

- Stress, frustration, and anxiety
- Loss of sleep
- Strained relationships
- Grievances and litigation
- Employee loss/turnover
- Loss of productivity/wasted time
- Increased discrimination complaints
- Absenteeism
- Disability and workers' compensation claims
- Sick leave

These symptoms of unresolved employment discrimination complaints are a significant cost factor to County Departments.

Employee Loss/Turnover:

Turnover has a number of undesirable implications for Departments, including the costs of losing an experienced worker, recruiting and retraining a successor.

The turnover cost for an employee is anywhere between 75% and 150% of the annual salary. (Phillips, D.T. *The Price Tag of Turnover*. Personnel Journal, Dec. 1990, at p 58, 1990)

Loss of Productivity/Wasted Time:

"Tension and stress reduce motivation and disturb concentration. A loss of simple productivity of 25% (doing things other than work related activities, such as discussing the dispute, playing computer games, finding reasons to get out of the area) reduces an average work week to fewer than 20 hours...)" (Cram, James A. and MacWilliams, Richard K.[online] *The Cost of Conflict in the Workplace*, Cramby River Consultants, date unknown)

"42% of a Manager's Time is spent addressing conflict in the workplace." (Watson, C & Hoffman, R, Managers as Negotiators, Leadership Quarterly 7(1), 1996)

"Over 65% of performance problems result from strained relationships between employees, not from deficits in individual employee's skill or motivation." ([online] *The Dana Measure of Financial Cost of Organizational Conflict*, 2001)

Absenteeism:

Consequences of employment discrimination complaints include greater incidences of absenteeism due to health problems, both physical and mental, and much higher incidence of interpersonal conflict.

Disability Costs:

"Workplace stress and work-related conflict are among the top eight reasons why employees request counseling assistance." (Warren Shepel, *Workplace Trends Linked to Mental Health Crisis in Canada*, 2002)

"Job stress is a key driver of health care costs. According to the Journal of Occupational Environmental Medicine, health care expenditures are nearly 50 percent greater for workers reporting high levels of stress."(Corbitt Clark, Mary, [online], *The Cost of Job Stress*, mediate.com)

Reducing Costs and Litigation:

The number of employees seeking legal assistance and filing lawsuits nationwide is steadily increasing, and a discrimination complaint that escalates to a lawsuit can be very costly to defend and take years to resolve.

The EDM Program has direct and appreciable financial benefits to the County, as well as improving the working conditions for affected employees. It has proven to be a successful tool in resolving complaints early, which has significantly reduced the costs associated with discrimination complaints filed against the County of Los Angeles. In Fiscal Years 2008-09 and 2009-10 the OAAC EDM Program conducted 266 mediation sessions, successfully resolving 175 complaints. Of those successful mediations, 95 were identified as high risk cases resulting in an estimated saving to the County of $14.1 million in potential litigation costs.

EQUAL EMPLOYMENT OPPORTUNITY, CIVIL RIGHTS TRAINING, & FOCUS GROUPS

- EEO Civil Rights Training & Focus Groups
- Training Guide : Keys to Compliance
- Sexual Harassment Training Curriculum E-Learning
- Reasonable Accommodation

EEO CIVIL RIGHTS TRAINING AND FOCUS GROUPS

OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

OAAC EEO/Civil Rights Training

The OAAC provides Equal Employment Opportunity/Affirmative Action (EEO/AA) and civil rights related training to all classifications in accordance with County policies and/or state law. The Affirmative Action/Diversity Programs (AA/DP) Section also assists County departments in identifying and resolving diversity-related conflicts through facilitation of focus groups and development of workshops specifically tailored to address department-specific issues including seminars on unlearning prejudice. In the last two fiscal years, training resulted in a total of over 1,833 sessions representing over 48,734 participants. Provided is a list of all the instructor-led classes offered by the OAAC.

PREVENTION TRAINING

OAAC's core EEO and civil rights education tools are its classes on Sexual Harassment Prevention, Employment Discrimination Prevention, and Employment Guidelines for the Reasonable Accommodation Process (see descriptions below).

E-Learning Sexual Harassment Prevention

Starting October 2010, the OAAC will launch the piloting phase of its new innovative, interactive and prevention-focused online sexual harassment prevention courses for managers/supervisors, line staff, and County Commissioners. Shortly thereafter, the three courses will be made available to all departments on the County's Learning Management System (LMS).

> Managers and Supervisors: this course is expertly designed to accommodate all learning styles—visual, audio, and tactile. The target audience for the course includes all executive staff, managers, supervisors, employees who are currently assigned to "Acting" positions in any of the aforementioned categories, advocacy staff, Affirmative Action Coordinators, and County Commissioners with supervisory responsibilities. All newly hired or promoted supervisors are required to take the course within six months of hiring or promotion.
>
> This *AB 1825 and ADA*/508-compliant course is designed to assist management and supervisory personnel to meet their obligations to prevent and respond to sexual harassment in the workplace. Participants learn about conduct prohibited by the County's Policy on Sexual

Harassment, employer, and individual liability, how to identify and stop inappropriate conduct of a sexual nature, specific legal concepts relevant to sexual harassment, definition of relevant terms, how to recognize and prevent retaliation, and the County's complaint process.

The course also includes discussion on the human and financial costs of sexual harassment, and the County Board of Supervisors' recently adopted "Legal Exposure Reduction Initiative" for all forms of risk management, including sexual harassment. To further aid in reducing liability, there are *required participation points* built into the course where the learner cannot proceed without reviewing and/or acknowledging County policies and policy guidance. Additionally, detailed guidance is offered on how to receive a complaint and how to proactively intervene when inappropriate behavior of a sexual nature occurs.

Line Staff: as with the Management and Supervisors course, this course is expertly designed to accommodate all learning styles—visual, audio, and tactile, and is also Americans with Disabilities Act (ADA)/508-compliant. The target audience for this course includes all non-supervisory employees, new employees—during their probationary period, and student interns.

The Line Staff course focuses on how to identify, prevent, and stop inappropriate conduct of a sexual nature, conduct prohibited by the County's Policy on Sexual Harassment, employer and individual liability, definitions of relevant terms and the County's complaint process. Videos and multiple-choice tests are used throughout the course to demonstrate what is and is not sexual harassment, and to reinforce the importance of self-managing behaviors of a sexual nature. Additionally, for the purposes of education and risk management, there are also required *participation points* built into the course where the learner cannot proceed without reviewing and/or acknowledging County policies and policy guidance.

Commissioners: the Commissioners course is a hybrid course (*Cultural Diversity Awareness-Section I and Sexual Harassment Prevention – Section II*) pursuant to the County Board of Supervisors' directive of June, 2007, requiring all County Commissioners to receive training in cultural diversity awareness and sexual harassment prevention. This course was designed to assist Commissioners in successfully fulfilling their responsibilities as representatives of the County and to support the efficient use of their time.

The sexual harassment portion of the course is the same as the Line Staff sexual harassment prevention course described above. All Commissioners with supervisory responsibilities are directed to take the Managers and Supervisors sexual harassment prevention course which is also described above.

Section I of the course explores different dimensions of cultural diversity, and the role of stereotypes and prejudice. Participants are also provided an opportunity to examine how cultural diversity issues and unlawful sexual harassment relate to each other. Before Section I concludes, Commissioners are provided access to the County's *Policy on Diversity* (Chapter 5.10 of LA County Code), and are asked to acknowledge receipt and their intent to adhere to the policy.

Instructor-Led Employment Discrimination Prevention

The target audience for *Employment Discrimination Prevention* is all executive staff, managers and supervisors, advocacy staff, and Affirmative Action Coordinators. This instructor-led course assists County participants in identifying their roles, rights, and responsibilities under civil rights laws. Major concepts such as disparate treatment, adverse impact, and reasonable accommodation are reviewed and discussed, along with specific types of discrimination and strategies to avoid them. This course focuses on measures that managers and supervisors can implement to prevent and eliminate discriminatory practices. This instructor-led course will continue for departments that are not yet capable of accessing the County's LMS.

Employment Guidelines for the Reasonable Accommodation Process

The target audience for *Employment Guidelines for the Reasonable Accommodation Process* is all executive staff, managers and supervisors, public contract staff, human resources personnel, information officers, return-to-work coordinators, Affirmative Action Coordinators, and ADA Coordinators. This instructor-led course demonstrates the tools necessary for managers and supervisors to determine and provide for reasonable accommodation to employees via the *Ten Step Interactive Process* for employees. It provides an overview of the disability laws, with specific emphasis on "per se violations" pursuant to California Government Code Section 12940(m) and 12940(n). Distinctions between the ADA and California's Fair Employment Housing Act (FEHA) are discussed as applicable to the reasonable accommodation process and how courts have interpreted FEHA to be a broader based protection for employees.

SKILL BUILDING TRAINING

The second track of the AA/DP's education programs and initiatives is skill-building. Classes and customized workshops are geared toward increasing Countywide capacity for respect and inclusion with a focus on ensuring that all persons employed by the County, as well as clients of the County, have an opportunity to engage in a respectful and harassment-free environment. OAAC's core skill-building tools are workshops on Disability Awareness and Etiquette, Diversity and Unlearning Prejudice, and Increasing Respect in the Workplace. These classes are described below.

Focus groups are an additional and very effective risk aversion tool offered to all County departments by the AA/DP. Upon request, the AA/DP develops and facilitates focus groups as a means of assisting departments to effectively assess and constructively respond to employee relations and management/staff conflicts. The focus group process is further discussed in the section below.

Disability Awareness and Etiquette

The target audience for *Disability Awareness and Etiquette* is all classifications. This instructor-led workshop communicates the County's commitment to diversity and how disability fits into the diversity context. Topics include the County's Policy on Non-Discrimination on the Basis of Disability (Policy #3.060) related federal and state laws, and regulations regarding accessibility. Myths, stereotypes, and misconceptions about persons with disabilities are identified and discussed. Managers and supervisors review guidelines for responding to disability discrimination allegations, and all workshop participants review the County's ADA Informal complaint process.

Diversity and Unlearning Prejudice

The target audience for *Diversity and Unlearning Prejudice* is all classifications. This highly interactive instructor-led workshop plays a critical role in cultivating cultural awareness, knowledge, and skills necessary for working and managing in our increasingly diverse workforce. Participants gain a better understanding of how assumptions they may hold about cultural differences can either foster an inclusive and respectful workplace, or create one in which conflict or potential violations of County policies and/or civil right laws may arise. The workshop takes participants on a journey from quiet self-reflection to exploration through discussion, charting and presentations of commonalities and differences that are vital components of valuing different identity groups, and promoting effective teamwork. Participants are left with tools that enable

them to better interact with, and manage, the array of human diversities in our work environments.

Increasing Respect in the Workplace

The target audience for *Increasing Respect in the Workplace* is all classifications. The workshop provides opportunity for participants to discuss behaviors and attitudes needed to increase respect and improve morale in the workplace. Participants learn the difference between unprofessional and illegal behaviors. Basic workplace etiquette and the importance of having clear boundaries that create good working relationships are also discussed and personal competencies for effective workplace relationships are explored. Special emphasis is given to the issues that are most relevant to the client department and/or section (e.g., speaking a language other than English at work, race, accent, gender, religion, sexual orientation, age). Specific workplace behaviors that increase respect and cooperation are discussed and supported by skill-building exercises on topics such as active listening and conflict resolution techniques.

Focus Groups

Focus groups are group interviews of target audiences (e.g., managers, supervisors, Departmental Personnel Officers, line staff) facilitated by a neutral third party. The purpose of focus groups is to solicit cross-sections of opinions, perceptions and recommendations related to peer relations and/or management/staff relations that are negatively impacting the workplace. The ideal size for focus groups is generally between six and fifteen people. This size group encourages participants to contribute their ideas. Smaller groups tend to be dominated by one or two members and larger groups often require facilitators to divert efforts towards the management side conversations.

Upon request, the AA/DP conducts a comprehensive workplace assessment though the facilitation of focus groups to assist County departments in addressing behavioral and conflict issues that could lead to violations of County policies and/or federal and state laws. *Increasing Respect in the Workplace* course (described above) is an outcome of a focus group developed for a department in 2008. The focus group process involves the following steps:

1) AA/DP meets with management representatives and decision makers of the client department to gain understanding of and consensus on core issues and desired outcomes.

2) A summary report, written by OAAC staff, of the initial meeting, is provided to participants of the client department's management team with recommendations for next steps (e.g., identification of classification-specific groups to be invited, number of participants and groups for each classification, selection process, method of notification, report results of focus groups).

3) Classification-specific focus groups are convened. At the end of the process (i.e., all classifications involved have concluded their group process) results are reported to client department's management team with options for sharing the results with non-management personnel (e.g., AA/DP facilitated group sessions; report provided at departmental, division or section meeting). Confidentiality of group discussions is maintained through the process. The AA/DP reports contain themes, trends, and patterns. Names of participants are not included and language is generalized to avoid identification of individuals. All charts generated during focus groups and workshops are destroyed by the AA/DP.

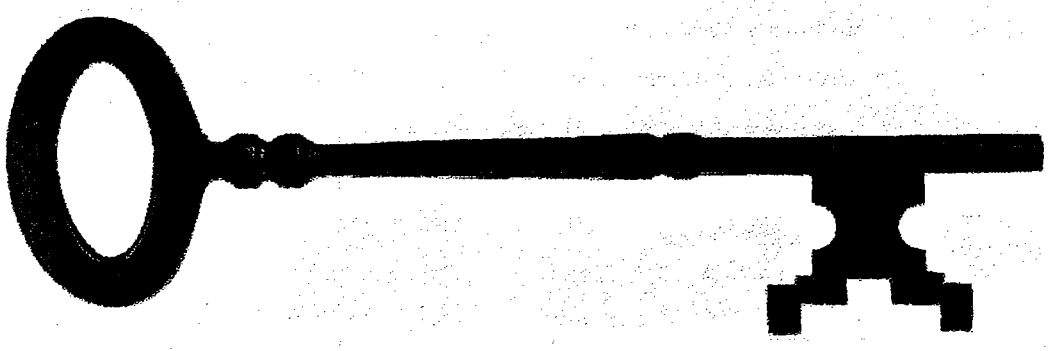
4) AA/DP staff develops or tailors an existing workshop to address underlining issues in response to common themes identified in focus groups. Other information that does not show up as themes may also be incorporated if escalation of the concern or comment would potentially violate County policies and/or state and federal laws.

5) Client department management receives feedback on the workshops through participant evaluations forms and a written or verbal summary of participant concerns that, if left unaddressed, could create liability for the County and/or individual personnel.

TRAINING GUIDE: KEYS TO COMPLIANCE

OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

Training Guide:
Keys to Compliance



Dennis A. Tafoya
Director

Keys To Compliance – Legal Requirements

Effective January 1, 2005, all California employers with 50 or more employees are required to provide at least 2 hours of sexual harassment training to all supervisory employees who have not received such training before 2005. All newly hired or promoted supervisors are also required to undergo 2 hours of sexual harassment training within 6 months of their hiring or promotion.

Beginning January 1, 2006, employers will need to provide ongoing training for all supervisors, consisting of at least 2 hours of sexual harassment training every two years.

The County of Los Angeles Board of Supervisors has established training mandates consistent with this new law. Specifically, Board Policy Manual 9.101 and 9.102 provide for mandatory discrimination and sexual harassment training. Although these policies have been in place for years, many County departments have been reluctant and unwilling to comply. With the arrival of the California State mandates, compliance is no longer a choice – it's the law.

REQUIRED TRAINING FOR COUNTY EMPLOYEES	Page
Sexual Harassment Prevention: Non-supervisory	3
Sexual Harassment Prevention: Non-supervisory - Refresher	3
Sexual Harassment Prevention: Executive Series	3
Sexual Harassment Prevention: Executive Series - Refresher	4
Employment Discrimination Prevention: Executive Series	4

PROFESSIONAL TRAINING	Page
Americans with Disabilities Act Series: Disability Awareness & Etiquette	5
Americans with Disabilities Act Series: Employment Guidelines for Reasonable Accommodation — The Interactive Process	5
Character-based Leadership — A Framework for Developing an Inclusive Environment	5
Discrimination Complaint Process	6
Diversity & Unlearning Prejudice	6
Employment Discrimination Prevention: Non-supervisory	6
Increasing Respect in the Workplace	7
Religious Discrimination Prevention	7
Train the Trainer	8

OTHER REQUIRED TRAININGS (County Commissioners only)	Page
Cultural Diversity Awareness/Sexual Harassment Prevention	8

Sexual Harassment Prevention: Non-supervisory

Target Audience: All non-supervising employees, new employees, student interns

This comprehensive seminar provides participants with general knowledge of the legal definition of sexual harassment under federal and state laws and also reviews the County's policy. Behaviors associated with and the consequences of sexual harassment in the workplace are discussed. Participants are provided information on both the responsibility of all employees to prevent sexual harassment and guidance on the complaint process.

Duration: 4 Hours
Cost: See Fee Schedule **Class Size:** 25-35

Sexual Harassment Prevention: Non-supervisory: Refresher

Target Audience: All non-supervising employees, new employees, student interns
Prerequisite: 4 Hour *Sexual Harassment Prevention* workshop

This seminar is for employees who have completed the 4 Hour *Sexual Harassment Prevention* workshop. County policy and the legal definition of sexual harassment under federal and state laws is reviewed. Behaviors associated with and the consequences of sexual harassment in the workplace are discussed. Participants are provided information on both the responsibility of all employees to prevent sexual harassment and guidance on the complaint process.

Duration: 2 Hours
Cost: See Fee Schedule **Class Size:** 25-35

Sexual Harassment Prevention: Executive Series

Target Audience: All executive staff, supervisors, managers, employees who may be moving into a supervisory position, advocacy staff, affirmative action coordinators

This workshop focuses on the rights and responsibilities of supervisors and managers when dealing with issues of sexual harassment. Demonstrations of how incidents of sexual harassment – including poorly handled or unresolved complaints – can translate into liability for the County are shown. Attendees are trained to use their own behavior to set the example to their staff.

Keys to Compliance – Legal Requirements: All newly hired or promoted supervisors are required to undergo sexual harassment training within 6 months of hiring or promotion. Employers will provide refresher training to all supervisors consisting of at least 2 hours of sexual harassment prevention training every 2 years. This training fulfills the requirements for AB 1825.

Duration: 4 Hours
Cost: See Fee Schedule **Class Size:** 25-35

Sexual Harassment Prevention: Executive Series: Refresher

Target Audience: All executive staff, supervisors, managers, employees who may be moving into a supervisory position, advocacy staff, affirmative action coordinators
Prerequisite: 4 Hour *Sexual Harassment Prevention: Executive Series.*

This seminar is for employees who have completed the *Sexual Harassment Prevention: Executive Series* workshop. This training reviews the rights and responsibilities of supervisors and managers when dealing with issues of sexual harassment. Demonstration of how incidents of sexual harassment – including poorly handled or unresolved complaints – can translate into liability for the County are shown. Attendees are trained to use their own behavior to set the example to their staff. This training fulfills the requirements for AB 1825.

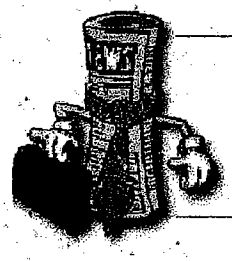
Duration: 2 Hours
Cost: See Fee Schedule **Class Size:** 25-35

Employment Discrimination Prevention: Executive Series

Target Audience: All executive staff, supervisors, managers, employees who may be moving into a supervisory position, advocacy staff, affirmative action coordinators.

This workshop will assist County managers and supervisors in identifying their roles, rights, and responsibilities under civil rights laws. Major concepts such as disparate treatment, adverse impact, and reasonable accommodation are reviewed and discussed, along with specific types of discrimination and strategies to avoid them. This workshop focuses on measures that supervisors and managers can implement to prevent and eliminate discriminatory practices.

Duration: 4 Hours
Cost: See Fee Schedule **Class Size:** 25-35



Under the law, California employers are required to take "reasonable steps" to prevent harassment from occurring. Govt. Code §12940(j)

Americans with Disabilities Act: Disability Awareness/Etiquettes

Target Audience: All County supervisors, managers, employees who may be moving into a supervisory position, all staff who interact with the public, human resources personnel, information officers, affirmative action and ADA coordinators.

This workshop provides an overview about the County's commitment to diversity and where disability fits in that context. Myths, stereotypes, and misconceptions about persons with disabilities will be identified and discussed. Topics include the County's policy of nondiscrimination on the basis of disability, related federal and state laws, and the regulations regarding accessibility and nondiscrimination. Provided will be examples of appropriate interaction with persons with disabilities in an efficient, responsive, high quality manner that promotes their self-sufficiency and well-being in accordance with County mandates. This training reviews disability language and communication, etiquette issues, and the County's *ADA Informal Complaint Process,* including guidelines when responding to disability discrimination allegations.

Duration: 4 Hours
Cost: See Fee Schedule **Class Size:** 25 or less

Americans with Disability Act: Employment Guidelines for Reasonable Accommodation — The Interactive Process

Target Audience: All County supervisors, managers, employees who may be moving into a supervisory position, public contract staff, human resources personnel, information officers, return-to-work coordinators, affirmative action coordinators, ADA coordinators.

This workshop demonstrates the tools necessary for supervisors and managers to determine and provide for reasonable accommodation to employees via the *Ten Step Interactive Process* for employees. It provides an overview of the disability laws, with specific emphasis on "per se violations" pursuant to California Government Code Section 12940(m) and 12940(n). Distinctions between the ADA and FEHA are discussed as applicable to the reasonable accommodation process and how courts have interpreted FEHA to be a broader based protection for employees.

Duration: 4 Hours
Cost: See Fee Schedule **Class Size:** Limited to 25

Character-Based Leadership: A Framework for Developing an Inclusive Work Environment

Target Audience: Executive staff, supervisors, managers, affirmative action coordinators, all employees

This training will provide a 7 step model for developing an inclusive work environment.

Duration: 4 Hours
Cost: See Fee Schedule **Class Size:** 25-35

Discrimination Complaint Process Training

Target Audience: All County supervisors, managers, employees who may be moving into a supervisory position, advocacy staff, affirmative action and ADA coordinators.

This workshop is for employees who have responsibility for investigating employment discrimination complaints. It provides extensive training on the Board-approved *Employment Discrimination Complaint Process* to ensure all complaints of employment discrimination are investigated in a timely, thorough, and effective manner. The program is designed to familiarize participants with the discrimination complaint process and employment discrimination theory, report writing, and developing the ability to conduct fair and impartial fact-finding investigations. Individuals who have completed this training receive an *Investigator Certification*.

Duration: See Note*
Cost: See Note* **Class Size:** 25-35

*Note: Contact Senior Deputy Compliance Officer Comelita Brown at (213) 202-5835 for more information on this workshop.

Diversity and Unlearning Prejudice

Target Audience: All employees, new employees, student interns

Our Diversity Training provides participants with the tools necessary to manage and navigate within our diverse workforce. Training plays a large role in creating an organizational culture that fosters individual understanding, accountability, and appreciation toward employee differences. Effectively managing diversity and creating an organization in which people can express their individuality is more than just a good idea – it is a core value that should be practiced and promoted at all levels of public service.

Duration: 4 Hours
Cost: See Fee Schedule **Class Size:** 25-35

Employment Discrimination Prevention: Non-Supervisory

Target Audience: All non-supervising employees, new employees, student interns

This workshop educates employees regarding their responsibility to create a nondiscriminatory work environment through their personal conduct. Participants learn to identify disrespectful behaviors related to protected categories and ways to create a respectful workplace. Federal and state laws are reviewed along with the County's equal employment opportunity and nondiscrimination policies, followed by a discussion of different forms of harassment in the workplace. Finally, skill-building exercises help participants learn ways to deal with offensive behavior in a sensitive manner.

Duration: 2 Hours
Cost: See Fee Schedule **Class Size:** 25-35

Increasing Respect In the Workplace

Target Audience: All County employees

This workshop provides an opportunity for participants to discuss behaviors and attitudes needed to increase respect and high morale in the workplace. Participants will learn the difference between unprofessional and illegal behaviors, workplace etiquette, and the importance of having clear boundaries that create good working relationships. Personal competencies for effective workplace relationships will be explored and discussed with special emphasis on any specific issue (speaking a language other than English at work, race, accent, gender, religion, age, etc.) requested by the client department. Also, workplace behaviors that increase respect and cooperation will be highlighted along with skill building exercises to help participants communicate effectively and with respect.

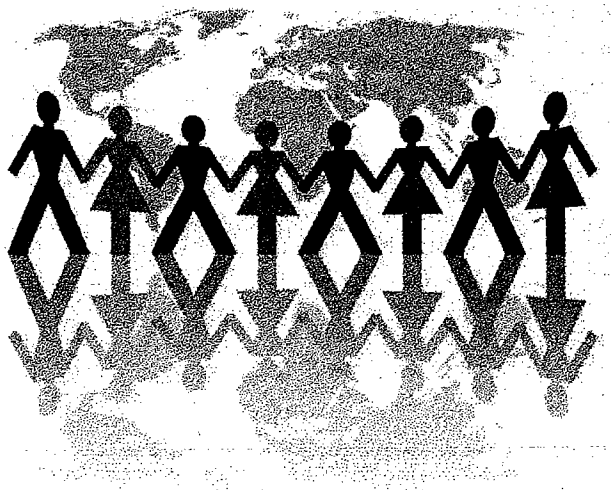
Duration: 4 hours
Cost: See Fee Schedule **Class Size:** 20-25

Religious Discrimination Prevention

Target Audience: All County supervisors, managers, affirmative action coordinators, advocacy staff, analysts, all employees.

This training raises the awareness of increased religion-based bias in the workplace and help County departments create an atmosphere that respects the range of religious traditions. The training will review the federal regulations identifying the legal basis for prohibiting religious discrimination in the workplace, review employee's rights of religious expression, and employer's duty to not discriminate based on religion.

Duration: 2-4 Hours
Cost: See Fee Schedule **Class Size:** 25-35



Train the Trainer

Target Audience: All County departmental staff development specialists and above. Prerequisite: Overall training ability, knowledge of County policies and departmental policies and procedures, strong facilitation and presentation skills. A certificate as a trainer/ presenter from the DHR Training Academy or other accredited institution is a plus.

This 2 day workshop prepares designated departmental staff development specialists and above to conduct workshops for their department in the specific topic trained by OAAC. Participants will be expected to study the background reading materials, the training curriculum, related federal and state laws, County policies, and any other relevant reading materials provided to them before the workshop. Participants will learn the principles of adult learning, how to present and debrief different segments of the training curriculum, how to respond to questions, and how to facilitate effective learning environments for all County employees. Participants will also be asked to complete a pre and post workshop test in order to qualify for OAAC's *Trainer Certification*.

Duration: 2 Day Workshop
Cost: See Fee Schedule **Class Size:** 15

Cultural Diversity Awareness & Sexual Harassment Prevention

Target Audience: **Target Audience:** All staff of County commissions, committees, task forces, and special district agency board members which provide forums for citizen input and accessibility to County government.

This 4 hour interactive training provides County participants, who are deemed "agents" of the County (e.g., commissioners, task force participants, joint-power representatives), with basic information and insight into 2 topics that are cornerstones to ensuring safe and respectful work relationships. During the first half of the class participants receive an overview of the County's *Policy on Diversity* (Chapter 5.10 of LA County Code), engage in guided discussions that explore dimensions of diversity, and initiate a personal skill-building plan by taking stock of their diversity competencies. The second half of the class focuses on everyone's right to work in an environment free of harassment, as well as the responsibilities of "agents" of the County to prevent and respond to inappropriate behavior and sexual harassment. In both segments, participants receive an overview of all relevant federal and state laws, and County policies designed to promote nondiscriminatory work environments.

Duration: 4 Hours
Cost: See Fee Schedule **Class Size:** 25-35

Customized Trainings

In addition to general training curriculum, we offer customized trainings for special needs or directives. Specially designed trainings may be required for:

- Conflict Resolution
- Mediation Agreements
- Corrective Action Plans
- Settlement Agreements
- Focus Group Summaries

Contact us for all your training needs at (626) 943-5621 or visit us online at http://oaac.co.la.ca.us

SEXUAL HARASSMENT TRAINING CURRICULUM E-LEARNING

SEXUAL HARASSMENT PREVENTION TRAINING CURRICULUM E-LEARNING

FOR

MANAGERS AND SUPERVISORS

County of Los Angeles
Sexual Harassment
Prevention

Welcome to Los Angeles County Sexual Harassment Prevention Training for Managers and Supervisors

Select to begin course

"...Every Los Angeles County employee and all persons engaged in business with Los Angeles County have an on-going responsibility to create a non-discriminatory work environment, through their personal conduct..."

- Board of Supervisors Non-Discrimination Policy

Click on Help for navigational instructions ?

You can click help anytime during this course for navigation instructions

Select if using a screen reader

SKIP

Module: 1

Introduction - Sexual Harassment Prevention Training for Managers and Supervisors

FN
Welcome to Sexual Harassment Prevention Training for Managers and Supervisors

Due to increasingly diverse workplaces, changes in technology *and* socially acceptable behavior...

MN
...and, since many of you have read about sexual harassment and/or previously attended training on the topic,

FN
...this course will focus on how to identify, prevent and stop inappropriate conduct of a sexual nature, specific legal concepts, and conduct prohibited by the County's Policy on Sexual Harassment.

MN
The County has higher expectations of managers and supervisors than of other employees. Managers and supervisors are expected to set an example of appropriate conduct for other employees. Managers and supervisors are expected to interact with employees in an appropriate manner—both within and outside the workplace.

FN
Employment discrimination and sexual harassment, in particular, cost employers significant amounts of money annually in legal settlements. Not to mention employees' loss of productivity and its impact on employee morale.

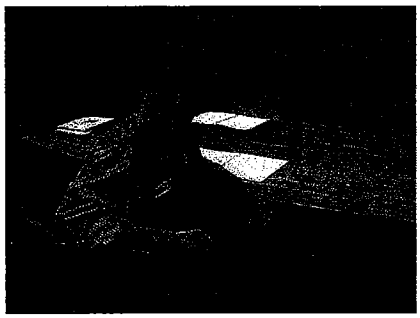
MN
To address these problems, the County Board of Supervisors recently adopted a "Legal Exposure Reduction Initiative" for all forms of risk management including employment discrimination and sexual harassment. This requires that every employee, especially managers and supervisors, do their part to avoid legal exposure and reduce the costs of risk to the County involving sexual harassment.

FN
This course is designed to assist you in meeting your obligations to PREVENT and RESPOND to employment discrimination and sexual harassment; thereby, achieving the County's goal of reducing legal exposure...

MN
...and, most importantly having a workplace free of discrimination and harassment.

MN
One method for preventing sexual harassment is for *all* employees to think about the *impact* of their behavior to ensure that they are respectful and that it is consistent with the County's Policy on Sexual Harassment.

MN
To assist you in receiving a complaint and responding appropriately when aware of inappropriate conduct of a sexual nature, this course will clarify the County's Policy on Sexual Harassment, employer and individual liability, define relevant terms and explain how to use the County's complaint process, identify a four-step interview and an eight-step intervention process.



FN
Inappropriate conduct of a sexual nature in the workplace that is less obvious can be more difficult to recognize. As you watch the interaction between Denise and Bill see if you observe inappropriate conduct of a sexual nature.

Video **"Escalation - First Meeting"**

Denise: (*Touches Bill's shoulder.)*

Bill: What?

Denise: Hi, you're Bill, the Branding NA project lead, right?

Bill: Guilty as charged beautiful. And yourrrr..?

Denise: (*shakes hands)* Denise. I started here last week and Stephen put me on that account yesterday.

Bill: Ah, I remember him mentioning that this morning.

Denise: Yeah he said you'd show me the ropes.

Bill: Absolutely. And, just so you know I'll need to see those template design ideas ASAP, so Sarosh can build a module to show the client. Can you work fast?

Denise: Yeah.

Bill: And I trust you're as creative as you are pretty.

Denise: (*ignores his comment)* Um, when do we start?

Bill: After lunch. Have you met Sarosh yet?

Denise: No

Bill: Oh, he works right over there.

Denise: I don't see him.

Bill: Um, yeah, he must be having a late lunch. In fact, I haven't eaten either. Do you want to join me and I can tell you, for starters, how to keep on this client's good side.

Denise: Thanks but I've got an orientation meeting in ten minutes. But, um, another time?

Bill: Another time then.

Denise: Great, and I'll buy. Um, didn't get a chance my last job to work with clients directly. So I'd love to learn more about how to best collaborate with them.

Bill: So, see me after the meeting and we'll get started on the project.

Denise: OK. Bye.

FN
Well, did you observe inappropriate conduct of a sexual nature?

MN
This scenario did *not* dramatize inappropriate conduct of a sexual nature. Though, she probably preferred him to talk about their *work* instead of her *appearance*. During this course, you'll see *how* his behavior becomes sexual and escalates, over six months to create a hostile work environment for her.

FN
Some employees do not realize that if they use sexual innuendoes, tell sexual jokes, or looking at sexual content on their personal phones or computers in their work environment that that is inappropriate conduct of a sexual nature which is prohibited by the County's Sexual Harassment Policy. This course will provide more guidance on types of inappropriate conduct and methods for stopping it.

END MODULE

Module: 2

Definitions of Relevant Terms for Managers and Supervisors

MN
Welcome to the Definitions of Relevant Terms module for Managers and Supervisors.

This module will assess your current understanding of the County's Policy on Sexual Harassment, and conduct prohibited by that policy. It will also define terms relevant to sexual harassment.

FN
Before we begin the assessment we will do a quick review of these relevant terms.
Discriminate, Illegal discrimination, Sexual harassment, Quid Pro Quo, Hostile Work Environment, Sex-based harassment and Retaliation.

MN
Discriminate. Discriminate means to pay attention to differences and exercise judgment.

Do you think all adults discriminate?

MN
Yes all adults do discriminate. Every time we make a decision about what to wear or eat we pay attention to differences and exercise a judgment.

FN
But in this course we are talking about a different type of discrimination...and that is illegal discrimination.

MN
Illegal discrimination is behavior against any employee or applicant for employment because of his/her sex, race, color, age, religion, national origin, disability, sexual orientation, gender identity, or other

FN
In regard to hiring, termination, promotion, compensation, job training, or any other term, condition, or privilege of employment.

MN
Examples include a supervisor not promoting ...or non-supervisors harassing an employee because of his or her age, religion, race, sex or other protected basis or characteristics.

FN
Retaliation is when an employer takes an adverse action against an individual because they participated in a protected activity which includes filing a discrimination or harassment complaint, participating in an investigation; and/or opposing a discriminatory action.

FN
Now let's talk about harassment. Some employees do not realize that age, sex, religious and racial harassment are also types of illegal discrimination.

MN
When you say harassment you are referring to behavior that threatens or torments a person because of her or his protected characteristic.

FN
Yes, and I'll define one type of illegal sex discrimination, sexual harassment.

MN
Sexual harassment is unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of sexual nature.

FN
Which explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

MN
Did you know that there are two types of sexual harassment?

FN
Yes, they are, Quid-pro-quo and hostile work environment.

MN
Quid pro quo is a Latin term that means "this for that." In an employment context it would be a manager or supervisor who makes an unwelcome sexual advance or request for a sexual favor to an employee or applicant,

FN
...and their submission to or rejection of that advance becomes a condition of employment or it will negatively impact employment decisions affecting that employee.

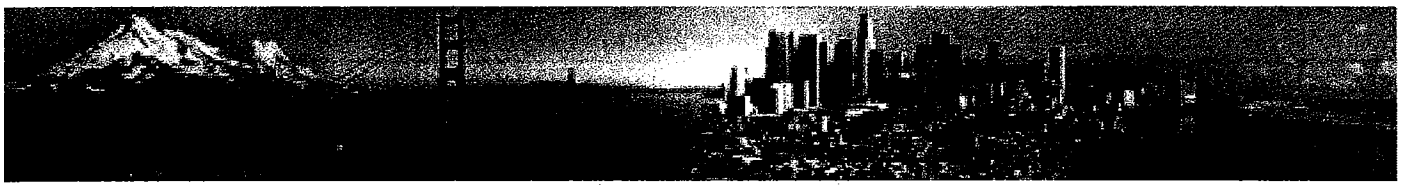
MN
Yes, basically its go out with me or you will lose your job or the promotion.

FN
Another type of sexual harassment is hostile work environment. It is a pattern of unwelcome conduct of a sexual or sex-based nature that substantially interferes with the work performance or creates a hostile, intimidating or offensive work environment.

FN
Did you know that sex -based harassment could create a hostile work environment?

MN
No, what is it?

FN
It is behavior that is not explicitly sexual in nature but which torments, degrades or threatens a person because the individual is a man or a woman.



MN
Do you know that under California law, employers are strictly liable (responsible) for all acts of sexual harassment by managers and supervisors?

FN
This means employers are liable for the discriminatory acts committed by their managers and supervisors. An employer is also liable for harassment by employees if the employer *knew or should have known* of the harassment and failed to take "immediate and appropriate" action.

MN
Let's now look at a situation that you as a manager or supervisor may encounter, where you'll need to use your understanding of the County's Policy on Sexual Harassment and effective communication skills to ensure you take immediate and appropriate action.

MN
Joan's employee, Deborah, has just told her that her co-worker, Bob, has been repeatedly asking her out. As you watch this interview, put yourself in Joan's shoes. Based on your understanding of the County's Policy on Sexual Harassment and complaint process, what are the right things to do next?

Video **"Don't Do Anything"**

Joan: Now Deborah, let's talk about how we can resolve this situation. What would you like to have happen?

Deborah: Nothing. I feel better just having talked about it. I think I'll just avoid him for a while.

Joan: Well avoiding is a solution, but a short term one. Is there any reason why you don't want to do anything about it?

Deborah: Well, I could get a reputation as a troublemaker or somebody that doesn't have a sense of humor. And besides, I don't want to get Bob in trouble.

Joan: Well I can understand your concern about being labeled. But we believe in confidentiality. And the only people who know about these issues are the ones who help in getting them resolved.

Deborah: I don't care. I don't want you to do anything. Promise me.

FN
If you were in this situation, what are the right things to do next?

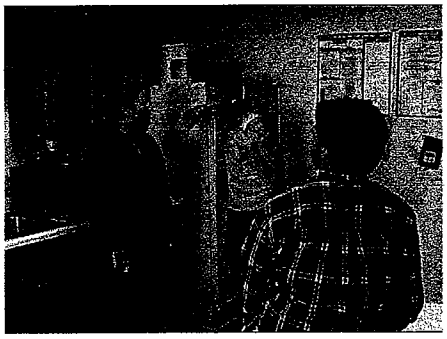
1. Ask Deborah, "What is your reason for not wanting me to do anything?" **(correct answer)**
2. Listen to and address her reasons or concerns **(correct answer)**
3. Explain what confidentiality (need to know) means **(correct answer)**
4. Emphasize that retaliation is not tolerated **(correct answer)**
5. Tell Deborah "I won't do anything now, but if it happens again, I'll have to talk with OAAC or HR."
6. Tell Deborah that you'll monitor her workplace **(correct answer)**

MN
You're absolutely correct. All of these steps are the right things to do and are part of the County's Policy on Sexual Harassment and complaint process.

FN
As you correctly identified though, instead of keeping it to yourself, it's your responsibility to explain the complaint process and to contact your departmental HR manager or OAAC.

MN
As mentioned earlier in strict liability, as a manager or supervisor it is important to be aware that even if the employee requests that you take no action there is no such thing as an informal complaint.

MN
The failure of a manager or supervisor to act on any alleged or actual harassment situation that they "knew or should have known" about can create strict liability for the County.



FN
In the following scenario see if you can identify at least two examples of sex-based harassment.

Video **Negligee In The Lunchbox**

Denise: What is this crap?

Keith: *(Laughing)* I told you she wouldn't know what that is.

Denise: And I have told you guys before I am tired of your childish pranks.

John: *(Standing behind her)* Well then maybe you shouldn't be working here, should you?

Keith: Yeah. We thought we'd get you to model that for us later.

Denise: And I told you before to keep your hands off me.

Keith: Geez, I was only joking. Can't you take a joke?

John: Yeah, because if you can't you shouldn't be working here. 'Course you could find a nice man to settle with.

Denise: Look, all I want to do is do my job and be left alone.

John: Yeah, and you expect us to treat you like a lady when you dress like a man. We've had to take our calendars down, we have to watch our language because of you.

Denise: I'm not telling you what to do. All I'm saying is leave me alone.

Keith: Give me this. I'll give it to a lady instead. *(Both men laugh as they walk away)*

FN
Which of the men's unwelcome behaviors were sex-based harassment?

A. Putting the negligee in their female co worker's lunch cooler.
B. "Yeah, and you expect us to treat you like a lady when you dress like a man."
C. "We've had to take our calendars down; we have to watch our language because of you."
D. "We thought we'd get you to model that for us later."

FN
Saying, you expect us to treat you like a lady when you dress like a man and we had to take our calendars down and watch our language because of you are examples of sex-based harassment. because reasonably they would not have made those same comments to a male coworker.

MN
Plus they probably did not realize that by putting the negligee in her lunch cooler and urging her to model it for them are inappropriate conducts of a sexual nature.

FN
Yes, and when that behavior is combined with repetitive verbal or physical conduct of a sexual nature it can create an intimidating, hostile and offensive work environment which can then lead to sexual harassment. More importantly, inappropriate touching such as when Keith slapped Denise on her buttocks is behavior prohibited by the County's Policy on Sexual Harassment.

MN
Although it may be difficult to tell the difference between sexual harassment and sex-based harassment both are harmful and prohibited by the County's policies.

MN
Now let's continue with a different type of work situation. After you watch the scenario of Ivan (who is holding the cell phone), Tom and Wendy, please answer the three questions.

Video **"Cell Phone – Two Guys"**

Ivan: (standing at counter, reading instruction manual, and looking at cell phone in his hand – acts like trying to figure out how it works.)

Tom: (walks up) Hey. What are you doing?

Ivan: Ah, just got a new phone. Checking out its features.

Tom: How do you like the picture feature?

Ivan: I don't know. It's not charged yet.

Tom: You do know how to charge it don't you?

Ivan: Ha. Ha.

Tom: Just checking, I know you and technology have a love/hate relationship.

Ivan: (nods in agreement)

Tom: Let me know when you have it charged and I'll show you how to take pictures.

Ivan: Thanks. (nods over T's shoulder) look, she's the one I told you about.

Tom: (looks at Wendy as she walks by)

Wendy: (ignores them, walks a little faster)

Ivan: (looks Wendy up and down, smiles to T) (as W walks past, Ivan holds up phone and pretends to take picture of her buttocks)

Ivan: (Ivan laughs)

MN
Please answer these three questions.

Question #1: Is stopping their conversation when Wendy walked by inappropriate conduct of a sexual nature?

Yes ___

No ____ **(Correct answer)**

FN
Yes. That's right. Stopping their conversation when Wendy walked by is not inappropriate conduct of a sexual nature, though she probably felt uncomfortable when they did.

Question #2: If Ivan's cell phone is NOT charged and Wendy did NOT see him, is his pretending to take a picture of her buttocks always prohibited by the County's policies?

Yes ___ **(Correct answer)**

No ____

FN
Yes. That's right. Even if Wendy did not see Ivan's action, and his cell phone is *not* charged, his *pretending* to take a picture of her buttocks is *always* prohibited by the County's Policy on Sexual Harassment.

MN
By the way, if Ivan's phone *was charged*, and he sent that picture to other employees, that would escalate the seriousness of his prohibited behavior.

Question #3: Based on the County's Policy on Sexual Harassment, does Wendy have to tell Ivan that his behavior is unwelcome before she can file a complaint?

Yes ___

No ____ **(Correct answer)**

FN
Wendy is encouraged but not required by the County's Policy on Sexual Harassment to tell him to stop, before talking with her supervisor, management or filing a complaint.

MN
Maybe Ivan's intent was to be humorous, but the impact of his behavior upset and embarrassed Wendy.

FN
To complete this module we will define two more terms, third-party sexual harassment and sexual favoritism.

MN
There are two types of Third-Party Sexual Harassment.

One is Harassment of an employee by someone other than another employee, such as a client, customer, vendor or service provider.

FN
Can an employer be liable for that type of sexual harassment?

MN
Yes, when the employer, i.e., its agent or supervisor knows or should have known of the conduct and fails to take immediate and appropriate corrective action.

FN
What if the County doesn't have control over that non employee?

MN
The County's responsibility and liability are determined by the extent of its control and any other legal responsibility it may have with respect to the conduct of that nonemployee.

FN
That is good to know.

FN
The second type of third-party sexual harassment is sexual harassment of employees who are not themselves the target of the harassment. Here is an example.

Video **"Don't Forget About Sexy!"**

Ruth: Karen Marie, I've finally got it!

Karen Marie: Got what?

Ruth: The catalog.

Karen Marie: Oh, that's great! Let's see...

Herb: See what? Oh, my, my...what are you two looking at?

Ruth: I'm helping her shop for what to wear on her honeymoon.

Herb: That's an easy one. I suggest nothing. (looks at Seddick) Right, Seddick? But wait, I'll be right there to help you decide.

Karen Marie: You two, you're embarrassing me. There are so many pretty things.

Ruth: There sure are. Oh, I like that.

Karen Marie: That is pretty.

Herb: So, (talking to Ruth) which of these numbers are you wearing now?

Ruth: Don't you wish you knew?

Herb: Yes, please show me.

Ruth: (smiling) In your dreams, lover boy.

Karen Marie: There's just so many pretty things. But I want it to be special.

Herb: And sexy. Don't forget about sexy. Right, Seddick? (looks at Seddick)

Seddick: (Ignores what herb just said)

FN
Even though they did not direct, or *target* their sexual innuendoes and conversation at Seddick he overheard what they said and was clearly uncomfortable.

MN
I agree.

MN
The next term is sexual favoritism. It is when a manager or supervisor grants job benefits to a subordinate with whom they engage in a consensual romantic relationship.

FN
Does that violate employment law?

MN
In certain circumstances even consensual romantic relationship can result in a violation of law.

FN
For instance?

MN
Well, when such favoritism is so widespread that it conveys the demeaning message to employees that they are viewed by management as "sexual playthings," or that the only way for employees to get ahead in the workplace is by engaging in sexual conduct with their supervisors or management.

FN
It seems that even if it is not a violation of law it could violate civil service rules.

MN
I agree. And other employees could feel that it is unfair when job benefits, like a promotion are given to the employee who is dating the boss.

FN
Yes, even if that employee was the most qualified to get the promotion.

MN
During this module we defined terms associated with sexual harassment and did an assessment of your current understanding of the County's Policy on Sexual Harassment, and conduct prohibited by that policy. Additional definitions are included in the glossary of terms that can be accessed by clicking on the link at the bottom of this screen titled "T."

END MODULE

Module: 3

Relationship of Federal and State Laws with County Policies

MN
Welcome to the Relationship of Federal and State Laws with County Policies module.

Most employees don't know that their employer, in your case the County, that its Policy on Non-Discrimination, and Policy on Sexual Harassment are rooted in overlapping federal, state, and local employment laws and court decisions interpreting these laws.

MN
This module will explain the relationship between federal and state employment laws and the County's adopted policies on non-discrimination and sexual harassment. .

FN
Federal law prohibits employment discrimination and harassment against people because of their race, religion, color, national origin, sex, age, disability, pregnancy, and other protected basis or characteristic.

MN
It is illegal to discriminate in most aspects of employment, including recruitment, hiring, wages, assignment, promotions, benefits, discharge, and layoffs.

FN
You have probably heard of the Equal Employment Opportunity Commission (EEOC).
It is the federal agency responsible for enforcing Title VII of the 1964 Civil Rights Act, as amended in 1991.

MN
Some states' and localities' harassment and discrimination laws have increased the groups of people who are protected. That means, in addition to the federal bases California's Fair Employment and Housing Act (FEHA) provides additional protection on the bases of ancestry, marital status, sexual orientation, gender, medical condition and/or disability (including AIDS and HIV Positive diagnoses)

FN
or denial of medical, family care or pregnancy leave through California Family Rights Act (CFRA) laws.

MN
And in the County, the Office of Affirmative Action Compliance is responsible for enforcing the County's adopted non-discrimination and sexual harassment policies.

FN
Did you know that the courts interpret and apply these laws to determine if they have been violated?

MN
I do now. But, did *you* know that most employers write and update their harassment policies and complaint procedures based in part on employment laws and court decisions?

FN
No. But why?

MN
Because that is one method employers use to create discrimination and harassment-free workplaces. Another method is to educate employees about their policies and procedures, to ensure they understand how to practically apply them in their workplace and to use their complaint process.

FN6
Since County policies prohibit *unwelcome* sexual jokes, does that mean if some employees are *comfortable* hearing or looking at sexual jokes and visuals, is their behavior is acceptable?

MN
The short answer is no. It is the County's policies, *not* employees' personal comfort, determine what behaviors are prohibited in the workplace.

FN
Why…if everyone is comfortable?

MN
How can you be sure? You can't, since many employees will accept unwelcome behavior rather than complain.

FN
That's true. Many employees will go along to get along. So when the County imposes a higher standard than the law requires, that helps them create comfortable and harassment-free work environments for all employees.

FN
The County also has other policies and civil service rules that govern employees' conduct to help establish and maintain harassment-free work environments. Some of these policies are: Civil Service Rule 18.03 (Discipline title), County's Policy on Diversity, and the Department of Human Resources – Policies, Procedures, and Guidelines

MN
So, to assist the County in achieving a harassment-free workplace all employees must self-manage their behavior and be sensitive to the comfort level of others.

END MODULE

Module: 4

The County's Policy on Sexual Harassment Module

FN
Welcome to the County's Policy on Sexual Harassment module.

In addition to the Federal and State laws, the County's policy against sexual harassment requires all employees to maintain a workplace free from discrimination and harassment.

FN
The County has developed an informational booklet that includes the County's Policy on Sexual Harassment, which identifies types of prohibited behaviors as well as employees' and supervisors' responsibilities for preventing workplace harassment. It is specific to the County of Los Angeles, and it is essential that you know what is in it.

MN
The Board of Supervisors requires that all employees acknowledge they have received and reviewed the booklet and the policy. Employees must also acknowledge that they will adhere to the County's Policy on Sexual Harassment. In order to proceed with this training, you must open and review the information booklet and policy. Please click **here** to read the policy.

MN
Now that you have completed reviewing the informational booklet and policy, please click the "Acknowledgement" button to complete this module.

MN
Remember that during this course, you can review the County's Policy on Sexual Harassment by clicking on the link at the bottom of the screen titled "P." You can also send an email to ask a question or request additional guidance about any content covered in the course by clicking on the link titled "E.

FN
The informational booklet and the County's Policy on Sexual Harassment provides guidance on types of behaviors that are prohibited; information on responsibilities of employees, supervisors and managers, and the complaint process. Because the booklet and policy do not identify every single prohibited behavior in the workplace, it is important for you to manage your personal behavior. You can do that by being aware of your actions and their impact on others.

END MODULE

Module: 5

How Inappropriate Conduct Escalates and Harms Employees

FN
Welcome to the How Inappropriate Conduct Escalates and Harms Employees module.
The County's Policy on Sexual Harassment *defines* sexual harassment and the responsibilities of employees and managers to prevent its occurrence in the workplace. The County's informational booklet on sexual harassment provides examples of prohibited behaviors. This module will dramatize how inappropriate conduct of a sexual nature, that if ignored can escalate and harm employees.

MN
Some interactions of inappropriate conduct of a sexual nature may not be obvious because; the conduct is not clearly prohibited by law or the County's Policy on Sexual Harassment and recipients do not complain or say "Stop."

FN
For example?

MN
Unwelcome touching.

FN
So if I hug a coworker good morning and he welcomes it, that is not inappropriate conduct.

MN
Correct. This module will identify two methods to assist you in recognizing inappropriate conduct of a sexual nature; they are focus on impact *not* intention of behavior and asking, is there equal initiation and participation between the individuals?

FN
It will also dramatize how conduct escalates and harms employees. Though these methods are helpful tools they are not intended to be interpreted as policy guidance.

MN
The first method for recognizing inappropriate conduct is the "*impact* not the *intention* of the behavior." When using this method an individual identifies the *impact* of their behavior instead of focusing on their *intentions* for doing the behavior.

FN
For example, some employees are huggers, and their *intentions* are usually to be friendly. Those same employees need to ensure that the *impact* of their behavior is *positive*—instead of uncomfortable or unwelcome—for *every* person they hug.

MN
To be clear, since I'm also a hugger, are you saying employees can't hug *anyone* at work?

FN
No...I'm saying huggers should monitor personal behavior to ensure it is welcome, and that all employees can apply the second method when unsure if their behavior is welcome or unwelcome,

MN
Which is to ask yourself, 'is there equal initiation and participation?'

FN
Yes. That question is a fairly objective method for determining if the behavior is welcome...

MN
...because if it is welcome, the person receiving the behavior will equally initiate and participate in the same behavior.

FN
That is correct. And that second method leads us back to Bill and Denise.

MN
I remember them; we met them in the introduction module.

FN
Yes. Her equal participation and initiation were the main reasons that Bill's behavior was not inappropriate conduct. As you watch their next interaction, five weeks later, apply the equal initiation and participation question to their interaction to determine if Bill's behavior is welcome or unwelcome.

Video **"Escalation - Couple Weeks Later"**

Stephen: Oh, hi Denise.

Denise: Hey Stephen.

Bill: Hey beautiful.

Denise: Hi.

Bill: You're looking especially pretty today.

Denise: Thank you, ahhh, so what did you think of those designs I emailed you yesterday?

Bill: Let's talk about them over that lunch you promised a couple of weeks ago.

Denise: I really don't have time for lunch today. Ah, those designs?

Bill: Good, as usual. And FYI the client's looking at them later today to make a final decision.

Denise: Oh, great. Just let me know when they decide.

Bill: Hey, before you go, I've been thinking.

Denise: Ah, about what?

Bill: You and I should spend some time together getting to know how we think.

Denise: What do you mean? I thought we worked really well together.

Bill: What I mean, beautiful, is that I've got two tickets for Saturday's game.

Denise: Thanks, but I'm going to visit my sister this weekend. She just had baby and I'm soooo excited about meeting my new niece...

Bill: It's gonna be a great game.

Denise: I'm sure it is, but I gotta go.

Bill: Well then, no problem. There's other games.

Denise: Ok, um, so you'll let me know what the client decides?

Bill: I'll try, but I'm booked solid this afternoon. How about we talk about it over drinks tonight?

Denise: Um, I can't. I'm meeting up with some girlfriends from college. Um, just email me with what the client decides?

Bill: Will do. You're missing the best Cosmo in town.

Denise: I'm sure I am. (she walks away)

Bill: (watches her walk away and looks her up and down)

FN
Well, did you observe equal initiation and participation?

Question with yes/no answer **("no" is correct)**

FN
Did you observe equal initiation and participation?

MN
We did not see equal initiation and participation. Bill made several comments about her appearance, asked her to lunch and a game and to have a drink after work. Denise did not make comments about his appearance nor did she suggest a different date to go to a game, or to have lunch or drinks together. Which means that Bill's behavior was probably unwelcome and could escalate to sexual harassment.

MN
I agree. Now we will see Bill's behavior four months from now and how it has escalated. It has gone from uncomfortable to very offensive. At the end of the scenario you will be asked how many of Bill's behaviors were unwelcome.

Video **"Escalation - Months Later"**

Bill: (Bill walks into D's workspace starts to massage her shoulders) Hey beautiful, you feel tense. Work stressing you out?

Denise: (startled, turns her chair to the side so he lets go) No. I'm just very busy trying to finish this report.

Bill: By the way I've been meaning to ask you.

Denise: What?

Bill: You've got great legs. Are you a runner or did you play basketball in college?

Denise: Ah, no. Listen, I've got a lot of work to do. Um, what do you want?

Bill: I want to know if you like Chilean Sea Bass?

Denise: Why do you ask?

Bill: Cause I'm inviting you to my place Saturday night. I will cook you the best Chilean Sea Bass you've ever had. We'll open a couple of bottles ...

Denise: Listen, thanks. But my fiancé is taking me to dinner that evening to meet his parents so...

Bill: Fiancé. Really? I don't see a ring.

Denise: It's out getting sized.

Bill: Well how long have you been engaged?

Denise: Three weeks this Sunday and I'm really excited...

Bill: Oh, so have you done it yet? Cause you know, my dad use to always say, "Son, you wouldn't buy a pair of shoes without trying them on first."

Denise: You know what, I don't need your dad's advice and I've got a lot work to do, so please go away!

Bill: OK, just let me know if you change your mind about Saturday.

FN
How many were unwelcome?

FN
Seven of Bill's behaviors were unwelcome. They started with him massaging her shoulders, saying, "Hey beautiful" and "You've got great legs". Then he invited her to his place Saturday night. When she said she was engaged he took her hand and THEN he asked her, "have you done it yet?" After that, he told her his father's saying.

MN
This is a dramatization of how an initially friendly interaction between two employees can escalate and become blatantly sexual and offensive violating the County's Policy on Sexual Harassment.

FN
When that happens it creates a *'I can't take it any more'* situation for the recipient. Because, her or his feelings of discomfort and embarrassment have changed to *anger, fear, anxiety,* and/or a *feeling of powerlessness.*

MN
Because the recipient can no longer ignore or tolerate the harasser's behavior, she or he will confront the harasser or tell a supervisor or file a complaint.

FN
But many employees being harassed transfer or quit without identifying their real reason for leaving.

MN
That is true. Because leaving is less anxiety provoking or scary than confronting their harasser or complaining.

FN
And that is one of the *hidden costs* of sexual harassment—supervisors and employers are losing good employees *and* their knowledge and talent.

MN
During this module, you learned how to apply two methods for recognizing inappropriate conduct of a sexual nature that may not be obvious, the impact not intentions of behavior and asking is there equal initiation and participation between the individuals? You also saw how an initially friendly interaction can escalate into blatant sexual conduct prohibited by County's Policy on Sexual Harassment.

FN
To achieve harassment free workplaces, it is important for everyone to self-manage their behavior, and for supervisors to monitor their workplace and intervene to stop prohibited behavior, even if no one has complained.

END MODULE

Module: 6

The Complex Workplace

MN
Welcome to the Complex Workplace module.

MN
In today's increasingly complex workplace, the County's application of its policies to romance in the workplace, sexual orientation, gender identity, misuse of information technology and profanity in the workplace can be confusing.

FN
This module is not intended to provide in-depth legal training on sexual harassment. Instead, it will answer frequently asked questions and provide examples of how the County's policies and directives can apply to today's complex workplace issues.

AUDIO
"What is the difference between flirtation, and inappropriate behaviors of a sexual nature that can lead to sexual harassment?"

AUDIO
"What is the difference between flirtation and inappropriate behaviors of a sexual nature?

FN
This section will explain how to tell the difference between flirtation and inappropriate conduct of a sexual nature that can lead to sexual harassment.

MN
We will start by defining flirtation and sexual harassment Flirtation is making playfully romantic or sexual overtures to a person who you are interested in.

FN
And sexual harassment is defined as unwelcome behavior of a sexual nature that is prohibited by law and the County's Policy on Sexual Harassment.

MN
Some employees ask, "Can flirting become inappropriate behavior of a sexual nature?

FN
Yes, even if the flirting is *welcome*, it could escalate and become unwelcome to one employee, or it may evolve into inappropriate conduct of a sexual nature that violates County policies on conduct. When the conduct is repetitive and sufficiently egregious it escalates to sexual harassment.

MN
For example?

FN
A few examples include conversations, text messages, Instant Messaging (IM), tweets and emails that include sexual content, innuendoes or images, as well sexual gestures or sexual touching.

MN
I understand. Now we will show a scenario of Susan and Chip to dramatize an objective way to determine if behavior that is not clearly prohibited is welcome flirting or inappropriate conduct that can lead to sexual harassment when no one has said, "stop?"

FN
As you watch Susan and Chip's interaction, count the number of times each of them touched the other person, gave a compliment, or asked personal questions.

Video **"Still Dating that Blonde?"**

Susan: Chip! What are you doing here?

Chip: Susan! Where have you been? I haven't seen you in a while.

Susan: What a beautiful tie. Where did you get it?

Chip: Uh... It was a gift. My girlfriend gave it to me. You remember Benta?

Susan: You're still dating that blonde?

Chip: Yes, we're getting along great. In fact we're planning a trip to her parent's, and... (Susan interrupts Chip)

Susan: You know, I love your hair. Did you change the style?

Chip: Actually, it's the same.

Susan: Would you like to go out and get a drink sometime, maybe after work?

Chip: Thanks, but I've got to work late tonight and I've got to wrap up some...

Susan: You know, actually I'm late for a meeting. I've gotta go. Give me a call.

FN
Select how many times Susan touched Chip.

Select how many times Susan complimented Chip.

Select how many times Susan asked him personal questions.

FN
Susan touched Chip five times. She touched his shoulder, tie, hair, sleeve, and arm.

Susan complimented him twice, about his tie and hair,

She asked him three questions: "What are you doing here?" "Are you still dating that blonde?" and "Do you want to have a drink?"

MN
Now, select how many times Chip touched Susan

Select how many times Chip complimented Susan.

Select how many times Chip asked her personal questions.

MN
Chip did not touch Susan.

Chip did not compliment Susan.

He did ask her one question: "Where have you been?"

FN
By doing the math, you can see that when flirtation is welcome, both parties will equally initiate and participate.

MN
But when the initiation and participation is one-sided, that interaction is usually unwelcome

FN
And, it should stop.

MN
The County is committed to creating a professional work environment that prevents sexual harassment and sexual favoritism, and a workplace where all employees are treated fairly by executives, managers and supervisors.

FN
Workplace romantic relationships can create workplace problems. Which of the following are examples of those problems?

Which of the following are examples of workplace problems?

1. Perceptions that the "paramour" receives favored treatment and in work assignments.
2. If consensual relationship is ended by one party the other party may file a sexual harassment complaint.
3. It negatively impacts the morale of employees and workplace productivity.
4. It can result in third party or sexual favoritism complaints by employees not engaged in the consensual relationship, but who believe that they are subject to a hostile work environment based on sex.
5. All of the above. (**correct answer**)

MN
Correct: You are correct.

MN
Incorrect: That's not quite correct.

MN
These are only some of the negative ways that a romantic relationship between a supervisor and his or her direct employee can impact the workplace and other employees.

FN
Another outcome of a failed consensual romantic relationship is that it can result in complaints of sexual harassment.

FN
Though the County has not adopted a formal policy that prohibits consensual romantic relationships between employees and there are no state or federal laws that prohibit work place romantic relationships, the County discourages office romances between supervisors and their employees.

MN
But, if an employee complains of sexual harassment or a hostile work environment The OAAC treats these complaints seriously and will investigate the allegations in the very same manner as other harassment complaints.

FN
Questions regarding County policies and dating in the workplace should be directed to your supervisor, departmental HR manager or OAAC.

MN
Also, keep in mind that the County's Policy on Sexual Harassment may apply if behavior outside work has a direct impact on the workplace.

FN
This can be especially true in a situation where coworkers dated, then broke up, and now one of them wants to continue their intimate relationship.

MN
John is visiting Trish's workplace bearing a gift.

VIDEO: **"The Gift"**

Trish: What's this?

John: This is a 'Happy Monday' gift. I couldn't resist it, I know how much you love surprises. Guess where I got it? I got it at that shop we used to browse in.

Trish: John, I don't want your gift, please just take it and go.

John: Trish, please give me another chance. I'm a reformed man.

Trish: It won't work. I already told you it's over between us. And I want you to stop calling me. I see the way you park in front of my house.

John: Well I don't get to see you any more since they moved me. Come on... please Trish.

Trish: Just go! Make it easier on both of us, just take it and leave.

John: I don't want it - I want you!

FN
This is a difficult situation because clearly John's behavior was unwelcome, but was it also prohibited by the County's Policy on Sexual Harassment?

Yes ___ **(Correct answer)**

No ____

User selects correct answer

MN
You're right.

User selects incorrect answer

MN
No, because giving Trish a gift, asking her out, and touching her were clearly unwelcome, which makes them always prohibited by the County's Policy on Sexual Harassment.

FN
Dating and subsequent breakups are likely to occur at work and can cause a lot of confusion about what is and isn't out of bounds.

MN
As a reminder, the County's Policy on Sexual Harassment applies to behavior outside the work environment that directly impacts an employee's workplace.

FN
If you are in a situation similar to Trish's, talk with your supervisor or another person in management, your HR Manager or contact the Office of Affirmative Action Compliance (OAAC) for assistance and guidance on your options for stopping unwelcome behavior.

MN
If you supervised either of them and know about this situation, don't ignore it! Contact HR, a Manager or OAAC for guidance.

Sexual Orientation and Gender Identity

AUDIO
I work with a homosexual male who makes sexual comments about my body. When I told him that I don't like his comments and that's sexual harassment, he laughed, and said, "I can't sexually harass you because I'm gay". Is that true?

MN
Increasingly, the media is portraying—and diverse workplaces are talking about— the full range of romantic, intimate, and emotional relationships.

FN
Before we define terminology and identify examples of sexual orientation harassment, we will answer her question.

MN
"I can't sexually harass you because I'm gay" is a false statement for several reasons.

First, the County's Policy on Sexual Harassment prohibits employees making sexual comments about a coworker, even if they are the same gender.

FN
Second, she told him that his sexual comments were unwelcome.

MN
And third, it is his unwelcome sexual comments—not his sexual orientation—that makes his behavior sexual harassment and prohibited by the County's Policy on Sexual Harassment.

FN
Now we will define four terms that may not be familiar to all employees.
The first term, gender identity, internal understanding of our self as a man or a woman. That understanding can be consistent with or different than what you were called at birth: "It's a boy!" or "It's a girl!"

MN
The term sexual orientation describes a person's emotional, physical, and romantic attraction to members of the same and/or opposite gender. Based on that attraction, a person's orientation is gay, straight, bisexual, or asexual.

FN
The term transgender refers to people whose gender identity, or how they feel inside about being a man or a woman, does match their birth sex

MN
The term transsexual refers to people who are changing their body from the sex they were born with to match their gender identity.

FN
Now we will identify examples of behaviors prohibited by the County's Policy on Sexual Harassment.

MN
Publicly declaring or "outing" a person at work who does not want his or her sexual orientation known to others.

FN
Joking about, ridiculing, and/or mocking a person's sexual orientation and gender identity.

Video "Paul Has a Joke for Gail"

Paul: (laughs) Hey! I just remembered this great joke. What does a lesbian and a mechanic have in common?

Gail: I don't want to hear about it.

MN
Telling jokes about sexual orientation or gender identity is prohibited by the County's Policy on Sexual Harassment, just as jokes about color, disability, religion, and age are also prohibited by the County's Non-Discrimination Policy.

FN
Speculating about, asking coworkers, or spreading rumors about an employee's sexual orientation or gender identity is disrespectful and can be harmful.

Video "Paul Has a Joke for Gail"

Paul: So what's the deal with Sara, then?

Gail: What about Sara?

Paul: You know... You see how she dresses. She has that short hair— she can't be straight.

MN
Just like spreading rumors about an employee's health, financial status, work ethic or marriage is disrespectful and can also be harmful to a person's reputation.

FN
This next scenario dramatizes how inappropriate behavior can escalate and lead to a hostile work environment based on an individual's sexual orientation.

MN
Paul's joke has now spread to another work group, and Gail's sexual orientation is also being speculated about—even bet on.

VIDEO "L.D. Wants to Tell Frank a Joke"

L.D.: Hey, Frank. Want to hear something funny?

Frank: What?

L.D.: Paul just told me a good one.

Frank: I'm not interested in one of Paul's good ones.

L.D.: (laughs) You gotta hear this one. It's really funny. What do a mechanic and a lesbian have in common?

Frank: I'm not interested.

L.D.: So, do you want to get in on Paul's pool?

Frank: What's the bet this time?

L.D.: It's Sarah. You know, she's a lesbian... if she has something going on with Gail.

Frank: L.D., how do you know Sarah is a lesbian?

L.D.: 'Cause Paul told me.

FN
Paul and L.D.'s rumors about Sarah and their betting pool about Sarah and Gail are inappropriate and create workplaces that are not inclusive, and that behavior is prohibited by the County's Policy on Sexual Harassment.

Misuse of Information Technology

VOICEOVER
Is it OK to look at sexual content online at work if no one else is around?

MN
Technology is rapidly changing, making it easier for employees to access information, display images, communicate with each other, and play video and music at work.

FN
Some employees, though, are not clear about what online behavior is acceptable or what they should not access, download, look at, discuss, forward to others, or listen to at work.

MN
To avoid behavior prohibited by the harassment policy, stop and think about what you are doing and how you use technology at work.
FN
Please click on each image and read what they are talking about.

Note to reader:
When the Learner clicks on a graphic, speech bubbles appear, revealing the following three brief conversations:

(Man holding PDA): Want to see the video I downloaded from that free porn site I told you about?
(Other man): Sure! No one is around.

(Man holding laptop): I just got some VERY funny sexual jokes from a client.
(Other man): I don't have time to read them now. You've got my email; forward them and I'll send the funniest ones to my clients.
(Man holding laptop): Doing that now.

(Woman holding cell phone): He's the stripper I hired for my sister's bachelorette party.
(Other woman): Did he take his thong off?
(Woman holding cell phone): Yes and here's his full Monty!

MN
It is obvious that they are comfortable with what they are looking at and talking about.

FN
Even so, their behaviors are always prohibited by the harassment policy, even if welcome.

MN
And they are potentially embarrassing coworkers and creating third-party sexual harassment situations.

FN
To finish this section, I will answer the question asked earlier, "Is it OK to look at sexual content online at work if no one else is around?" At work, the answer is always "no."

Profanity at Work

MN
Is using profanity, cursing, obscenity, raunchy, foul, or vulgar language a violation of County policy?

FN
The use of profanity, cursing, obscenity, raunchy, foul, and vulgar language are becoming increasingly common in music, movies, television, radio, sports and in public places.

But, is using that type of language in the workplace a violation of County policy or a type of sexual or discriminatory harassment?

MN
For an answer to those questions take this True False quiz.
Please mark the following statements true or false.

Please mark the following statements true or false.

1. County has a legal responsibility to prevent its employees' speech from creating a hostile work environment for its employees. **(true)**
2. Employers have a right to establish and enforce policies that prohibit profanity and abusive language in its work environments. **(true)**
3. Profanity, however it is communicated, can create legal liability for discriminatory harassment when it is directed at someone and used in the context of their sex, race, age, religion and/or other protected basis. **(true)**
4. An employee can file a sexual harassment complaint against a co-worker based only on her or his use of profanity. **(true)**

User answers all questions correctly

MN
Yes, all of these statements are true.

User answers at least one question incorrectly

FN
No, all of these statements are true.

FN
The County has policies that prohibit the use of profanity and abusive language at work to ensure a harassment free workplace. And statements three and four identify some of the consequences of using profanity in the workplace

MN
In summary, the County has a legal responsibility to prevent employees' speech from creating a hostile work environment and profanity can create legal liability for discriminatory harassment.

FN
Plus an employee can file a sexual harassment complaint based only on profanity.

END OF MODULE

Module: 7

Manager and Supervisors' Role in Recognizing and Preventing Retaliation

MN
Welcome to the Manager and Supervisors Role in Recognizing and Preventing Retaliation module. Retaliation involves an action that negatively impacts an employee's work situation. Did you know that the majority of retaliation complaints are the result of managers or supervisors' failure to objectively and appropriately respond to inappropriate behaviors and discrimination issues?

FN
Yes, and that's why this module will focus on helping managers and supervisors identify inappropriate behavior that creates *retaliation,* identify reasons it occurs, its legal definition, clarify the manager and supervisor's role in preventing retaliation, and identify examples of conduct prohibited by County policies.

MN
To start we will define retaliation. Retaliation is taking adverse actions against an employee for engaging in any of the following three protected activities, filing a discrimination complaint, participating in any discrimination proceeding or, opposing discrimination when there's a link between the adverse action and the protected activity.

FN
Retaliation is prohibited by federal and state anti-discrimination laws and the County's sexual harassment and non-discrimination policies.

MN
In addition, the County has conduct policies that prohibit inappropriate behaviors that could lead to retaliation.

MN
Now, let's determine what you currently understand about retaliation.
An employee must have a strong discrimination case before he or she can have a strong retaliation case.

Select true or false.

True
False **(correct answer)**

User selects "False"

FN
That is correct; it does not take a strong discrimination case. In fact the act of retaliation can convert an easily defensible discrimination claim into an expensive legal liability.

User selects "True"

FN
That is not correct; it does not take a strong discrimination case. In fact the act of retaliation can convert an easily defensible discrimination claim into an expensive legal liability.

MN
If an employee you supervise files a discrimination or harassment complaint against you it can create an uncomfortable work environment for both of you. To avoid retaliation, or its appearance, if you still supervise that person, it is important to seek guidance from your Departmental HR any time you make an employment decision that affects the employee's job status. If additional guidance is needed contact OAAC.

FN
To assist you in recognizing conduct prohibited by the County's Policy on Sexual Harassment and its conduct policies take the following test.

The workplace situation. Three weeks ago Pat filed a religious discrimination and sexual harassment complaint with HR against his supervisor.

Review each of these supervisor's actions since then and indicate if you think they are or are not examples of conduct prohibited by the County's policies.

MN
Pat's supervisor excludes Pat from the weekly training lunches, held at a local restaurant, because his coworkers say they are uncomfortable being around Pat.

Yes **(correct answer)**
No

FN
Excluding Pat is a type of conduct prohibited by the County's policies because they are *training* meetings and Pat is missing information relevant to doing his job.

FN
Pat's supervisor files a report with the Police Department that states Pat hit his car and drove off. The police investigation determined that the supervisor filed a false report.

Yes **(correct answer)**
No

MN
Even though the supervisor's conduct is not work-related, the filing of a false police report against Pat could be viewed as an act of retaliation.

MN
Pat's supervisor transfers Pat to a more physically demanding and dirtier job. But Pat's pay, hours and benefits are not affected nor does Pat suffer a monetary loss.

FN
Changing Pat's job status is a type of prohibited conduct, even if Pat did not lose money or benefits.

Yes **(correct answer)**
No

FN
Pat's supervisor requires Pat to verbally check in when arriving and leaving work. Pat's coworkers are not required to verbally check in.

Yes **(correct answer)**
No

MN
Setting different work standards for Pat than his coworkers is a type of retaliatory conduct prohibited by County policies.

FN
These examples dramatize retaliatory conduct on and off of the job that are prohibited by County policies. They also reemphasize why it is important for you to seek guidance from your departmental HR or the OAAC any time you make a job status change for an employee who filed a complaint.

MN
In this scenario, Kathy is challenging Mark, her supervisor, about changing her work assignment.

Video **"Better off for everyone if you were taken off the project"**

Kathy: I want to work on this project. I can't believe you'd take me off of it.

Mark: Believe it! End of discussion.

Kathy: (sarcasm) You're going to let your bruised ego get in the way of our team doing the best job for our client. Well, I am not going to let you get away with that.

Mark: (Stands up) Who do you think you are to threaten me? If you want to continue working in this company, or even in this industry, you will drop this ridiculous paranoia.

Kathy: (stares at him, emotionally shaken, turns and walks out)

FN
Mark and Kathy's argument has the potential of escalating to the filing of a sexual harassment and or retaliation complaint.

MN
If either was proven they could expose their employer to liability. Which of these sentences created a potential *retaliation* liability for their employer?

1. Kathy: You're going to let your bruised ego get in the way of the quality of this project?
2. Kathy: Well, I am not going to let you get away with that...
3. Mark: Who do you think you are threatening me?
4. Mark: If you want to continue working in this company, or even this industry, you will drop this ridiculous paranoia. **(correct answer)**

MN
Kathy's sarcasm, her threat of possibly filing a sexual harassment complaint and Mark's angry responses are making a bad situation even worse. However, Mark's statement about if you want to continue working you will drop your ridiculous paranoia creates a possible retaliation situation.

FN
Managers and supervisors, learn from what Mark did wrong. If an employee threatens to complain about an employment decision of yours, d*on't* express anger or defensiveness. *Instead*, encourage that employee to talk and then listen. Also, *don't* say anything that would discourage that employee from complaining.

MN
Pam, Ivan and Tom's supervisor, sees prohibited behavior.

Video **"Supervisor Observes"**

Ivan: (standing at counter, reading instruction manual, and looking at cell phone in his hand – acts like trying to figure out how it works.)

Tom: (walks up) Hey. What are you doing?

Ivan: Ah, just got a new phone. Checking out its features.

Tom: How do you like the, ah picture feature?

Ivan: (laughs) I Don't know. It's not charged yet.

Tom: You do know how to charge it don't you? (laughs)

Ivan: Ha. Ha.

Tom: I know you and technology have a love hate relationship.

Ivan: (nods in agreement)

Tom: Let me know when you have it charged and I'll show you how to take a picture.

Ivan: Oh thanks man. (nods over Tom's shoulder) She's the one I told you about.

Tom: (looks at Wendy as she walks by)

Wendy: (ignores them, walks a little faster)

Ivan: (looks Wendy up and down, smiles to T) (as W walks past Ivan holds up phone and pretends to take picture of her buttocks.)

Wendy: (does not say anything and continues walking)

Ivan: (laughs)

Pam: (Is sitting at a table in a conference room, near where Ivan and Tom are standing. She sees Ivan look Wendy up and down and point his camera at her buttocks.

FN
After Ivan and Tom walked away, Pam finds Wendy and talks to her about Ivan pointing his cell phone at her buttocks and taking a picture. She then asked her how she felt about what occurred. If Wendy says that Ivan was just joking around and she wasn't offended, should Pam talk with Ivan about his behavior?

User answers "Yes"

MN
That is correct because those types of behavior are always prohibited by the County's policies that govern conduct, even if the recipient of the behavior is not offended. And, it is *primarily* Pam's responsibility—not Wendy's—to recognize and prevent behavior prohibited by County policies.

User answers "No"

MN
That is incorrect because those types of behavior are always prohibited by the County's policies that govern conduct, even if the recipient of the behavior is not offended. And, it is *primarily* Pam's responsibility—not Wendy's—to recognize and prevent behavior prohibited by County policies.

FN
Pam was correct in talking with Wendy and asking her how she felt about what occurred. But she shouldn't stop there. Pam should also explain that his behavior is prohibited by the County's policies that govern conduct and that she is going to tell Ivan to stop his prohibited behavior.

MN
Later that day, Pam talked with Tom and then Ivan. She asked them to stop their prohibited behavior and they agreed to stop.

FN
During her conversation with Tom and Ivan, Pam used open-ended questions, asked them to identify specific behaviors prohibited by the workplace policies and explained that since Wendy is a coworker, if they avoided her that would be a type of social ostracism that could lead to retaliation.

FN
The goal of Pam's discussion with Tom and Ivan was to stop their prohibited behavior, NOT to threaten them.

MN
It is important for managers and supervisors to also keep in mind that retaliation often begins with inappropriate behavior like social ostracism, giving the silent treatment, no longer including a person in work-related activities

FN
...which takes that employee out of the information loop. Other examples include sarcasm and spreading rumors. These behaviors often escalate until they violate County policies.

FN
I agree. Those are just a few ways employees have retaliated against those who file sexual harassment complaints. And whether or not their subtle actions or inappropriate behavior are violations of the law, they negatively impact the workplace and may be violations of the County's policies.

MN
Take a look at Ivan and Tom's next interaction with Wendy after Pam asked them to stop their prohibited behavior. Look for examples of behavior that could lead to a form of retaliation against Wendy.

Video **"Retaliation Hinders"**

(Ivan and Tom are sitting at a table in the break area)

Ivan: How do I get rid of that blue thing? What is that?

Tom: That just means it's on vibrate, man you just got to change the volume.

(Wendy walks in and sees Tom and Ivan, pauses then goes to a cooler and opens the door.)

(Ivan sees Wendy, nudges Tom and they stop talking...)

Ivan: FYI, we're not ogling you. Just noticing your hairstyle.

(Wendy doesn't say anything)

Ivan: (holds up cell phone) I'd better put this away, before I get in trouble again. (makes a loud noise closing your cell shut)

Wendy: I didn't even complain so I don't why you're acting like this?

Ivan: Maybe you didn't complain but Pam still chewed me out cause you got offended when we complimented you.

Wendy: So, you're the victim now! Yeah that's a laugh. (walks out)

Ivan: Sooo, how do I get rid of that?

MN
You are correct if you identified Ivan's sarcastic comments of "FYI we're not ogling you just noticing your hairstyle" and saying, "I better put this away before I get in trouble again."

FN
They also gave her the silent treatment when she entered the break room. Plus Ivan seemed to blame Wendy for him getting in trouble when he said, "Pam chewed me out because you got offended when we complimented you."

MN
I agree, because some people become embarrassed or angry at being identified as an alleged harasser, and may justify their retaliation by *blaming* the employee they harassed for the disciplinary action they received.

FN
Some will *also* try to gain sympathy and support from co-workers by saying, "*all* I did was tell a joke" or, "*everyone* is too politically correct."

MN
Harassers who behave in those ways are *less* likely to self-manage their behavior and *more* likely to harass and retaliate again.

FN
Plus, inappropriate behavior of this type only makes a bad situation worse. Because if this behavior escalates to retaliation, it can create a hostile work environment and legal liability, even if the original sexual harassment complaint was *not proven.*

MN
That's right. It's also why as a manager or supervisor you must respond immediately and take appropriate action to prevent situations from spinning out of control.

FN
Before we end this module let's discuss some examples of how managers and supervisors have taken adverse actions against employees because they participated in a protected activity.

MN

As a manager or supervisor you may not have final authority on every employment decision that results in an adverse action,

FN
...however; keep in mind that you can still influence employment decisions outside of your immediate control.

MN
Examples of adverse actions include: termination of employment, demotion, loss of pay, change in job assignment not based on legitimate business reasons and so on. It is also illegal to retaliate by subjecting an employee to a hostile work environment.

FN
What are some examples of retaliation that would create a hostile work environment?

MN
Well, managers, supervisors, or employees can create a hostile environment by sabotaging an employee's work, withholding important information or messages hiding their equipment giving them incorrect details for a project, or damaging their personal property.

MN
So, managers and supervisors should monitor the workplace and their employees, *and* self-manage personal behavior to prevent and stop retaliatory behavior.

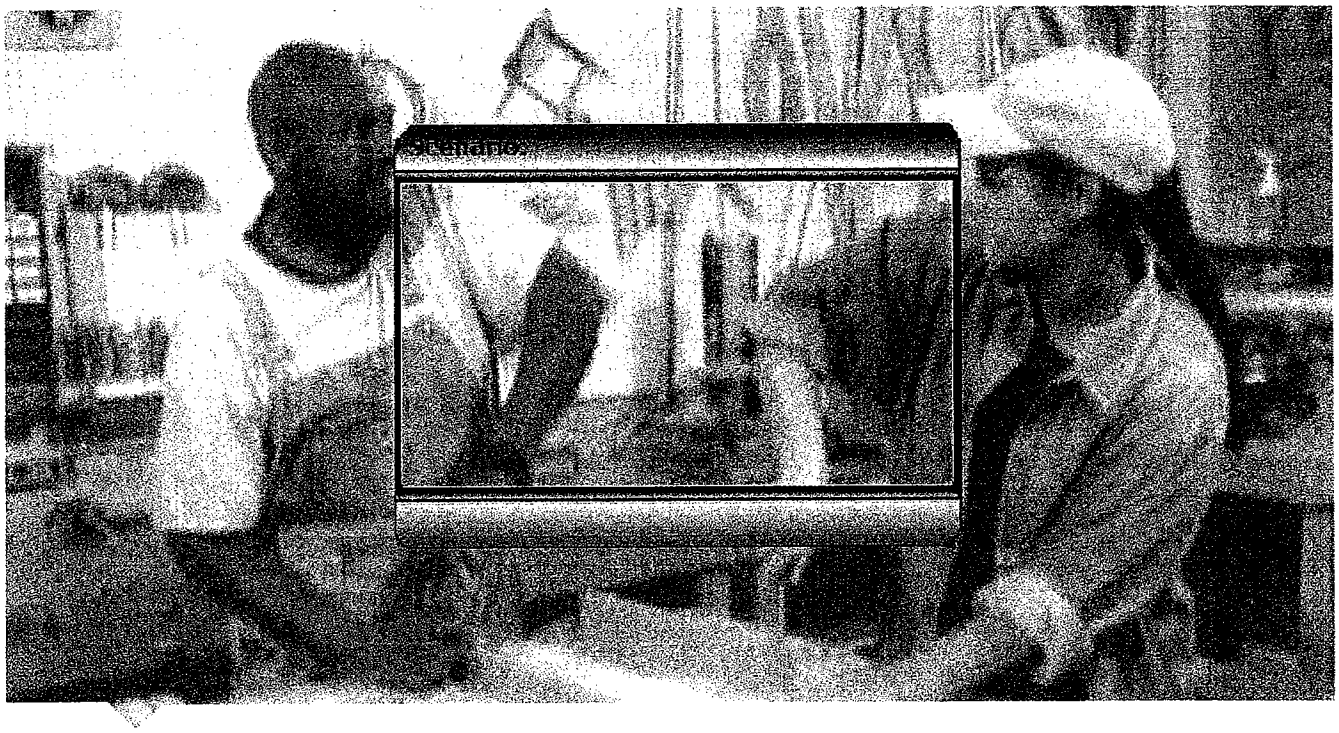
FN
That's correct; managers and supervisors must lead by example. And, the County does not wait to determine whether the retaliation is "bad enough" to violate the law. If such behavior is reported, the County will assess the behavior for violations of its policies, take steps to stop the retaliation, if it is occurring, and determine if corrective action is required.

MN
During this module, you learned how to identify inappropriate behavior that creates retaliation, identify reasons it occurs, its legal definition and clarified the manager and supervisor's role in preventing retaliation, and identified examples of conduct prohibited by County Policies.

END MODULE

Module 8:

The County's Employment Discrimination Complaint Process



Paul: (laughs) Hey! I just remembered this great joke. What do a lesbian and a mechanic have in common?

Gail: I don't want to hear about it.

Paul: They both in a...

Gail: (interrupting Paul) I told you, I don't want to hear about it.

Paul: So what's the deal with Sara, then?

Gail: What about Sara?

Paul: You know... You see how she dresses. She has that short hair - she can't be straight.

Gail: Look, just because she doesn't wear a dress, or want to go out with you, or like your sexual jokes, doesn't mean she's a lesbian.

Paul: Look she doesn't smell like a lady, like you...

Gail: You smell, that's for sure (as she moves away from the man's touch)!

Paul: So what, (smiling) guys smell. That's another thing. I've never seen her with a guy. You see that big motorcycle she rides.

Gail: Look her personal life is none of our business and I'm tired of you going on about her.

Paul: You know, you're very protective of her. I know, I bet you and Sara got something going on. Is that it?

Gail: (In an 'I can't believe you're saying that' tone of voice) Oh please…

Paul: Because if you do – I mean, I'd be happy to – you know – join in, 'cause….

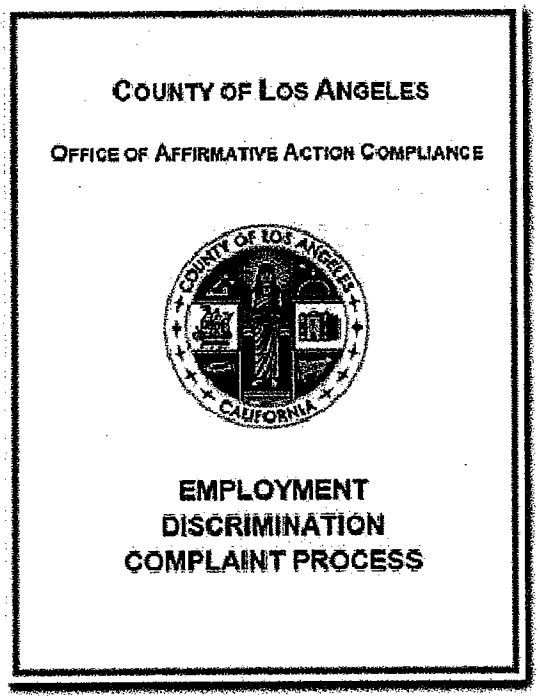
Gail: You're not funny! (raises her voice) Get a life!

Paul: What? What's wrong with that? I was just joking!

MN
If this happened to you it is not a joke! Do you know who to talk with for guidance on how use the County's internal complaint process?

FN
Or, what your "Employee Rights" are under the County's Policy on Sexual Harassment and the Complaint Process?

MN
This is a difficult situation and it is important for employees to understand that the County has resources to assist them in resolving harassment and discrimination situations.



FN
Welcome to the County's Employment Discrimination Complaint Process module. The County has an internal complaint process that enables employees and applicants to file complaints of employment discrimination including sexual harassment. Contact information for that process is provided at the end of this module.

MN
Yes, and an individual who wishes to file a complaint is encouraged to use this complaint process for an objective timely resolution of their complaint. This process also ensures that employees who violate County policies receive appropriate disciplinary action to prevent further occurrences.

FN
Did you know that, although the County has an internal complaint process, individuals have a right to file a complaint with the U.S. Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing (DFEH)?

MN
I did, and that the Office of Affirmative Action Compliance has full responsibility for enforcing the County's complaint process. This includes ensuring that all complaints filed internally within the County or externally with EEOC and/or DFEH are investigated.

MN
The County recognizes that it can be uncomfortable to file a harassment or discrimination complaint, so let's review what the County's complaint process is designed to ensure.

FN
It is designed to,

To promote a workplace that is free of discrimination and sexual harassment;
To immediately stop the sexual harassment and prevent its reoccurrence;
To inform employees of their rights and responsibilities;
To conduct a timely and thorough investigation;

MN
And, to ensure the investigation is confidential to the extent possible;

To prevent retaliation;
To provide quick and easy access to filing a complaint; and
To ensure that employees who violate the County's Policy on Sexual Harassment receive appropriate disciplinary action ranging from written reprimand to discharge.

FN
Employees wishing to file a complaint have several options: You can contact a supervisor/manager or departmental Human Resources Office.

MN
Another option is to contact the OAAC; by going to their website, by calling their investigations hotline, or by mail. Additionally, the County's process also offers you the opportunity to voluntarily elect pre-investigation mediation as an option for resolving the issues identified in your complaint.

FN
Information on contacting the OAAC and OAAC's Mediation Program is also provided at the end of this module.

FN
Some employees don't know what happens if they file a complaint.

MN
I agree, so let's review the nine points in the County's investigation process to insure that all employees have that information.

FN
The investigator will meet with the person who reported the harassment to learn of his/her concerns. The investigator will ask if there is any evidence and/or witnesses to the harassment.

MN
The investigator will talk with the alleged harasser(s) to obtain his/her point of view on each allegation and learn about any evidence and/or witnesses that will support his/her response.

FN
Witnesses will be interviewed and evidence gathered and analyzed. All employees are required to cooperate in investigations. This means being available for interviews without delay and honestly telling what you know as directly as possible.

MN
Throughout the investigation only people who have a business need to know will be informed of the investigation and everyone with whom the investigator talks will be required to keep the investigation confidential.

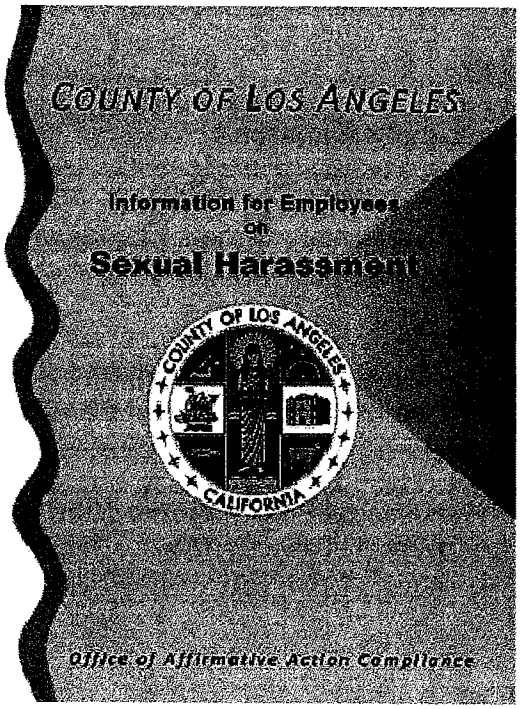
FN
The investigator will decide, based on the facts that emerge in the investigation, whether or not inappropriate conduct or harassment has taken place. In some instances, it may not be possible to determine whether it has taken place.

MN
The designated management representative will review the investigation analysis and conclusions and determine what corrective action will be taken. When inappropriate conduct or harassment is found to have occurred, immediate corrective and/or disciplinary action will be taken to stop the conduct and prevent its recurrence and retaliation. Disciplinary action can range from written warning to discharge.

FN
The complainant and the alleged harasser will be informed of the outcome of the investigation.

MN
Departmental management will implement any corrective or disciplinary action.

FN
The investigator will follow up with the complainant to assure that there is no further inappropriate conduct or harassment and no retaliation.



MN
Now we will explain what are the "Employee Rights" under the County's Policy on Sexual Harassment and the Complaint Process?

FN
You are to work in a harassment-free environment. And to be informed of the County policies protecting you from illegal harassment, discrimination, and retaliation.

MN
Not be discriminated against in decisions and actions affecting you at work.

And to file a complaint of harassment of discrimination without being retaliated against.

FN
They include having your complaint treated seriously; investigated promptly, objectively, and thoroughly; and handled as confidentially as possible.

MN
And to participate in an investigation without being retaliated against. And to be informed of the outcome of the investigation.

FN
Did you know that the County has a program to assist employees in resolving issues identified in their employment discrimination complaint?

MN
Yes, that is the mediation program, right?

FN
Correct. Prior to conducting an investigation, the complaint process provides for mediation as an option for employees to resolve issues identified in their complaint.

MN
Which means that mediation can be elected for complaints filed internally with the County or externally with EEOC and/or DFEH.

FN
Yes, but, mediation is a voluntary process. It is where the employer and employee work together with the assistance of a professional mediator who helps all parties reach a mutually agreeable solution.

MN During mediation the participants explore options and choose creative solutions that meet their needs and are consistent with their sense of fairness.

FN
Mediation is a confidential process that encourages a free exchange of information.

MN
The County's Mediation Program has over a 70% success rate which has minimized polarization in the workplace and helped in restoring positive working relationships.

MN
Now we will explain how to file a complaint with the OAAC, EEOC and DFEH, and how to find information on the County's Mediation Program.

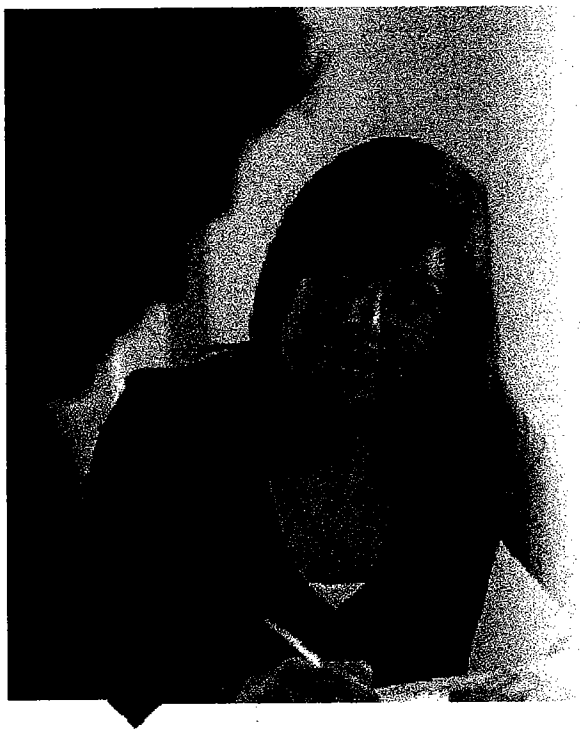
FN
First, let's start with the County. As you may recall, the OAAC is the internal County agency responsible for investigating all complaints of sexual harassment and discrimination. You can contact the OAAC or file a complaint by using one of the following options:

1) **MN** File online, access the OAAC website by clicking on the link titled "OAAC file a complaint" and follow the instructions on the webpage;
2) File by telephone, call the OAAC complaint hotline at (213) 974-1251; or
3) **FN** You can also file by mail, click "here" and print and complete the OAAC complaint form, and send to the address listed on the form.

If you have any questions on how to file a complaint with the OAAC, click on the "email OAAC" icon, located at the top of the page.

MN
Now, to obtain contact information for filing a complaint with the DFEH or the EEOC, click here to get contact information.

And finally, to obtain information on the OAAC's Mediation Program click on the link titled "Mediation".



MN
It can be difficult to speak up or to file a complaint. But remember that the County takes the prevention and resolution of discrimination, harassment, and retaliation situations seriously. So, give the County an opportunity to assist you if it is happening to you.

END MODULE

Module: 9

Receiving a Complaint

MN
Welcome to the Receiving a Complaint module.

Let us start with what is *not* your responsibility. You are *not* responsible for being a judge or for investigating harassment and discrimination complaints.

MN
You *are* responsible, though, for responding appropriately if an employee talks with you about an alleged harassment or discrimination situation. Which means the way you initially respond to a complaint will either *hinder* or *support* its timely resolution and *encourage* or *discourage* your employee to talk with you and to use the County's Employment Discrimination Complaint Process.

As a manager or supervisor, you will have employees come to you with various types of complaints. Many times they will confide in you "informally" about their concerns. If they share information with you informally of inappropriate conduct of a sexual nature, that conversation is no longer informal.

Even though the person confiding in you may not have intended to make a complaint, you now have reason to believe that the conduct in question may be in violation of the County Policy on Sexual Harassment. As a manager or supervisor you now have a responsibility to report the situation to your departmental HR Manager or OAAC.

This is an example of management's "*knew or should have known*" concept and failure to act may result in strict liability for the County as defined in Module 2.

FN
That is right. Most employees see their supervisor as their first resource for resolving these types of situations.

MN
Yes, but some supervisors discourage employees from talking about these situations. Identify what this supervisor does to discourage her employee.

Video **"If It Doesn't Work Out"**

Deborah: Joan, I need to talk to you.

Joan: What is it?

Deborah: It's Bob. He won't leave me alone. He keeps asking me out and....

Joan: Bob is harmless. I mean, give him a break. The poor guy's wife just up and left him.

Deborah: I don't care about his wife or his personal life, or how poor he is. I want him to keep his hands off me.

Joan: Okay—what did he do this time?

FN
What did Joan say and do that you think would discourage Deborah from continuing to talk with her?

1. "Bob is harmless"
2. "Give him a break"
3. "The poor guy's wife just up and left him"
4. Joan's tone of voice and body language
5. All of the above **(correct answer)**

MN
When Joan said that Bob is harmless before getting details from Deborah, it shows a bias for Bob in that she has already decided that Deborah's situation is not serious.

FN
Joan's comments, "Give him a break" and "His wife up and left him" make excuses for Bob's alleged behavior.

MN
Her tone of voice and body language clearly indicate that she is busy and does not take Deborah seriously.

FN
Though Joan's mistakes seemed fairly obvious it is important for all supervisors to understand that it may not be as easy to recognize *their own* mistakes in a similar situation.

MN
I agree. To assist managers and supervisors in meeting their responsibility to be objective and to respond appropriately if they receive a complaint, this module will identify methods for avoiding mistakes, explain what is considered a complaint, and provide a practical four-step interview process.

MN
Before we move on, the reason the word *alleged* is used when describing an employment discrimination or sexual harassment complaint is because the manager or supervisor is only hearing *one* person's version of what happened.

MN
Which makes it even more important to be neutral and objective during what may be an emotional interview process.

MN
Answer the following statement True or False to see if you know what most employees think constitutes an employment discrimination or sexual harassment complaint.

MN
Before the OAAC will begin an employment discrimination or sexual harassment investigation, an employee must use specific buzzwords or legal terms such as, "I want to file a harassment complaint," or "I'm being sexually harassed," to indicate that they want to file a complaint.

FN
That is a false statement because employees don't have to use a specific buzzword or legal term to put their employer on notice of potential harassment or discrimination.

MN
This means managers and supervisors must understand that any conversation with their employees, even outside of the workplace, that includes a discussion about behavior in the workplace which is prohibited by the County's Policy on Sexual Harassment constitutes a potential complaint and *must* be brought to the attention of the HR Manager or the OAAC.

MN
That can be difficult for some managers and supervisors to do, especially if that employee doesn't want them to do anything or if the alleged harasser is their good friend.

MN
It is also important for managers and supervisors to understand that a potential complaint creates three responsibilities. First, the manager or supervisor has a responsibility to bring those situations to their HR Manager or OAAC. Then the OAAC has a responsibility to investigate to determine if the alleged behavior is occurring, and if it is, the County and department has a legal responsibility to stop the discrimination and prevent retaliation.

MN
The County is experiencing a growing number of costly lawsuits caused by the failure of managers and supervisors to report complaints of employment discrimination for investigation. Because this is such a serious problem, the County has issued a policy directive outlining your responsibilities and the consequences for failing to comply. When you become aware of a complaint, this policy requires you to report the complaint to either your HR Manager or the OAAC within two business days.

MN
In addition, if you observe inappropriate behaviors, it is your responsibility to intervene and stop the behavior before it escalates to complaints of discrimination, harassment, or retaliation.

MN
Some managers and supervisors think they are doing that employee a favor by not doing anything. But what they don't realize is that harassment often escalates in severity and frequency, which harms the employee even more.

MN
Resolving these situations can be fairly complex so it is important that managers and supervisors clearly understand their role in the County's complaint process and have the tools to respond appropriately if they receive a complaint.

MN
The following is a practical, four-step process for interviewing someone who discusses or brings a complaint of alleged employment discrimination or sexual harassment to you.

FN
Step one is to ensure that the person complaining feels supported and comfortable talking. Document what is said.

MN
Step two is to get the details.

FN
Step three is to address concerns and questions raised.

MN
Step four is to close the interview by assuring the employee that their complaint will be referred to the HR Manager or OAAC for handling.

FN
Step 1 includes doing the following.

Ensure privacy and avoid interruptions when you determine that the person is discussing an allegation or filing a complaint of harassment or discrimination.

MN
Clarify your role by explaining that your responsibility is to obtain information that will allow the complaint to be appropriately handled by the HR Manager and/or OAAC.

FN
Listen effectively, especially if the employee or the accused is a friend of yours, because it may be more difficult to be unbiased.

MN
Document the details of what is said without adding your opinion or assumptions. Remember, your notes may become part of the official file related to the complaint.

MN
It is also important to have read the County's Policy on Sexual Harassment and to contact HR or OAAC for guidance.

FN
Step 2 in the interview process is to **get the details** of what allegedly occurred.

This means asking What, Who, Where, and When questions because they help you objectively gather details about what allegedly occurred.

FN
Step 3 is to **respond appropriately** to the complaint's concerns and questions.

The person coming to you will inevitably have many concerns and issues about the incident itself, the complaint, or perceived problems in the future.

MN
Their concerns can include retaliation personal safety or that they could be making the situation worse, to name a few.

They may also ask you not to do anything, say that they want to deal with it themselves, or ask your opinion about what happened to them.

FN
Think about how you would respond to what Deborah just said.

FN
Which of these responses would be the most appropriate?

1. You're right. Bob does not have the right to treat you this way.
2. Let me explain the factors that would make this a case of sexual harassment, and see if they apply.
3. I know you don't like being treated this way, but if this is occurring it could be inappropriate conduct of a sexual nature. I will refer your complaint to the HR Manager or OAAC for their handling. In the meantime I will be instructing Bob, that if he is engaging in this behavior, to stop. **(correct answer)**

MN
This is the best response because it acknowledges how Deborah feels while making it clear that Joan will be taking appropriate action by referring her complaint to the departmental HR Manager or OAAC.

FN
Whereas the first response indicates that Joan has decided that Bob is guilty, the second response is not appropriate either because Joan is acting like a judge

FN
Step 4 is closing the interview.

Start by **reviewing the details in** your notes to ensure that you have heard things correctly.

FN
Ask the person "Is there anything else?" because this gives him or her another opportunity to provide additional details.

MN
Ask how the person feels about returning to work. This helps you determine whether the employee feels safe and if there are other issues that may need to be addressed.

FN
Clarify what confidentiality means by explaining that this information will be given to the OAAC or departmental HR office and others may be interviewed.

MN
But emphasize that only the people who need to know about this situation will be given information.

FN
Emphasize that it is also important for him or her not talk about this with anyone who is not involved in investigating or resolving this situation.

MN
Reemphasize that the County does not tolerate retaliation and to immediately contact, the HR Manager, or OAAC if it occurs.

MN
Thank the person for trusting you enough to talk about his or her situation with you.

MN
After the interview you have two immediate responsibilities that need to be completed in a timely manner. First, complete your documentation and second, contact the HR Manager or OAAC, preferably the same day the complaint is brought to your attention.
As a manager and supervisor you have a duty to report by referring the complaint to the departmental HR Manager and OAAC within two business days.

MN
When someone brings a complaint about sexual harassment, you as a manager or supervisor want to show support, get the basic information, remain objective.

MN
To assist you in accomplishing those objectives, this module identified methods for avoiding mistakes, explained what is considered a complaint, and provided a practical four-step interview process.

END MODULE

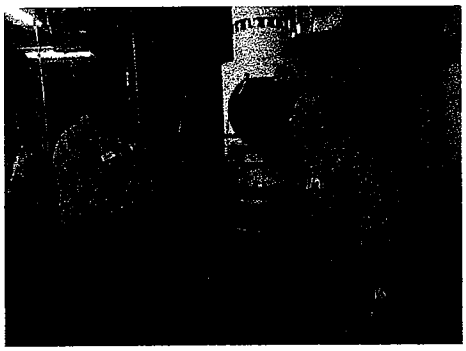
Module: 10

Intervention: Eight-Step Process

FN
Welcome to the Intervention: Eight-Step Process module.

MN
As a manager or supervisor, if you saw something like this or other behavior prohibited by the Policy on Sexual Harassment are you expected to take action to ensure that that behavior stops?

1. No, never
2. No, unless the employee receiving the behavior complained to me
3. Yes, always **(correct answer)**
4. Yes, but only if the employees doing the behavior work for me



MN
Absolutely. As a manager or supervisor, your responsibilities include monitoring the workplace and taking action to stop prohibited behavior. This module will provide you with an eight-step intervention process and practice in applying it.

FN
Before you continue with this module, the term "intervention" needs clarification. In this course, intervention means:

- drawing a clear line between acceptable and unacceptable behavior so that your employees know what's expected of them

MN
- applying effective communication techniques to stop harassment and disrespectful behavior that you see, hear or read, and

- clarifying the County's policies, when necessary, to your employees.

MN
A caution for the manager or supervisor who decides to not intervene: You are taking a number of risks. You risk disciplinary action, a hostile work environment, the perception that you approve of the harassers' behavior, and your employees—and even others in management—losing confidence in your supervisory capabilities.

FN
It's clear that intervention is essential for everyone's benefit. To help you intervene effectively and proactively, here is a practical eight-step process.

MN
Step one is to **document your conversation.**

FN
Step two is to **objectively identify the specific behavior that is prohibited.**

For example, *"Your screen saver is a picture of a naked person."*

MN
Step three is to **identify the policy that prohibits that behavior.**

For example, *"Our sexual harassment policy prohibits that type of behavior."*

FN
Step four is to **respond to questions and concerns** from the employee.

For example, *"I understand that no one visits your cubicle, but that type of visual is always prohibited by our policies..."*

MN
Step five is to ask the **employee to stop the prohibited behavior.**

For example, *"I want you to remove that screen saver of the naked person."*

FN
Step six is to **ask for and receive the employee's commitment to stop that behavior** in the future.

For example, *"Will you remove it and agree not to do anything similar again?"*
Employee says: *"Yes, I will remove it and not do that again."*

MN
Step seven, if applicable, is to **contact the departmental HR Manager and/or OAAC, within two business days**, to tell them what has happened.

FN
Step eight is to **monitor your workplace** to ensure that the behavior has stopped.

MN
You will now have an opportunity to practice an intervention. But, when a supervisor asks a harasser to stop behavior prohibited by the harassment policy that employee may act positively or react angrily and be very defensive.

FN
This section will demonstrate effective intervention skills for dealing with a defensive harasser.

MN
This scenario dramatizes a conversation between two coworkers. See if you observe behavior prohibited by the County's sexual harassment policy.

Video **"LD Has a Joke for Frank"**

L.D.: (standing on the right) Hey, Frank. Want to hear something funny?

Frank: What?

L.D.: Paul just told me a good one.

Frank: I'm not interested in one of Paul's good ones.

(L.D. and Frank, are standing 15 feet away and overhear this conversation.)

L.D.: (laughs) You gotta hear this one. It's really funny. What do a mechanic and a lesbian have in common?

Frank: I'm not interested.

L.D.: So, do you want to get in on Paul's pool?

Frank: What's the bet this time?

L.D.: It's Sarah. You know, she's a lesbian... if she has something going on with Gail.

Frank: L.D., how do you know Sarah is a lesbian?

L.D.: 'Cause Paul told me.

Frank: And since when do you start believing everything Paul tells you?

L.D.: Well, she looks different.

Frank: Well, L.D.... I look different than you! Does that mean that...?

L.D.: (interrupts Frank) Ah, I gotta go. You wanna bet or not?

Frank: No.

MN
Based on your responsibilities as a manager or supervisor to prevent harassment, which of L.D.'s behavior should you intervene and stop?

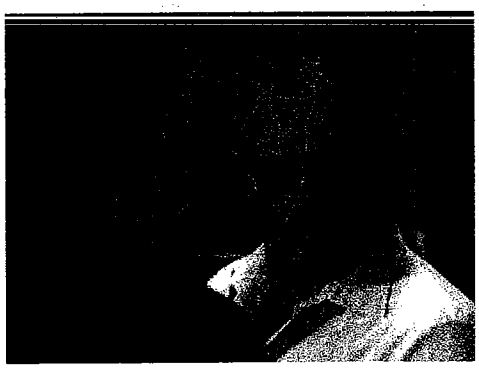
1. Asking others to bet about Gail and Sarah's personal relationship **(correct answer)**
2. Spreading a rumor about Sarah's sexual orientation **(correct answer)**
3. Trying to repeat a joke about lesbians **(correct answer)**

Correct answer

FN
That is correct. If you saw one or more of these behaviors your employer expects you to intervene and to stop it.

Incorrect answer

FN
That is not correct. If you saw any of these behaviors your employer does expect you to intervene and to stop it.



MN
Steven is L.D. and Frank's supervisor and he overheard their conversation.
Now we will see how he addresses L.D.'s prohibited behavior.

VIDEO **"WE WERE JUST PASSING THE TIME"**

Supervisor: I want to talk with you about something I heard earlier today.

L.D.: Ooh... what'd you hear? Anything juicy?

Supervisor: Well, actually, I overheard part of your conversation with Frank.

L.D.: What?! (laughing) Don't you have enough to do without creeping around the corners?

Supervisor: No, no. I was taking an inspector around and I overheard... well, actually... both of us overheard part of your conversation with Frank.

L.D.: So?

Supervisor: Well, L.D., I gotta tell you, I was embarrassed. I didn't know what to say to him [the inspector] and you know, he seemed kind of offended.

L.D.: So what did you say?

Supervisor: Nothing. I just acted like I didn't hear and talked about the weather.

L.D.: Sorry, old buddy. I owe you one.

Supervisor: Well, that's what we need to talk about. What you were saying to Frank.

L.D.: Well how come? We were just passing time.

MN
What is Steven's most effective response?

1. "L.D., you weren't passing time—you were violating our sexual harassment policy."
2. "I know you were just joking around, but our policy says I have to talk with you."
3. "L.D., this is a little more serious than just passing the time." **(correct answer)**

FN
This is the most effective response because it acknowledges and restates what L.D. just said without creating a conflict between them.

(Incorrect response #1)

MN
While this response is less effective because it immediately makes an accusation and contradicts what L.D. said.

(Incorrect response #2)

FN
Yes, and this is a less effective response for three reasons.
First, it is a subjective description of L.D.'s behavior and puts words in L.D.'s mouth.

Second, it implies that because L.D. was joking, his behavior isn't prohibited.

MN
And, third, saying "our policy says I need to talk with you" implies that Steven is just meeting a policy requirement instead of supporting the harassment policy.

MN
Steven explains that this is a serious conversation..

Video **"WHAT'S THE BIG DEAL?"**

Supervisor: Well, this is a little more serious than just passing the time. And, L.D. I want you to know, I'm documenting this conversation...

L.D.: (interrupts) Oooh... now settle down here.

Supervisor: For the file. (talking as he walks to his desk and sits down) Take a seat for a minute, would you?

L.D.: What's the big deal?

Supervisor: Well, the big deal is I heard you start to tell Frank a joke about mechanics and lesbians.

L.D.: Come on. You know Frank lost his sense of humor after he took that... that minority class last month.

MN
What is Steven's most effective response?

1. Frank's behavior isn't the issue here, L.D. *Your* behavior is. **(correct answer)**
2. I agree, that class did make some employees' hesitant to tell jokes.

MN
Correct. This response is more effective because it keeps the focus of the intervention on L.D.'s behavior.

MN (incorrect answer- #2)
This is a less effective response for a couple of reasons.
First, the issue is L.D.'s behavior not the class's content.
Second, Steven is agreeing with L.D. that the real issue is Frank's sense of humor instead of L.D.s prohibited behavior

FN
L.D. doesn't understand the point of their conversation.

Video **"I'm Betting They Are"**

Supervisor: Oh, you mean the "Respect vs. Harassment" class. Look, L.D., Frank's sense of humor is not the issue here. Your behavior is. Now, did you try to tell Frank a joke about mechanics and lesbians?

L.D.: Tried, but I stopped when he said he didn't want to hear it.

Supervisor: So, we're on the same page then about what I heard?

L.D.: (in an irritated tone of voice) What's the point?

Supervisor: The point is, I want to get my facts straight about that conversation.

L.D.: Ok. I tried to tell a joke. What's the big deal?

Supervisor: And then you said there's something about there's a bet if Sarah and Gail have got something going on?

L.D.: Yeah. Paul's taking bets. Want some of the action? Hey, I'm bettin' they are (laughs).

FN
Identify Steven's effective communication techniques.

1. Stressed that the real issue is L.D.'s behavior
2. Asks if L.D. tried to tell Frank a joke to insure he heard L.D. correctly
3. Asked if L.D. said there was a bet on whether two women have a relationship
4. All of the above **(correct answer)**

FN
That is correct because Steven focused on L.D.'s behavior, determined if he heard L.D. correctly and clarified if there was a bet about two women having a relationship.

Incorrect responses are #1, #2 and or #3

MN
This is not quite correct because Steven focused on L.D.'s behavior, determined if he heard L.D. correctly and clarified if there was a bet about two women having a relationship.

MN
L.D. GETS ANGRY.

Video **"This Conversation is *Over!*"**

Supervisor: (in a firm tone of voice) L.D., those types of bets, jokes, rumors have got to stop.

L.D.: Oh, come on! We go back a long way, old buddy. What's the sudden shift? What—no more jokes? Can't we have fun anymore?

Supervisor: L.D., having this conversation with you is not any fun, okay? Now look, this is now and we've got to change. Plus our non-harassment policy...

L.D.: (interrupts in a loud and angry tone of voice) Change?! I'm not changing one thing because of some stupid policy. And I tell you what: if nobody likes it, they can just... just...

Supervisor: (interrupts) Now come on, L.D. This is difficult enough without you yelling.

L.D.: Hey, no problem there, old buddy, because this conversation is over... (L.D. opens door to leave)

FN
Select Steven's most effective response.

1. "Walking away isn't taking responsibility for your behavior, you know." **(correct answer)**
2. "If you walk out, I'll have to discipline you, and I don't want to do that."
3. "I know you're angry—but before you go, at least hear me out." **(correct answer)**

***Incorrect response** (# 2)*

MN
That is less effective, please try again.

***Correct respons3:** (#3)*
FN
Yes, that is the more effective response because
Steven acknowledges L.D.'s feelings of anger, gives him the option to leave while encouraging L.D. to listen to what Steven has to say.

MN
But this is less effective because Steven makes a judgmental and doesn't offer a positive option to keep their conversation going.

FN
And this is less effective because the goal of an effective intervention is to have the employee understand the reasons for stopping his or her prohibited behavior not to threaten the employee with discipline.

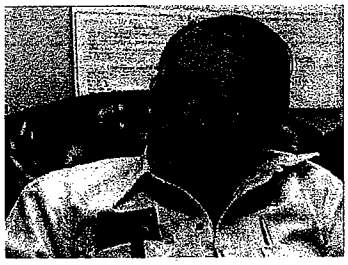
FN
Before you see Steven demonstrate that response these are ten methods for effectively dealing with a defensive harasser.

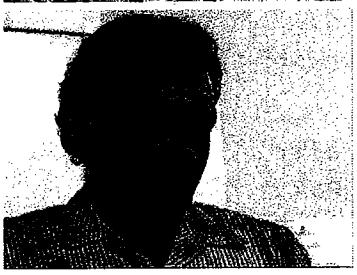
MN
First focus on keeping the situation calm and stopping behavior prohibited by the harassment policy...not on punishing or disciplining the harasser.

FN
Yes and to do this use a calm, non-aggressive tone of voice, acknowledge the harasser's feelings and comments ...without necessarily agreeing with them.

MN
Also, ask clarifying questions and restate what you've heard because this helps avoid misunderstandings. Remember, your focus is on his or her behavior rather than personal opinions or beliefs.

FN
I agree. It is also important to review your employer's harassment policy with the employee, and to identify the consequences if she or he continues doing prohibited behavior.





FN
Now let's see Steven's response.

Video **"Why Single *Me* Out?"**

LD: Hey, no problem there, old buddy, because this conversation is over...

Supervisor: LD, look. Look, I know you're angry, but before you go, at least hear this.

LD: What?

Supervisor: Come here. Come here. Come on in here. Come on (in a friendly tone of voice).

Supervisor: Look, I want you to understand that your yelling and walking away from this thing only delays this conversation. And makes the resolution more difficult for both of us. Also, you need to understand that this needs to be resolved. And if you won't talk with me about this then you're gonna have to talk with Jessie in Human Resources.

LD: Why HR?

Supervisor: 'Cause this needs to be resolved. And I won't feel right about this if I walk away from it until it is. Look, do yourself a favor—let's you and I resolve this thing, okay?

L.D.: Yeah... all those policies... they come and go and... (chuckling). Haven't we outlasted them all?

Supervisor: Sit down. Yeah, I admit, we've been through a lot of policy changes.

L.D.: Then why are you singling me out?

MN
Identify the communication techniques Steven used to maintain control of his intervention meeting.

1. He uses a quiet, non-aggressive tone of voice.
2. He identifies the impacts of L.D. being angry.
3. He acknowledges L.D.'s feelings without necessarily agreeing with them.
4. He explains why L.D.'s shouldn't be angry.

Incorrect answer: *(if #4 is selected as one or more of user's choices)*

MN
That is not quite correct because Steven did not tell L.D. he shouldn't be angry.
Instead Steven used a quiet, non-aggressive tone of voice and did not react by getting angry himself.

FN
Steven also explained that L.D.'s anger only delays and makes the resolution of the situation more difficult.

MN
And, Steven acknowledges L.D.'s feelings, "I know you're angry".

Correct answers: (if #1, 2 and 3 are selected, this is correct answer)

MN
That is correct because Steven did not tell L.D. he shouldn't be angry. Instead he used a quiet, non-aggressive tone of voice and did not react by getting angry himself.

FN
Steven also explained that L.D.'s anger only delays and makes the resolution of the situation more difficult.

And, Steven acknowledges L.D.'s feelings, "I know you're angry".

FN
How would you respond to L.D.'s last comment?

Video **"I've Got Strong Opinions!"**

Supervisor: I'll mention this to Jessie. But you need to know that I take our non-harassment policy serious. And that you work for me, ok?

L.D.: Yeah, old buddy. You've gotten too serious since they made you supervisor.

Supervisor: (chuckling) Maybe. But you need to understand my position. Look, can we get back to the conversation with Frank?

L.D.: Okay, you're the boss.

Supervisor: All right. So, you did start to tell a joke about mechanics and lesbians and talked about a bet about Sarah and Gail, right?

L.D.: Ya got me there partner. Guilty as charged.

Supervisor: L.D., I want you to agree to stop telling those types of jokes...

L.D.: (interrupts) Oh, come on!

Supervisor: (continues) ...and stop with the rumors about Sarah.

L.D.: Oh, come on. You know me. I can't help it cause I've got strong opinions!

FN
What is Steven's more effective response?

1. Personally L.D., I think you should change those personal opinions.
2. This isn't about your opinion L.D. I'm talking about your behavior. Specifically telling those kinds of jokes.
3. I understand, but as your friend, I don't think you should be so prejudiced.

Incorrect response *(#1 and #3)*

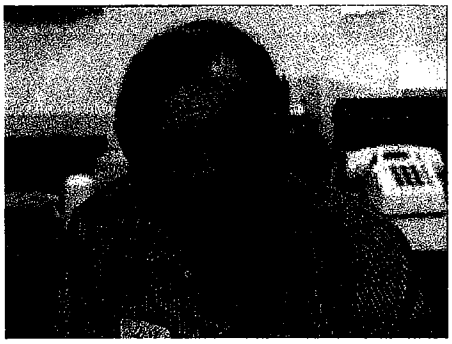
FN
No that is less effective please try again.

Correct response *(#2)*

FN
This is a more effective response because Steven redirects their conversation to L.D.'s prohibited behavior. This also reemphasizes that L.D. is responsible for his personal behavior.

MN
(Responses #1) This response is less effective because employees have a right to their personal opinions, plus when you ask an employee to change personal opinions they are more likely to become defensive.

MN
(Response #3) This response is less effective because employees are more likely to react very defensively if you label their behavior.



FN
Now we will see how Steven finishes their meeting.

Video **"The Conclusion"**

Supervisor: L.D., our non-harassment policy states that that type of behavior is unacceptable in the work environment, even when no one else is around.

L.D.: Okay! I hear ya. Is that it?

Supervisor: Almost. Now I want you to go over my notes, but before we do that, is there anything else that you want to talk about?

L.D.: No. But how come?

Supervisor: To make sure that they're accurate.

L.D.: You know (looking at his supervisor's notes) I never could read your writing.

Supervisor: Ok. (laughs) I'll read what I wrote.

L.D.: You know... It seems like we're using a sledgehammer to drive in a tack.

Supervisor: Yeah. Well when things change it can feel that way.

MN
I agree with Steven. Workplaces *are* changing, becoming more diverse and employers' harassment policies are prohibiting a wider range of behavior....

MN
Which often increases managers and supervisors responsibilities for preventing harassment.

MN
And, by effectively applying this intervention process it will assist them in meeting that responsibility and in avoiding hostile work environments.

MN
During this module, you learned what intervention is and an eight-step process for stopping prohibited behavior, even when there is no complaint. You also practiced applying that process with a defensive employee.

MN
This module also emphasized that it is managers and supervisors' responsibilities to keep their workplaces harassment free, which means that they all must act—**intervene**—to stop those types of behavior that are prohibited by the County's policies, if they see, read, or hear them, even when there is ***no complaint***.

END MODULE

Module: 11

Intervention of Third Party Sexual Harassment

MN
Welcome to the Intervention of Third-Party Sexual Harassment Module.

MN
Listen to this conversation between your employees Ruth, Karen-Marie and Herb.

Video **"Don't Forget About Sexy!"**

Ruth: Karen Marie, I've finally got it!

Karen Marie: Got what?

Ruth: The catalog.

Karen Marie: Oh, that's great! Let's see...

Herb: See what? Oh, my, my...what are you two looking at?

Ruth: I'm helping her shop for what to wear on her honeymoon.

Herb: That's an easy one. I suggest nothing. (looks at Seddick) Right, Seddick? But wait, I'll be right there to help you decide.

Karen Marie: You two, you're embarrassing me. There are so many pretty things.

Ruth: There sure are. Oh, I like that.

Karen Marie: That is pretty.

Herb: So, (talking to Ruth) which of these numbers are you wearing now?

Ruth: Don't you wish you knew?

Herb: Yes, please show me.

Ruth: (smiling) In your dreams, lover boy.

Karen Marie: There's just so many pretty things. But I want it to be special.

Herb: And sexy. Don't forget about sexy. Right, Seddick? (looks at Seddick)

Seddick: (Ignores what herb just said)

FN
Based on the County's Policy on Sexual Harassment, if Seddick did not complain, are you expected to intervene and tell them to stop?

__ Yes **(correct answer)**

FN
You are expected to tell Ruth and Herb that their sexual innuendoes and discussions are prohibited. You would also tell everyone that looking at a negligee catalogue in the workplace is unacceptable behavior.

MN
What if they did not work for you?

FN
Good question. Because managers and supervisors are expected to monitor the workplace and prevent harassment they are aware of, he or she should talk with those employees' manager or supervisor, or with your HR Manager, or OAAC for guidance.

MN
What would you do if Seddick left his cubicle before you intervened?

FN
He will talk with Seddick later that day and explain why that conversation is prohibited by policy.

MN
It isn't enough to tell coworkers to stop. Because if you don't also talk with Seddick, who is a third party recipient of alleged sexual harassment, how would *he* know that his supervisor doesn't approve of or tolerate these types of behavior and can be trusted to listen to and take seriously any other concerns that he may have in the future?

MN
But, isn't it enough that you told his coworkers to stop?

FN
That is a good first step but if you don't talk with Seddick, who is a third party recipient of alleged sexual harassment, how would he know that his supervisor doesn't approve of or tolerate these types of behavior and can be trusted to listen to and take seriously any other concerns that he may have?

MN
You are right, he wouldn't. So managers and supervisors, if you have any questions about your responsibilities in such situations, contact your departmental HR Manager or OAAC. Now you will learn how to have that difficult conversation with Seddick.

FN
This Module will explain why it is important to talk with a recipient of third party sexual harassment, and teach you how to identify and address a third party recipient's concerns and questions, encourage him or her to talk about these situations if they occur in the future and to clarify the harassment policy.

MN
Monty asks Seddick what he thought about his coworkers' conversation.

Video **"It's None Of My Business"**

Monty: (Talking to Seddick) Did you hear about the meeting in my office in ten minutes?

Seddick: No. What's it about?

Monty: Well, we need to have a project update. Just don't want to have any surprises.

Seddick: No problem. I'm working on it now.

Monty: (sitting) Good. I noticed that you... (pause) left out of that... (pause) conversation a few minutes ago.

Seddick: Which one?

Monty: The one with your co-workers.

Seddick: Yes.

Monty: Well, did you hear what they were saying?

Seddick: Some of it.

Monty: What did you think about what you heard?

Seddick: Nothing. Their personal conversation is none of my business.

MN
What would you do if you were Monty?

1. Assume that Seddick doesn't have a problem with what happened because he did not say anything to you.

2. Agree with Seddick that at work you should generally treat other people's conversations as their own business.

3. Ask another question to see whether anything in his coworker's conversation had made Seddick feel uncomfortable. (**correct answer**)

User selects #1

MN
This isn't the best option. Third-party recipients like Seddick often won't complain because they want to 'get along.' A proactive manager or supervisor will take the time to check whether the conversation made him feel uncomfortable and to ensure that Seddick knows that he does not tolerate that type of behavior, even if it is welcome between the participants.

FN
Remember that what's important is not the intent of his coworkers' conversation, but its impact on Seddick.

User selects #2

MN
This isn't the best option. It's not true that his coworkers' conversation was none of Seddick's business. However, he has a job to do, and if Herb and Ruth's unwanted behavior makes it difficult for him to do that job, the negative consequences affect him and others.

FN
A proactive manager or supervisor will take time to check whether the conversation made him feel uncomfortable and to ensure that Seddick knows that he does not tolerate that type of behavior, even if it is welcome between the participants.

Remember that what's important is not the intent of his coworkers' conversation, but its impact on Seddick.

FN
Monty discovers what Seddick is worried about

User selects #3

MN
This is the best option. Third-party recipients often hesitate to discuss their feelings. And what's important about this coworkers' conversation is not its intent, but its impact. A proactive manager or supervisor will take time to check whether the conversation made him feel uncomfortable and to ensure that Seddick knows that he does not tolerate that type of behavior, even if it is welcome between the participants.

FN
Monty discovers what Seddick is worried about

Video **"They'll Blame Me!"**

Monty: I understand, but... it occurred in your workplace.

Seddick: Yes... (in a hesitant tone of voice)

Monty: Did anything they said make you feel uncomfortable?

Seddick: It's no problem. They're good friends.

Monty: I know they are. But I wanted you to know that I talked with them about stopping that kind of talk in the workplace.

Seddick: What?! You shouldn't have.

Monty: What do you mean?

Seddick: They'll blame me!

FN
Clearly Seddick is concerned. What would you say now?

1. Reassure Seddick: "Don't worry about what they think. You did the right thing by leaving."
2. Ask a clarifying question: "What do you mean when you say they'll blame you?" **(correct answer)**
3. Show him that he's overreacting: "Oh, you're overreacting, you know they're your friends. They won't think that."

User selects #1

FN
Telling Seddick not to worry isn't the most effective approach because most employees DO care what their coworkers think about them. It doesn't help Monty determine how Seddick feels about what he heard.

MN
The best choice would be to ask a clarifying question that helps uncover what Seddick means by saying his coworkers would blame him.

MN
Monty asks clarifying questions and reassures Seddick...

User selects #2

FN
Yes, this is the best choice. Careful questioning should help you uncover what Seddick means by saying his coworkers would blame him.

MN
Monty asks clarifying questions and reassures Seddick...

User selects #3

FN
This isn't the best choice. Telling Seddick that he's overreacting is judgmental, trivializes his feelings and overlooks his concerns

MN
The best choice is to ask a clarifying question so you can find out what Seddick means by saying his coworkers would blame him.

MN
Monty asks clarifying questions and reassures Seddick...

Video **"I Thought That's How People Talk Here"**

Monty: What do you mean they'll blame you?

Seddick: They'll think that I asked you to tell them to stop.

Monty: To stop what?

Seddick: Their sexual talks and jokes.

Monty: So... you're concerned that they'll think that you asked me to talk to them.

Seddick: Yes!

Monty: Hmm. Understood. Well, let me tell you how I talked to them. First, I told them that I heard what they said. So, I didn't say anyone complained. You know, it was low key and straightforward. And since their behavior is prohibited by our sexual harassment policy, I asked them to stop and they agreed.

Seddick: Didn't they object?

Monty: Well, don't we all, when we're asked to stop doing something we think is okay?

Seddick: Since I'm new, I thought that's just how people talk here.

MN
What communication techniques did Monty use to encourage Seddick to talk?

1. He described the consequences of the unwanted behavior
2. 2. He asked clarifying questions **(correct answer)**
3. He restated what he thought he'd heard Seddick telling him **(correct answer)**
4. He reassured Seddick that he was simply overreacting

User selects all correct answers only

MN
Monty asked clarifying questions like "What do you mean, they'll blame you" and "To stop what?"

FN
He also restated what that Seddick said in his own words: "So, you're concerned that they'll think you asked me to talk to them." This enabled Monty to check his understanding and show Seddick he really understood his concerns.

FN
Monty identifies another concern of Seddick...

User selects at least one incorrect answer

MN
Monty asked clarifying questions like "What do you mean, they'll blame you" and "To stop what?"

FN
He also restated what that Seddick said in his own words: "So, you're concerned that they'll think you asked me to talk to them." This enabled Monty to check his understanding and show Seddick he really understood his concerns.

MN
He didn't discuss the consequences of the unwelcome behavior and he didn't try to calm or reassure Seddick. He simply used active listening and effective questioning skills to draw out and calmly address Seddick's concerns.

FN
Monty identifies another concern of Seddick...

Video **"I Was Becoming Concerned"**

Monty: And that's why I wanted to talk with you, too. Um... it occurred to me, when I talked to them, that you may have left because of what they were saying. (pause) Well, I wanted you to know that those types of behaviors, the sexual innuendos, the story, the catalogue... those are unacceptable. And something else I learned during that conversation is that they aren't very clear about what our sexual harassment policy says is unacceptable behavior.

Seddick: Even though I read the sexual harassment policy during orientation, I wasn't either.

Monty: So, do you understand that I won't tolerate that kind of behavior?

Seddick: Yes, and knowing your position helps, because I was becoming concerned.

FN
How would you handle Seddick's expression of concern?

1. You were becoming concerned because you thought they wouldn't work with you?
2. You were concerned about what, specifically? **(correct answer)**

User selects #1

FN
This is a leading question. It makes the assumption that Seddick fears the others won't want to work with him. This may be what he's afraid of, but Monty doesn't know for sure and shouldn't guess or assume that. Seddick may feel it's easier to agree with the assumption than to say what's actually wrong.

MN
This is a more effective clarifying question. It's an open question – it doesn't assume anything, it doesn't offer a multiple choice of answers. It encourages Seddick to explain the situation in his own words.

MN
Monty brings their conversation to a close.

User selects #2

FN
This is the best option. It's an open question. It doesn't assume anything and doesn't offer a multiple choice of answers. It pushes Seddick to explain the situation in his own words.

MN
If you ask a leading question like this in a difficult situation, the recipient may well find it easier to agree with the assumption than to say what's actually wrong.

MN
Monty brings their conversation to a close.

Video **"The Conclusion"**

Monty: Something else I've learned: most people don't harass others intentionally. When they were talking the way they were, did you think they were deliberately doing that to make you feel uncomfortable?

Seddick: No, they were just being themselves.

Monty: Yeah, I agree. So, in the future, if this situation occurs again, how do you feel about telling a person that his or her behavior is unwelcome?

Seddick: I'll try, but... it's a lot easier to think about telling somebody to stop than to actually do it.

Monty: Yup. Just remember I'm here to back you up, okay?

Seddick: Thank you.

MN
Monty did the right thing in following up with Seddick after the original intervention. If you ever have to intervene "on the spot", remember to follow up with other employees who might have also observed the inappropriate behavior and to communicate to them that this type of behavior will not be tolerated in the workplace. Also advise them they can come to you with any future concerns they may have.

FN
He successfully uncovered Seddick's concerns and addressed them using effective communication skills, a knowledge of policy and a good degree of empathy.

MN
In this module you learned why it is important to talk with the third party recipient of harassment, and how to identify and address his or her concerns and questions, encourage him or her to talk about these situations if they occur in the future and to clarify the County's Policy on Sexual Harassment policy.

END MODULE

Module: 12

Managers and Supervisors Course Knowledge Check

MN
Welcome to the Managers and Supervisors Course Knowledge Check.

The supervisors' course knowledge check will assess your understanding of managers' and supervisors' responsibilities, the County's sexual harassment policy and complaint process, and information provided during this course.

FN
It is important that you complete the Managers and Supervisors Course Knowledge Check once you have started it.

MN
Because if you exit before completing it, when you return to the course to retake it, you will start over from this page.

FN
Upon successful completion of the Managers and Supervisors' Course Knowledge Check you will be able to print the Certificate of Completion.

MN
Please click the next button to start the Knowledge Check.

DEFINITIONS OF RELEVANT TERMS

1. A hostile work environment is created when an employee tells one sexual joke.

__ True
___False (**Correct Answer**)

Correct Answer

That's correct. A hostile work environment is not one sexual joke or comment. It is a pattern of unwelcome conduct of a sexual or sex-based nature that substantially interferes with the work performance or creates a hostile, intimidating or offensive work environment.

Incorrect Answer

That's incorrect. A hostile work environment is not one sexual joke or comment. It is a pattern of unwelcome conduct of a sexual or sex-based nature that substantially interferes with the work performance or creates a hostile, intimidating or offensive work environment.

2. Quid pro quo is a Latin term that means "this for that," which basically means 'go out with me or you will lose your job.'

_ True **(correct answer)**
_ False

Correct Answer

That's correct. In an employment context it would be a manager or supervisor who makes an unwelcome sexual advance or request for a sexual favor to an employee or applicant, and their submission to or rejection of that advance becomes a condition of employment or it will negatively impact employment decisions affecting that employee. Additionally, some departments have policies that require their supervisors and managers to inform their management of any consensual relationship with a subordinate employee.

Incorrect Answer

That's incorrect. In an employment context it would be a manager or supervisor who makes an unwelcome sexual advance or request for a sexual favor to an employee or applicant, and their submission to or rejection of that advance becomes a condition of employment or it will negatively impact employment decisions affecting that employee. Additionally, some departments have policies that require their supervisors and managers to inform their management of any consensual relationship with a subordinate employee.

3. Sexual favoritism is when a manager or supervisor grants job benefits to a subordinate with whom they engage in a consensual romantic relationship.

___True **(correct answer)**
___False

Correct Answer

That's correct, although it may not violate the County's Policy on Sexual Harassment, it may violate County Civil Service rules. Also, sexual favoritism will violate the County's Policy on Sexual Harassment when such favoritism is so widespread that it conveys the demeaning message to employees that they are viewed by management as "sexual playthings," or that the only way for employees to get ahead in the workplace is by engaging in sexual conduct with their supervisors or management.

Incorrect Answer

That's incorrect. Although it may not violate the County's Policy on Sexual Harassment, it may violate County Civil Service rules. Also, sexual favoritism will violate the County's Policy on Sexual Harassment when such favoritism is so widespread that it conveys the demeaning message to employees that they are viewed by management as "sexual playthings," or that the only way for employees to get ahead in the workplace is by engaging in sexual conduct with their supervisors or management.

4. Third-party sexual harassment is when an employee asks a coworker for a date.

____True
____False (**correct answer)**

Correct Answer

That's correct. There are two types of third-party sexual harassment: (1) when behavior of a sexual nature creates a hostile environment for someone who is not the direct recipient of the behavior, such as a coworker; and (2) When a non-county employee such as a customer, contractor or vendor subjects a county employee to sexual harassing behavior during the course of his/her work.

Incorrect Answer

That's incorrect. There are two types of third-party sexual harassment: (1) when behavior of a sexual nature creates a hostile environment for someone who is not the direct recipient of the behavior, such as a coworker; and (2) When a non-county employee such as a customer, contractor or vendor subjects a county employee to sexual harassing behavior during the course of his/her work.

RELATIONSHIP OF FEDERAL AND STATE LAWS WITH COUNTY POLICIES

1. It is the employee's personal comfort level with sexual jokes, not the County's Policy on Sexual Harassment that determines if those sexual jokes are acceptable in their workplace.

_ True
_ False **(correct answer)**

Correct Answer

That is correct. It is the County's Policy on Sexual Harassment, NOT employees' personal comfort that determines what workplace behaviors are appropriate.

Incorrect Answer

That is incorrect. It is the County's Policy on Sexual Harassment, NOT employees' personal comfort that determines what workplace behaviors are appropriate.

2. The state of California has more protected bases or categories than federal laws, when it comes to prohibiting discriminatory conduct in the workplace.

_ True **(correct answer)**
_ False

Correct Answer

That is correct. The laws of the state of California provides broader protections against discrimination in the workplace than federal laws.

Incorrect Answer

That is incorrect. The laws of the state of California provides broader protections against discrimination in the workplace than federal laws.

THE COUNTY'S POLICY ON SEXUAL HARASSMENT

1. The County's Policy on Sexual Harassment identifies every single prohibited behavior.

_ True
_ False **(correct answer)**

Correct Answer

That is correct. That is why it is important to self-manage personal behavior and to be aware of your actions' impact on others to ensure you don't harass or discriminate against them.

Incorrect Answer

That is incorrect. The County's Policy on Sexual Harassment does not identify every single prohibited behavior. That is why it is important to self-manage personal behavior and to be aware of your actions' impact on others to ensure you don't harass or discriminate against them.

2. The County's Policy on Sexual Harassment only applies to behavior in your workplace.

_ True
_ False **(correct answer)**

Correct Answer

That is correct. When the behavior outside the workplace creates a harassing or discriminatory impact in the workplace, the County is obligated to stop that behavior.

Incorrect Answer

That is not correct. When the behavior outside the workplace creates a harassing or discriminatory impact in the workplace, the County is obligated to stop that behavior.

3. The County's Policy protects County employees from inappropriate conduct by non-employees such as vendors, customers and contractors in the context of their employment.

_ True **(correct answer)**
_ False

Correct Answer

That is correct. When the County is aware of any harassing behavior directed towards its employees, it has a responsibility to stop it, even when done by a non-employee.

Incorrect Answer

That is incorrect because when the County is aware of that harassing behavior it has a responsibility to stop it, even when done by a non-employee.

4. The County's Policy on Sexual Harassment and informational booklet provide guidance on what behaviors are prohibited, the employee's responsibilities, consequences for violating the policies and information on the complaint process.

_ True **(correct answer)**
_ False

Correct Answer

That is correct.

Incorrect Answer

That is incorrect. If you are unsure about the policy or complaint process, please contact the Office of Affirmative Action Compliance, by clicking on the "send email" icon for guidance.

HOW INAPPROPRIATE CONDUCT ESCALATES AND HARMS EMPLOYEES

1. A female employee works with a gay male who makes sexual comments about her body. He commented that she should wear short skirts to show off her legs. She told him that she does not like those comments. He laughed and said, "I can't sexually harass you because I'm gay". Is that a true statement?

_ Yes
_ No **(correct answer)**

Correct Answer

That is correct. Making sexual comments about an employee's body are always prohibited by the County's Policy on Sexual Harassment. His sexual orientation does not change that fact.

Incorrect Answer

That is incorrect. Making sexual comments about an employee's body are always prohibited by the County's Policy on Sexual Harassment. His sexual orientation does not change that fact.

2. An effective method for determining if your behavior is inappropriate is to focus on your intentions for doing that behavior.

_ True
_ False **(correct answer)**

Correct Answer

That is correct. You want to identify the impact of personal behavior instead of focusing on your intentions for doing that behavior.

Incorrect Answer

That is incorrect because you want to identify the impact of personal behavior instead of focusing on your intentions for doing that behavior.

THE COMPLEX WORKPLACE

1. The County has a formal policy that prohibits managers and supervisors from dating subordinates. Is that true?

_ Yes
_ No **(correct answer)**

Correct Answer

That is correct. The County does not have a formal policy on dating; however, it strongly discourages managers/supervisors from dating subordinates because it creates perceptions of favoritism and can lead to complaints of sexual harassment when relationships end badly. Also, some departments have policies that require managers/supervisors to report any dating relationships with a subordinate.

Incorrect Answer

That is incorrect. The County does not have a formal policy on dating; however, it strongly discourages managers/supervisors from dating subordinates because it creates perceptions of favoritism and can lead to complaints of sexual harassment when relationships end badly. Also, some departments have policies that require managers/supervisors to report any dating relationships with a subordinate.

2. Is it OK to look at sexual content online at work if no one else is around?

_ Yes
_ No **(correct answer)**

Correct Answer

That is correct. At work, the answer is always "no" and that behavior is prohibited by the County's Sexual harassment policy, even if other employees welcome that behavior.

Incorrect Answer

That is incorrect. At work, the answer is always "no" and that behavior is prohibited by the County's Policy on Sexual Harassment, even if other employees welcome that behavior. Furthermore, that conduct is prohibited by the County's policies on the use of County equipment.

MANAGER AND SUPERVISORS' ROLE IN RECOGNIZING AND PREVENTING RETALIATION MODULE

1. The following is an example of conduct that can lead to retaliation. An employee complained to management about being sexually harassed. The complainant subsequently was given the "silent treatment" by his/her coworkers.

_ True **(correct answer)**
_ False

Correct Answer

That is correct. This is a type of social ostracism. Other examples include not including him or her in work-related lunches or social situations to which he or she was previously invited.

Incorrect Answer

That is incorrect. This is a type of social ostracism. Other examples include not including him or her in work-related lunches or social situations to which he or she was previously invited.

2. Because an employee is angry at being identified as a harasser, he or she may retaliate against the person who complained about his or her harassment.

_ True **(correct answer)**
_ False

Correct Answer

That is correct. Some also blame the employee they harassed for getting them in trouble with management.

Incorrect Answer

That is incorrect. Some also blame the employee they harassed for getting them in trouble with management.

3. Even if a harassment complaint was found by the County's investigation to have no merit, retaliation against the employee who complained can still create legal liability for the County.

_ True **(correct answer)**
_ False

Correct Answer

That is correct.

Incorrect Answer

That is incorrect because if the employee who complained was retaliated against, and the County was aware of it but did not stop it, it can still be legal liability, even if the original harassment complaint did not have merit.

4. Unless retaliation is a violation of the law, it does not negatively impact the workplace.

_ True
_ False **(correct answer)**

Correct Answer

That is correct. Retaliation negatively impacts teamwork, interpersonal communications and if allowed to continue, it can create a hostile work environment. Plus, it typically violates the County's policy against retaliation.

Incorrect Answer

That is incorrect. Retaliation negatively impacts teamwork, interpersonal communications and if allowed to continue, it can create a hostile work environment. Plus, it typically violates the County's policy against retaliation.

THE COUNTY'S EMPLOYMENT DISCRIMINATION COMPLAINT PROCESS

1. Although the County has an internal complaint process, individuals have a right to file a complaint with the U.S. Equal Employment Opportunity Commissioner (EEOC) or the California Department of Fair Employment and Housing (DFEH).

_ True **(correct answer)**
_ False

Correct Answer

That is correct.

Incorrect Answer

That is incorrect. Individuals do have a right to file a complaint with the U.S. Equal Employment Opportunity Commissioner (EEOC) or the California Department of Fair Employment and Housing (DFEH).

2. Which of the following are "Employee Rights" under the County's Policy on Sexual Harassment and Complaint Process?

_ Work in a harassment-free environment
_ Be informed of the County policies protecting you from illegal harassment, discrimination, and retaliation.
_ File a complaint of harassment of discrimination without being retaliated against.
_ Have your complaint treated seriously; investigated promptly, objectively, and thoroughly; and handled as confidentially as possible.
_ Be informed of the outcome of the investigation.

All answers are correct

Correct Answer

That is correct, You have all of these "Employee Rights" under the County's Policy on Sexual Harassment and Complaint Process

Incorrect Answer

That is incorrect, because you have all of these "Employee Rights" under the County's Policy on Sexual Harassment and Complaint Process

3. Mediation is a voluntary process where the employer and employee work together with the assistance of a professional mediator who helps the parties resolve the employment discrimination complaint.

_ True **(correct answer)**
_ False

Correct Answer

That is correct.

Incorrect Answer

That is incorrect because Mediation is a voluntary process where the employer and employee work together with the assistance of a professional mediator who helps the parties resolve the employment discrimination complaint.

4. Which of the following options do employees have for filing an internal complaint with the County?

Filing with:

1. Your supervisor or a manager
2. Your departmental Human Resources Office
3. OAAC: By completing a secure online complaint form on their website; by calling their investigations hotline; or by mail
4. All the above **(correct answer)**

Correct Answer

That is correct.

Incorrect Answer

That is not correct. You can file an internal complaint with any of those parties.

5. County employees who are found to have violated the County's Policy on Sexual Harassment will receive discipline ranging from written warning to discharge.

_ True **(correct answer)**
_ False

Correct Answer

That is correct. The County of Los Angeles takes violations of the Policy on Sexual Harassment seriously and works to ensure that we have a workplace free of sexual harassment and discrimination.

Incorrect Answer

That is not correct. The County of Los Angeles takes violations of the Policy on Sexual Harassment seriously and works to ensure that we have a workplace free of sexual harassment and discrimination.

RECEIVING A COMPLAINT MODULE

1. When you receive a harassment or discrimination complaint, you are responsible for being a judge (i.e. determining the seriousness of the allegation before deciding to contact HR).

_ True
_ False **(correct answer)**

Correct Answer

That is false because your responsibility is not to be a judge or to investigate the complaint. It is to respond appropriately, show support, get the basic information, remain objective and to refer the complaint to your departmental HR or OAAC within two business days.

Incorrect Answer

That is a false statement because your responsibility is not to be a judge or to investigate the complaint. It is to respond appropriately, show support, get the basic information, remain objective and to refer the complaint to your departmental HR or OAAC within two business days.

2. The way a manager or supervisor initially responds to a harassment or discrimination complaint will either encourage or discourage the complainant to talk with him or her and to use the employer's complaint process.

_ True **(correct answer)**
_ False

Correct Answer

That is true. Not taking a complaint seriously; blaming the complainant or making excuses for the alleged harasser are some responses that could discourage an employee from following through on a complaint. How a manager or supervisor initially responds will also hinder or support that complaint's timely resolution.

Incorrect Answer

That is a true statement. Not taking a complaint seriously; blaming the complainant; or making excuses for the alleged harasser are some responses that could discourage an employee from following through on a complaint. How a manager and supervisor initially responds will also hinder or support that complaint's timely resolution.

3. Before employers will begin a harassment or discrimination investigation, employees must use specific buzzwords or legal terms such as, "I want to file a harassment complaint," or "I'm being sexually harassed," to indicate that they want to file a complaint.

_ True
_ False **(correct answer)**

Correct Answer

That is correct. Employees do not have to use specific buzzwords or legal terms to put their manager or

supervisor and the County on notice of alleged harassment or discrimination.

Incorrect Answer

That is incorrect because employees do not have to use specific buzzwords or legal terms to put their manager or supervisor and the County on notice of alleged harassment or discrimination.

4. Identify which of the following questions should *not* be asked when interviewing the complainant.

a. "What happened?"
b. "Who was there?"
c. "Why did this happen to you?" **(correct answer)**
d. "Where did this happen?"
e. "When did this occur?"

Correct Answer

That is correct. All of these are appropriate questions except "Why did this happen to you?" The reason not to ask that question is because it is often perceived by the complainant as blaming him or her for what happened.

Incorrect Answer

That is not correct; all of these are appropriate questions except "Why did this happen to you?" The reason not to ask that question is because it often is perceived by the complainant as blaming him or her for what happened.

INTERVENTION: EIGHT-STEP PROCESS

1. Effective intervention does which of the following?

a. Draws a clear line between acceptable and unacceptable behavior
b. Applies effective communication techniques to stop harassment and disrespectful behavior that you see, hear or read
c. Clarifies the harassment policy
d. All of the above **(correct answer)**

Correct Answer

That is correct

Incorrect Answer

That is not correct because effective intervention does all of the above.

2. Managers and Supervisors who do not intervene risk which of the following?

a. disciplinary action
b. creating a hostile work environment
c. your employees perceiving that you approve of the harassers' behavior
d. others in management losing confidence in your supervisory capabilities
e. all of the above **(correct answer)**

Correct Answer

That is correct. As a manager or supervisor, you must always monitor the workplace, respond immediately and appropriately to behavior that could lead to sexual harassment, and lead by example.

Incorrect Answer

That is not correct. Managers and Supervisors risk all of the above when they don't intervene. As a manager or supervisor, you must always monitor the workplace, respond immediately and appropriately to behavior that could lead to sexual harassment and lead by example.

3. When you ask an employee to stop her or his prohibited behavior if she or he agrees to stop that is an acceptable response.

_ Yes
_ No **(correct answer)**

Correct Answer

That is correct because the employee must *agree* to stop and then stop the prohibited behavior, not just *try* to stop.

Incorrect Answer

That is not correct because the employee must *agree* to stop and then stop the prohibited behavior, not just *try* to stop.

4. What is an effective way for a manager and supervisor to respond if the harasser gets upset and says that she or he is leaving the meeting?

a. "Unless you want to be disciplined, sit down."
b. "Please listen to me before you decide what to do next." **(correct answer)**
c. "Please stop being defensive and listen to me."
d. Raise your voice and firmly tell the employee, "Do not leave the meeting."

Correct Answer

That is correct. You want the employee to listen to you and think about the potential impacts of leaving your meeting. If you raise your voice or label the employee as being defensive, he or she may obey but will probably not listen or be receptive to your comments and feedback.

Incorrect Answer

That is not correct. You want the employee to listen to you and think about the potential impacts of leaving your meeting. If you raise your voice or label the employee as being defensive, he or she may obey but will probably not listen or be receptive to your comments and feedback.

END MODULE

REASONABLE ACCOMMODATION

County of Los Angeles

Office of Affirmative Action Compliance

EMPLOYMENT GUIDELINES FOR THE REASONABLE ACCOMMODATION PROCESS

Dennis A.Tafoya, Director

2006

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 780
LOS ANGELES, CALIFORNIA 90012
(213) 974-1080 / FAX (213) 626-7034
TTY (213) 974-0911
HTTP://OAAC.CO.LA.CA.US

DENNIS A. TAFOYA
DIRECTOR

MEMBERS OF THE BOARD
GLORIA MOLINA
YVONNE B. BURKE
ZEV YAROSLAVSKY
DON KNABE
MICHAEL D. ANTONOVICH

October 10, 2006

To: Department Heads

From: Dennis A. Tafoya
Director

Subject: **EMPLOYMENT GUIDELINES FOR THE REASONABLE ACCOMMODATION PROCESS**

Ensuring equal employment opportunity for individuals with disabilities has been a long standing policy objective for our County government. A very important programmatic element to achieving equal opportunity for individuals with disabilities is providing reasonable accommodations to enable the individual to perform the essential job functions. Various federal laws including the Civil Rights Act of 1964, Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA) of 1990 prohibit discrimination. Recent amendments to California's Fair Employment Housing Act (FEHA), known as the Prudence Kay Poppink Act (AB 2222) has expanded protections under state law. These expanded protections now require employers in California to engage in an interactive process with the individual with a disability when a request for reasonable accommodation is made. To ensure compliance, my office has obtained concurrence from the Department of Human Resources and the Chief Administrative Office in the development of the *"Employment Guidelines for the Reasonable Accommodation Process."*

County managers and supervisors need to be aware that it is no longer merely a "good idea" to engage in an interactive process, when an employee or applicant requests a reasonable accommodation. Under state law it is now legally **required** to engage in this process. Employment discrimination complaints on the basis of disability continue to increase and many of these complaints involve providing reasonable accommodation.

These guidelines when effectively administered will reduce complaints and minimize risk and liability for the County. Most importantly, the guidelines will provide County Human Resources staff, Affirmative Action, and ADA Coordinators the tools to adequately respond to individuals with disabilities accommodation needs in a respectful, efficient, and expert manner.

DAT:JS:bg
J:\ADACOMP\Cover letter for Guidelines2.doc

c: Board of Supervisors
Chief Administrative Officer
Director of Personnel
County Counsel

Table of Contents

Page

Reasonable Accommodation and Interactive Process

I. Policy 1
II. Purpose 1
III. Departmental Responsibilities 1
IV. Employee/Applicant Notice 2
V. Departmental Reasonable Accommodation Coordinator 2
VI. Request for Reasonable Accommodation 2
VII. Methods for Communicating a Request for Accommodation 2
VIII. Interactive Process 3
IX. Cooperative Process 3
X. Performance Issues 3
XI. Individual Assessment 3
XII. Documentation of Disability 4
XIII. County/Employer Right to Choose Effective Accommodation 4
XIV. Confidentiality 4
XV. Record Retention 5
XVI. Resources 5

The County of Los Angeles Policies on Non-Discrimination on the Basis of Disability 6

Step-by-Step Procedures for Ensuring Reasonable Accommodation and an Effective Interactive Process 7-16

Attachments and Sample Letters

Voluntary Request for Reasonable Accommodation Form I
Notice to Employees and Applicants with Disabilities II
Confirmation/Receipt of Reasonable Accommodation Request III
Confirmation/Receipt of RA Request – Need for Additional Information IV
Department Follow-Up V
Lack of Documentation Denial VI
Authorization of Protected Health Information (PHI) VII
Clarification of Medical Restrictions/Limitations VIII
Temporary Assignment During Interactive Process IX
County-Wide Search X
Provision of Reasonable Accommodation XI
Denial of Request for Reasonable Accommodation XII
Definition of Terms XIII
Resource List XIV

This material is available in alternate format by calling (213) 974-1251/Voice or (213) 974-0911/TTY

I. POLICY

The County of Los Angeles does not discriminate on the basis of disability in employment. It is the policy of this County to provide reasonable accommodation for individuals with disabilities as defined by the State of California Fair Employment and Housing Act (FEHA) or the federal Americans with Disabilities Act (ADA). It is important to note that the law which provides the greater protection for persons with disabilities must be used, unless to do so would create an undue hardship or would pose a direct threat to the employee/applicant or the safety of others. This policy includes the requirement for managers and/or supervisors to engage in a timely, good faith interactive process prior to the determination of all disability-related requests for reasonable accommodations as they pertain to employment activities.

II. PURPOSE

To ensure employees/applicants with known physical or mental disabilities and/or who have a medical condition as defined by state and/or federal laws are provided with necessary reasonable accommodation(s) which will enable them to perform the essential functions of their job and enjoy the benefits and privileges of employment.

III. DEPARTMENTAL RESPONSIBILITIES

Each County Department is responsible for ensuring reasonable accommodation requests are addressed on a case-by-case basis and in a timely, good faith manner. The accommodation shall be determined by conducting a timely, good faith individual assessment and interactive discussion with the employee/applicant (Interactive Process) to determine the most effective accommodation(s). When an employee informs the employer of a connection between his/her physical or mental condition and an inability to perform a job function due to the physical or mental condition, this becomes the first notification of a potential need for reasonable accommodation. Therefore, the department should provide the employee with a **Voluntary** Request for Reasonable Accommodation form (Attachment I) to initiate the Interactive Process and, where necessary, obtain sufficient documentation of disability.

It is recommended that departments have available and distribute a **Voluntary** Request for Reasonable Accommodation form. It is further recommended that departments consider distributing this form as part of an annual notification to employees of the opportunity to request evacuation assistance. Distribution would be in preparation for a yearly evacuation drill and/or in the event of an actual emergency evacuation (for additional information, see the County's Emergency Evacuation Procedures for Persons with Disabilities). The form is strictly voluntary and the employee/applicant cannot be required to complete the form. Each department may work cooperatively with the Office of Affirmative Action Compliance (OAAC) Employment Discrimination Investigations Section and/or County Counsel in the resolution of the more complex requests for reasonable accommodation. Additionally, departments are required to post notices of Reasonable Accommodation and Interactive Process information (see section IV below).

IV. EMPLOYEE/APPLICANT NOTICE

County Departments must display the **Notice to Employees and Applicants with Disabilities** (Attachment II) that outlines the County's policy ensuring equal employment opportunities for persons with disabilities and the Reasonable Accommodation process. Notices should be posted in conspicuous places frequented by employees and/or applicants to ensure maximum opportunity for review. The notices must list the department name and telephone number of the person responsible for addressing requests for reasonable accommodation. Upon request, the information contained on the notice must be made available in alternate formats (e.g. Braille, audio, large print, etc.).

V. DEPARTMENTAL REASONABLE ACCOMMODATION COORDINATOR

All County Departments are required to designate an individual to function as the Departmental Reasonable Accommodation Coordinator. The Departmental Reasonable Accommodation Coordinator is responsible for appropriately responding to requests from employees, applicants, and/or management regarding disability related accommodation issues.

VI. REQUEST FOR REASONABLE ACCOMMODATION

The employee/applicant must let the employer know that he/she needs an adjustment or change at work for a reason related to a disability and/or medical condition. An individual may use "Plain Language" and need not mention the ADA or FEHA or use the phrase "reasonable accommodation." Requests for reasonable accommodation(s) do not need to be in writing. Other methods of communicating (e.g. verbal, TTY, etc.) a request for accommodation are acceptable. Additionally, an employee/applicant shall not be mandated to complete the Voluntary Request for Reasonable Accommodation form. However, it is recommended that written confirmation of the requested accommodation be provided to the employee/applicant regardless of whether or not the employee/applicant completed the Voluntary Request for Reasonable Accommodation form (see Attachment III for sample letter).

It is recommended that Voluntary Request for Reasonable Accommodation forms (Attachment I) be readily available to employees/applicants seeking an accommodation. This form is strictly voluntary and an individual seeking an accommodation may be provided with the form; however, shall not be mandated to complete the form. Upon request, forms must be made available in alternate formats (e.g. Braille, audio, large print, etc.).

VII. METHODS FOR COMMUNICATING A REQUEST FOR ACCOMMODATION

As noted in Section VI above, the request for accommodation is not required to be in writing. Therefore, accommodations may be identified through various methods, including but not limited to the Return-to-Work (RTW) process. Additionally, an accommodation request may be brought to the attention of the department by the employee/applicant, or any other individual speaking on the employee/applicant's behalf with the employee/applicant's permission. In any of the above situations, the department has been notified that physical or mental impairment(s)/restriction(s), due to a work-related or off-duty, non work-related injury or illness, limit his/her ability to perform the Essential Job Functions

(EJFs) of his/her current or sought after position or to receive equal benefits and privileges of employment.

VIII. INTERACTIVE PROCESS

The Interactive Process is mandated by State law and is intended to provide departments and employees/applicants the opportunity to discuss and cooperatively determine the most appropriate accommodation. Departmental representatives must communicate directly with the individual in good faith and in a timely manner. It is important that all efforts are made to ensure the process is not delayed or obstructed.

IX. COOPERATIVE PROCESS

The Interactive Process expects that each involved party will actively and cooperatively participate to facilitate an appropriate determination within reasonable timeframes. Both parties bear this responsibility; however, the department cannot force an employee/applicant to cooperate in the process by requiring medical documentation from the employee/applicant (i.e. a Department may not order an employee/applicant to provide medical documentation for a reasonable accommodation request). Keep in mind, this process is in response to a request for accommodation. If an employee/applicant fails to cooperate in the process by not providing appropriate documentation, this at some point, may lead to a denial of the reasonable accommodation request.

X. PERFORMANCE ISSUES

An employer never has to excuse a violation of a uniformly applied conduct rule that is job-related and consistent with business necessity. Additionally, since reasonable accommodation is prospective, an employer is not required to excuse past misconduct even if the misconduct problem is the result of the disability. Therefore, appropriate disciplinary actions may occur.

Please be aware that during the disciplinary process, an employee may make a connection between a physical or mental condition and the performance or misconduct problem. If the employee makes such a connection, the employer should initiate the interactive process including a request for appropriate documentation/verification of disability (see Section XII Documentation of Disability) as necessary in order to investigate the accommodation to mitigate future performance problems. Whether or not an effective accommodation is provided, the employee remains responsible for performing the essential job functions and for complying with County policies and guidelines; if the employee fails to do so, disciplinary actions may again be appropriate.

> *Note: An employer should never assume a performance problem an employee faces on the job is related to a disability. It should be viewed and managed as a performance problem unless the employee makes a connection between a physical or mental condition and the performance problem itself.*

XI. INDIVIDUAL ASSESSMENT

All requests for reasonable accommodation must be assessed on a case-by-case basis. The goal of individually assessing each request for accommodation is to conduct an

effective interactive process to clarify the employee's/applicant's ability to perform the EJF's or to complete the employment hiring process with or without accommodation. Additionally, this process encourages discussions with the employee/applicant to explore available options that may enable the employee/applicant to effectively perform the essential functions of the job or to continue in the hiring process.

XII. DOCUMENTATION OF DISABILITY

An employer may request, from the employee, documentation from a qualified health care or rehabilitation professional to ascertain that the disability/impairment rises to the protected level under FEHA, or in rare cases, the ADA. The employee/applicant will be asked to complete an Authorization for Request or Use/Disclosure of Protected Health Information (PHI) (see Attachment VII) to release appropriate records from a qualified professional. For most situations, California law provides for greater protection for persons with disabilities; therefore, the California definition of disability under AB 2222 should be applied (see definition of disability in Attachment XIII of this document).

Documentation can be requested when the disability and/or need for reasonable accommodation is not obvious or otherwise already known (see EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act dated 10/17/02). However, documentation may not be requested when both the disability and the need for accommodation are obvious (e.g. a wheelchair user requesting his/her desk be raised). Additionally, it is not appropriate to ask for documentation when sufficient, appropriate documentation has previously been received by the department.

> *Note: The authorization will be specific to the disability at issue. Requesting disability information not related to the disability identified in the accommodation request is not allowed.*

XIII. COUNTY/EMPLOYER RIGHT TO CHOOSE EFFECTIVE ACCOMMODATION

If there is more than one possible accommodation, the employer may choose the less burdensome and/or less expensive accommodation as long as it is effective, thereby providing the individual with an equal opportunity to apply for a position, perform the essential job functions of a position, or to gain equal access to a benefit or privilege of employment. Although, primary consideration should be given to the employee/applicant's requested accommodation, the employer may continue to explore other accommodations until an appropriate and effective accommodation is identified, as deemed by the employer.

XIV. CONFIDENTIALITY

Unless otherwise authorized or required by law, the request for accommodation and related records will be maintained in a confidential manner, in a **locked file accessible only to authorized management**. All documentation regarding an employee's disability is to be kept in a file separate from the general (official) personnel file and disclosed for legitimate business needs only. Disability civil rights laws specifically prohibit the disclosure of medical information except in certain limited situations. Those limited situations are as follows:

- Supervisors and managers may be told about necessary restrictions on the work or duties of the employee and about necessary accommodations;

- First aid and safety personnel may be told if the disability might require emergency treatment;

- Government officials investigating compliance with the ADA and/or FEHA must be given relevant information on request;

- Employers may give information to state workers' compensation offices, state second injury funds or workers' compensation insurance carriers (in the case of the County, the Third Party Administrator), in accordance with state workers' compensation laws.

XV. RECORD RETENTION

Departments are required to keep all documentation pertaining to requests for accommodation in accordance with prevailing record retention requirements of three (3) years.

XVI. RESOURCES

The Office of Affirmative Action Compliance/ADA Compliance Section maintains and updates resource lists for departments and employees. A copy of that list is included with this document (Attachment XIV). Should you require additional resource information and/or an updated list, please contact the OAAC Employment Discrimination Investigations Section (EDI).

County of Los Angeles Policies on Non-Discrimination on the Basis of Disability

The County of Los Angeles is committed to equal opportunity in all employment, programs, services, and activities. These commitments apply equally to employees of the County of Los Angeles and members of the public who access public services through County departments and related agencies. The County of Los Angeles has developed numerous policies and procedures to create a non-discriminatory environment. Three primary employment policies pertaining to Non-Discrimination on the Basis of Disability are listed below.

Non-Discrimination on the Basis of Disability (Board Policy # 3.060)

The County of Los Angeles does not discriminate on the basis of disability in employment or in the admission and access to its services, programs and activities. Pursuant to the ADA, the departments have designated an ADA Coordinator to carry out each department's compliance with the non-discrimination requirements of the ADA. Each department is to implement the Board approved Informal Complaint Procedure and to post the County Policy of Non-Discrimination on the Basis of Disability in conspicuous places frequented by the public.

Equal Employment Opportunity Non-Discrimination Policy (Board Policy # 9.010)

The County of Los Angeles provides for equal employment opportunities and non-discrimination in the County workforce for all qualified persons, regardless of race, color, religion, sex, national origin, age, sexual orientation or disability. Additionally, County employees shall be responsible for creating a non-discriminatory workplace where employees and all persons engaged in business with the County of Los Angeles are valued for their differences as well as their similarities. The Board further expects that each department head, manager, and supervisor will ensure compliance with this policy.

Civil Service Rule 9.08

According to Civil Service Rule 9.08, the County of Los Angeles shall make every attempt to return an employee to suitable work by modifying the employee's duties or change of his/her assignment (i.e. reasonable accommodation), change the classification or reduction to another position in the employee's department (i.e. reassignment), or transfer the employee to a position in another (County) department. If the employee cannot return to gainful employment in any capacity, other alternatives need to be explored.

Guidelines for Managing the ADA and FEHA Interactive and Accommodation Process

STEP-BY-STEP PROCEDURES FOR ENSURING REASONABLE ACCOMMODATION AND AN EFFECTIVE INTERACTIVE PROCESS

Recommended time frames are provided throughout the following step-by-step procedures. Departments should attempt to abide by the recommended timeframes; however, it is understood that circumstances may occur in a particular case which may require a variance (see Step 8).

STEP 1 Review County Policies and Resources Related to Disability Management

The County of Los Angeles is committed to equal opportunity in all employment, programs, services, and activities. The County of Los Angeles has developed numerous policies and procedures to create a non-discriminatory environment. Three primary employment policies pertaining to Non-Discrimination on the Basis of Disability are listed below.

- Non-Discrimination on the Basis of Disability (Board Policy # 3.060)
- Equal Employment Opportunity Non-Discrimination Policy (Board Policy # 9.010)
- Civil Service Rule 9.08

Compliance Challenge

- All Departments must display the ***Notice to Employees and Applicants with Disabilities*** (Attachment II). Notices should be posted in conspicuous places frequented by employees and/or applicants. The notices must list the department name and telephone number of the person responsible for addressing requests for reasonable accommodation. Upon request, the information contained on the notice must be made available in alternate formats (e.g. Braille, audio, large print, etc.).

STEP 2 Initiate the "Interactive Process" with the Employee and Document

When an employer learns of an employee's disability, they have an affirmative obligation to commence the Interactive Process within a reasonable period of time. It is recommended that County Department's respond within ten (10) business days. It is advisable that the process begin by asking the employee/applicant to complete a Voluntary Request for Reasonable Accommodation form (Attachment I) to clarify the limitations and document the request.

When an employer learns of, or an employee informs the employer of, a connection between his/her physical or mental condition and an inability to perform a job function due to the physical or mental condition or is "regarded as" having a disability, this becomes the first notification of a potential need for reasonable accommodation. An applicant/employee may be considered "regarded as" a person with a disability until appropriate documentation is received by the employer.

Important Points Concerning a Request for a Reasonable Accommodation

- The employee/applicant must let the employer (i.e. supervisor or manager in direct line of supervision or responsible employer representative) know that he/she needs an adjustment or change at work for a reason related to a disability and/or medical condition.

- Anyone speaking on the employee's/applicant's behalf may request an accommodation with the employee/applicant's permission.

- An individual may use "plain English" and need not mention the ADA or FEHA or use the phrase "reasonable accommodation."

- Requests for reasonable accommodation(s) do not need to be in writing.

- Other methods of communicating (e.g. verbal, TTY, etc.) a request for accommodation are acceptable.

- An employee/applicant shall not be mandated to complete the Voluntary Request for Reasonable Accommodation form. The employee/applicant cannot be required to complete the form; however, completion of the form enables both the employee/applicant and the employer to interact more effectively.

Compliance Challenge

- The Voluntary Request for Reasonable Accommodation form (Attachment I) should be readily available to employees/applicants seeking an accommodation. Upon request, forms must be made available in alternate formats (e.g. Braille, audio, large print, etc.).

Compliance Challenge

- Written confirmation of any requested accommodation should be provided to the employee/applicant regardless of whether or not the employee/applicant completed the Voluntary Request for Reasonable Accommodation form (see Attachment III or IV for a sample letter).

During this step, be sure to have a discussion and document the employee/applicant's specific limitations and needs. Solicit suggestions about what type of accommodation the employee/applicant thinks would be most effective. It is helpful to know that the employee/applicant is not required to be able to identify an effective accommodation, however, so long as the employee/applicant can describe the work-related problems posed by the disability.

All requests for reasonable accommodation must be assessed on a case-by-case basis. The goal of individually assessing each request for accommodation is to conduct an effective interactive process to clarify the employee's/applicant's ability to perform the EJF's or to complete the employment hiring process with or without accommodation. Additionally, this process encourages discussions with the employee/applicant about available options that may enable the employee/applicant to effectively perform the essential functions of the job or to continue in the hiring process.

Commonly asked questions concerning Step 2 of the Interactive Process

- **What if the accommodation request is understood by both parties?**
  Send a memorandum of receipt (Attachment III or IV) to the employee/applicant within a reasonable timeframe (recommended within ten (10) business days) advising him/her of the process and when the determination of the request will be made.

- **What if the requested accommodation can be easily implemented?**
  The department should act expeditiously and provide the accommodation within a reasonable period of time.

- **What if the employee/applicant's request is unclear?**
  The department should arrange a meeting with the employee/applicant or send a memorandum to the employee/applicant requesting clarification.

- **What if the disability and the need for accommodation are not obvious and the employee has failed to provide any documentation of disability?**
  A notice should be sent (Attachment V) to remind the employee that the process cannot continue until appropriate documentation has been received. It is recommended that the employee be given at least ten (10) business days to respond to the original request for documentation before this notice is sent.

- **What if the need for an accommodation is not obvious?**
  Employees can be required to obtain certification from a qualified professional.

- **What if the employee does not respond to your request for documentation?**
  The employer should send a second notice giving the employee at least ten (10) additional days to respond. If the employee still does not respond, the employer may send a closing letter (Attachment VI) denying the request for accommodation based on insufficient documentation. The closing letter should advise the employee of their right to request reasonable accommodation at any time in the future.

  Note: It is always best to engage in a face-to-face meeting with the employee to ensure requests for accommodation are understood by all parties involved in the reasonable accommodation process.

STEP 3 Analyze the Employee's Essential Job Functions and Document

As early as possible in the Interactive Process, the manager/supervisor should analyze the particular class specification of the job involved and determine the purpose and essential functions of the position. In so doing, the employer must identify the essential and non-essential functions of the position that the employee currently occupies or wishes to obtain.

Key Term

Essential Job Functions: Job duties that are so fundamental to the position that an employee cannot or would not be doing the same job without performing them.

This important step will allow the manager/supervisor to successfully dialogue with the employee or applicant about job tasks that are difficult because of the disability or

limitations. This discussion will help identify barriers related to performance and will help identify collateral (i.e. non-essential) job tasks which may be reassigned or eliminated from the position.

When evaluating whether a duty is an essential or non-essential function of the job, consider whether or not:

- The functions of the job are required to be performed by all persons in the position.
- The position exists to perform the function.
- The position would be fundamentally altered if the function(s) were eliminated.
- The functions to be performed in the position are provided in the class specification and job bulletin for the position.

Also consider:

- The number of other employees that are available to perform the function.
- The expertise and skill required to perform the function.
- The time spent performing the function.
- The work experience of past or current employees.
- Terms of a collective bargaining agreement that may apply.
- Civil Service Rules.
- Applicant job qualifications.

STEP 4 Consult with the Worker's Medical Practitioner or Qualified Professional as Needed and Document

If after completing the first few steps, you and the employee/applicant are unable to identify and implement a reasonable accommodation, it may be necessary and beneficial for you to gather additional information about the disability or limitations. As a result, you may request additional information directly related to the disability or limitation from the employee/applicant, the employee's/applicant's physician or a qualified professional such as a State Rehabilitation Counselor, chiropractor, workers' compensation physician, etc. (see Attachment VIII for sample letter).

What to expect from the medical practitioner or qualified professional:

- Documentation of the employee/applicant's limitations.
- An explanation on how those limitations limit a major life function.
- An evaluation of the disabled employee/applicant's ability to perform the essential job functions as provided.
- Recommendations concerning possible accommodation or modification that will enable the employee to perform the essential job functions.
- An opinion concerning possible reasonable accommodation options.

What not to expect from the medical practitioner or qualified professional:

- Information not related to the disability identified in the request for accommodation.
- The employee's diagnosis.
- An employment decision.
- A determination whether or not an accommodation is an undue hardship.

Compliance Challenge

- Prior to requesting any medical information from an employee/applicant, an authorization to release records or an Authorization for Request or Use/Disclosure of Protected Health Information (PHI) (Attachment VII) must be signed.

Compliance Challenge

- Unless otherwise authorized or required by law, the request for accommodation and related records will be maintained in a confidential manner, in a locked file accessible only to authorized management. This is a file separate from the general (official) personnel file.

STEP 5 Consult with other Experts as Needed and Document

Consulting with other experts is highly encouraged and often necessary throughout the entire 10-Step Interactive Process. For this reason, the Office of Affirmative Action Compliance Employment Discrimination Investigation Section has developed and provided a resource list for departments and employees (Attachment XIV). Should you require additional resource information and/or an updated list, please contact the OAAC, EDI Section.

STEP 6 Brainstorm Possible Accommodations with Employee and Document

There are various ways for employers to accommodate individuals with disabilities. The best solutions usually arise from an ongoing, collaborative dialogue between the employer and employee/applicant. Reasonable accommodation may include but is not limited to the following:

Examples of Reasonable Accommodations:

- Modifying a workplace policy
- Making existing facilities accessible
- Job restructuring
- Establishing modified work schedules
- Reassignment to a vacant position for which an employee meets the minimum qualifications
- Acquisition or modification of equipment or devices
- Appropriate adjustment or modification of policies, examinations and/or training materials
- Providing qualified readers and interpreters
- Permitting the use of accrued paid leave or providing additional unpaid leave for necessary treatment
- If transportation is provided for employees, it must made accessible to persons with disabilities
- Providing reserved parking spaces
- Providing personal assistants to help with specified duties related to the job
- Allowing the qualified individual with a disability to provide and use equipment, aids and services that an employer is not required to provide (e.g. wheelchair)

If the requested accommodation is understood by both the employee/applicant and employer, can be easily implemented, and the appropriate documentation has been obtained to justify a covered disability and the accommodation, the department should act expeditiously and provide the accommodation within a reasonable period of time.

STEP 7 Determine if You are Required or Able to Accommodate and Document

Once the department has obtained appropriate/sufficient documentation regarding the employee/applicant's disclosed physical or mental disability and/or medical condition, and has had an interactive discussion with the employee/applicant, an individual assessment needs to be made to determine:

- Whether or not the individual meets the State of California current definition of disability; and
- Whether or not the employee can perform the essential job functions of his/her current position with or without reasonable accommodation; and
- Whether or not the requested accommodation is appropriate and effective for both the employee and the department.

ADA and FEHA regulations require the employer to give primary consideration to the accommodation requested by the applicant or employee; however, if the requested accommodation is not appropriate or the department determines an alternate accommodation would be more appropriate, the department has the option of choosing the alternative accommodation, providing it is reasonable and effective. There is no requirement for the employer to choose the most elaborate or expensive accommodation, but instead to choose the "most effective" accommodation, even if it is less expensive.

Managers, supervisors and Human Resources professionals should evaluate individual accommodations.

How to Evaluate an Accommodation:

- Does the accommodation enable the person to perform the essential function(s) of the job to the employer's "normal standards?"
- Does the accommodation appear to be reliable and capable of being provided in a timely manner?
- Does the accommodation enable the person with a disability to be competitively employed and to have equal advancement and promotional opportunities?

Key Term

Reasonable accommodation *is a modification or adjustment to a job, the work environment, or the way things usually are done that enables a qualified individual with a disability to enjoy an equal employment opportunity.*

An employer is not required to provide an accommodation that is primarily for personal use. Reasonable accommodation applies to modifications that specifically assist an individual in performing the duties of a particular job. Equipment or devices that assist a person in daily activities on and off the job are considered personal items that an employer is not required to provide. Thus, an employer generally would not be required to provide personal items such as eyeglasses, a wheelchair, or an artificial limb. However, the employer might be required to provide a person who has a visual impairment with glasses that are specifically needed to use a computer monitor.

If the requested accommodation would impose an undue hardship on the employer, the employer can deny the request on the basis of "Undue Hardship." Additionally, when disabled individuals pose a direct threat to the safety of themselves or to others, employers may deny the request. An "Undue Hardship" may be defined as that which would create a significant difficulty or expense. Several factors must be considered when determining "Undue Hardship[1]." Those include:

- The nature and cost of the accommodation needed;
- The overall financial resources of the facility making the reasonable accommodation; the number of persons employed at this facility; the effect on expenses and resources of the facility;
- The overall financial resources, size and number of employees, and type and location of facilities of the employer (if the facility involved in the reasonable accommodation is part of a larger entity);
- The type of operation of the employer, including the structure and functions of the workforce, the geographic separateness, and the administrative or fiscal relationship of the facility involved in making the accommodation to the employer; AND/OR
- The impact of the accommodation on the operation of the facility.

The obligation of the employer to pursue and/or provide a reasonable accommodation does not require the removal of essential job functions, lowering production standards, or violating a uniformly administered conduct rule that is job related and consistent with business necessity.

Commonly asked questions concerning Step 7 of the Interactive Process:

1. **What should I do when appropriate accommodation cannot be identified for the employee?**
   Alternate placement must be considered. This requirement is consistent with Civil Service Rule (CSR) 9.08 (B) 1. This rule should be read consistently with ADA/FEHA principles to complement, not supersede ADA/FEHA requirements.

2. **What must I do if the employee is requesting a new position or reassignment?**
   The department is not required to create a position for an employee who can no longer perform the Essential Job Functions (EJF's) of his/her current job assignment with or without a reasonable accommodation, as determined by the department. However, a department-wide search for a vacant position at a comparable level must be conducted.

---

[1] Source: EEOC Enforcement Guidance

3. **What if there is a vacant position in the department and the employee meets the minimum requirements?**
   Management should evaluate the employee's skills and experience to determine if their qualifications are appropriate for the vacant position. If the employee meets the requirements for that position, they should be offered that position. It is important to understand that an employee who possesses the requisite skills and experience is not required to compete for the position.

4. **What if there are no vacant positions in your department?**
   The requirement to search for an alternate position or modify the non-essential duties of the current position is required under both state and federal disability laws. A county-wide search should be conducted (see Attachment X for sample letter). In all instances, a good faith effort must be made by the employer to search for an alternate position for the employee.

5. **What if I am unable to locate an equivalent position anywhere in the County?**
   If a department is unable to locate a vacant position at an equal level to the employee's position, the department will conduct a search for a vacant position at a lower level (less pay) in which the employee meets the minimum requirements.

6. **What if we've exhausted our accommodation and reassignment efforts?**
   If, after conducting an effective, timely interactive process, an accommodation is not identified and reassignment is not possible, options (e.g. long-term disability, disability retirement, medical release pursuant to CSR 9.08, etc.) must be discussed with the employee as soon as possible. It may also be prudent to discuss this scenario with County Counsel.

7. **What if the employee refuses the reasonable accommodation?**
   The employee remains responsible for performing the EJF's of his/her job as long as the County has satisfied its requirement to engage in a timely, good faith, interactive process.

8. **Can we force the employee to accept the reasonable accommodation?**
   The reasonable accommodation cannot be forced; however, the employee does <u>not</u> have the right to choose another job if they have refused an effective reasonable accommodation.

If the accommodation issue cannot be easily and quickly resolved, it is recommended another meeting with the employee/applicant be scheduled within a reasonable period of time (recommended not to exceed 30 days from the receipt of request) to ensure there is a clear understanding of the request for accommodation as it relates to the Essential Job Functions of the position. If a meeting is necessary, it should be <u>limited to the individuals with a "need to know"</u> interest such as the immediate supervisor and the Departmental Coordinator or designee who has sufficient knowledge of the ADA and FEHA. If the applicant/employee wishes to have a representative accompany them at the meeting, they may do so.

If the request is being denied (see Attachment XII for sample letter), it is strongly recommended that the department contact the Employment Discrimination Investigation

Section and/or County Counsel prior to notifying the employee and/or applicant of the denial.

STEP 8 Choose and Implement Effective Options Promptly and Document

When a determination is made, it is recommended that within fifteen (15) business days, the department prepare a written response to the employee/applicant advising him/her of the outcome of the request.

If the requested accommodation is being provided, the response (Attachment XI) should include the conditions of the accommodation, thereby eliminating any misunderstanding between the department and the employee/applicant.

Compliance Challenge

- All responses to the employee and/or applicant should include notification of his/her right to file an employment discrimination complaint with the Office of Affirmative Action Compliance, Employment Discrimination Investigations Section.

Management and supervisory staff are expected to act as quickly and as reasonably possible. However, when extenuating circumstances exist, the time for providing the accommodation may be extended as reasonably necessary and the employee/applicant should be notified of the reasons for the delay. Below are some examples of potential delay situations:

- There is an outstanding initial or follow-up request for medical information.
- The purchase of equipment may take longer than fifteen (15) or twenty (20) business days or the equipment is on back-order.
- The employee with a disability needs to try working with the equipment on a trial basis to ensure it is effective before the County purchases it.
- New staff needs to be hired or contracted for, or an accommodation involves the removal of architectural barriers.

  Note: Providing a modified and/or temporary assignment may be necessary while determining the most appropriate accommodation (Attachment IX).

STEP 9 Monitor Results Closely and Document

The duty to accommodate is a continuing duty that is not exhausted by one effort. Once an employer becomes aware that an accommodation is not working, it must consider alternative accommodations and cannot shift the responsibility to the employee to request one.

Therefore, once a reasonable accommodation has been implemented, it is important to maintain dialogue with the employee/applicant. Upon completion of the interactive process, the accommodation is implemented with the understanding that the accommodation can be revisited should it prove ineffective for either the operation of the department or the employee. If the accommodation should prove ineffective, the interactive process continues until an appropriate accommodation is determined.

Reasonable accommodation is not necessarily a one time consideration. Impairments can become more severe as people age, requiring changes in the accommodation.

STEP 10 Continue the Interactive Process in "Good Faith" and Document

Federal courts have provided an interpretation of "good faith," essentially saying an employer and employee must communicate directly with each other to determine essential information and that neither party can delay or interfere with the process.

To demonstrate good-faith engagement in the interactive process, the employer should be able to point to cooperative behavior that promotes the identification of an appropriate accommodation.

The burden will be on the employer to prove it completed the accommodation process. Therefore, at every step, you should document your efforts to engage in the flexible, good faith Interactive Process. This requires your documentation and your best effort to find effective accommodations for your workforce.

ATTACHMENT I

ATTACHMENT I

County of Los Angeles Voluntary Request for Reasonable Accommodation Form

Applicant/Employee Name: _____

Applicant Employee Department Name: _____

Telephone Number :(___)_____TTY Number: (___)_____

Address (Worksite or Home)_____

Job Title or Position Applying for:_____

Supervisor: _____

This form may be used when requesting a disability-related reasonable accommodation for the following purposes:

1. To complete the employment application process.
2. To perform essential job functions.
3. To have the same benefits and privileges as non-disabled employees.
4. To obtain evacuation assistance in a time of emergency.

Once you have completed this form, return it to your supervisor, your Personnel Officer, or submit it directly to your Departmental ADA Coordinator.

Documentation of Covered (Protected) Status

When requesting a Reasonable Accommodation, be prepared to provide documentation of your protected status. Prior to the department accepting disability information from you, you must provide a completed Authorization for Request or Use/Disclosure of Protected Health Information (PHI). All such documentation will be treated confidentially.

Please answer the following questions regarding your accommodation needs:

How does your limitation restrict your ability to accomplish or obtain one of the four items listed above? (Please describe as specifically as possible. If related to the performance of job responsibilities, state the task(s) for which you need an accommodation, and describe the difficulty you have performing that task.)_____

_____

_____

_____

_____

_____

_____

What specific accommodation(s) are you requesting? _____

_____

_____

_____

_____

_____

Are you aware of a third party, such as the Department of Rehabilitation, who might pay part or all of the cost of this accommodation? Yes No If yes, please provide the contact information for that agency_____

_____

_____

_____

_____

Your request will be given thorough consideration. Upon receipt of your request, the Department will notify you of either the approval of your request, requirement of additional documentation, or the time frame for consideration. In order to explore reasonable accommodation, there is a need for the department to conduct an interactive process with you regarding accommodation options. (Therefore, in this process, alternatives may be discussed with you and you may be contacted for additional information before making a decision). Once the department has reached a decision, you will be informed.

In all instances, once the Department has obtained from you complete documentation of your limitations; you will be informed of progress or a decision date. If you have not heard from your coordinator within a reasonable period of time, you may contact them directly for a status. If, after a Department decision, you believe your rights have not been enforced, you may file a complaint with the County's Office of Affirmative Action Compliance, Employment Discrimination Investigations Section.

I believe I have a protected disability (a physical or mental impairment that limits one or more major life activities) and I can perform the essential functions of my job with or without a Reasonable Accommodation.

Signature_____ Date_____

This form is available in alternate format from the Departmental Personnel Officer, Departmental Reasonable Accommodation Coordinator, ADA Coordinator or your supervisor upon request.

0702.01

ATTACHMENT II

ATTACHMENT II

COUNTY OF LOS ANGELES

NOTICE TO EMPLOYEES AND APPLICANTS WITH DISABILITIES

REQUESTING A REASONABLE ACCOMMODATION

The Americans with Disabilities Act (ADA) and the Fair Employment and Housing Act (FEHA) protect qualified employees and applicants with disabilities from discrimination in hiring, promotion, benefits, and other aspects of employment on the basis of disability. Both laws require that covered entities provide qualified employees and applicants with disabilities with a reasonable accommodation in order that they may perform the essential functions of the job and/or participate in the hiring process as long as it does not impose an undue hardship to the organization or pose a direct threat to the safety of themselves or others.

Employees or applicants requiring a reasonable accommodation and/or are interested in obtaining additional information on the ADA/FEHA or the County's policy on implementing the provisions of the ADA or FEHA should contact the department's designated departmental Reasonable Accommodation contact person at:

_____
(Department)

_____
(Contact Person)

_____
(Telephone Number Voice/TTY)

Applicants or employees can also contact the Office of Affirmative Action Compliance (OAAC) Employment Discrimination Investigation Section directly concerning employment disability related questions at:

OFFICE OF AFFIRMATIVE ACTION COMPLIANCE
EMPLOYMENT DISCRIMINATION INVESTIGATION SECTION
500 West Temple Street, Room 780
Los Angeles, California 90012
(213) 974-1251/Voice
(213) 974-0911/TTY

This notice is available in alternate format

"To Enrich Lives Through Effective And Caring Service"

ATTACHMENT III

ATTACHMENT III

CONFIRMATION/RECEIPT OF
REASONABLE ACCOMMODATION REQUEST
(SAMPLE LETTER)

Date

Employee/Applicant Name
Address
City, State, Zip Code

Dear Mr./Ms. Employee/Applicant:

On (date of receipt), this office received your request for reasonable accommodation. Based on the information provided and our follow-up conversation, it is my understanding you are requesting the following:

- Flexible Work Schedule from 10:00 a.m. to 7:00 p.m.

Because the normal work schedule for your section is 7:00 a.m. to 3:00 p.m., this request will need to be discussed with management before a determination can be made.

As soon as the department has made an individual assessment of your request and has reached a decision, you will be informed. In all instances, once the department has obtained the necessary authorization and documentation you will be informed within thirty (30) days of progress or a decision date.

Should you have any questions about this process, please contact me at (telephone number).

Sincerely,

Name
Payroll/Functional Title

c: Confidential Medical File

ATTACHMENT IV

ATTACHMENT IV

CONFIRMATION/RECEIPT OF REASONABLE ACCOMMODATION REQUEST NEED FOR ADDITIONAL INFORMATION (SAMPLE LETTER)

Date

Employee/Applicant Name
Address
City, State, Zip Code

Dear Mr./Ms. Employee/Applicant:

On (date of receipt), this office received your request for reasonable accommodation. Based on the information provided and our follow-up conversation, it is my understanding you are requesting the following:

- Flexible Work Schedule from 10:00 a.m. to 7:00 p.m.

Because the normal work schedule for your section is 7:00 a.m. to 3:00 p.m., this request will need to be discussed with management before a determination can be made.

Prior to my discussion with management and in order to assist us in conducting an individual assessment, I am requesting that you provide a completed authorization to release records from your physician. If your physician cannot provide this authorization, please complete the enclosed Authorization for Request or Use/Disclosure of Protected Health Information (PHI) and obtain documentation from your physician providing the following information:

1. An evaluation and medical opinion of your medical condition detailing whether your condition limits your ability to engage in one or more major life activities. If so, please identify which major life activities are limited.

2. What is the anticipated duration of your limitations?

3. Please have your doctor review the attached list of essential job functions of your position of (employee's payroll/functional title) and indicate which of the duties you can perform without restriction and which duties you are limited in performing due to your medical condition. Please have your doctor detail how your restrictions limit your ability to perform the essential functions. If the doctor believes an accommodation is necessary, please have your doctor list the accommodation(s) he/she would like considered that would allow you to perform the essential functions of the job.

This documentation should be received as soon as possible to ensure your accommodation needs are being appropriately addressed. As soon as the department has reached a decision, you will be informed. In all instances, once the department has obtained from you complete documentation of your limitations, you will be informed within thirty (30) days of progress or a decision date.

Should you have any questions about this process, please contact me at (telephone number).

Sincerely,

Name
Payroll/Functional Title

c: Confidential Medical File

ATTACHMENT V

ATTACHMENT V

DEPARTMENT FOLLOW-UP OF REASONABLE ACCOMMODATION REQUEST MADE BY EMPLOYEE (SAMPLE LETTER)

Date

Employee/Applicant Name
Address
City, State, Zip Code

Dear Mr./Ms. Employee/Applicant:

On (date letter sent), this office sent you a letter requesting documentation of disability in order to appropriately assess your request for reasonable accommodation. The documentation is necessary to enable the department to conduct an individual assessment of your request.

To date, we have not received any information from you regarding our documentation request. Therefore, once again, this office is requesting documentation from your physician or qualified professional. The following information is requested:

1. An evaluation and medical opinion of your medical condition detailing whether your condition limits your ability to engage in one or more major life activities. Please identify which major life activities are limited.

2. What is the anticipated duration of your limitations?

3. Please have your doctor review the attached list of essential job functions of your position of (employee's payroll/functional title) and indicate which of the duties you can perform without restriction and which duties you are limited in performing due to your medical condition. Please have your doctor detail how your restrictions limit your ability to perform the essential functions. If the doctor believes an accommodation is necessary, please have your doctor list the accommodation(s) he/she would like considered that would allow you to perform the essential functions of the job.

This documentation should be received as soon as possible to ensure your accommodation needs are being appropriately addressed. As soon as the department has reached a decision, you will be informed. In all instances, once the department has obtained from you complete documentation of your limitations, you will be informed within thirty (30) days of progress or a decision date.

Should you have any questions about this process, please contact me at (telephone number).

Sincerely,

Name
Payroll/Functional Title

c: Confidential Medical File

ATTACHMENT VI

ATTACHMENT VI

LACK OF DOCUMENTATION DENIAL (SAMPLE LETTER)

Date

Employee/Applicant Name
Address
City, State, Zip Code

Dear Mr./Ms. Employee/Applicant:

On (date letter sent), this office sent you a letter requesting documentation of disability in order to appropriately assess your request for reasonable accommodation. A follow-up letter was sent on (date letter sent) requesting the same information. This documentation is necessary to enable the department to conduct an individual assessment of your request.

To date, we have not received any information from you regarding our documentation request. Therefore, at this time, we are denying your request for reasonable accommodation due to insufficient documentation. If, at some time in the future, you choose to pursue this request or any other request for accommodation, please contact this office.

The Los Angeles County (department) is committed to non-discrimination on the basis of disability in accordance with the Americans with Disabilities Act (ADA) and the Fair Employment and Housing Act (FEHA). (However, if you believe you have been discriminated against because of a disability, you have the right to file a complaint with the Office of Affirmative Action Compliance (OAAC) Department, Employment Discrimination Investigations (EDI) Section. Their telephone number is (213) 974-1251/Voice or (213) 974-0911/TTY.)

Should you have any questions about this process, please contact me at (telephone number).

Sincerely,

Name
Payroll/Functional Title

c: Confidential Medical File

ATTACHMENT VII

ATTACHMENT VII

AUTHORIZATION FOR REQUEST OR USE/DISCLOSURE OF PROTECTED HEALTH INFORMATION (PHI)

County of Los Angeles Department of ( )
Department Name

EMPLOYEE/APPLICANT:

Name/Previous Names	Birth Date	Employee Number
Street Address	City, State, Zip	

AUTHORIZES:	**DISCLOSURE OF PROTECTED HEALTH INFORMATION TO:**
Name of Health Care Provider/Plan/Other	Name of Agency (Department)
Street Address	Street Address
City, State, Zip Code	City, State, Zip Code

INFORMATION TO BE RELEASED:
Applicant/Employee's condition and the major life activity that is limited. The duration of the limitation(s) and the physician's/qualified professional's opinion as to what type(s) of accommodation may be appropriate.

PURPOSE OF DISCLOSURE:
_____ Applicant/Employee's Request
_____ Other (Specify below)

This office works cooperatively with the applicant/employee to determine effective employment reasonable accommodations pursuant to the Americans with Disabilities Act (ADA) and the Fair Employment and Housing Act (FEHA). In order to successfully accommodate applicant's/employee's requested accommodation, it is necessary to obtain appropriate verification of disability to ensure the disability rises to the protected level and to determine the availability of reasonable accommodation.

I understand that PHI used or disclosed as a result of my signing this Authorization may not be further used or disclosed by the recipient unless such use or disclosure is specifically required or permitted by law.

EXPIRATION DATE: This authorization is valid until the following date _____/_____/_____
Month Day Year

ATTACHMENT VII

AUTHORIZATION FOR REQUEST OR USE/DISCLOSURE OF PROTECTED HEALTH INFORMATION (PHI)

YOUR RIGHTS WITH RESPECT TO THIS AUTHORIZATION:

Right to receive a Copy of This Authorization - I understand that if I agree to sign this authorization, which I am not required to do, I must be provided with a signed copy of the form.

Right to Revoke This Authorization – I understand that I have a right to revoke this Authorization at any time by telling (Department Name) in writing. I may use the Revocation of Authorization at the bottom of this form, mail or deliver the revocation to:

_____	_____
Contact Person	Department Name
_____	_____
Street Address	City, State, Zip

I also understand that revocation will not affect the ability of any health care provider to use or disclose the health information for reasons related to the prior reliance on this Authorization.

Conditions: None. This authorization does not have anything to do with my ability to obtain treatment. In the event that I refuse to sign this authorization, (department name) will be unable to process my request for reasonable accommodation.

I have had an opportunity to review and understand the content of this authorization form. By signing this authorization, I am confirming that it accurately reflects my wishes.

_____	_____
Signature of Applicant/Employee	Date

If signed by other than the client, state relationship and authority to do so:_____

c: Employee's Confidential Medical File

REVOCATION OF AUTHORIZATION

SIGNATURE OF APPLICANT/EMPLOYEE: _____

If signed by other than client, state relationship and authority to do so: _____

DATE: ____/____/____
Month Day Year

ATTACHMENT VIII

ATTACHMENT VIII

CLARIFICATION OF MEDICAL RESTRICTIONS/LIMITATIONS (SAMPLE LETTER)

Date

Qualified Professional Name
Address
City, State, Zip Code

Dear Mr./Ms./Doctor (name):

Based on previous information received from your office, we are conducting an individual assessment to determine whether your patient, our employee (employee's name) meets the definition of disability as determined by the Americans with Disabilities Act (ADA) and the California Fair Employment and Housing Act (FEHA) and whether he/she can perform his/her essential job functions with or without a reasonable accommodation. As evidenced by the attached authorization, we have Mr./Ms. (employee's name) permission to contact you directly.

To assist us in conducting an individual assessment of Mr./Ms.(employee's name) reasonable accommodation request, we are asking for the following information:

1. Based on your evaluation of Mr./Ms.(employee's name) medical condition, please state whether the condition limits his/her ability to engage in one or more major life activities. If so, please identify which major life activities are limited.

2. What is the anticipated duration of his/her limitation?

3. After reviewing the attached list of essential job functions for Mr. /Ms. (employee) position of (employee's payroll/functional title), please identify which of the duties he/she can perform without restrictions and which duties he/she is limited in performing due to his/her medical limitation. Please be specific in your explanation as to how his/her restrictions limit his/her ability to perform the essential functions. If you believe an accommodation is necessary, please list the accommodation(s) you and Mr./Ms.(employee) would like considered that would allow him/her to perform the essential functions of the job.

The (department) of Los Angeles County is committed to non-discrimination on the basis of disability in accordance with the Americans with Disabilities Act (ADA) and the Fair Employment and Housing Act (FEHA). As the information requested above is necessary to make a determination regarding the request for reasonable accommodation from Mr./Ms. (employee), your timely response by (indicate reasonable date) would be appreciated.

Please send your response directly to me at the address below in order to expedite an appropriate response to our employee.

Name of Department
Contact Person
Address, City, State, Zip

Thank you for your cooperation and attention to this matter. If you have any questions, please contact me at (telephone number).

Sincerely,

Name
Payroll/Functional Title

c: Confidential Medical File

Note to Departments:

You may/should customize the letter to meet the needs of your request, especially when requesting additional information on ambiguous documentation/certifications.

ATTACHMENT IX

ATTACHMENT IX

TEMPORARY ASSIGNMENT DURING INTERACTIVE PROCESS (SAMPLE LETTER)

Date

Employee Name
Address
City, State, Zip Code

Dear (Employee):

On (date), you requested a reasonable accommodation to enable you to perform the essential functions of your job in your position as (payroll/functional title). You requested (accommodation request).

Due to the (reason e.g. equipment on back-order, employee is trying out equipment, etc.) and in an effort to assist you in providing the requested accommodation, we have identified a temporary assignment for you to perform until such time as the appropriate accommodation can be identified and/or provided.

The length of this assignment will be for (period of time not to exceed twelve (12) weeks). If at the conclusion of the twelve (12) weeks, an appropriate accommodation has not been provided, you will be contacted by this office for an update on your request.

If you have any questions about your request or the reasons for the delay, please feel free to contact me at (telephone number).

Sincerely,

Name
Payroll/Functional Title

c: Confidential Medical File

ATTACHMENT X

ATTACHMENT X

COUNTY-WIDE SEARCH
(SAMPLE LETTER)

Date

Personnel Officer
County Department
Address
City, State, Zip Code

Dear PO:

We are seeking assistance from other departments in finding appropriate placement for one of our current employees. After carefully reviewing (employee's name) experience and education, we are currently unable to find appropriate placement for (him/her) within our department.

I have attached a copy of (employee's name) resume to provide some background on (his/her) education and experience. (His/her) current salary is (salary) which falls in the (salary schedule) salary schedule. Although we are not requesting that you identify a position within his/her current salary schedule, we are asking that you first take into consideration those positions that may be comparable to his/her current salary and benefit entitlements.

It is our intent to work cooperatively with other departments to identify and secure positions for current County employees. This should enable the County to more effectively utilize the skills and experience gained by current employees.

If you are interested in hiring this employee, please provide a job description of the position you are considering and we will discuss it with the employee to ensure compatibility. In order to maintain the integrity and confidentiality of this process, we are asking that you communicate directly with our office if you feel you can provide a position for (employee's name).

Thank you for your anticipated cooperation in this new process. Should you have any questions, please contact me at (telephone number).

Sincerely,

Name
Personnel Officer (not ADA or RTW Coordinator)

ATTACHMENT XI

ATTACHMENT XI

PROVISION OF REASONABLE ACCOMMODATION (SAMPLE LETTER)

Date

Employee Name
Address
City, State, Zip Code

Dear (Employee):

On (date), you requested a reasonable accommodation to enable you to perform the essential functions of your job in your position as (payroll/functional title). You requested (accommodation request).

After careful review and consideration, your request is being approved with the following provisions: (Departmental Representative <u>should</u> provide detailed information about the accommodation.)

If you believe you need additional and/or alternate accommodations, you have the right to request this at any time. It is important to understand that the department has the right to investigate other accommodations should this accommodation prove ineffective by either the department or the employee or in the event it should create an undue hardship to the organization.

The (department) of Los Angeles County is committed to non-discrimination on the basis of disability in accordance with the Americans with Disabilities Act (ADA) and the Fair Employment and Housing Act (FEHA). However, if you believe you have been discriminated against because of a disability, you have the right to file a complaint with the Office of Affirmative Action Compliance Employment Discrimination Investigations (EDI) Section. Their telephone number is (213) 974-1251/Voice or (213) 974-0911/TTY.

Sincerely,

Name
Payroll/Functional Title

c: Confidential Medical File

ATTACHMENT XII

ATTACHMENT XII

DENIAL OF REQUEST FOR REASONABLE ACCOMMODATION (SAMPLE LETTER)

Date

Employee Name
Address
City, State, Zip Code

Dear (Employee):

On (date), you requested a reasonable accommodation to enable you to perform the essential functions of your job in your position as (payroll/functional title). You requested (accommodation request).

After careful review and consideration, your request is being denied. The denial is based on (Accommodation Ineffective, Accommodation Would Cause Undue Hardship, Inadequate Documentation, Accommodation Would Remove Essential Function, Accommodation Would Require Lowering of Performance or Production Standard, Other).

(Departmental Representative must provide detailed reasons for the denial as to why providing the accommodation would be ineffective or create an undue hardship.)

The (department) of Los Angeles County is committed to non-discrimination on the basis of disability in accordance with the Americans with Disabilities Act (ADA) and the Fair Employment and Housing Act (FEHA). However, if you believe you have been discriminated against because of a disability, you have the right to file a complaint with the Office of Affirmative Action Compliance Employment Discrimination Investigations (EDI) Section. Their telephone number is (213) 974-1251/Voice or (213) 974-0911/TTY.

If you have any questions or would like to provide additional information regarding your request, please contact me at (telephone number).

Sincerely,

Name
Payroll/Functional Title

c: Confidential Medical File

ATTACHMENT XIII

DEFINITION OF TERMS

AB2222 (aka: Prudence Kay Poppink Act):	State legislation passed in 2000 that took effect January 1, 2001 making significant changes to the state's existing disability laws and reemphasizing previous legal and policy positions.
ADA:	Americans with Disabilities Act: Civil Rights Legislation passed in 1990 providing persons with disabilities protection from discrimination based on disability.
ADA Coordinator:	Departmental representative having responsibility for ensuring ADA compliance within their respective department.
ADA Section:	Specific Section within a department responsible for handling ADA related issues.
Applicant:	An individual who has filed an application for employment with the County of Los Angeles.
Department:	The largest organizational unit of county government, as shown by the separate departmental articles of the county Salary Ordinance. This also includes board, commission, and district.
DFEH:	Department of Fair Employment and Housing. An independent department of the State of California charged with enforcing California's comprehensive employment, housing, public accommodations and public service non-discrimination laws as well as the State's bias related hate violence law.
Disability:	**ADA:** a physical or mental impairment that substantially limits one or more major life activity (e.g. caring for oneself, walking, seeing, hearing, speaking, etc.); or has a record of such an impairment; or is regarded as having such an impairment. **FEHA:** a physical or mental disability that limits one or more major life activity; or has a history of such an impairment known to the employer; or is incorrectly regarded or treated as having or having had such an impairment; or is regarded or treated as having or having such an impairment that has no presently disabling effects but may become a qualifying impairment in the future.
Documentation of Disability:	Any documentation from a qualified professional that substantiates an individual's functional limitations as it pertains to their ability to perform a major life function.

DOJ:	Department of Justice is the governmental agency responsible for implementing enforcement for Titles I, II, and III of the ADA.
EEOC:	Equal Employment Opportunity Commission. The EEOC was established by Title VII of the Civil Rights Act of 1964 and began operating on July 2, 1965. The EEOC enforces several federal statutes including Title I and Title V of the Americans with Disabilities Act (ADA) of 1990, prohibiting employment discrimination on the basis of disability in the private sector and state and local governments.
Effective Accommodation:	In the context of job performance, this means that a reasonable accommodation enables the individual to perform the essential functions of the position. Similarly, a reasonable accommodation enables an applicant with a disability to have an equal opportunity to participate in the application process and to be considered for a job.
Employee:	Person employed by the County in a part time, full-time, temporary or other capacity while receiving earnings in exchange for work performed.
Essential Job Function(s): or EJF's	Those job duties that are so fundamental to the position that the individual holds or desires that he/she cannot do the job without performing them. A function can be "essential" if, among other things: the position exists specifically to perform that function; there are a limited number of other employees who could perform the function; or the function is specialized and the individual is hired based on his/her ability to perform it. Determination of the essential functions of a position must be done on a case-by-case basis so that it reflects the job as actually performed, and not simply the components of a generic position description (class specification).
FEHA:	Fair Employment and Housing Act. The State of California law that provides protection from harassment or discrimination in employment because of Age (40 and over), Ancestry, Color, Creed, Denial of Family and Medical Care Leave, Disability (mental and physical) including HIV and AIDS, Marital Status, Medical Condition (cancer and genetic characteristics), National Origin, Race, Religion, Sex, and Sexual Orientation.
Good Faith:	Federal courts have provided an interpretation of "good faith," essentially stating that an employer and employee must communicate directly with each other to determine essential information and that neither party can delay or interfere with the process. Examples of good faith efforts are:

- Making the process easy for the employee/applicant.
- Providing forms for requests for accommodation to help document the process.
- Making time for dealing with these issues.
- Training supervisors not to make employees feel that such requests are an unwelcome burden.
- Responding promptly to employee requests for reasonable accommodation.

Individual Assessment: An assessment made to determine the appropriateness of an accommodation based on information received by that individual and not by the perception of the individual's disability/impairment.

Interactive Process: A consultation with the individual to ascertain the precise job-related limitations due to disability and how they could be overcome with a reasonable accommodation; and cooperatively identifying potential accommodations and assessing their effectiveness.

JAN: Job Accommodation Network is a free service of the Office of Disability Employment Policy, United States Department of Labor that provides accommodation information that can be used in the hiring, training, retention, and career advancement of people with disabilities.

Limited: An impairment that makes performance of a major life activity "difficult" as compared to the ability of the average person in the general population to perform the same activity.

Major Life Activity: Activities such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, thinking, concentrating, learning and working. This list is not inclusive and must be used only as a guideline when making an individual assessment of the employee's/applicant's request for accommodation.

Mitigating Measures: Assistive devices such as prosthesis, medications, adaptive equipment are not to be considered when determining whether a condition "limits" a major life activity. In other words, when an employer is making a determination of eligibility for ADA/FEHA protection, their condition is evaluated without the mitigating measure. An individual with diabetes may still be covered, even if their diabetes is controlled. It is important to understand that any result of the mitigating measure (i.e. the medication causes concentration problems) must be considered and accommodated, if reasonable.

OAAC: Office of Affirmative Action Compliance. County department responsible for developing, monitoring, attaining and enforcing affirmative action compliance within the departments and agencies of the Los Angeles County governments.

Pre-employment Inquiries: Prior to employment, it is unlawful for an employer to require an applicant to attend a medical/psychological examination, make any medical/psychological inquiry, make any inquiry as to whether an applicant has a mental/physical disability or medical condition or make any inquiry as to the severity of the disability or medical condition. However, an employer may inquire into the ability of an applicant to perform job-related functions and may respond to an applicant's request for reasonable accommodation or require a medical/psychological examination or make an inquiry of a job applicant ***after*** an employment offer has been made but ***prior*** to the start of employment provided that the examination or inquiry is job-related and consistent with business necessity and all new employees in the same job classification are subject to the same examination or inquiry.

Post-employment Inquiries: If the individual is a current employee, the employer may not require any medical/psychological examination of an employee or make any of the following inquiries: Medical or psychological; whether an employee has a mental/physical disability; or the nature or severity of a physical disability, mental disability, or medical condition. However, an employer may require any examination or inquiries that it can show to be job-related **and** consistent with business necessity. See Rule 9.07 of the Los Angeles County Code for more information.

Prudence Kay Poppink Act (aka: AB2222): State legislation passed in 2000 that took effect January 1, 2001 making significant changes to the state's existing disability laws and reemphasizing previous legal and policy positions.

Reassignment: Reassignment is a form of reasonable accommodation that, absent undue hardship, is provided to employees (not applicants) who, because of a disability, can no longer perform the essential functions of their job, with or without reasonable accommodation. Reassignments are made only to vacant positions and to employees who are qualified for the new position. If the employee is qualified for the position, he/she will be reassigned to the job and will not have to compete for it.

Reasonable Accommodation: Any change in the work environment or in the way things are customarily done that would enable a qualified individual with a disability to enjoy the benefits and privileges associated with employment including the ability to perform the essential functions of their job, attend meetings, and other functions associated with their employment.

Request for Reasonable Accommodation: Any statement or observation that suggests an individual needs an adjustment or change at work, in the application process, or in a benefit or privilege of employment because of a disability or impairment.

Stereotype:	A fixed or conventional notion or conception, as of a person, group, idea, etc., held by a number of people, and allowing no individuality.
Substantially Limited:	Prohibition or significant restriction of an individual's ability to perform a major life activity as compared to the ability of the average person in the general population to perform the same activity.
TTY	Teletypewriter aka: TDD/Telecommunications Device for Deaf or Hard of Hearing. A device used to communicate with individuals who are deaf or hard of hearing. Often used for individuals with speech impairments as well.
Undue Hardship:	If a specific type of reasonable accommodation causes significant difficulty or expense, the employer does not have to provide that particular accommodation. Determination of undue hardship is always made on a case-by-case basis, considering factors that include the nature and cost of the reasonable accommodation needed and the impact of the reasonable accommodation on the operation of the agency (the County).

ATTACHMENT XIV

ATTACHMENT XIV

*RESOURCE LIST**

EMPLOYMENT ACCOMMODATION RESOURCES

JOB ACCOMMODATION NETWORK (JAN)
P O Box 6080
Morgantown, West Virginia 26506-6080
(800) 526-7234 (Voice/TTY)
http://www.jan.wvu.edu

CALIFORNIA DEPARTMENT OF REHABILITATION (DOR)
Greater Los Angeles District
3251 W. 6th Street, Suite 300
Los Angeles, California 90020-5017
(213) 736-3904(Voice)
(213) 736-3960 (TTY)
http://www.dor.ca.gov

GOODWILL INDUSTRIES OF SOUTHERN CALIFORNIA
342 San Fernando Road
Los Angeles, California
(888) 446-6394 (Voice)
http://www.goodwillsocal.org

AUXILLIARY AIDS AND SERVICES/SERVICE PROVIDERS

Sign Language Interpreting Services

ACCOMMODATING IDEAS
13701 Riverside Drive, Suite 509
Sherman Oaks, California 91423
(800) 257-1783 (Voice/TTY)
http://www.ai-ada.com

GREATER LOS ANGELES AGENCY ON DEAFNESS (GLAD)/LIFESIGNS
2222 Laverna Avenue
Los Angeles, California 90041
(323) 550-4210/Voice
(800) 633-8883/After Hours
http://www.gladinc.org

THE SIGN LANGUAGE COMPANY
14203 Califa Street
Van Nuys, California 91401
(818) 782-6002/ (Voice/TTY)

INDEPENDENT LIVING CENTER OF EAST SAN GABRIEL VALLEY
963 West Badillo Street
Covina, California 91722
(626) 967-0995

DAYLE MCINTOSH CENTER FOR THE DISABLED
13272 Garden Grove Boulevard
Garden Grove, California 92843
(714) 621-3300/Voice
(714) 663-2087/TTY

Braille Services

BRAILLE INSTITUTE
741 North Vermont Avenue
Los Angeles, California 90029
(323) 663-1111 (Voice)
http://www.brailleinstitute.org

RESOURCES FOR TECHNICAL ASSISTANCE

LOS ANGELES COUNTY OFFICE OF AFFIRMATIVE ACTION COMPLIANCE EMPLOYMENT DISCRIMINATION INVESTIGATIONS
500 West Temple Street, Room 780
Los Angeles, California 90012
(213) 974-1251/Voice
(213) 974-0911/TTY
http://www.oaac.co.la.ca.us

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING (DFEH)
Los Angeles District Office
611 West 6th Street, Suite 1500
Los Angeles, California 90017
(800) 884-1684/Voice
(800) 700-2320/TTY
http://www.dfeh.ca.gov

DEPARTMENT OF JUSTICE (DOJ)
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001
(800) 514-0301/Voice
(800) 514-0383/TTY
http://www.usdoj.gov

DISABILITY RIGHTS AND EDUCATION FUND (DREDF)
2212 Sixth Street
Berkeley, California 94710
(510) 644-2555/Voice and TTY
http://www.dredf.org

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)
Los Angeles District Office
Roybal Federal Building
255 E. Temple Street, 4th Floor
Los Angeles, California 90012
(800) 669-4000/Voice
(800) 669-6820/TTY
http://www.eeoc.gov

PACIFIC AMERICANS WITH DISABILITIES ACT AND ACCESSIBLE INFORMATION TECHNOLOGY CENTER (PDBTAC)
555 12TH Street, Suite 1030
Oakland, California 94607-4046
(510) 285-5600 (Voice/TTY)
(800) 949-4232
http://www.www.pacdbtac.org

PROFESSIONAL ORGANIZATIONS/AFFILIATIONS

NATIONAL ASSOCIATION OF ADA COORDINATORS (NAADAC)
P O Box 958
Rancho Mirage, California 92270
(800) 722-4232
http://www.jan.wvu.edu/naadac

CALIFORNIANS FOR DISABILITY RIGHTS (CDR) INC.
909 12TH Street Suite 200
Sacramento, California 94814
(800) 838-9237
(916) 447-2237
http://www.disabilityrights-cdr.org

** This Resource List is informational only and not endorsed/sponsored by the County of Los Angeles unless otherwise noted.*

INVESTIGATIONS and MEDIATION STAFFING

- Staff Development Training
- Standard Operational Procedure
- Case Review Progress Reports
- Work Plan (Employee Performance Management)

STAFF DEVELOPMENT TRAINING

List of Staff Development Training:

1. Employment of Round Table of Southern California - 2008
2. CAERP Southern California Presents: "Complying with State & Federal Interactive Requirements for Disability/Medical Reasonable Accommodation Request" - 2006
3. OAAC Investigations Division Training Presentation - 2009
4. OAAC Investigations Division Workshop "Policy Guidance – Elements of Proof - 2010
5. OAAC Policy Guidance – Volume 1
6. OAAC Policy Guidance – Volume 2
7. OAAC Employment Discrimination Investigative Training - 2009
8. OAAC Investigators Training Internal Process - 2006
9. EEOC Investigator Training - 2007
10. Brightline Learning Division – 7 Steps to Investigate Alleged Employee Misconduct - 2008
11. NELI 2006 Public Sector EEO and Employment Law Manual
12. California Workplace Law Education Series/Disability Management Workshop - 2010
13. Business Writing Solutions Workshop
14. OAAC Investigations Division Training – 2008
15. NELI Resolving ADA Workplace Questions – 2006
16. Transformative Mediation Training -

Employment Round Table of Southern California, ERTSC

2008 Annual Conference and Carol F. Schiller Award Luncheon

"New Horizons in Discrimination Issues – 2009 and Beyond"

Thursday, November 13, 2008
Radisson Hotel at USC

The 2008 ERTSC Annual Conference and Carol F. Schiller Award Luncheon

New Horizons in Discrimination Issues – 2009 & Beyond

November 13, 2008 – Radisson Hotel at USC - Los Angeles, CA

7:30 a.m. Registration/Networking/Continental Breakfast

8:00 a.m. **GENERAL SESSIONS**

Welcome/Introductions/ERTSC Mission, Sharon Agnew, EEO/AA Compliance Sr Mgr, Amgen & Lloyd Loomis, Lewis, Brisbois, Bisgaard & Smith, LLP, ERTSC Co-Chairpersons; Announcements – Art Flores, HR Consultant, Conference Chair
Welcome & DFEH Update – Phyllis Cheng, Director, California Department of Fair Employment & Housing (DFEH)

8:30 a.m. **Legal Update**
Andrew H. Friedman, Helmer Friedman, LLP & Anthony J. Oncidi, Proskauer Rose, LLP

9:15 a.m. **New ADA Amendments – How Do They Affect California Employers?**
Moderator: Joan Smiles, Sidley Austin, LLP
Panelists: Summary of the ADA Amendments – Deborah C. Saxe, Jones Day
Effect of Amendments on the FEHA – Phyllis Cheng
A Plaintiff's Lawyer's Perspective – Jeffrey K. Winikow, Century City workers' rights lawyer
An Employer's Lawyer's Perspective – Deborah C. Saxe
Public Policy Interest Point of View – Paula Pearlman, Executive Director, Disabili Rights Legal Center

10:30 a.m. **Break**

10:45 a.m. **ADA & FEHA in Practice**
ADA: New EEOC Guidance on Applying Performance and Conduct Standards to Employees with Disabilities
The Neiman Marcus Case – (FEHA): What it Tells Us About the Interactive Process
Lloyd Loomis, Lewis, Brisbois, Bisgaard & Smith, LLP & Kathleen Mulligan, Administrative Judge, EEOC Los Angeles District Office

11:45 a.m. **Break**

12:00 p.m. **CAROL F. SCHILLER AWARD LUNCHEON**
2008 Award Recipient – **The Reverend Cecil L. Murray**, Civil Rights Advocate

Presentation of Award - ERTSC
Sharon Agnew & Lloyd Loomis, Co Chairpersons

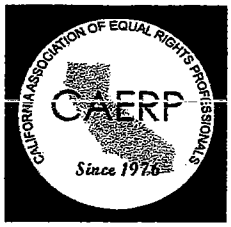
Remarks

2:00 p.m. **GENERAL SESSIONS**

Military Leaves – How State & Federal Laws Impact California Employers
Jonathan Boxer, Sr. Counsel, Northrup Grumman Space & Mission Systems

3:00 p.m. **Religion in the Workplace – New EEOC Guidance & Best Practices**
Dianna Johnston, EEOC Office of Legal Counsel, Washington, D.C.
Howard L. Magee, Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

4:00 p.m. Acknowledgements, Adjournment and next ERTSC Breakfast Seminar – January 22, 2009 at Cal State Los Angeles



CALIFORNIA ASSOCIATION OF EQUAL RIGHTS PROFESSIONALS

CAERP Southern California Presents:

"Complying with State & Federal Interactive Requirements for Disability/Medical Reasonable Accommodation Request"

September 21, 2006
Almansor Court
Alhambra, California

CALIFORNIA ASSOCIATION OF EQUAL RIGHTS PROFESSIONALS

CAERP Southern California

"Complying with State & Federal Interactive Requirements for Disability/Medical Reasonable Accommodation Request"

Almansor Court, Alhambra, CA
September 21, 2006

A G E N D A

I.	**BREAKFAST**	8:30 a.m.
II.	**WELCOME** • Phil Rocha – CAERP Board Member • Dennis A. Tafoya – CAERP Vice President	9:00 a.m.
III.	**WORKSHOP OVERVIEW** • Cecile Ochoa- CAERP Board Member	9:15 a.m.
IV.	**INTERACTIVE GUIDELINES ON REASONABLE ACCOMMODATION** • Comelita Brown, OAAC Senior Deputy • Maricamen Caceres, OAAC Deputy • Jackie Sloniker, OAAC Deputy • Stephen Strati, OAAC Deputy • Anthony Morrone, OAAC Senior Deputy	
V.	**BREAK**	10:20 a.m.
VI.	**EXPERT PANEL DISCUSSION ON THE INTERACTIVE PROCESS** • Rosa Viramontes, Deputy Director, EEOC • Theresa Satterfield, District Administrator, DFEH • Steve Morris, LA County Counsel • Anthony Morrone, Moderator	10:30 a.m.
VII.	**CLOSING REMARKS** • Kenneth Fleming, CAERP President	12:00 p.m.

Investigations Division Training

Date: Thursday, January 8, 2009

Time: 8:30 a.m. – 5:00 p.m.

Location: Quiet Cannon
901 N. Via San Clemente
Montebello, CA 90640
(323) 724-4500

Attendance Mandatory

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

Investigations Division Training Presentation

JANUARY 8, 2009

AGENDA

TIME	SUBJECT	PRESENTER
8:00 – 8:30	Sign- in and Continental Breakfast	
8:30 – 8:45	Welcome	Dennis A. Tafoya, Director Evangeline Ross, Chief Deputy Hayward Harris, Jr., Principle Deputy Cecile Ochoa, Princple Deputy
8:45 – 9:30	Refresher of Day One Training Risk Management Process	David Kim
9:30 – 10:00	Employment Discrimination Procedures	Comelita Brown
10:00 – 10:15	BREAK	
10:15 – 11:50	Report Writing	Crystal Lewis
12:00 – 1:00	LUNCH	
1:00 – 3:00	Commitment & Trust	James Champion
3:15 – 3:30	BREAK	
3:30 – 4:00	ABC Designation	Gary Sakai
4:00 - 4:30	OAAC Goals for 2009	Hayward Harris, Jr.
4:30 – 4:45	Questions and Evaluations	All

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

Investigation Division Workshop
Policy Guidance – Elements of Proof

March 17, 2010
8:30 am to 4:30 pm

Time	Topic	Presenter
8:30 – 8:45	WELCOME & REFRESHMENTS	
8:45 - 9:00	Director's Message	Dennis A. Tafoya, Director
9:00 – 9:15	Elements of Proof & Policy Guidance Overview	Stanley Eng, Senior Deputy
9:15 – 9:30	Intake Assessment Form	Stephen Strati, Senior Deputy
9:30 – 9:45	Theory & Elements - Disparate Treatment	Karen Fullner, Senior Deputy
9:45 – 10:00	Theory & Elements – Harassment	Liza Javier, Senior Deputy
10:00 – 10:15	BREAK	
10:15 – 10:30	Theory & Elements – Sexual Harassment	Comelita Brown, Senior Deputy
10:30 – 10:45	Theory & Elements – Reasonable Accommodation (Disability & Religion)	Stephen Strati, Senior Deputy
10:45 – 11:00	Theory & Elements – Inappropriate Conduct/Adverse Impact	Stanley Eng, Senior Deputy
11:00 – 11:15	Theory & Elements – Retaliation	Crystal Lewis, Senior Deputy
11:15am – 11:45	Morning Recap	Hayward Harris, Jr. Principal Deputy
11:45am – 1:00pm	LUNCH (on your own)	
1:00pm – 1:45pm	Report of Investigation	Hayward Harris, Jr. Principal Deputy
1:45pm – 2:15pm	Scenarios (Group)	
2:15pm – 2:30pm	BREAK	
2:30pm – 4:15pm	Presentation of Scenarios	
4:15pm – 4:30pm	Open Discussion	Hayward Harris, Jr. Principal Deputy

OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

POLICY GUIDANCE

Volume 1
Equal Employment Opportunity Policy

- Equal Employment Opportunity (EEO) Policy
- Sexual Harassment Policy
- Policy on Diversity
- Board of Supervisors' EEO Nondiscrimination Policy:
  - Statement
  - Poster

DENNIS A. TAFOYA
DIRECTOR

OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

POLICY GUIDANCE

Volume 2
Elements of Proof

- Equal Employment Opportunity (EEO) Policy
- Sexual Harassment Policy
- Policy on Diversity
- Board of Supervisors' EEO Nondiscrimination Policy:
  - Statement
  - Poster

DENNIS A. TAFOYA
DIRECTOR

County of Los Angeles

Office of Affirmative Action Compliance

EMPLOYMENT DISCRIMINATION INVESTIGATOR TRAINING

Dennis A.Tafoya, Director

August 2009

TABLE OF CONTENTS

Page

Purpose of the County's Employment Discrimination Complaint Process i
Objectives i
Authority/Policy ii
Board of Supervisors' Mandates ii

I. The Importance of an Effective Complaint Process 1
A. Requirements of the County's Employment Discrimination, Harassment, and Retaliation Complaint Process 1
B. Evaluating the Effectiveness of the Complaint Process 2

II. Selection of Employment Discrimination Complaint Investigators 4
A. Role of the Departmental Investigator 4
B. Important Considerations in Selecting Investigators 5
C. Conflict of Interest & Use of Third-Party Investigators 6
D. Vital Knowledge, Skills, and Abilities 7

III. When an Investigation Must be Conducted 8

IV. Investigations of Internal Complaints of Employment Discrimination, Harassment, and/or Retaliation 10
A. Reporting Internal Complaints 10
B. Investigating Internal Complaints 11
C. Processing Internal Complaints 12
D. Role of the OAAC 13

V. Investigations of External Complaints of Employment Discrimination, Harassment, and/or Retaliation 15
A. Reporting External Complaints 15
B. Department's Role in Investigating Complaints 16
C. OAAC Processing of External Complaints 17
D. Role of the OAAC in Responding to the EEOC or DFEH 17
E. Pre-Determination Resolution 18
F. Possible EEOC/DFEH Follow-up Actions 18
G. No Cause Determination and Notice of Case Closure 19
H. Receipt of a "Cause" Finding 19
I. Right to Sue Notice 20

VI. Mediation 21
A. The OAAC Employment Discrimination Mediation (EDM) Program 21
B. What is Mediation? 21
C. How the OAAC EDM Program Works 22
D. The EEOC (External) Mediation Program 23
E. The DFEH (External) Mediation Program 24

VII. OAAC Risk Management Program 25

A. Complaints Referred to Risk Management 25
B. Role of the OAAC Risk Manager 26
C. Settlement Agreements 28

VIII. Record Keeping and Reporting 30

GLOSSARY 31

IX. EXHIBITS (Forms)

A. Receipt of the County's Sexual Harassment Policy/Brochure
B. Required Postings
C. Employment Discrimination Complaint Form
D. Letter of Inquiry to the Department (LOI)
E. Letter of Acknowledgement (LOA) to the Charging Party
F. Letter of Determination to the Charging Party (LOD/CP)
G. Letter of Determination to the Subject of Investigation (LOD/SOI)

X. APPENDICES (Tools)

1. Board of Supervisors' Instruction on Investigating Complaints
2. County Sexual Harassment Policy & Brochure
3. Corrective Action Plan Users Guide
4. U.S. Equal Employment Opportunity Commission Mediation Program
5. County of Los Angeles Mediation Program
6. Steps to Investigating Employment Discrimination, Harassment, and Retaliation Complaints
7. Guide – Initial Conversation with the Charging Party
8. Guide – Initial Interview with Charging Party
9. Interview with the Subject of Investigation
10. Interview with Witness(es)
11. Investigation Log

County of Los Angeles
Office of Affirmative Action Compliance

OAAC INVESTIGATORS TRAINING
INTERNAL PROCESSES

Presented By The Senior Deputies:

Employment Discrimination Investigations
Health Services Investigations
Public Works Investigations
Fire Investigations
Risk Management
Employment Discrimination Mediation

Dennis A. Tafoya, Director
July 11 - 12, 2006

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

OAAC INVESTIGATORS
INTERNAL TRAINING PROCESSES

July 11-12, 2006
8:00 a.m. – 4:30 p.m.

AGENDA

Day 1 – Department of Public Works – Conference Room C

- **Introduction** - Marcus Castro
  - Review Agenda
  - Director's Message – Dennis A. Tafoya
  - Warm up Exercise – Flora Rostamian
- **The Importance of the Intake Process** – Floyd McDonald, Anthony Morrone
- **The Seamless Interplay Between Investigations and Mediations** – Cecile Ochoa, Comelita Brown

LUNCH

- **The Report Format** – Marcus Castro, Hayward Harris, Floyd McDonald, Anthony Morrone
- **The Important Role of Staff Assistants** – Marcus Castro, Flora Rostamian
- **EEO Update** – Anthony Morrone, Stanley Eng

Day 2 – Hall of Administration – Basement Room 85-H

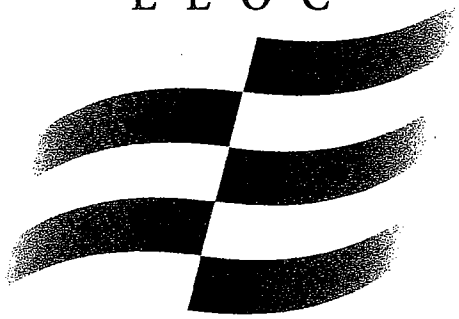
- **Introduction** - Marcus Castro
  - Review Day One
  - Review Agenda
- **The OAAC's Risk Management Process** – Hayward Harris
- **Case Review** – Hayward Harris, Gary Miller, County Counsel
- **Investigations/Mediation Database Update** – Comelita Brown, Hayward Harris

LUNCH

- **Deputy Panel** – Marcus Castro
- **Interactive Process Guidelines** – Comelita Brown, Maricarmen Caceres
- **Performance Counts! Update** – Marcus Castro, Anthony Morrone

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

E E O C



TRAINING INSTITUTE

EEO Investigator Training

Participant's Manual

March - April 2007

TABLE OF CONTENTS

DAY 1

Section 1: Introduction, Purpose and Course Objectives .....
Section 2: Reflections. .....
Section 3: What Causes Discrimination: Burning Questions/Challenges .....
Section 4: Overview of EEOC .....
Section 5: Threshold Issues .....
Section 6: Theories and Analyses of Discrimination Claims & Elements of Proof .....
Disparate Treatment .....
Race/Color .....
National Origin .....
Pregnancy Discrimination .....
Harassment .....
Religion .....
Retaliation .....
Age Discrimination .....
Adverse Impact .....

DAY 2

Section 7: Overview of Charge Process .....
Section 8: Introduction of Dante Johnson Case Study .....
Section 9: Exercise: CP Interview, Roleplay, Feedback Report, and Discussion .....
Section 10: Exercise: Drafting of Charge .....
Section 11: Video on Pretext and Discussion .....
Section 12: Investigative Tools and Techniques: Onsites, Interviews, Requests for Information, Outside Sources of Information
Section 13: Exercise: Developing Investigative Plan/Strategy .....
Section 14: Critical Thinking and Analyzing for Pretext .....
Section 15: Exercise: Interview Plan and Roleplay of Cheryl Cluck Interview .....

DAY 3

Section 16:	Systemic Investigations/Pattern & Practice and Adverse Impact Theory of Discrimination.....
Section 17:	Module: The Selection Process.....
Section 18:	Introduction of Kati Jackson Case Study.....
Section 19:	Investigator and Supervisor Roleplay and Case Discussion.....
Section 20:	Review of Employer's Response to Allegations.....
Section 21:	Development of Investigative Plan and Request for Information.....
Section 22:	Report from Groups, Discussion on RFI.....
Section 23:	Discussion of Onsite and Development of Onsite Plan.....
Section 24:	Second Roleplay of Investigator and Supervisor Case Discussion .....
Section 25:	Tools for Development of Class Case .....

DAY 4

Section 26:	Overview of ADA & Analyzing a Disability Claims .....
Section 27:	Introduction of Lita Santamaria Case Study & Recap of Elements of Proof and Therories of Discrimination on Pregnancy, Harassment, National Origin and English Only Rules .....
Section 28	Video on Interviews and Discussion of Interview Skills/Credibility Assessment.....
Section 29:	Interview of Lita Santamaria.....
Section 30	Lessons Learned from Lita Santamaria Interview
Section 31:	Investigative Plan of Multi-Issue/Multi-Bases Claim
Section 32:	Interview Plan for Most Knowledgeable Management Official
Section 33:	Roleplay and Interview with Robert Sandoval.....
Section 34:	Recap of Interview and Credibility Assessment.....

DAY 5

Section 35:	Lecture/Discussion on Remedies and Settlement Techniques .....
Section 36:	Introduction of Retaliation Case Study .....
Section 37:	Recap of Retaliation Elements of Proof .....
Section 38:	Analysis of New Allegations, Position Statement and Affidavits from Key Witnesses .....
Section 39:	Investigative Writing.....
Section 40:	Exercise: Report Writing.....
Section 41:	Lecture and Discussion on Making a Presentation to Department Heads.....
Section 42:	Exercise: Presentation of Findings to Superiors/Department Head .....

7 Steps

to investigate alleged employee misconduct

Michael Johnson, J.D. / Andrew Foose, J.D. / Katrina Campbell, J.D.

Global Compliance™
Brightline℠ Learning Division

5/21/08

Table of Contents

Introductory Materials i

A. About the authors
B. Copyright and legal disclaimer
C. About the training
D. Why is an effective investigation important?

Step 1: Decide If You Should Investigate 1

A. What should I do if the alleged victim asks that I keep the matter confidential and not investigate? (Hypothetical 1)
B. Should I investigate if the employee has filed a charge with an administrative agency or the police?
C. Confidentiality of employee hotlines and counseling programs
D. Do I need to separate the parties while I conduct the investigation? (Hypothetical 2)

Step 2: Choose the Appropriate Investigator(s) 7

A. Ensure that the investigator possesses the necessary qualifications
B. Must I honor the complainant's request that the investigator be of a certain gender, race, etc.?
C. Internal vs. external investigator
D. Fair Credit Reporting Act (FCRA) and outside investigators
E. State licensing requirements for outside investigators
F. Choose the number of investigators

Step 3: Examine Documentary, Electronic, & Physical Evidence 14

A. Workplace searches (Hypothetical 3)
B. Monitoring of employee telephone calls and conversations (Hypothetical 4)
C. Document the allegation
D. Identify the major issues to be investigated
E. Gather and review documents

Step 4: Conduct and Document Your Interviews 22

Who, When, Where
A. Should I interview non-employees who may be witnesses?
B. How should I order the interviews?
C. Select the interview sites

Copyright © 2008 Global Compliance, Brightline Learning Division

D. What should I do if an employee brings a lawyer, co-worker, or friend to an investigative interview? (*Weingarten* rights) (Hypothetical 5)
E. What if an employee refuses to be interviewed or to otherwise cooperate in the investigation? (Hypothetical 6)
F. What if a public employee refuses to answer questions on the grounds that he or she has a Fifth Amendment right to remain silent? (Hypothetical 7) (*Garrity* rights)

How to Document Interviews **32**
G. Should I tape my interviews or just take notes?
H. What if the employee demands to tape-record the interview?
I. How to take notes

How to Interview **33**
J. Prepare an outline of topics
K. Use the "Funnel Method"
L. Set the scene
M. Listen!
N. Keeping track of new topics that come up in the interview and the questions that you have not yet asked
O. Avoid certain types of questions (Hypothetical 8)
P. Should I instruct witnesses not to tell me "hearsay" or their personal opinions?
Q. How should I respond if the accused demands to cross-examine the complainant?
R. How should I respond if the witness asks whom else I am going to interview?
S. Questions and comments for the end of each interview

Credibility Determinations **40**
T. How do I deal with "he said/she said" situations? (Hypothetical 9)
U. Judge if the witness is being truthful (Hypothetical 10)

Miscellaneous Interview Issues **46**
V. Sample interview questions for a harassment investigation

Confidentiality Issues **47**
W. Avoid a defamation lawsuit and warn witnesses of the risk of a defamation lawsuit
X. Should I discipline employees if they discuss the investigation with other employees? (Hypothetical 11)

Copyright © 2008 Global Compliance, Brightline Learning Division

Step 5: Reach a Conclusion and Write the Report 52

Reach a Conclusion

A. How much detail about the complainant's and witnesses' statements should I give the accused? (Hypothetical 12)
B. What is the appropriate standard of proof? (Hypothetical 13)
C. What to do if the investigation is truly inconclusive

***Write the Report* 54**

D. Purpose of the report
E. Report is discoverable
F. Format of the report (Hypothetical 14)
G. Who should see the report?

Step 6: Take Prompt Corrective Action 58

A. Choose the appropriate level of discipline (Hypothetical 15)
B. Are oral warnings ever sufficient?
C. Options for corrective action
D. Avoid a due process, breach of contract, wrongful discharge, and discrimination lawsuit from the accused
E. Should I discipline someone who files a false complaint?

Step 7: Wrap Up and Handle Challenges from the Complainant and the Accused 61

A. Communicate the results of the investigation to the accused, the complainant, and certain others in the workplace (Hypothetical 16)
B. Follow-up
C. Where should I keep documents relating to the investigation?
D. What should I do if the complainant files a charge with the EEOC or a state Fair Employment Practices Agency?
E. Does the employer have a right to have an attorney present during an agency's interviews of employees?
F. Can I be sued successfully if I mistakenly discipline an innocent person? (Hypothetical 17)

Copyright © 2008 Global Compliance, Brightline Learning Division

www.neli.org
NATIONAL EMPLOYMENT LAW INSTITUTE
303.861.560
neli@neli.org
1601 EMERSON STREET, DENVER, COLORADO 80218
FAX 303.861.566

2006 PUBLIC SECTOR EEO AND EMPLOYMENT LAW MANUAL

www.neli.org NATIONAL EMPLOYMENT LAW INSTITUTE 30 6
neli@neli.org 1601 EMERSON STREET, DENVER, COLORADO 80218 FAX 303.861.56

2006 PUBLIC SECTOR EEO AND EMPLOYMENT LAW MANUAL

This Manual contains exclusive papers and supporting documents prepared for the 2006 *Public Sector EEO and Employment Law Conference* presented by the National Employment Law Institute in August/September 2006. We wish to thank the members of the faculty for the time and effort they have devoted to the preparation of these materials. Each author will respond to questions you may have about the topics covered. Please refer to the biographical information at the beginning of the Manual in order to contact them.

These materials should not be construed as legal advice or opinions on any specific facts. Reproduction of materials contained in this Manual in whole or in part is permitted only with prior authorization of the National Employment Law Institute. Additional copies of this Manual are available through the NELI office.

TABLE OF CONTENTS

Front . . . . . Table of Contents, Agenda, Biographies, and Federal Circuit Map

Chapter One . . . . . Developments in Equal Employment Opportunity Law

Chapter Two . . . . . Recent Developments in Sexual Harassment Law

Chapter Three . . . . . Responding to and Preventing Retaliation and Whistleblowing Claims

Chapter Four . . . . . Privacy Rights for Public Sector Employees

Chapter Five . . . . . Public Sector Wage and Hour Update

Chapter Six . . . . . ADA/Rehabilitation Act Update: Developments Affecting "Reasonable Accommodation"

Chapter Seven . . . . . Developments in the Family and Medical Leave Act

Chapter Eight . . . . . Public Employee Free Speech Rights: Balancing the Employer's and Employee's Competing Interests

AGENDA

DAY ONE

7:45 Open Registration & Continental Breakfast

8:30 Annual Review of Major Developments in EEO and Employment Law

Practical impact on governmental employment practices of decisions during the past year by the Supreme Court, appellate courts, and administrative agencies in key areas, including age, religion, sex, race, national origin, pregnancy, defamation, disparate treatment, adverse impact, due process, sovereign immunity, and other issues.

Washington, D.C. - Carla Walworth
San Francisco - Jeffrey Wohl

10:30 Refreshment Break

10:45 Harassment Developments

Discussion of recent developments which affect harassment in the public sector workplace, including conduct and "hostile environment" issues, when employers are responsible for harassment and have liability to an alleged harasser, guidance on proper policies, procedures, training, and "prompt remedial action," and issues unique to public sector employers including the requirements under the Equal Protection Clause for state action, and protection of the due process rights of those involved.

Washington, D.C. - Eric Paltell
San Francisco - Irma Rodriguez Moisa

12:00 Luncheon (Hosted by NELI)

1:00 Responding to and Preventing Retaliation Claims

Practical guidance for public employers for preventing and responding to claims, key elements of claims, legally protected activities of employees, including First Amendment protections, political affiliation rights, and whistleblower protection, the positions EEOC asserts in its Retaliation Guidelines, and a checklist of relevant questions for investigating retaliation claims.

Washington, D.C. - Jill Rosenberg
San Francisco - Timothy Long

2:15 Privacy in the Public Sector Workplace

Update of constitutional and other legal developments and their affect on public sector employment practices such as screening job applicants (testing, reference and background checks), monitoring performance and investigating conduct of employees (phone, e-mail and video surveillance, polygraphs, workplace searches), protecting employee records, (personnel/medical files, identity information, disclosure of information), and investigating employee misconduct or claims.

Washington, D.C. - Ellen Boshkoff
San Francisco - Sheryl Willert

3:30 Refreshment Break

3:45 Public Sector Wage and Hour Update

Review of recent case law and practical advice on issues unique to public sector employers such as compensatory time, sovereign immunity, volunteers, special cost-saving overtime calculations and an analysis of overtime rules, as well as a review of topics applicable to all employers such as exempt status and what is compensable time, with particular emphasis on specific problems faced by public sector employers.

Washington D.C. - Charles Jackson
San Francisco - Peter Brown

5:00 Adjourn

DAY TWO

7:30 Open Registration & Continental Breakfast

8:00 ADA/Rehabilitation Act Update: Developments Affecting "Reasonable Accommodation"

Discussion of the latest reasonable accommodatic developments, including what "triggers" the interac tive process, how employers should interact and doc ment the process, whether employers can still argu "cost/benefit" after the Supreme Court's *U.S. Airway* decision, whether/how much "leave" is required as a accommodation, whether non-competitive reassigr ment, modifications to seniority policies, light dut work-at-home, shift changes, or parking spaces ar required, whether misconduct must be excused, an undue hardship issues, including the affect of a accommodation on other employees' ability to safel and efficiently perform their jobs.

Both Locations - David Fram

10:00 Refreshment Break

10:15 Family and Medical Leave Act Developments

Practical advice regarding FMLA policies and proce dures in light of significant case law and administra tive agency decisions pertaining to eligibility, require notice by the employee and employer, "serious healt conditions," definition of "caring for" a family mem ber, medical certifications, working while on leave return to work, ability to discipline/terminate, restora tion to equivalent position, and other issues.

Washington, D.C. - Abbey Hairston
San Francisco - Patricia Mehler

11:45 Public Employee Free Speech Rights

Analysis of the developing law involving the interplay between employment law rights and obligations anc free speech rights when the regulation of speech conflicts with the First Amendment protections possessed by public sector employees, as in situations where personnel departments issue "speech codes" in order tc prevent sexual harassment by word or conduct, and practical guidelines to develop permissible methods of regulating the speech of public employees.

Washington, D.C. - Kenneth Willner
San Francisco - Lawrence Rosenthal

1:15 Adjourn

Public Sector EEO and Employment Law Manual

Registrants will receive a comprehensive Manual containing in-depth papers and supporting reference materials, together with case notes and sample forms, prepared exclusively for this Conference. This extensive Manual will serve as an excellent workbook for later reference. Those unable to attend may purchase a copy by completing the necessary information on the Registration/Order form. The Manual will be available following the San Francisco Conference.

jackson|lewis
presents

California Workplace Law Education Series

Hot Topics Presented by Employment Experts

2010 Breakfast Sessions

Disability Management Workshop:

Test Your Knowledge and Skills While Learning

March 24, 2010 - Registration: 8:30 am - 9:00 am; Program: 9:00 am - 11:00 am

Managing employees with disabilities is complicated and varied. The confusing overlap of protected leaves creates what is commonly known in the field of employment law as, the "Bermuda Triangle." This innovative and interactive workshop is designed to help employers navigate these issues through problem-solving exercises addressing the interplay of different leaves of absence under the FMLA, California Family Rights Act (CFRA), Pregnancy Disability Leave, and Workers' Compensation laws.

Program locations: Los Angeles - Orange County - Sacramento - San Francisco

Wage and Hour Update:

The Essential Guide to Handling Employee Classifications, Commissions, Bonus Payments, Wage Deductions and Meal and Rest Breaks

August 25, 2010 - Registration: 8:30 am - 9:00 am; Program: 9:00 am - 11:00 am

California leads the way in wage and hour law. With the dramatic growth of multiple plaintiff and class action lawsuits, it is critical for employers to master the complex laws governing hours of work and payment of wages. This seminar is designed to help employers avoid some of the common pitfalls in wage and hour compliance. Topics addressed include: classification of employees as exempt from overtime; deductions from employee pay; calculation and payment of bonuses and commissions; overtime calculations; and the potential impact of *Brinker v. Superior Court* and how to handle meal and rest breaks in the interim - learn from the attorneys that were called upon by the Association of Corporate Counsel to submit an amicus brief.

Program locations: Los Angeles - Orange County - Sacramento - San Francisco

California Workplace Law Update 2010:

What Happened in 2010 and What You Need to Know to be Prepared in 2011

December 16, 2010 - Registration: 8:30 am - 9:00 am; Program: 9:00 am - 11:00 am

Regardless of location, the playing field of employment law changes almost daily and the challenges employers face are increasingly demanding. Adding the "California factor" to the equation, the obstacles facing employers are innumerable. It is critical employers stay up to date on recent employment-related court decisions and legislation, and analyze the impact to their specific workplace. This session has been designed to provide employers a complete update on the latest employment law developments and solutions for the most pressing workplace issues.

*Program location: Sacramento**

Breakfast Session Locations & Registration Contacts:

Los Angeles
The Offices of Jackson Lewis
725 S. Figueroa St., Suite 2500
Los Angeles, CA 90017
LYDIA LARA
p: (213) 689-0404
e: laral@jacksonlewis.com

Orange County
Hilton Costa Mesa
3050 Bristol St.
Costa Mesa, CA 92626
JANIS FELDE
p: (949) 885-1360
e: feldej@jacksonlewis.com

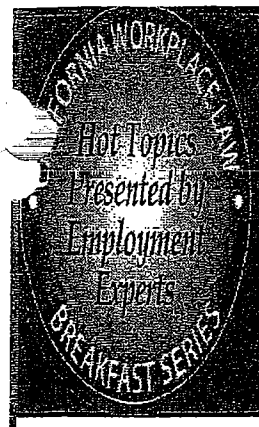
Sacramento
The Offices of Jackson Lewis
801 K St., Suite 2300
Sacramento, CA 95814
DEANA XRYZTION
p: (916) 341-0404
e: xryztiond@jacksonlewis.com

San Francisco
The Offices of Jackson Lewis
199 Fremont St., 10th Floor
San Francisco, CA 94105
GLORIA KENNARD
p: (415) 394-9400
e: kennardg@jacksonlewis.com

Registration cost is $50.00 per session per attendee which includes breakfa and program materials. For more information or to register online, please visit www.jacksonlewis.com.

Hot Topics Presented by Employment Experts

CALIFORNIA WORKPLACE LAW BREAKFAST SERIES



jackson|lewis

Preventive Strategies and Positive Solutions for the Workplace℠

Disability Management Workshop

Presented by:

Jonathan A. Siegel and Nikki Wilson Crary

Jackson Lewis LLP, 5000 Birch Street, Suite 5000, Newport Beach, CA 92660, (949) 885-1360

www.jacksonlewis.com

jackson|lewis

Jackson Lewis

California Workplace Law Education Series

Disability Management Workshop

Test Your Knowledge and Skills While Learning

March 24, 2010

Jonathan A. Siegel
Nikki Wilson Crary
Jackson Lewis LLP
5000 Birch Street, Suite 5000
Newport Beach. CA 92660
(949) 885-1360

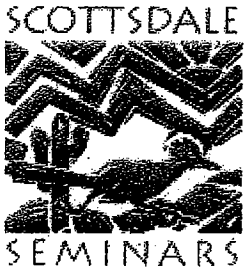
© 2010 Jackson Lewis LLP

A SCOTTSDALE SEMINARS, INC., EXCLUSIVE PROGRAM

Business Writing Solutions

PRESENTED TO

Los Angeles County
Office of Affirmative Action Compliance



BUSINESS WRITING SOLUTIONS®
A division of SCOTTSDALE SEMINARS, Inc.
P.O. Box 268, Phoenix, AZ 85001

MEET JONATHAN CLARK

Jonathan Clark, founder of **Business Writing Solutions**, has written professionally since he was 14 years old. The Wheaton College (IL) graduate began as a sports writer, but quickly moved first into public relations and then to publications editor for the National Collegiate Athletic Association (NCAA). At 23, he became the youngest executive in NCAA history.

His marketing director calls him "the best writing trainer schlepping bags through the airport." With ongoing client relationships including Southwest Airlines, the federal Inspector General community (including Defense, Treasury, Labor, HUD and others), NASA-Kennedy Space Center, RadioShack, Los Angeles County, City of Scottsdale, FedEx, Goodrich Corp. and the U.S. Postal Service, it's not hard to see why people call Jonathan "the nation's business writing expert." These organizations can choose anyone to teach writing classes. They choose Jonathan.

Jonathan has been training since 1982, teaching over 2,500 full days in all 50 states and nine Canadian provinces. His enthusiasm and passion for writing are contagious, and it's not unusual for participants to call his program "the best seminar I've ever attended." He believes "writing" and "fun" belong in the same sentence, and he will convince you, too!

He has produced an 8-disc CD-ROM version of his two day seminar, Business Writing Solutions. With his wife, Susan Clark, he also wrote a successful book on time and priority management, ***How to Make the Most of Your Work Day.*** Most recently, he authored a chapter on writing in the book ***Power Tools: The Fast Track to Success.***

Jonathan married Susan in 1972. They live in Phoenix, AZ. He has seen baseball games in 55 major league parks (including all 30 current ones), and has attended 247 different operas in 10 countries.

A WORD FROM YOUR SPEAKER

Welcome to the seminar! This program represents a significant opportunity to further your career by boosting your skills and confidence in a most important area of communication in the workplace--business writing.

To maximize your personal benefit, we need to establish a partnership--you and I--during this program. Will you commit to that?

As your instructor, I commit to making this the most beneficial and most enjoyable training session you've ever attended, and I guarantee your satisfaction. I'll do everything in my power to help achieve this goal. Please ask me questions, show me examples of your writing, and I'll be available to you before, during and after the program.

What can you do to ensure your success and enjoyment? Here are several suggestions from my 26 years of experience helping people get more out of their jobs and their lives through seminar instruction:

- *Determine that you'll make the effort to get the most out of the program, even if attending might not have been your first choice.*

- *Be willing to participate in the exercises, and share your own ideas and experience in the program whenever you can.*

- *Ask yourself: "How can I apply this idea to my own situation?"*

- *Commit yourself to trying the techniques and methods of this seminar after it's over. Choose three or four ideas you will apply immediately to your personal situation.*

That's all it takes! Now, get comfortable, make sure your pen or pencil is ready to go, and let's begin!

JONATHAN CLARK

"Plain talk will not be easily achieved in business and government. Too much vanity is on the line. Executives and managers at every level are prisoners to the notion that a simple style reflects a simple mind. Actually a simple style is the result of hard work and hard thinking; a muddled style reflects a muddled thinker or a person too dumb or too lazy to organize thoughts."

William Zinsser, *On Writing Well*

Table of Contents

Writing	**PAGE**
Beginning Thoughts	5
Writing--the Process	6
Preparing to Write	7
Clustering	9
Freewriting	15
Editing	16
Powerful Writing Tips	29
E-mail	32
Tone and Style/Ghostwriting Ideas	33
Think Like a Writer	35
Now, For the Power!	36
The Final Test	37
Grammar and Usage	
How We Get Our Rules	38
How to Spel Beter	39
Confusing Word Groups	44
Parts of Speech	46
Rules of Punctuation	54
Proofreading	59
Back of the Book	
Transitional Words and Phrases	62
Personal Action Plan	64
Bibliography	65
About Business Writing Solutions	66

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

Investigations Division Training

2008

April 24, 2008

Dennis A. Tafoya, Director

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 780
Los Angeles, California 90012
(213) 974-1080 / FAX (213) 626-7034
TTY (213) 974-0911
Website: http://oaac.co.la.ca.us

DENNIS A. TAFOYA
Director

MEMBERS OF THE BOARD

GLORIA MOLINA
YVONNE B. BURKE
ZEV YAROSLAVSKY
DON KNABE
MICHAEL D. ANTONOVICH

April 24, 2008

TO: All OAAC Investigations Division Staff

FROM: Dennis A. Tafoya
Director

SUBJECT: **OAAC INVESTIGATIONS DIVISION TRAINING CONFERENCE**

Welcome to the first of several Investigations Division (ID) Training Conferences. I am excited to know we are continuing our efforts to streamline and standardize our employment discrimination complaint process.

It is important that I share with you that our new Chief Executive Officer, Bill Fujioka, has established a goal for our department to complete employment discrimination investigations within 90 business days. This goal is a result of the Board of Supervisors efforts to reduce settlement and litigation costs. This will be a major challenge for us, but efforts such as today's training will streamline the process and assist us in meeting this goal.

In this first training conference you will examine the Theories of Discrimination, Models of Proof and the 6-Step Assessment Process. I am excited about the new 6-Step Assessment Process because it will introduce you to a streamlined, yet efficient, method of controlling jurisdictional and non-jurisdictional cases. Implementation of the 6-Step Assessment Process will provide us with a tool to achieve the Board and CEO's mandate.

Each of you are the County's expert on employment discrimination investigations and I have great confidence that under Hayward Harris' leadership you will make the County's process even better! Future training conferences will cover the standardized Employment Discrimination Process, Report Writing, Letters of Determination, and Credibility Assessments.

Again, I am excited about the outcome of these training conferences and your commitment to achieving the challenges placed before us by the Board and CEO. Enjoy your day!

DAT:HH:CL:cl

INTRODUCTION

Welcome to the Office of Affirmative Action Compliance Investigations Division Training for Deputy Compliance Officers 2008. This training is designed to provide you with the necessary skills to perform the job of Deputy Compliance Officers investigating employment discrimination complaints for the County of Los Angeles.

Presented by:
Hayward Harris, Jr. Acting Principal Deputy

Investigation Division Senior Deputies
Comelita Brown, Employment Discrimination Compliance
Stanley Eng, Sheriff's Equity Investigations
David Kim, Senior Deputy Public Works Investigations
Crystal Lewis, Department of Public Social Services Investigations
Floyd McDonald, Health Services Investigations
Tim Pescatello, Deputy Compliance Officer, Risk Management

Office of Affirmative Action Compliance

Investigations Division Training Presentation

April 24, 2008

AGENDA

Day One

Time	Presentation	Presenter
8:30 – 8:45	Welcome	Dennis A. Tafoya, Director
8:45 – 10:15	Theories of Discrimination	Comelita Brown, Sr. Deputy David Kim, Sr. Deputy
10:00 – 10:15	15 min Break	
10:10 – 12:00	Models of Proof	Hayward Harris, Acting Principal Deputy
12:00 – 1:00	Lunch	
1:00 – 2:30	6-Step Assessment Process	Stanley Eng, Sr. Deputy
2:30 – 2:45	15 min Break	
2:45 – 4:15	Practical Application/Interactive	All
4:15 – 4:30	Questions and Evaluations	

TABLE OF CONTENTS

DAY ONE

Section 1: **Theories of Discrimination**

Section 2: **Models of Proof**

Section 3: **6-Step Assessment Process**

Section 4: **Applicable Policies**

- **Los Angeles County Code:**
  - **Chapter 5.08 "Equal Employment"**
  - **Chapter 5.09 "Sexual Harassment"**
  - **Chapter 5.10 "Policy on Diversity"**
  - **Rule 25**
- **Sexual Harassment Pamphlet**
- **Equal Employment Opportunity Non-Discrimination Policy**
- **Title VII, Fair Employment and Housing Act**
- **Departmental Policies**

RESOLVING ADA WORKPLACE QUESTIONS

How Courts and Agencies are
Dealing with Employment Issues

Twenty-First Edition

BY DAVID K. FRAM, ESQ.
DIRECTOR, ADA & EEO SERVICES
NATIONAL EMPLOYMENT LAW INSTITUTE

A NATIONAL EMPLOYMENT LAW INSTITUTE PUBLICATION
SEPTEMBER 2006

8:00 Registration & Continental Breakfast

8:30 Update of EEOC Charges, ADA Trends and the Most Common Questions from Human Resource Managers and Counsel

8:45 Latest "Checklists" for Analyzing and Documenting ADA Issues
Discussion of updated checklists for supervisors, human resource personnel and attorneys to use in analyzing ADA questions in the workplace, incorporating questions considered crucial by EEOC and courts.

9:15 Who is an "Individual with a Disability?"
Discussion of the latest federal court and EEOC decisions on the meaning of "disability," including difficult impairment issues such as ADHD, stress disorders, back conditions, migraines, depression and other mental impairments, the latest "major life activities," how courts determine whether an impairment "substantially" limits a major life activity, including questions human resource professionals and counsel should be asking, why more individuals are alleging a "record of" a disability and why HR professionals need to analyze this issue, and how to train supervisors to avoid "regarding" individuals as having disabilities, including instances when a supervisor thinks s/he is simply being nice to the individual.

10:00 Refreshment Break

10:45 Who is a "Qualified" Individual?
Discussion of how courts and the EEOC have determined whether an individual is qualified for a job, including how to analyze whether qualification standards (such as licensing requirements) can be defended, analysis of "essential" functions, including whether attendance, full-time or overtime work, the ability to get along with others and to handle workplace stress, lifting, shifts, and rotating tasks are essential, the increasing dangers of "inflated" performance evaluations by supervisors, the importance of doctors' notes in determining whether an individual is qualified, and the various ways plaintiffs have explained arguably inconsistent statements since the Supreme Court's landmark ADA case on this issue.

12:00 Luncheon (Hosted by NELI)

Please Note:
Time has been set aside throughout the day to answer questions and analyze case study scenarios involving practical workplace situations. Registrants are invited to submit questions to Mr. Fram prior to the Workshop at *neli@neli.org*.

1:00 Practical Reasonable Accommodation Issues
Discussion of common and practical reasonable accommodation issues in the workplace, including when an employer should approach employees to discuss possible accommodations, how to train supervisors to recognize possible triggers to the accommodation process, what employers should say in response to employee requests, how to carefully document the interactive process, whether/how much "leave" is required as an accommodation, how "leave" under the ADA relates to FMLA leave, whether non-competitive reassignment, modifications to seniority policies, light duty, work-at-home, shift changes, parking spaces, or commuting assistance are required, whether misconduct must be forgiven as an accommodation, how to deal with an employee who is allergic to a particular substance or smell in the workplace, and undue hardship issues, including the effect of an accommodation on other employees' ability to safely and efficiently perform their jobs.

2:45 Refreshment Break

3:00 When Does an Individual Pose a "Direct Threat?"
Discussion of how courts and the EEOC have analyzed whether an individual poses a "direct threat" in the workplace since the U.S. Supreme Court's *Chevron* case, how to handle conditions such as HIV, epilepsy and mental disabilities, how to analyze risk in safety-sensitive positions, such as law enforcement and medical jobs, and whether employers can "balance" risk against harm when the harm is to the public.

3:30 Enforcing Conduct Rules
Discussion of the latest decision on enforcement of conduct rules, such as rules on drugs, alcohol, violence, safety, co-worker courtesy, and tardiness, analysis of EEOC's controversial enforcement position on conduct rules, and practical considerations concerning whether an employer should ever refer an employee with an apparent mental disability to a doctor when the employee is breaking workplace rules.

3:45 Questions and Examinations of Applicants and Employees
Analysis of recent cases concerning ADA's restrictions on medical questions and exams, and discussion of EEOC's latest formal and informal policies on questions and exams of employees, including fitness-for-duty exams, permissible questions when an applicant or employee requests a reasonable accommodation, and confidentiality issues, including whether the ADA's confidentiality restrictions apply to voluntarily-disclosed information, whether employers should post notices of employee injuries/illnesses, whether e-mail can be used to notify co-workers of such conditions, and whether employers can lawfully solicit donated leave for employees who need additional leave.

4:30 Adjourn

About The Author

David K. Fram, Esq., is Director, ADA & EEO Services for the National Employment Law Institute. In this position, Mr. Fram conducts seminars, briefings, workshops, and in-house training on the ADA and other EEO laws. He also provides guidance, as well as expert witness services, during administrative proceedings and litigation. In addition, Mr. Fram provides independent and impartial investigations into employee complaints of discrimination, including harassment and other alleged mistreatment.

From 1991-1996, Mr. Fram was Policy Attorney in the Office of Legal Counsel of the Equal Employment Opportunity Commission in Washington, D.C. Prior to this, Mr. Fram was with the law firm of Hogan & Hartson in Washington, D.C., where he represented employers in a broad range of employment issues.

Mr. Fram has spoken extensively around the country concerning ADA and EEO issues, and has trained thousands of HR professionals, attorneys, and others representing manufacturers, state and local governments, colleges and universities, hospitals and health service providers, benefit providers, non-profits, law firms and bar associations, among others. He also has trained hundreds of EEOC investigators and EEOC attorneys who analyze and resolve ADA claims. In addition, Mr. Fram has supervised and consulted with EEOC investigators and EEOC attorneys during the investigation and resolution of all forms of discrimination complaints.

Mr. Fram has written on a wide variety of employment issues. His articles on the ADA include ADA Update: The Emerging Definition of 'Disability,'" Corporate Counsel's Guide to the ADA (BLI: 11/05); "Lessons in Effectively Communicating to Avoid ADA Lawsuits," ADA Compliance Guide (Thompson: 5/04); "Recognizing Covered Long-Term Impairments," ADA Compliance Guide (Thompson: 1/04); "Understanding the ADA's Reassignment Obligation," Employment Law Strategist (7/03); "Employers' Qualification Standards Must Comport with ADA," ADA Compliance Guide (Thompson: 3/02); "Plausible Explanations for Inconsistent Statements," ADA Compliance Guide (Thompson: 8/01); "Aftermath of Sutton Analyzed," ADA Compliance Guide (Thompson: 1/01); "Accommodating Disabled Employees Through Reassignment," ADA Compliance Guide (Thompson: 9/99); "Five Keys to the Disabilities Act," The New York Times (Aug. 16, 1998); "Determining Disability: Analyzing *With* or *Without* Medication," Employment Law Strategist (March 1998); "What Employers Should Know About the ADA," The Wall Street Journal, (Sept. 16, 1996); "Key Evidence on Whether Someone is 'Qualified' Under the ADA" (BNA's Employment Discrimination Report, July 17, 1996), and "The ADA and Reasonable Accommodation: Some Common Employer Errors" (BNA's Employment Discrimination Report, June 7, 1995), among others.

About This Manual

This Manual focuses on the difficult, complex, and controversial questions and issues that arise under the Americans with Disabilities Act of 1990, as amended. In covering these topics, I have included recent case citations, as well as EEOC guidance -- both formal and informal -- on the issues. Of course, the manual is not legal advice; for legal advice on a particular issue, I recommend that you consult an attorney. I hope you find this Manual helpful in handling and litigating your ADA issues.

David K. Fram, September 2006

Table of Contents

Table of Cases iv

"Disability" Issues ..... Chapter 1

"Qualified" Issues ..... Chapter 2

"Reasonable Accommodation" Issues ..... Chapter 3

"Direct Threat" Issues ..... Chapter 4

Drug, Alcohol and Other Conduct Rules ..... Chapter 5

Disability-Related Questions and Medical Exams ..... Chapter 6

Checklists for Handling ADA Issues ..... Chapter 7

Transformative Mediation Training

Sponsored by UCSB in collaboration with the Institute for the Study of Conflict Transformation

Transformative Mediation Skills
Program Agenda

Day One

8:30 A.M. *PROGRAM STARTS*

Morning

Welcome & Introductions

The Transformative Framework: Theoretical Basis

BREAK

Dynamics of Conflict:
- **Destructive Conflict**
- **Empowerment & Recognition Shifts**
- **Conflict Transformation**

12:00-12:45 *LUNCH*

Afternoon

The Third-Party Role:
- **Mediator Premises, Role, and Goals**
- **Mediation Demonstration**

Mediator skills I: Identifying Intervention Opportunities
- **Introducing the Core Activities**
- **The Practice of Proactive Listenting**

BREAK

Mediation Skills II: Avoiding Directiveness
- **Identifying directive behaviors**
- **Avoiding directive impulses**

4:30 P.M *PROGRAM ENDS*

STANDARD OPERATIONAL PROCEDURE

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

EMPLOYMENT DISCRIMINATION COMPLIANCE

STANDARD OPERATING PROCEDURES

Revised September 2010 (DRAFT)

"To Enrich Lives Through Effective & Caring Service"

GENERAL OVERVIEW

Investigative Division

The County of Los Angeles has a civil service workforce of approximately 102,000 employees, working in 39 separate County departments and agencies. The incredible diversity of our workforce and the diverse customers we serve present us with new opportunities as well as challenges.

One of these challenges is the effective management of our workforce diversity and to ensure that all employees are afforded the opportunity to work in a workplace free from discrimination. When an employee believes he/she is being subjected to employment discrimination, the individual has the right to file a complaint and have the complaint investigated in a timely, thorough, and effective manner; and if the complaint is substantiated, have appropriate corrective action taken.

To accomplish this goal the Office of Affirmative Action Compliance has established the Investigative Division to assist County departments, with respect to the following employment discrimination complaint process:

- **Investigate employment discrimination complaints.**
- **Provide oversight, and technical assistance to departments.**
- **Provide assistance in responding to external agency (i.e. EEOC or DFEH) inquiries.**
- **Negotiate No-Fault Settlement Agreements.**
- **Conduct trainings on the Employment Discrimination Complaint Process and the Reasonable Accommodation Guidelines.**

The outlined Standard Operating Procedures (SOP) is designed to provide Deputy Compliance Officers (DCO) with guidelines on how to process and investigate employment discrimination complaints. These procedures do not describe every nuance to a complaint investigation and will be updated as necessary.

NOTE: All documents prepared shall be in **ARIAL** font size **12** with **justified** alignment. A review form should be attached to all submitted documents **(Attachment 1)** for review/processing. A copy shall be saved in the **L**: share drive in the appropriate folder.

I. INTAKE PROCESS

An employment discrimination complaint can be received in one or more of the following ways:

- OAAC Discrimination Complaint Form **(Attachment 2)** submitted by the Complaining Party (CP) or referred from the department
- In person
- Telephone call
- Electronic mail or OAAC Website
- Complaint letter
- Database
- Claims for Damages to Person or Property submitted to the County of Los Angeles Board of Supervisors
- Fax
- Complaint served by external agency (EEOC / DFEH)
- County interdepartmental referral [i.e. Board of Supervisors, Department of Human Resources (DHR), Office of County Investigations (OCI)]
- Grievance
- Investigation Process

A. Discrimination Complaint Form

A common method used by Charging Parties (CP) is to submit an OAAC Discrimination Complaint Form to someone in their departmental human resources section or directly to the OAAC. If the DCO receives a complaint without a complaint form, a letter should be sent to the CP requesting that he/she fill out the complaint form, which will be attached to the correspondence **(Attachment 3)**. It is the responsibility of the assigned DCO to make every effort to obtain a completed complaint form prior to case closure. A follow up letter to the CP might be necessary **(Attachment 4)**.

B. Complaint Case Folders

1. Case numbering/designation

   Complaint numbers are automatically assigned when new complaints are logged into the OAAC Investigative Tracking and Management System (ITMS) database. Complaint numbering is based on the investigative sections acronym, the calendar year received, and the number assigned to the case. (e.g., HSI_2010_0055).

2. Folder Set-up and Maintenance

   a. Investigative folders are color coded.

      i. External Complaints (EEOC & DFEH) are in green folders

      ii. Internal Complaint are in yellow folders

      iii. Board and Fraud Hotline Referrals are in red folders

   b. Folders shall be labeled with the CP's name, case number, and department name.

   c. Investigative folders shall be neat and organized. Each document should be two-hole punched and secured. Loose, unfastened documents are unacceptable. Documents should be filed in chronological order with the most recent items on top of their respective sections. Folders are divided into the following sections:

      i. Complaint

      ii. Assessment

      iii. Report

      iv. Determination – Settlement Agreements

      v. Correspondence – Mediation Letters

      vi. Deputy Notes

   d. All investigative folders shall contain Action Plans (**Attachment 5**). DCO's shall update Action Plans and enter completion dates for each listed task. Action Plans shall remain on top of the Deputy Notes section in the case folder.

e. All settlement instruments shall be placed in a sealed manila envelope within the investigative file and labeled "Confidential Settlement Agreement."

f. All case files should be treated in accordance with OAAC's internal policies regarding confidential information. Lock all case files in a secure location when leaving the office.

II. ASSESSMENT PROCEDURE

Senior Deputy Compliance Officers or designees shall assign cases to DCO's. Within 15 business days, DCOs shall assess complaints to determine if they are jurisdictional to the OAAC and require investigation.

Some investigations involve allegations that are jurisdictional to multiple County Departments including, but not limited to, the Auditor-Controller, the Chief Executive Office (CEO) Office, County Counsel or Department of Human Resources (DHR). To coordinate such multi-jurisdictional complaints and to avoid duplicative efforts, Common Subject Searches (CSS) shall be conducted before cases are assigned to DCO's. Staff Assistants and DCO's shall follow CSS protocols as outlined in the Investigative Division's June 21, 2010 Inter-Office Memo **(Attachment 6)**.

In completing assessments, DCO's shall:

- Review the allegation(s) in the Discrimination Complaint Form or other submitted documents (letter, e-mail, fax, etc.) upon which the complaint was generated.

- Conduct a clarifying interview with the Charging Party.

  If clarifying CP interviews cannot be coordinated within three attempts, DCO's should send a written request for contact **(Attachment 7)** to the CP. If the CP still fails to respond, the DCO shall base the assessment on the information already received.

- Complete an OAAC Intake Assessment Form **(Attachment 8)** clearly identifying:

  - the theory(ies) of discrimination,
  - the alleged protected basis(es),
  - the alleged adverse action,
  - the analysis upon which the final classification was based.

Note: External complaints should be forwarded directly to OAAC Employment Discrimination Mediation (EDM). No assessments are required.

A. Jurisdictional Complaint – "Class 1"

1. If a complaint is deemed jurisdictional, the DCO must complete an Intake Assessment Form supporting the classification. The DCO also prepares an Assessment Letter **(Attachment 9)**, which informs the department of

the complaint's classification and referral to OAAC mediation. Both documents shall be submitted to the Senior DCO for review and approval.

2. For all jurisdictional complaints, the DCO must also assess its level of risk. Complaints involving allegations of sexually inappropriate conduct and/or egregious examples of discrimination are potentially high-risk complaints. High-risk complaints must be reported to the Senior DCO who will assess the case and determine whether it is appropriate to refer it to the OAAC's Risk Manager for review. The Senior DCO will refer high-risk cases to the Risk Manager in an expeditious manner utilizing the Risk Management Referral memo format **(Attachment 10)**. The Staff Assistant within the section will notify the Staff Assistant within the Risk Management section of the referral. Both Staff Assistants are responsible for tracking the Risk Management referrals.

B. Non-Jurisdictional Complaint – "Class 2"

1. If a complaint is not jurisdictional, the DCO must complete an Intake Assessment Form supporting the classification. The DCO also prepares a Department Assessment Letter **(Attachment 11)** and Letter of Determination **(Attachment 12)**, to inform the department and the Charging Party of the complaint's non-jurisdiction and the referral to the department's human resources division or the appropriate forum for resolution. All documents shall be submitted to the Senior DCO for review and approval.

2. Upon approval from the Senior DCO, the complaint file can be closed.

MEDIATION

After a complaint has been assessed and determined to be jurisdictional, the DCO will assess whether the complaint should be sent to the OAAC Employment Discrimination Mediation (EDM) section.

A. Referral to EDM

1. All internal assessed jurisdictional complaints reviewed and approved by the Senior DCO will be sent to EDM, with the exception of non-County employees (case-by-case basis).

2. Complaints filed with the Board of Supervisors will be sent to EDM on a case-by-case basis.

3. Cases filed with EEOC will only be sent to the EDM when an invitation **(Attachment 13)** to mediate is attached to the complaint. EEOC generally provides the County two weeks from the close of mediation to present a Position Statement.

4. The staff assistant is responsible for forwarding the complaint from the investigative section to EDM.

B. Mediation Process

1. Mediation is a voluntary, alternative dispute resolution method. The EDM is responsible for contacting the CP and the involved County department to ascertain whether mediation is an agreeable option.

2. If the parties do not agree to mediation, EDM will close its case and return the Complaint to the assigned DCO.

3. If the parties agree to mediate, the mediation process will take approximately 30 business days to complete.

4. In the event mediation exceeds a reasonable amount of time (i.e. 45 business days), the DCO should contact EDM regarding the mediation status and inform the Senior DCO of the delay to determine the appropriate course of action.

C. Mediation Closure

1. When the mediation process is completed (i.e. settlement, impasse, or party declined), the EDM will send the complaint back to the assigned DCO for investigation via the database.

III. REPORT OF INVESTIGATION

D. OAAC Investigation

[Note: If during the course of an investigation, the CP files litigation against the Department encompassing the same allegation(s) as asserted in the employment discrimination complaint, the DCO should verify the civil complaint and defer to the recommendation of County Counsel. Generally, the assigned DCO is to complete the investigation unless County Counsel otherwise instruct not to in writing. The Senior DCO shall promptly notify the Principal Deputy. The DCO shall properly document in the database.]

1. Reports are not complete and final until it is approved by the Senior DCO. **(Attachment 14, A-C)**

2. Until a report is finalized, it must bear the watermark "**DRAFT**" on each page.

3. The DCO should present the report of investigation to the Senior DCO sufficiently prior to the due date (90 business days) to allow for review, edit, and additional investigative research, if necessary.

4. Reports of Investigation on cases filed with the Board of Supervisors must be approved by Senior DCO and forwarded to the Principal Deputy, with copies to the Executive Secretary and Principal Deputy's secretary. Completed Board of Supervisors and Department of Human Resources referrals will include a cover letter to the respective office and Complaining Party informing them of the outcome of the investigation. **(Attachment 15)**

5. Investigative reports on cases filed with the Office of County Investigations (OCI) must be approved by the Senior DCO and Principal Deputy. A Case Disposition Form must be completed by the DCO and sent with a copy of the Report of Investigation to OCI. **(Attachment 16)**

6. All substantiated cases must be approved by the Senior DCO; high risk cases will be referred to the Risk Manager.

7. Reports of Investigation must be drafted in plain language and in proper format free of spelling and typographical errors.

8. Recommendations requesting corrective action will be included for all substantiated complaints.

E. Substantiated Cases

1. After Senior DCO's approval of substantiated employment discrimination complaints, internal or external, the high risk Reports of Investigation will be referred to OAAC Risk Management (RM) for review and final approval. **(Attachment 17)**

2. OAAC RM will review the Report of Investigation within 7 business days for comments/approval.

3. Once approval is received, the DCO will ask the department to submit a corrective action plan within 10 business days.

4. OAAC RM will review the Corrective Action Plan within 7 business days for comments/approval.

5. The DCO is required to track the progress of the immediate/appropriate action(s) implemented by the department and input the date in Corrective Action field when the confirmation of corrective action **(Attachment 18)** is received from the department.

6. If the department fails to submit a corrective action plan within 30 business days, the DCO will notify the Senior DCO and the matter will be referred to OAAC RM for follow-up to ensure compliance from the department. **(Attachment 19)**

   Note: For external cases with substantiated findings, ascertain CP's proposed remedy from the external agency for potential settlement. (See No-Fault Settlement Agreement – p. 13)

IV. LETTER OF DETERMINATION (LOD)

F. OAAC Investigation

1. Upon completion and the Senior DCO's final approval of the Report of Investigation, the DCO will prepare the Letter of Determination (LOD) for the Charging Party **(Attachments 20A, 20B, 20C)** and the Subject(s) of Investigation **(Attachments 21A, 21B, 21C)** advising them of the outcome of the investigation. After Closed Case Conference, all LOD letters will be mailed to CP and/or SOI.

2. All applicable fields in the OAAC database are to be completed for case closure.

   Note: If settlement is resolved through mediation, CP does not receive an LOD. The SOI will receive a LOD after the completion of the investigation.

G. External Agency Responses

1. External cases will not be officially closed until OAAC receives a Notice of Case Closure **(Attachment 22)** or a Dismissal and Notice of Rights **(Attachment 23)** from the respective agency.

2. The DCO is to prepare a Submission letter (Attachment 24A) to the respective department upon completion of the position report submitted to the external agency.

3. The DCO will prepare a Closure Notice **(Attachment 24B)** to the respective department upon notification from the external agency of the Notice of Case Closure or Dismissal and Notice of Rights. No LOD will be required.

4. All applicable fields in the OAAC database must be completed for case closure.

H. File Closure Procedure

1. Investigative Section

   a. In processing the case file for filing, the DCO shall remove all unnecessary documents from the case file folder. Only permanent/final documents are to be included in the closed file. No "DRAFT" or working documents should be in the file.

   b. Under the DCO's discretion, a separate folder can be created for problematic cases.

c. All settlement agreements should be sealed in an envelope marked "Confidential."

d. A red dot on the complaint file signifies a closed case.

e. Investigative sections will maintain case files for at least two calendar years in the office.

2. Archive Storage

a. Offsite archive will be utilized for storage of cases beyond two calendar years in age.

b. Archived cases can be retrieved through the request of the staff assistant.

c. Archived case files must be boxed, categorized and stored in a central location.

V. AGREEMENT TO WITHDRAW

On occasion, Charging Parties have expressed a desire to withdraw their complaints and have OAAC cease or not conduct an investigation. The CP may wish to withdraw a complaint for a variety of reasons including, but not limited to, fear of retaliation, remorse for filing a complaint against a co-worker or supervisor, resolution of the complaint, or a realization that the allegations contained in the complaint are not true.

A. Factors

1. Each complaint must be analyzed individually to ascertain whether withdrawing the complaint is permissible. There is no hard and fast rule as to when a CP will be permitted to withdraw a complaint.

2. In deciding whether withdrawing a complaint is appropriate, the DCO should consider each of the following factors:

   a. Whether the subject of the investigation (SOI) leaves County service
   b. Nature of the complaint
   c. Severity of the allegation
   d. Whether the CP is willing to sign a No-Fault Settlement Agreement
   e. Age of the case
   f. Likelihood that a violation of County policy occurred
   g. Nature of the relationship between the CP and the SOI (i.e., whether they are co-workers or manager-subordinates)

B. Procedure

1. In the event a CP informs a DCO that he/she wishes to withdraw a complaint, the DCO should ascertain the reason(s) for the request by speaking with the CP. The DCO should consider each of the factors listed above in making an assessment as to whether the CP should be permitted to withdraw his/her complaint.

2. If after making that assessment the DCO believes the CP should be permitted to withdraw the complaint, the DCO must prepare a memorandum **(Attachment 25)** to the Senior DCO explaining the basis for his/her recommendation for the CP be permitted to withdraw the complaint and that OAAC cease or not conduct an investigation.

3. Final authority to permit a CP to withdraw a complaint rests with the Senior DCO. If the Senior DCO concurs with the DCO's recommendation, the CP will be asked to sign OAAC's Agreement to Withdraw Complaint. **(Attachment 26)**

4. Once the agreement has been signed by the CP and the Senior Deputy, OAAC will close its case and cease any further investigation relating to that complaint.

5. OAAC will provide a copy of the signed Agreement to Withdraw to the CP and retain the original in the investigative file.

6. OAAC will notify the Charging Party **(Attachment 27)** and the Subject of Investigation **(Attachment 28)** by letter confirming the withdrawal and closure of the discrimination complaint.

7. A copy of the department notification letter **(Attachment 29)** shall be placed in the investigation case file under the Determination tab prior to case closure.

8. Process file for case closure. **(See File Closure Procedure – p. 11-12)**

VI. NO-FAULT SETTLEMENT AGREEMENT

Once an employment discrimination complaint has been returned from OAAC EDM due to impasse or parties electing not to mediate, a case can still be settled if both parties elect to do so. A settlement is a legal agreement between the CP and the County resolvies the complaint. Settlement agreements can include, but are not limited to, monetary payments, promotions, transfers, reasonable accommodation, training, etc.

Note: Some settlements, internal/external, may require the review by County Counsel.

A. Internal Complaints

1. When both the CP and the department express interest in settlement subsequent to mediation closure, the DCO can facilitate the process as the neutral third party in drafting an agreement.

2. The DCO is to contact both the CP and the department to negotiate the terms and stipulations of the settlement agreement.

3. Depending on the nature of the complaint and/or investigation findings, the Risk Manager may be involved during the settlement negotiation process (Attachment __"Risk Management Process").

4. Once an agreement has been reached between the CP and department, the DCO will prepare a draft No-Fault Settlement Agreement for review by the Senior DCO, OAAC Risk Manager, Principal Deputy, Chief Deputy and Director of OAAC.

5. With final approvals **(Attachment 30)**, the DCO is to obtain signatures from the CP and the department representative.

6. OAAC Director's signature will finalize the No-Fault Settlement Agreement with copies provided to each party involved. **(Attachment 31)**

B. External Complaints

1. The DCO contacts the external agency to request the CP's desired remedy.

2. The DCO contacts the department and discusses the proposed remedy.

3. Once agreement is reached between the CP and department, the external agency will draft the Settlement Agreement.

4. The DCO will provide a copy of the DRAFT Settlement Agreement to the department, Senior DCO, and OAAC Risk Manager for approval.

5. The external agency will finalize the No-Fault Settlement Agreement upon signature of the CP and the department representative. **(Attachment 32)**

C. County Counsel and Claims Board

1. In addition to OAAC and County Counsel review, the Board of Supervisors has established the County Claims Board to review and approve all departmental requests for monetary settlements exceeding $20,000.

2. Monetary settlements exceeding $100,000 require both the approval of the Claims Board and the Board of Supervisors. The purpose of this Board action is to ensure that departments investigate all complaints in a timely, effective, thorough manner; and take appropriate corrective action.

3. Both the Claims Board and the Board of Supervisors require departments to develop and implement a corrective action plan to remedy identified violations and to prevent future occurrences. The Claims Board and/or the Board of Supervisors regularly consult with the Director of OAAC for an evaluation as to the merits of the discrimination allegations, the efficacy of the corrective action plan, and assessment of the effectiveness of the investigation.

LIST OF ATTACHMENTS

Attachment No.	DESCRIPTION
1	Case Review Form
2	OAAC Discrimination Complaint Form
3	Acknowledgement Letter to CP with Request for DCF
4	Request to CP for DCF
5	Action Plans (with and without Mediation)
6	Common Subject Search Protocols
7	Request for Charging Party contact
8	Intake Assessment Form
9	Assessment Letter
10	Risk Management Referral Internal Memo
11	Department Assessment Letter – Non-jurisdictional
12	CP Letter of Determination (LOD) – Non jurisdictional
13	Sample – External Invitation to Mediate
14	Sample – Investigative Report Setups (Internal and External)
15	Correspondence for Board Referrals
16	OCI Case Disposition Form Cover Sheet
17	Request for Risk Management Review and Assessment
18	Confirmation of Corrective Action Plan
19	Risk Management Referral – CAPS Request
20	CP LODs
21	SOI LODs
22	DFEH Notice of Case Closure
23	EEOC Dismissal and Notice of Rights
24	External and Submission Closure Notices to Department
25	Agreement to Withdraw Complaint – Recommendation Memo to Sr. DCO
26	Agreement to Withdraw Complaint
27	Notice of Complaint Withdrawal to CP
28	Notice of Complaint Withdrawal to SOI
29	Notice of Complaint Withdrawal to Department
30	Risk Management Settlement Review & Approval form
31	No-Fault Settlement Agreement
32	EEOC Negotiated Settlement Agreement

ATTACHMENT 1

HEALTH SERVICES INVESTIGATIONS REVIEW FORM

Date Received: _____ ☑ Common Subject Search (CSS)

Deputy Name: _____ CSS Date: _____

Case Name: _____ Department: _____

Case Number _____

Complaint type: ☐ Internal Investigation Classification: ☐ 1 ☐ 2

☐ External Investigation Send to: ☐ Mediation

☐ Board Referral

DATE	ACTIVITY

ATTACHMENT 2

Case No. _____

County of Los Angeles
Office of Affirmative Action Compliance

For the fastest, most convenient filing of your complaint, use our online complaint form!

DISCRIMINATION COMPLAINT FORM

Print or Type Your Information Below:

Name:	Job Title:	Employee Number:
Department:		
Home Address:		
Telephone: Home:	Work:	Cell:
What number from above do you prefer we use to contact you? ☐Home ☐Work ☐Cell		
E-mail Address:	Is this your ☐ personal or ☐ work e-mail address?	
Please indicate the most convenient time(s) and day(s) to reach you: Time(s) _____ _____ Day(s) _____ _____		
Are you a Peace Officer? ☐Yes ☐No		

I WISH TO FILE A COMPLAINT AGAINST:

Name(s) of person(s) you're complaining about?

Is/Are the person(s) you're complaining about (a) Peace Officer(s)? ☐Yes ☐No

Job Title(s) of person(s) you're complaining about?

1. I believe I've been discriminated against because of (race, sex, age, disability, religion, national origin, color, retaliation, etc.):

   _____

2. This discrimination resulted in the following unfair treatment (discharge, denial of promotion, harassment, etc.):

   _____

   _____

3. Date discrimination occurred:

   _____

4. Why do you believe the unfair treatment you describe is discrimination?
Attach a separate sheet, if necessary.

5. What is your desired remedy?

6. List the names, job titles, and telephone numbers of witnesses, coworkers, or others you feel could provide evidence. *On a separate sheet, explain what you think each witness will be able to tell us.*

Name	Title	Telephone Number

7. Your Employment Information:

   A. Date hired or applied for job:

   B. Your job title at time of discrimination:

   C. Name and title of your immediate supervisor:

   D. Name of your department's Affirmative Action Coordinator?

8. Have you attempted to resolve your problem by discussing this matter with someone in management?

☐ Yes ☐ No

If yes, provide the name(s) and title(s) of the person(s) and state what happened:

9. Are you interested in resolving your complaint through Dispute Resolution Mediation?

☐ Yes ☐ No ☐ Not Sure

9A. Would you like additional information on our Dispute Resolution Mediation Program?

☐ Yes ☐ No

10. Have you filed this complaint with the U.S. Equal Employment Opportunity Commission or California Department of Fair Employment and Housing?

☐ Yes Date: _____ ☐ No

11. Do you have an attorney/representative concerning this complaint?

☐ Yes ☐ No

12. Optional: Please provide the information below for statistical purposes:

Sex: ☐ Female ☐ Male

Race/Ethnicity: ☐ White ☐ American Indian ☐ Black ☐ Other ☐ Asian & Pacific Islander ☐ Hispanic ☐ Filipino

I declare that the above statements are true to the best of my knowledge.

_____ Signature

_____ Date

Mail this completed form to:

County of Los Angeles
Office of Affirmative Action Compliance
500 West Temple Street, Room 780
Los Angeles, CA 90012-2723

Or fax to: (213) 626-7034

TTY Users: (888) 478-3502

For Office Use Only:

Received by: _____ Date: _____

rev. 9/10 bc

ATTACHMENT 3

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 780
Los Angeles, CA 90012
(213) 974-1080
Fax (213) 626-7034 TTY (213) 482-2598
http://oaac.co.la.ca.us

Members of the Board
Gloria Molina
Mark Ridley-Thomas
Zev Yaroslavsky
Don Knabe
Michael D. Antonovich

Dennis A. Tafoya
Director

September 30, 2010

[CP NAME
ADDRESS
CITY, ST, ZIP]

Dear [CP NAME]:

This is to inform you that I have been assigned to investigate your complaint of employment discrimination. In order to facilitate the process, please fill out the attached Employment Discrimination Complaint Form. In addition, please attach a summarized written statement of your discrimination complaint including any pertinent documentation. Please hand-deliver, mail, or fax your documents to the following address by [DATE – two weeks from date]:

Office of Affirmative Action Compliance
County of Los Angeles
Office of Affirmative Action Compliance
Attn: Dennis Tafoya, Director
500 West Temple St., Room 780
Los Angeles, Ca 90012
Fax: (213) XXX-XXXX

If you need assistance in completing this form, you may contact me at [Investigator phone number]. Your complaint will be treated confidentially, carefully evaluated, and promptly investigated. If corrective action is necessary, it will be taken. No adverse action will be taken against you for making your complaint.

CP NAME
DATE
PG

After reviewing your complaint form and any documentation, I will contact you and, if necessary, schedule an interview to discuss the issues involving your complaint.

Sincerely,

[INVESTIGATOR FIRST LAST]
Deputy Compliance Officer

CB:SS
J:\2010 Revision\SOP 2010 Attachments_9.20.10\3 - Acknowledgement Letter.doc

Attachment

c: OAAC, DHS Investigations

ATTACHMENT 4

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 780
LOS ANGELES, CALIFORNIA 90012
(213) 974-1080 / FAX (213) 626-7034
HTTP://OAAC.CO.LA.CA.US

DENNIS A. TAFOYA
DIRECTOR

MEMBERS OF THE BOARD
GLORIA MOLINA
MARK RIDLEY-THOMAS
ZEV YAROSLAVSKY
DON KNABE
MICHAEL D. ANTONOVICH

CONFIDENTIAL
PERSONNEL INFORMATION

October 31, 2008

John Smith
1234 Main Street
Los Angeles, CA 90012

Dear Mr. Smith:

Thank you for speaking with me today. Enclosed is a Discrimination Complaint form. Please complete the form and return it to me at the address listed above or fax it to (213) 580-0014. If you have any questions, please feel free to contact me at (213) 202-5897.

Sincerely,

STEPHEN STRATI
Deputy Compliance Officer

CB:SS
J:\2010 Revision\SOP 2010 Attachments_9.20.10\4 - Request to CP for DCF.doc

c: OAAC, DHS Investigations

ATTACHMENT 5

ATTACHMENT 5

COUNTY OF LOS ANGELES

OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

INVESTIGATIONS ACTION PLAN
CONCURRENT WITH MEDIATION

SHARED SERVICES/MONITORED			
ACTIVITY	**TOTAL # OF DAYS TO**	**Due Date**	**Actual Completion Date**
Receive Complaint from department or Charging Party (CP)	**1**	**9/30/10**	
Staff Assistant processes complaint into ITMS database Assigns number, creates case file and forwards to Senior to assign to deputy			
Complete Assessment	**10**	**10/14/10**	
Deputy schedules interview w/CP (conducts telephone or face-to-face interview), completes jurisdictional assessment/Clarifying interview with the CP (Face-to-face preferred) using OAAC Assessment Form and the Investigation Log	*5*	*10/7/10*	
Drafts Assessment Worksheet & Cover Letter to the department	*5*	*10/14/10*	
Submit Assessment for Senior Review	**2**	**10/16/10**	
Deputy attaches completed assessment to Senior for review and approval Senior reviews and/or approves assessment or returns for correction and/or further information	*2*	*10/16/10*	
No Mediation * *(Board, Anonymous or Fraud Hotline Complaint)*	**5**	**10/23/10**	
Deputy identifies Witnesses and drafts interview questions Deputy requests contact information and documents from the department Deputy drafts Letter of Inquiry (LOI) for monitored complaints			
Conduct Investigation	**36**	**12/13/10**	
Deputy interview/re-interviews CP, if necessary	*5*	*10/30/10*	
Deputy reviews documents	*1*	*11/1/10*	
Deputy schedules and conducts SOI and Witness Interviews and obtains signed statements	*30*	*12/13/10*	
Draft Report of Investigation	**10**	**12/27/10**	
Deputy drafts report Deputy assembles exihibits			
Submit Report for Senior Review	**10**	**1/10/11**	
Deputy submits report to Senior for review and approval Senior returns report to Deputy for correction and/or additional information, if necessary	*8*	*1/7/11*	
If applicable, submit draft report and LODs to department for courtesy review	*2*	*1/10/11*	
Finalize Report	**13**	**1/28/11**	
Deputy completes corrections and finalizes documents (report & LODs), gives to Staff Assistant to scan, mail out and attach to ITMS file Update notes in ITMS, prepare case file for case closure, submit to Senior for closure			

Note: A five day extension may be in writing and indicated in ITMS at anytime with Senior Deputy approval.

ATTACHMENT 6

OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

SHARED SERVICES INVESTIGATIONS DIVISION

Inter-Office Memo

June 21, 2010

To: Investigative Division Staff Assistants
Investigative Division Deputy Compliance Officers

From: Cornelita Brown
Lead, Common Subject Search

Subject: Common Subject Search

Common Subject Search (CSS) is a search in ITMS for all Subject(s) of Investigation (SOI). The CSS is a Board directive to avoid duplications when conducting investigations. The purpose of this search engine is to conduct a common search for all SOIs to determine if there are any additional cases currently under investigation. If so, the Requested Department should contact the appropriate designated person from the following four County Departments to discuss any related issues pertaining to the case and/or SOI under investigation.

- Auditor-Controller – OCI Maria Santana – (213) 893-0348
- CEO-Workers Compensation – Brian Mc Kenzie (213) 351-6426
- County Counsel – Brian Chu (213) 974-1956
- Department of Human Resources – Marion Figueroa (213) 974-2616

When a search is conducted using the CSS engine the following information will be provided to the Requested Department:

- Name of SOI
- Employee Number
- Requested Department Name
- Date of Lead Department Open
- Date of Lead Department Closure
- Lead Department Name
- Lead Department Case Name

The Requested Department should use the information to become familiar with any relevant cases or issues involving the SOI.

Due to the sensitivity of this search engine, only investigative Staff Assistants, the Lead Common Subject Search (LCSS) for OAAC, and the Executive office staff have access to perform this search.

Staff Assistant Steps: Effective

1. When a new complaint is received:
- Access the CSS tracking system (see Attachment I - instructions)
- Search for SOI criteria at the beginning and end of each investigation
- If the CP did not identify an SOI (i.e. Anonymous, named County Department or a non county employee) the CSS is not needed

2. Review Form/Case Folder:
- Insert a check ☑ on the review form in the appropriate box indicating a CSS was completed (see Attachment II)
- Attach the review form and a copy of the findings to the new case folder
- If the CSS did not produce a matching SOI, import the form into an Excel document and type the following and attach it to the case folder:
    a. SOI name search
    b. Date search
    c. No search found
- Provide these documents to the assigned Deputy for assessment and/or investigation

3. Document steps in Database:
- Include in the "note" section of the database that a CSS was performed and what data was found and date of search.

4. Provide the following reports:
- LCSS for OAAC
    1. Provide monthly reports of all CSS findings to the LCSS by the 5th of each month for data retrieved from the prior month.

- Senior Deputy
    1. Provide weekly reports of all CSS findings to the Senior Deputy every Monday of data retrieved from the prior week.

- Investigator
    1. Provide daily/as needed print outs of CSS findings to new case folders.

Deputy Compliance Officer (DCO) Steps:

Upon receiving the CSS information from the Staff Assistant the DCO will:

1. Contact the CSS Lead Department to obtain information about the SOI and inquire as to:

- What the case is about
- Is the case open or closed
- What were the findings; and
- The nature of the case

2. Document Steps in Database:

- Include in the Deputy "note" section information obtained from Lead Department regarding SOI CSS findings

Because of the exchanging of confidential information, it is OAAC's policy not to provide Requested Departments with documents such as investigative reports or any other relevant documentation unless approved by the Principal Deputy or above.

If you have any questions or require additional information regarding this process please let me know or you may contact Monica Ector of my staff at (213) 202-5839.

HH:CB:me
[illegible]

Attachment

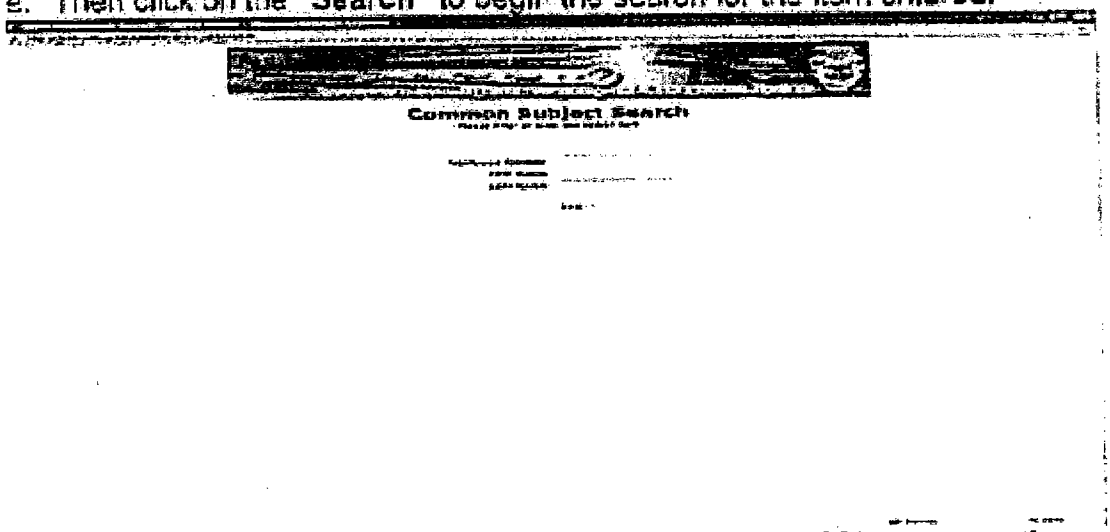
cc: Norma Rios

Instructions to conduct the Common Subject Search:

1. Access the Investigations Tracking Management System:
   a. Type the following link address:
      https://admin.lacountyfraud.org/AuditorOCI/MainMenu.aspx
      i. You may want to save this link as a "Favorite" and rename it as ITMS-CSS.
   b. At the User Login page, enter the following to Log In to the ITMS.
      i. User Name (e followed by the employees' six digit employee number)
      ii. Enter password
         1. If you forget your password, click on the "Forgot your password?"
         2. Follow the instructions to reset the password

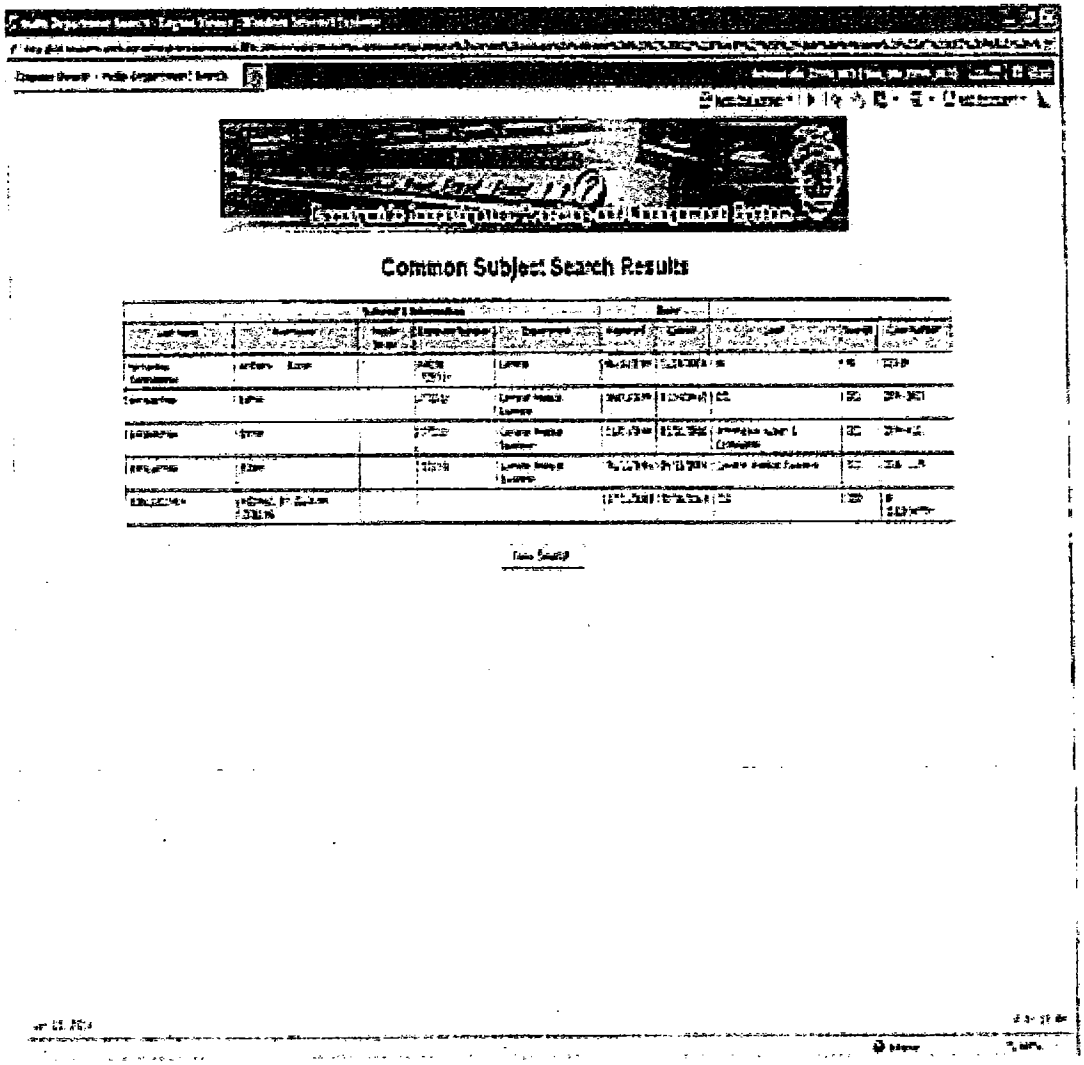
2. At the Main Menu click on the Report icon and at the Report page:
   a. Click on AC OCI FRAUD – COMMON SUBJECT SEARCH
   b. Then click on open the PDF (not editable format) file to the right of Multi-Department Search Report Name page.
      Note: Do not click on the "CSV" able to download as a spreadsheet (editable).

3. At the Common Subject Search Page (as shown below), enter at least one search item (exact) for the Subject of Investigation (SOI):
   a. Employee Number
   b. First Name
   c. Last Name
      i. Type: bin -> robinson, binhem, etc.
      ii. Type "ben" -> huben, Benquechea, etc.
   d. "*" as a wild card is not available at this time.
   e. Then click on the "Search" to begin the search for the item entered.

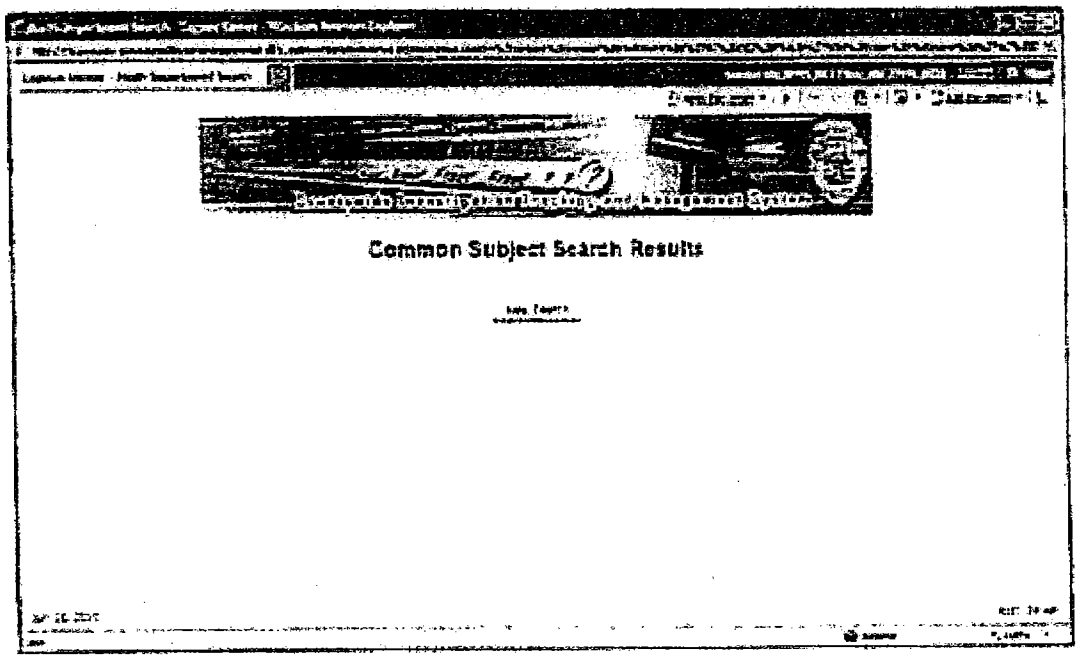


Note: Some Departments (e.g., CC, DAAC) may not necessarily use SOI, but "claimant" information instead.

i. Wait for the results and the Search Results will appear (as shown below).
   1. Contact the Lead agency (OCI, or a County department) to discuss the details of the case regarding the SOI.
      a. OCI will provide the contact information for the countywide departments.
   2. No data in the field:
      a. The information was not initially entered in the involved department's database.



ii. However, there is **"No Notification"** when no hits are found. Therefore, the user should make a note that "No Results were found" for the item, if applicable (as shown below) and save in the case file.



4. To conduct another "Search", click on the "New Search" button or repeat Step 3.

5. Log out icon to exit the ITMS database.

Common Subject Search (CSS) Rights

CSS Rights allows ITMS-CSS users in certain Departments to access the Common Subject Search report.

- The system will search for a match for each item against the following departments database:
  1. A-C (ITMS)
  2. CC
  3. CEO-WC
  4. DHR
  5. OAAC

ATTACHMENT II

(UNIT NAME) REVIEW FORM

Date Received: _____ ☑ Common Subject Search (CSS)

Deputy Name: _____ CSS Date: _____

Case Name: _____ Department: _____

Case Number _____

Complaint type: ☐ Internal Investigation

☐ External Investigation

☐ Board Referral

Classification: ☐ 1 ☐ 2

Send to: ☐ Mediation

DATE	ACTIVITY

Revised 6/16/2010

ATTACHMENT 7

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 780
LOS ANGELES, CALIFORNIA 90012
(213) 974-1080
FAX (213) 626-7034 / TTY (888) 478-3502
HTTP://OAAC.CO.LA.CA.US

DENNIS A. TAFOYA
DIRECTOR

MEMBERS OF THE BOARD
GLORIA MOLINA
MARK RIDLEY-THOMAS
ZEV YAROSLAVSKY
DON KNABE
MICHAEL D. ANTONOVICH

CONFIDENTIAL
PERSONNEL INFORMATION

November 26, 2008

CERTIFIED MAIL 7004 1350 0001 7191 8832

John Smith
1234 Main Street
Los Angeles, CA 90012

Dear Mr. Smith:

The Office of Affirmative Action Compliance (OAAC) is in receipt of your complaint alleging harassment and I have been assigned as the investigator. I have attempted to contact you at your telephone number of record; however, I have not been successful in reaching you. At your earliest convenience, please contact me at (213) 974-1514 during normal business hours for an assessment interview. Should I not hear from you by _____, I will conduct the investigation based on the information received.

Sincerely,

STEPHEN STRATI
Deputy Compliance Officer

CB:SS
J:\2010 Revision\SOP 2010 Attachments_9.20.10\7 - Request for CP Contact.doc

ATTACHMENT 8

County of Los Angeles
Office of Affirmative Action Compliance
INTAKE ASSESSMENT FORM

OAAC Case#
☐ External

Date County Dept. Notified
Case Number:

Date OAAC Received
Classification:

Complaining Party(ies):	Subject(s) of Investigation:
Dept/Unit:	Dept/Unit:

CONFIDENTIAL

Theory(ies) of Discrimination:

☐ Harassment
☐ Disparate Treatment
☐ Disparate Impact
☐ Reasonable Accommodation
☐ Retaliation

Alleged Protected Basis(es):

☐ Sex
☐ Race
☐ Color
☐ Ancestry
☐ Religion
☐ Sexual Orientation
☐ Age (40 and Over)
☐ Marital Status
☐ National Origin
☐ Medical Condition
☐ Disability
☐ Retaliation for participating/opposing
☐ Association with a Protected Individual
☐ Other (Non-Protected Basis):

Act(s) of Harm:

☐ Hostile Work Environment Harassment
☐ Quid Pro Quo Harassment
☐ Differential Treatment
☐ Failure to Engage in Interactive Process
☐ Denial of Reasonable Accommodation
☐ Failure to Promote
☐ Demotion
☐ Involuntary Transfer
☐ Suspension
☐ Termination
☐ Denial of Leave
☐ Denial of Reinstatement
☐ Failure to Hire
☐ Other:

Classification:

Based on the information in the complaint of employment discrimination, any data contained in this intake assessment form, and/or attachment(s), it has been determined that this complaint:

☒ **(Class 1): Jurisdictional (Contains sufficient information to warrant further investigation by OAAC).**

☐ **(Class 2): Non-Jurisdictional (Contains information concerning a protected basis, but the information or allegations did not rise to a level requiring a further investigation by the OAAC; information not sufficient to reveal the existence of a causal connection to a protected basis; or information provided does not reveal that the allegation(s) concerns a protected basis)**

CONFIDENTIAL

Persons Interviewed

Job #	Name	Emp #	Title	UOA
***Persons to be Interviewed*:**				

Explanation/Comments:

Admonishment/Supervisory Actions:

Prior Related Discrimination Complaint(s):

☐ **None** ☐ **Prior Related Discrimination Complaint(s) Identified Below**

Explanation of Classification:

☐ **Refer for Investigation (Class 1 cases)**
☐ **Return to County Department for investigation/inquiry of personnel issues (Class 2 cases)**

Assessed by OAAC Deputy Compliance Officer:

	Date Assessed:	Date Received:

Approved by Senior Deputy Compliance Officer:

	Date:

☐ **Referred to Risk Manager** **Date Referred:**

Comments:

CONFIDENTIAL

ATTACHMENT 9

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 780
LOS ANGELES, CALIFORNIA 90012
(213) 974-1080 / FAX (213) 626-7034
HTTP://OAAC.CO.LA.CA.US

DENNIS A. TAFOYA
DIRECTOR

MEMBERS OF THE BOARD
GLORIA MOLINA
MARK RIDLEY-THOMAS
ZEV YAROSLAVSKY
DON KNABE
MICHAEL D. ANTONOVICH

CONFIDENTIAL
PERSONNEL INFORMATION

December 3, 2008

Charging Party Name
Address

LETTER OF DETERMINATION
OAAC Case #

Dear Mr. XXXXX:

The above-referenced employment discrimination complaint reported to the Office of Affirmative Action Compliance (OAAC) on December 7, 2008, did not contain sufficient information to warrant further investigation by OAAC.

In accordance with the Los Angeles County's Employment Discrimination Complaint Process, your complaint has been referred to the Department of Public Social Services (DPSS) for resolution.

If I can be of additional assistance, please call me at (213) 253-9644.

Sincerely,

DEPUTY NAME
Deputy Compliance Officer

CL:JH:jh
J:\TEMPLATE\Investigations\Assessment Letter C - 12.doc

c: Department Coordinator

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 780
LOS ANGELES, CALIFORNIA 90012
(213) 974-1080 / FAX (213) 626-7034
HTTP://OAAC.CO.LA.CA.US

DENNIS A. TAFOYA
DIRECTOR

MEMBERS OF THE BOARD
GLORIA MOLINA
MARK RIDLEY-THOMAS
ZEV YAROSLAVSKY
DON KNABE
MICHAEL D. ANTONOVICH

CONFIDENTIAL
PERSONNEL INFORMATION

December 3, 2008

To: Dave Cochran, Organization Manager
Department of Health Services
Office of Human Resources

From: Letitia Ellison-Cooper
Deputy Compliance Officer

Subject: **JOHN SMITH**
OAAC #DHS08-0000 / HSI_2008_000

I have been assigned to investigate the above-referenced internal complaint of discrimination filed by John Smith, Charging Party (CP). CP Smith alleged that he was discriminated against based on national origin (Hispanic). Specifically, CP Smith alleged he was moved out of his position as the Director of Materials Manager of King-Drew Medical Center (KDMC); denied the opportunity to be the Director of Materials Manager for King-Harbor Medical Ambulatory Care Clinic; denied a transfer opportunity to Rancho Los Amigos Rehabilitation Center (RLARC) due to ethnic favoritism toward Hispanics; and denied other promotional and transfer opportunities because of his prior employment with KDMC, in violation of the County's Non-Discrimination in Employment policy.

A preliminary assessment determined the complaint contains sufficient information to warrant further investigation by OAAC. Accordingly, this portion of the complaint is being referred to mediation for possible resolution. However, the allegation regarding denial of other promotional and transfer opportunities based on his prior employment with KDMC did not establish a prima facie case for OAAC investigation as prior KDMC employment does not constitute a protected class or activity related to employment discrimination. Therefore, this allegation is being referred to DHS for any necessary follow-up.

If you need further assistance or have any questions please call me at (213) 202-5836.

CB:LEC
J:\TEMPLATE\Investigations\Assessment Letter A - 8.doc

ATTACHMENT 10

OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

HEALTH SERVICES INVESTIGATIONS

Date: September 20, 2010

To: David Kim
Senior Deputy

From: Comelita Brown
Senior Deputy

Subject: **Notification of Potential Liability**
Department of Health Services
Jane Doe - HSI_2010_000

This memo serves as notification that findings in this case, if revealed, may pose a potential liability for the County.

Date Received:	August 27, 2008
Date Response due to external agency:	September 27, 2008
Subject of Investigation:	Jenny Jones, Return to Work Coordinator
Protected Basis:	Disability
Allegations:	Denial of Accommodation

Letitia Ellison-Cooper will be conducting an investigation of the above case and is expected to complete the investigation within 15 business days from the date meditation closes. The case was sent to mediation on September 4, 2008 and mediation has not yet closed. A copy of the report will be forwarded to you for your review. Should you require additional information, please contact me at (213) 202-5835 or Letitia Ellison-Cooper at (213) 202-5836.

CB:LEC
I:\2010 Revision\SOP 2010 Attachments\Risk Mgmt Referral for Potential Liability - 10.doc

c: Risk Management Staff Assistant

ATTACHMENT 11

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 780
Los Angeles, CA 90012
(213) 974-1080
Fax (213) 626-7034 TTY (888) 478-3502
http://oaac.co.la.ca.us

Dennis A. Tafoya
Director

Members of the Board
Gloria Molina
Mark Ridley-Thomas
Zev Yaroslavsky
Don Knabe
Michael D. Antonovich

CONFIDENTIAL
PERSONNEL INFORMATION

September 20, 2010

To: Dave Cochran, Organizational Manager
Department of Health Services

From: Stephen Strati
Deputy Compliance Officer

Subject: **JOHN SMITH**
OAAC # HSI_2010_000

The Office of Affirmative Action Compliance (OAAC) has completed its review of the above-referenced employment discrimination complaint filed by John Smith, Children's Services Worker I, Complaining Party (CP). The review determined that Mr. Smith's complaint does not contain sufficient information to warrant further investigation by OAAC and the complaint is being returned to your department for resolution.

Please notify OAAC should you have any additional information relating to this matter that may be jurisdictional to our office.

If you need further assistance or have any questions please call me at (213) 202-5836.

CB:SS
J:\TEMPLATE\SOP 2010\Assessment Letter C to Dept-11.doc

SAMPLE

ATTACHMENT 12

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 780
Los Angeles, CA 90012
(213) 974-1080
Fax (213) 626-7034 TTY (888) 478-3502
http://oaac.co.la.ca.us

Dennis A. Tafoya
Director

Members of the Board
Gloria Molina
Mark Ridley-Thomas
Zev Yaroslavsky
Don Knabe
Michael D. Antonovich

CONFIDENTIAL
PERSONNEL INFORMATION

September 20, 2010

John Smith
123 Main Street
Los Angeles, CA 90012

LETTER OF DETERMINATION
OAAC # HSI_2010_000

Dear Mr. Smith:

The above-referenced employment discrimination complaint reported to the Office of Affirmative Action Compliance (OAAC) on *, 2010, did not contain sufficient information to warrant further investigation by OAAC.

In accordance with the Los Angeles County's Employment Discrimination Complaint Process, your complaint has been referred to the Department of Health Services (DHS) for resolution.

If I can be of additional assistance, please call me at (213) 202-5835.
**If you have any questions regarding this matter, please contact David Cochran, DHS Organizational Manager at 323 890-7935.*

Sincerely,

DEPUTY NAME
Deputy Compliance Officer

CB:DCO
J:\TEMPLATE\SOP 2010\Assessment Letter C - 12.doc

c: David Cochran, DHS

SAMPLE

ATTACHMENT 13

STOP AND READ BEFORE SUBMITTING A POSITION STATEMENT

***** If a party elects to mediate the charge of discrimination, a position statement will NOT be required to be submitted during the time the charge is in mediation.

*****Nationally, the ADR unit has a 70% success rate, 96% of respondents and 91% of charging parties that have gone to mediation have indicated that they would go through the process again.

****The mediation is free, voluntary and confidential.

IF YOU WANT TO ELECT TO MEDIATE, SIGN AND FAX OR MAIL THE INVITATION TO MEDIATE FORM WITHIN TEN (10) DAYS TO:

Cherry-Marie D. Rojas, Esq.
EEOC – Los Angeles District Office
ADR Coordinator
255 E. Temple St., 4th Floor
Los Angeles, CA 90012
Telephone (213) 894-1030
Facsimile (213) 894-8385
E-mail: cherry.rojas@eeoc.gov

The U.S. Equal Employment Opportunity Commission

MEDIATION

Facts About Mediation

Mediation is a form of Alternative Dispute Resolution (ADR) that is offered by the U.S. Equal Employment Opportunity Commission (EEOC) as an alternative to the traditional investigative or litigation process. Mediation is an informal process in which a neutral third party assists the opposing parties to reach a voluntary, negotiated resolution of a charge of discrimination. The decision to mediate is completely voluntary for the charging party and the employer. Mediation gives the parties the opportunity to discuss the issues raised in the charge, clear up misunderstandings, determine the underlying interests or concerns, find areas of agreement and, ultimately, to incorporate those areas of agreements into resolutions. A mediator does not resolve the charge or impose a decision on the parties. Instead, the mediator helps the parties to agree on a mutually acceptable resolution. The mediation process is strictly confidential. Information disclosed during mediation will not be revealed to anyone, including other EEOC employees.

How Mediation Works

An EEOC representative will contact the employee and employer concerning their participation in the program. If both parties agree, a mediation session conducted by a trained and experienced mediator is scheduled. While it is not necessary to have an attorney in order to participate in EEOC's Mediation Program, either party may choose to do so. It is important that persons attending the mediation session have the authority to resolve the dispute. If mediation is unsuccessful, the charge is investigated like any other charge.

Advantages of Mediation

Free

Mediation is available at no cost to the parties.

Fair and Neutral

Parties have an equal say in the process and decide settlement terms, not the mediator. There is no determination of guilt or innocence in the process.

Saves Time and Money

Mediation usually occurs early in the charge process, and many mediations are completed in one meeting. Legal or other representation is optional but not required.

Confidential

All parties sign a confidentiality agreement. Information disclosed during mediation will not be revealed to anyone, including other EEOC investigative or legal staff.

Avoids Litigation

Lengthy litigation CAN be avoided. Mediation costs less than a lawsuit and avoids the uncertainty of judicial outcome.

Fosters Cooperation

Mediation fosters a problem solving approach to complaints and workplace disruptions are reduced. With investigation, even if the charge is dismissed by EEOC, the underlying problems may remain, affecting others in the workforce and human resources staff.

Improves Communication

Mediation provides a neutral and confidential setting where both parties can openly discuss their views on the underlying dispute. Enhanced communication can lead to mutually satisfactory resolutions.

Discover the Real Issues in your Workplace

Parties share information, which can lead to a better understanding of issues affecting the workplace.

Design your own Solution

A neutral third party assists the parties in reaching a voluntary, mutually beneficial resolution. Mediation can resolve all issues important to the parties, not just the underlying legal dispute.

Everyone Wins

An independent survey showed 96% of all respondents and 91% of all charging parties who used mediation would use it again if offered.

"Once the employer gets past the myth of "If we didn't do anything wrong, we shouldn't go to mediation" and decides to participate, the real issues in the dispute become clear. Through mediation, we have had the opportunity to proactively resolve issues and avoid potential charges in the future. We have seen the number of charges filed with the EEOC against us actually decline. We believe that our participating in mediation and listening to employees' concerns has contributed to that decline."

Donna M. Gwin
Director of Human Resources
Eastern Division
Safeway, Inc.

"As an employer's attorney, I routinely recommend mediation to my clients. In mediation, you can build a sense of what the issues are, learn the problems, explore possible options for resolutions, and make informed decisions whether or not resolving at that time or moving on is the best outcome for that matter. It makes both business and economic sense from the employer's perspective."

Charles C. Warner, Esquire
Porter Wright Morris & Arthur LLP

"Regardless of the issue or whether it has merit under Title VII, if it is draining resources, weighing on the mind of the employee, or having a negative impact on productivity, then getting the issue out on the table mediating it and resolving it is often the smartest and most expeditious way to ensure workforce effectiveness."

Linda I. Workman
Vice President
Workforce Effectiveness
ConAgra Foods, Inc.

"Hopkins is striving to be an employer of choice. We think that participating in EEOC's mediation program moves us that much closer to meeting that goal...We learned that settlement is not always about money. Sometimes there are non-economic ways to settle a case that may be important to the charging party and the respondent."

Laurice Royal, Esquire
John Hopkins Health System Corporation

For additional information about the mediation program at EEOC, you may contact:

Cherry-Marie D. Rojas, ADR Coordinator
Equal Employment Opportunity Commission
Los Angeles District Office
255 E. Temple Street, 4th Floor
Los Angeles, California 90012
Tel: (213) 894-1030
E-Mail: cherry-marie.rojas@eeoc.gov

Notice to Mediation Program Participants

EEOC's Mediation Program is an alternative resolution method used to reduce the cost and delays associated with resolving disputes. This program helps parties in a dispute reach a mutually acceptable resolution. Be advised that you must submit your statement of position within FOURTEEN (14) days from the date that you are notified that mediation has failed. The position statement should be directed to the Commission Representative named on the "Notice of Charge of Discrimination", EEOC Form 131 - ADA.

THE EEOC
MEDIATION PROGRAM

LOS ANGELES DISTRICT OFFICE

INVITATION TO MEDIATE DISCRIMINATION COMPLAINTS

The EEOC has implemented a mediation program that provides an alternative to possible extensiv investigations and expensive litigation of discrimination charges.

Features:

- **Free to the parties**
- **Voluntary participation**
- **Early and complete resolution (60-90 days) of charges filed with the EEOC**
- **At least 70% probability of settlement**
- **Experienced professional mediators**
- **Complete confidentiality during the process**
- **onvenience of scheduling the mediation**

Program Description

Mediation is an alternative resolution method used to reduce the costs and delays associated with resolving disputes. It is a process whereby a neutral third party, the mediator, helps the parties to a dispute reach a mutually acceptable resolution.

Sessions are conducted by mediators (at no cost) with training and experience in conflict resolution. Mediation is voluntary and has resulted in a very high settlement rate because the resolutions are crafted by the disputants themselves, with the mediator's assistance.

The process is informal and confidential. The proceedings are non-evidentiary and the sessions are not recorded. Mediation is not a litigation process and does not require the presence of an attorney, although the parties may have an attorney present if they wish. All principals speak on their own behalf. Mediation agreements do not constitute an admission of any violation of the laws enforced by EEOC. All settlements are enforceable and are recognized by the EEOC and the courts as resolving the EEOC charge.

During the mediation session each party explains their view of the problem and what they believe is necessary to resolve the dispute. The mediator will then work to assist the participants in reaching a settlement satisfactory to all those involved.

You would like to participate in mediation, simply complete the attached election form and return it within 10 days or you may fax your reply to:

For Further Information Contact: Cherry-Marie D. Rojas, Esq., ADR Coordinator
Tel.: (213) 894-1030

MEDIATION ELECTION FORM

U.S. Equal Employment Opportunity Commission

ATTN: ADR Unit
255 East Temple Street, Fourth Floor
Los Angeles, CA 90012
Fax # (213) 894-8385

RE: CHARGE NUMBER: _____

FROM: _____
Name and Title of Contact Person

_____
Address

_____
Address

_____
City, State, Zip Code

_____
Telephone Number Fax Number E-mail

I am the [check one]: _____ Charging Party _____ Respondent
_____ Name of Charging Party _____ Company Name

_____ [please initial] I have read the attached Invitation to Mediate.

I [check one]:

____will participate in the EEOC Mediation Program. I understand that I do not need to submit any written material and/or position statement concerning this Charge and that someone will be contacting me to discuss further details about the mediation process and to schedule a session.

____will not participate in the EEOC Mediation Program. If I am the Respondent, I understand that I must submit a written position statement and/or RFI as indicated in the Notice of Charge of Discrimination at Box #3 (EEOC Form No. 131).

In making a good faith effort to resolve the matter through mediation, I agree that someone with authority to sign the mediation agreement will attend the mediation session. Participants acknowledge that if an agreement is reached as a result of the mediation effort, the assigned mediator(s) is required to report to EEOC any benefits received. This information is reported only for purposes of providing aggregate data to the EEOC for ADR program evaluation purposes.

Date: _____ Signature: _____

INFORMATION SHEET ON CHARGES OF DISCRIMINATION

EEOC RULES AND REGULATIONS

Section 1601.15 of EEOC's Procedural Regulations provides that persons charged with employme crimination, such as yourself, may submit a statement of position or evidence with respect to the allegatio ntained in this charge.

EEOC's Recordkeeping and Reporting Requirements are set forth at Title 29, Code of Federal Regulatio FR), Part 1602 (see particularly Section 1602.14 below) for Title VII and the ADA; 29 CFR Part 1620 for t A; and 29 CFR Part 1627, for the ADEA. These regulations generally require respondents to preserve payr d personnel records relevant to a charge of discrimination until disposition of the charge or litigation relating e charge (for ADEA charges, this notice constitutes the written request set out in Part 1627 for respondents eserve records relevant to the charge -- the records to be retained are as described in Section 1602.14, as cit low, and should be kept for the periods described in that section). Parts 1602, 1620 and 1627 also prescri cord retention periods -- generally, three years for basic payroll records and one year for personnel recor uestions regarding retention periods and the types of records to be retained should be resolved by reference e regulations.

Section 1602.14 Preservation of records made or kept. ....Where a charge of discrimination has been fil r an action brought by the Commission or the Attorney General, against an employer under Title VII or the AD e employer shall preserve all personnel records relevant to the charge or the action. The term "personnel reco levant to the charge," for example, would include personnel or employment records relating to the aggriev erson and to all other aggrieved employees holding positions similar to that held or sought by the aggriev erson and application forms or test papers completed by an unsuccessful applicant and by all other candida r the same position as that for which the aggrieved person applied and was rejected. The date of "fi sition of the charge or the action" means the date of expiration of the statutory period within which eved person may bring an action in a U.S. District Court or, where an action is brought against an emplo ither by the aggrieved person, the Commission, or by the Attorney General, the date on which such litigatio erminated.

NOTICE OF NON-RETALIATION REQUIREMENTS

Section 704(a) of Title VII, Section 4(d) of the ADEA, and Section 503(a) of the ADA provide that it s be an unlawful employment practice for an employer to discriminate against any of his/her employees or applica for employment, for an employment agency to discriminate against any individual, or for a labor organizatio discriminate against any member thereof or applicant for membership, because s/he has opposed any act practice made unlawful by these statutes, or because s/he has made a charge, testified, assisted, or participa in any manner in an investigation, proceeding, or hearing under these statutes. The Equal Pay Act of 1 contains similar provisions. Additionally, Section 503(b) of the ADA prohibits coercion, intimidation, threats interference with any person because s/he has exercised or enjoyed, or aided or encouraged others in their exer or enjoyment, of rights under the Act.

Persons filing charges of discrimination are advised of these Non-Retaliation Requirements and instructed to notify EEOC if any attempt at retaliation is made. Note that the Civil Rights Act of 1991 provi substantial additional monetary provisions to remedy instances of retaliation or other discrimination, including, example, to remedy the emotional harm caused by on-the-job harassment.

NOTICE REGARDING REPRESENTATION BY ATTORNEYS

Although it is not necessary that you be represented by an attorney while we handle this charge, you h a right, and may wish to retain an attorney to represent you. If you are represented by an attorney we req that you provide the Commission with your attorney's name, address, and telephone number, and that you your attorney to write to the Commission confirming such representation.

ATTACHMENT 14

Margins: 1" all *Font: Arial 12 pt.*

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

CONFIDENTIAL PERSONNEL INFORMATION – *Bold Red*

REPORT OF INVESTIGATION
OAAC CASE #

COMPLAINING PARTY:	Jane Doe (CP Doe) Payroll Clerk II
SUBJECT(s) OF INVESTIGATION:	Sally Smith (SOI Smith) Intermediate Typist Clerk
DATE OF INCIDENT:	April 23, 2009 to June 29, 2009
LOCATION:	Department of Fruits & Vegetables 123 Cherry Street Orange, CA 00000
THEORY(IES) OF DISCRIMINATION:	*- Check Theory -* ☐ Disparate Treatment ☒ Harassment ☐ Disparate Impact ☐ Retaliation ☐ Reasonable Accommodation
PROTECTED BASIS (ES):	*- Check Basis -* ☒ Race ☐ Religion ☐ Sex ☐ Sexual Orientation ☐ Age ☐ Disability ☐ Retaliation ☐ National Origin ☐ Other _____
ACT OF HARM:	Hostil Work Environment
APPLICABLE POLICY(IES):	Los Angeles County Code Chapter: ☒ 5.08 "Equal Employment" ☐ 5.09 "Sexual Harassment" ☐ Board of Supervisors' EEO Non-Discrimination Policy & Poster Department Policy
NOTIFICATION DATE:	August 27, 2009
CLOSURE DATE:	October 22, 2009
OAAC INVESTIGATOR:	Name Deputy Compliance Officer
OAAC REVIEWER:	Name Senior Deputy Compliance Officer

SAMPLE

SAMPLE – REPORT SET-UP

CONFIDENTIAL PERSONNEL INFORMATION – *Bold Red*

BACKGROUND:

Complete for ALL reports.

On August 26, 2009, CP Doe filed an employment discrimination complaint with the Department of Fruits & Vegetables (DFV) against SOI Smith alleging race discrimination. Upon receipt of the complaint, DFV sent her complaint to the Office of Affirmative Action Compliance (OAAC) for assessment. On August 27, 2009, OAAC received the complaint and began an assessment.

On September 2, 2009, OAAC conducted a clarifying interview with CP Doe and determined the alleged issues were jurisdictional to OAAC. The applicable theory is harassment, the protected basis is race, and the act of harm is hostile work environment.

On September 30, 2009, OAAC offered CP Doe accepted mediation. On October 7, 2009, CP Doe's complaint was successfully mediated and she expressed satisfaction with the terms and conditions of the settlement.

On October 1, 2009, an anonymous complaint was forwarded to the Board of Supervisors. In that complaint, the anonymous Charging Party alleged inappropriate comments of a racial nature and asserted SOI Smith resorts to violence in the workplace.

Complaining Party Jane Doe's Work History:

Required information: Employment Date, classification, Work location, Supervisor, Training date or signed acknowledgment of training (i.e. Sexual Harassment, Reasonable Accommodation, Return to Work or Diversity, etc)

CP Doe, Black, began her employment with the Department of Fruits & Vegetables on July 30, 1990 as an Assistant Payroll Clerk I. She promoted to a Payroll Clerk II on March 2, 1995 and continues in this capacity.

Subject of Investigation Sally Smith's Work History:

Same as above (Include disciplinary history)

ALLEGATIONS: CP Doe's specific allegations were SOI Smith:

- ***Bullet specific allegations***

SAMPLE

CONFIDENTIAL PERSONNEL INFORMATION – *Bold Red*

- Said "eew a black guy" when Asia Minor said she was going to introduce a Black man to August May;
- Said "eew" when she saw a picture of CP Doe's son in a graduation picture. CP Doe's son is Black; and
- Inferred CP Doe could clean her house.

The anonymous Charging Party alleged SOI Smith:

- Said "I hate Black People, yeah I am racist and what of it; you need to be my maid like the slave days; I don't like colored people and the color dark makes me sick to my stomach;"
- Said "I hate niggers" to August May; and
- Resorts to violence in the workplace.

OUTCOME OF THE INVESTIGATION:

State information that led to the conclusion. It is a reflection of the conclusion.

OAAC's investigation did not confirm SOI Smith made the egregious, offensive comments referenced in the October 1, 2009 letter to the Board. However, it did reveal CP Doe, was a member of a protected group and was subjected to unwelcome comments based on her race. The investigation also revealed her supervisor, Summer Winter (Supervisor Winter), Departmental Personnel Technician, inflamed the situation by telling CP Doe about a race-based remark SOI Smith made in her office and failed to immediately report the matter her manager, Green Leaves (Manager Leaves), Head Departmental Technician. Supervisor Winter's failure to immediately report the incident to Manager Leaves coupled with her knowledge of a race-based comment SOI Smith made in Witness Minor's cubicle created a hostile work environment for CP Doe. Supervisor Winter's failure to report the matter to Manager Leaves showed inadequate corrective measure were taken.

DISCUSSION OF THEORY:

Use appropriate theory (ies) and elements.

Harassment is a form of unlawful discrimination which is a violation of Title VII of the Civil Rights Act of 1964, as amended, and Chapter 6 of the California Fair Employment

SAMPLE

CONFIDENTIAL PERSONNEL INFORMATION – *Bold Red*

and Housing Act. It is the policy of the County of Los Angeles that harassment on any ported basis is unacceptable and will not be tolerated.

OAAC considered the following factors in deciding its findings:

1. Basis: Was CP a member of a protected group?
2. Activity: Was CP subjected to unwelcome conduct?
3. Issue: Was CP subjected to hostile environmental harassment?
4. Causal connection: Was there a causal connection between CP's membership in a protected group and the unwelcome comment?
5. Did DFV know or should have known?

The following details support OAAC's determination:

Present the facts and information in chronological date order.

On April 23, 2009, CP Doe's co-workers, Asia Minor (Witness Minor), Departmental Personnel Assistant, and SOI Smith were having a conversation in Witness Minor's cubicle. Their discussion was about Witness Minor wanting to introduce August May to a Black guy. During the conversation CP Doe overheard SOI Smith, "Ewwwww" to a statement made by Witness Minor. The comment was about Witness Minor's plan to introduce Co-Worker May to one of her husband's friends who happened to be Black. CP Doe then heard silence once the comment was made.

Upon conclusion of Witness Minor and SOI Smith's conversation, Witness Minor went to CP Doe's cubicle and apologized. She told CP Doe she did not feel the same way as SOI Smith. CP Doe replied, yes, but I heard what was said. Witness Minor explained she told SOI Smith she could not say things like that in the office.

Sometime in early June 2009, CP Doe complained to Supervisor Winter that she was bothered and offended about SOI Smith's May 26, 2009 inference that she could clean (Winter's) house. SOI Smith made this inference following training at Rancho Ojai. On that same day, Witness Minor reported to Supervisor Winter that SOI Smith made a racist statement (cubicle incident).

The investigation also disclosed that sometime in early June 2009, CP Doe gave a graduation picture of her son to Supervisor Winter and Manager Leaves. On June 12, 2009, SOI Smith was in Supervisor Winter's office and saw the graduation picture of CP

SAMPLE

CONFIDENTIAL PERSONNEL INFORMATION – *Bold Red*

Doe's son. Upon seeing the graduation picture, SOI Smith said, "Ewwwww, who is that?" Witness Minor, who was in Supervisor Winter's office at the time, immediately left and told CP Doe about what she had just witnessed. CP Doe confirmed Witness Minor told her about the June 12, 2009 incident.

Supervisor Winter confirmed SOI Smith made the comment. She stated upon hearing the comments, she closed her door and told SOI Smith she had received two previous complaints and that because she witnessed this comment, she was going to report it.

The investigation revealed Supervisor Winter was aware of the April 23, 2009 "cubicle" incident and confirmed the June 12, 2009 graduation picture incident took place in her office. Supervisor Winter did not report either incident to management until June 29, 2009 which was untimely. In addition, the investigation disclosed Supervisor Winter was aware of the May 26, 2009 incident in which SOI Smith inferred CP Doe could clean her (Winter's) house. According to Manager Leaves, Supervisor Winter did not report this matter to her.

It is clear Supervisor Winter was aware of SOI Smith's race-based comments at least sometime in early June 2009. Rather than immediately reporting the incident(s) to Manager Leaves, she did not do so until June 29, 2009. On or about June 30, 2009, Manager Leaves met with SOI Smith. Although SOI Smith denied the comments Manager Leaves admonished her about the comments and her conduct. Manager Leaves also met with CP Doe and advised her she would take care of the matter.

Sometime between June 30, 2009 and July 2, 2009, Manager Leaves reported SOI Smith's alleged comments to DFV's Affirmative Action Coordinator. April Spring, DFV Investigator, interviewed CP Doe on July 6, 2009. At the time, CP Doe reported she was upset by two comments made by SOI Smith that she was aware of. She told Investigator Spring that she spoke to Manager Leaves and was satisfied that she would handle the matter properly. Investigator Spring told CP Doe that a Discrimination Complaint Form was available for her use if she felt the matter was a form of discrimination. CP Doe responded she just wanted to put the matter behind her and since she did not have any more incidents with SOI Smith, she would think about filing a complaint.

On August 26, 2009, CP Doe filed an Employment Discrimination Complaint with DFV. She said she filed the complaint because she wanted SOI Smith's comment about her son's graduation picture to be "...on record." DFV sent the complaint to OAAC on August 27, 2009.

<u>CONCLUSION:</u>

CONFIDENTIAL PERSONNEL INFORMATION – *Bold Red*

Restate outcome of investigation and analysis addressing the elements of proof (as appropriate). Conclude with statement of a violation of policy (i.e. County's EEOC, DHS, DPSS or applicable policy) occurred or did not occur (i.e. disclosed, revealed or showed are acceptable. Do not restate CP, SOI and/or Witness statements

The investigation did not confirm SOI Smith made the offensive and egregious race-based comments referenced in the October 1, 2009 letter to the Board. However, in OAAC's judgment, CP Doe was subjected to a hostile work environment which violated County policy. Specifically, on April 23, 2009, she was subjected to the cubicle incident; on May 26, 2009, SOI Smith inferred CP Doe could clean Supervisor Winter's house; and on June 12, 2009, Witness Minor told her about SOI Smith's comment in Supervisor Winter's Office. Supervisor Winter inflamed the situation by telling CP Doe about the race-based comment SOI Smith made in her office. Once Supervisor Winter reported the incidents to Manager Leaves, she admonished SOI Smith and reported the matter to the department's Affirmative Action Coordinator.

The investigation also revealed SOI Smith violated the County's Policy on Diversity. Specifically, 5.10.020 A states: "To foster an environment in every County Department in which;

1. Groups, as well as individuals, are appreciated for their differences and treat each other with respect.

Based on the findings of this investigation, DFV should consider appropriate disciplinary action against SOI Smith for her inappropriate comments and against Supervisor Winter for failing to timely report her knowledge of these incidents to management. DFV should advise OAAC within 10 business days of the disciplinary action taken. ***(Use this paragraph only if the investigation is substantiated)***

SAMPLE

_____ _____
Deputy Compliance Officer Date

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 780
Los Angeles, CA 90012
(213) 974-1080
Fax (213) 626-7034 TTY (888) 478-3502
http://oaac.co.la.ca.us

Dennis A. Tafoya
Director

Members of the Board
Gloria Molina
Mark Ridley-Thomas
Zev Yaroslavsky
Don Knabe
Michael D. Antonovich

CONFIDENTIAL
PERSONNEL INFORMATION

, 2010

Patricia Kane, Enforcement Supervisor
U.S. Equal Employment Opportunity Commission
255 East Temple Street, 4th Floor
Los Angeles, CA 90012

Dear Ms. Kane:

STANDARD OPENING PARAGRAPHS FOR BOTH DFEH AND EEOC

The County of Los Angeles submits the attached information in response to EEOC Charge No. 480-2008-00135 filed with the U.S. Equal Employment Opportunity Commission (EEOC) by CP's NAME, Charging Party, against the Los Angeles County Probation Department.

The County has made a reasonable inquiry of its records in order to be responsive to your request for information and documentation. The responses given are based upon information known by the County. The County reserves the right to supplement these responses and to produce additional information and documentation during the investigation of this charge and/or any subsequent proceeding.

Charging Party's specific allegations are:

I. On or about July 16, 2007, my request for documents related to a pending disciplinary action was not granted.

On August 24, 2007, I was issued a "Notice of Demotion".

On September 14, 2007, I was notified that I was under investigation by Internal Affairs.

II. No reason was give as to why I have not been provided with the requested documents. Policy on the Skelly process dictates that I receive all documents related to the pending disciplinary action.

I was advised in a letter signed by XXXXX, Deputy Director, that I was demoted due to (1) Failure to perform job duties. (2) Falsification of Worker's Compensation Claim forms, (3) Inappropriate behavior toward the public (4) Failure to exercise sound judgment and (5) violation of Department policy.

The notification from XXXXX, Administrative Investigator, stated I was under investigation because someone filed a complaint against me.

III. I believe that my treatment is due to retaliation for having complained internally about discrimination and harassment and having filed two previous EEOC charges, in violation of Title VII of the Civil Rights Act of 1964, as amended.

COUNTY'S RESPONSE

The County acknowledges CP's NAME engaged in a protected activity. However, the County denies and refutes CP's NAME's charge that she was subjected to retaliation for having filed internal and external discrimination and harassment complaints and/charges.

BACKGROUND

INCLUDES CP'S WORK HISTORY AND CURRENT ASSIGNMENT

CP's NAME is an African American female hired on February 12, 1990. She is a Departmental Personnel Technician, assigned to the Probation Department, Return-to-Work Unit until her reassignment on October 12, 2006, to the Firestone Office pending the completion of an investigation. On May 17, 2007, CP's NAME the department issued a Notice of Intent to Demote and reassigned her to Downey Headquarters, Management Services Bureau effective May 21, 2007. Effective September 16, 2007, CP's NAME was demoted to the position of Administrative Assistant II at Management Services Bureau.

RESTATE ALLEGATIONS

On or about July 16, 2007, my request for documents related to a pending disciplinary action was not granted. No reason was given as to why I have not been provided with the requested documents. Policy on the Skelly process dictates that I receive all documents related to the pending disciplinary action.

The County denies and disputes this allegation. On May 17, 2007, the department issued CP's NAME a "Notice of Intent" to demote. The letter informed CP's NAME of the basis for the action, of her right to obtain copies, and to offer additional information

SAMPLE

for consideration to the Skelly Manager. The Skelly meeting was initially scheduled for June 21, 2007, but rescheduled and held on June 26, 2007.

On May 24, 2007, a copy of the "Skelly Packet", that included all the documents the department relied on in determining appropriate discipline, was provided to CP's NAME's Union Representative via fax from xxxxxxx, Had DCSR, Performance Management. (Exhibit 1)

On June 12, 2007, CP's NAME was provided with copies of all the documents the department relied upon in preparing its letter of intent in accordance with Civil Service Rule 18.02. (Exhibit 2)

On August 24, 2007, I was issued a "Notice of Demotion." I was advised in a letter signed by xxxxxx, Deputy Director, that I was demoted due to (1) Failure to perform job duties. (2) Falsification of Worker's Compensation Claim forms, (3) Inappropriate behavior toward the public (4) Failure to exercise sound judgment and (5) violation of Department policy.

The County does not dispute this allegation. However, CP's NAME was issued a "Notice of Demotion" on August 29, 2007, dated August 24, 2007, signed by xxxxxx, Bureau Director and issued by xxxxxx, Management Services Bureau Director. (Exhibit 3)

The County's investigation disclosed the department noticed CP's NAME of pending discipline by issuing her a "Notice of Intent" on May 17, 2007, following the Acclamation Insurance Management Services, Los Angeles County's Third-Party Administrator (TPA), responsible for processing Worker's Compensation Claims investigation and audit of Return-to-Work (RTW) cases. The letter advised CP's NAME of the department's intent to demote her to an Administrative Assistant II, the basis for the action and that she had the right to offer additional information for consideration to the Skelly Manager. (Exhibit 4)

Information provided on July 17, 2007, in response to EEOC Charge No. 480-2006-04433, detailed the department's decision to take disciplinary action due to reports of claims mismanagement as reported by the TPA on October 9, 2006.

The TPA conducted an independent investigation and found CP's NAME was unresponsive to the needs of the clients and failed to process claims in a timely manner. The TPA's investigation also disclosed CP's NAME informed the employee that the stroke she suffered was work related and filed a Worker's Compensation claim on behalf of the employee. However the TPA's investigation revealed, the employee told CP's NAME that she was off work with an ear infection and suffered a stroke. The employee also informed CP's NAME that she had a history of high blood pressure and other illnesses.

In addition, the department requested the TPA randomly review and identify other problematic cases processed by all RTW staff. The TPA reported no problems and/or concerns with current RTW staff. However, eight cases handled by CP's NAME between March and September 2006 were identified. In one of the cases, CP's NAME's failure to return the employee back to work resulted cost the department an additional $47,000.00 in additional benefits the employee.

On September 14, 2007, I was notified that I was under investigation by Internal Affairs. The notification from xxxxxxx, Administrative Investigator, stated I was under investigation because some filed a complaint against me.

The County does not dispute this allegation. On August 1, 2007, xxxxxx, Administrative Investigator assigned to the Internal Affairs Section was assigned to conduct an Administrative Investigation involving allegations of employee misconduct (retaining confidential employee files) against CP's NAME.

The department initiated the investigation after CP's NAME submitted confidential RTW files and attached them to her Grievance form and submitted to a personnel receptionist on July 25, 2007. (Exhibit 5)

On September 14, 2007, Ms. xxxxx notified CP's NAME she was the Subject of the Investigation. The department informed CP's NAME that the investigation focused on inappropriate and unprofessional conduct. (Exhibit 6)

On October 9, 2007, CP's NAME was interviewed regarding the allegations and acknowledged she was advised of her Administrative Rights and given specific allegations. The allegations included, inappropriate and unprofessional conduct, failing to maintain personnel files to the highest degree of confidentiality, HIPPA violation, presentation of misleading work completed, failure to follow instructions and misuse of County equipment. (Exhibit 7)

According to Ms. xxxxxx, during the taped interview, CP's NAME admitted she retained copies of Worker's Compensation documents (approximately 200 pages) for her "stat file" and retained the copies at her home. (Exhibit 8)

I believe that my treatment is due to retaliation for having complained internally about discrimination and harassment and having filed two previous EEOC charges, in violation of Title VII of the Civil Rights Act of 1964, as amended.

The department denies this allegation. The County's investigation did not disclose CP's NAME was subjected any adverse treatment and/or retaliation with any causal connection to CP's NAME engaging in a protected activity.

SAMPLE

The County's investigation disclosed CP's NAME filed nine discrimination complaints since 2002. Seven of the complaints were internal and two were EEOC Charges (#480-2006-04385 and #480-2006-004433). None of the complaints were substantiated and EEOC issued Dismissal and Notice of Rights for the two charges. (Exhibit 9)

The County's investigation revealed CP's NAME received discipline for failure to perform job duties, Falsification of Worker's Compensation Claim forms, inappropriate behavior toward the public, failure to exercise sound judgment and violation of Department policy. CP's NAME was also under investigation for possessing confidentially employee records that contained confidential employee information that included social security numbers and medical information.

CONCLUSION

The investigation did not substantiate CP's NAME's allegation of retaliation based on a protected activity. The department has an obligation to hold employees accountable for misconduct as outlined in Civil Service Rules, as well as the obligation to maintain confidentiality and protect employee medical information. The filing of a fraudulent Worker's Compensation claim and/or processing confidential employee records is grounds for discipline.

Accordingly, the County believes the information provided demonstrates the County had a legitimate non-discriminatory business need to address performance issues and non-compliance with rules and regulations with no causal connection to CP's protected activity. Therefore, the County respectfully requests the EEOC dismiss CP's NAME complaint. If I can be of further assistance in this matter, please contact me at (213) 202-5928.

Sincerely,

DEPUTY NAME
Deputy Compliance Officer

CB:SS
J:\2010 REVISION\SOP 2010 ATTACHMENTS\External Response Sample – 14C.doc

Attachments

ATTACH A LIST OF ATTACHMENTS
DO NOT ATTACH WITNESS STATEMENTS

SAMPLE

ATTACHMENT 15

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 780
Los Angeles, CA 90012
(213) 974-1080
Fax (213) 626-7034 TTY (888) 478-3502
http://oaac.co.la.ca.us

Dennis A. Tafoya
Director

Members of the Board
Gloria Molina
Mark Ridley-Thomas
Zev Yaroslavsky
Don Knabe
Michael D. Antonovich

CONFIDENTIAL
PERSONNEL INFORMATION

September 30, 2010

To: Honorable Gloria Molina
Supervisor, First District

Attn: Erika Banegas, Legislative Assistant

From: Dennis A. Tafoya
Director

Subject: **DEPARTMENT OF HEALTH SERVICES**
JANE DOE – OAAC # HSI_2010_000

My office has completed its investigation of Jane Doe's employment discrimination complaint filed against the Department of Health Services (DHS). The investigation did not reveal a violation of County or departmental EEO policies. Attached for your information are copies of the Report of Investigation and the Letter of Determination sent to Ms. Doe.

If you have any questions concerning this matter, please call me at (213) 974-1080, or you may contact Hayward Harris, Jr., Principal Deputy of my staff, at (213) 974-1388.

DAT:HH:CB:LEC:lec
J:TEMPLATE\SOP 2010\Cover Letter to BOS – 15A.doc

Attachments (2)

SAMPLE

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 780
Los Angeles, CA 90012
(213) 974-1080
Fax (213) 626-7034 TTY (888) 478-3502
http://oaac.co.la.ca.us

Dennis A. Tafoya
Director

Members of the Board
Gloria Molina
Mark Ridley-Thomas
Zev Yaroslavsky
Don Knabe
Michael D. Antonovich

CONFIDENTIAL
PERSONNEL INFORMATION

September 30, 2010

To: Director's Name
Director and Chief Medical Officer
Department of Health Services

From: Dennis A. Tafoya
Director

Subject: **JANE DOE COMPLAINT**
OAAC # HSI_2010_000

My office has completed its investigation of Jane Doe's employment discrimination complaint against the Department of Health Services (DHS). The investigation did not reveal a violation of County or departmental EEO policies. Attached for your information is a copy of the Letter of Determination to Ms. Doe.

If you have any questions concerning this matter, please call me at (213) 974-1080 or your staff may contact Hayward Harris, Jr., Principal Deputy of my staff, at (213) 974 1388.

DAT:HH:CB:LEC:lec
J:\TEMPLATE\SOP 2010\BOS Cover LOD to Dept Head – 15B

Attachment

SAMPLE

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 780
Los Angeles, CA 90012
(213) 974-1080
Fax (213) 626-7034 TTY (888) 478-3502
http://oaac.co.la.ca.us

Dennis A. Tafoya
Director

Members of the Board
Gloria Molina
Mark Ridley-Thomas
Zev Yaroslavsky
Don Knabe
Michael D. Antonovich

CONFIDENTIAL
PERSONNEL INFORMATION

September 30, 2010

Jane Doe
123 Anywhere Avenue
Los Angeles, CA 9000

LETTER OF DETERMINATION
OAAC # HSI_2010_000

Dear Ms. Doe:

The employment discrimination complaint you recently filed was investigated by the Office of Affirmative Action Compliance. The investigation, which included reviewing pertinent facts and interviewing witnesses regarding your allegations, did not reveal a violation of the County or departmental EEO policies.

This concludes the investigation of your complaint. If you are dissatisfied with these findings, you have the right to file your complaint with the U.S. Equal Employment Opportunity Commission or the California Department of Fair Employment and Housing.

If I can be of further assistance, please call me at (213) 202-5837.

Sincerely,

LETICIA ELLISON-COOPER
Deputy Compliance Officer

DAT:HH:CB:LEC:lec
J:\TEMPLATE\SOP 2010\BOS CP LOD-Unsub - 15C.doc

c: David Cochran, Department of Health Services

SAMPLE

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 780
Los Angeles, CA 90012
(213) 974-1080
Fax (213) 626-7034 TTY (888) 478-3502
http://oaac.co.la.ca.us

Dennis A. Tafoya
Director

Members of the Board
Gloria Molina
Mark Ridley-Thomas
Zev Yaroslavsky
Don Knabe
Michael D. Antonovich

CONFIDENTIAL
PERSONNEL INFORMATION

September 30, 2010

Jane Doe
123 Anywhere Avenue
Los Angeles, CA 90000

LETTER OF DETERMINATION
OAAC # HSI_2010_000

Dear Ms. Doe:

The employment discrimination complaint you recently filed was investigated by the Office of Affirmative Action Compliance. The investigation, which included reviewing pertinent facts and interviewing witnesses regarding your allegations, did reveal a violation of the County or departmental EEO policies.

As a result, DHS will take corrective action it believes to be sufficient to prevent any further violation of County or DHS policy from occurring. It at any time there is another incident or you believe you have been retaliated against, please report it immediately.

This concludes the investigation of your complaint. If you are dissatisfied with these findings, you have the right to file your complaint with the U.S. Equal Employment Opportunity Commission or the California Department of Fair Employment and Housing.

If I can be of further assistance, please call me at (213) 202-5837.

Sincerely,

LETICIA ELLISON-COOPER
Deputy Compliance Officer

DAT:HH:CB:LEC:lec
J:\TEMPLATE\SOP 2010\BOS CP LOD-Sub – 15D.doc

c: David Cochran, Department of Health Services

SAMPLE

ATTACHMENT 16

ATTACHMENT 17

OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

HEALTH SERVICES INVESTIGATIONS

Date: September 20, 2010

To: David Kim
Senior Deputy

From: Comelita Brown
Senior Deputy

Subject: **Request for Review and Assessment**
Health Services – LAC+USC Medical Center, Outpatient Pharmacy
Sue True-Blue – OAAC #HSI_2010_000

The investigation of this case revealed a violation of County policy that may pose liability for the County. There is no Settlement Agreement secured. Please review the report of Investigation and provide your assessment and/or recommendations for corrective action.

Date OAAC received complaint:	April 18, 2010
Date investigation completed:	October 27, 2010
Subject of Investigation:	Tree Lee, Pharmacy Supervisor I
Protected Basis:	Sex
Allegation:	Harassment

A copy of the Assessment, Complaint, and Report of Investigation are attached. Should you require additional information, please contact me at (213) 202-5835 or Letitia Ellison-Cooper at (213) 202-5837.

CB:LEC
J:\TEMPLATE\SOP 2010\Risk Management Request for Review and Assessment - 17.doc

DRAFT

ATTACHMENT 18

Health Services
ANGELES COUNTY

Los Angeles County
Board of Supervisors

Gloria Molina
First District

Yvonne B. Burke
Second District

Zev Yaroslavsky
Third District

Don Knabe
Fourth District

Michael D. Antonovich
Fifth District

John F. Schunhoff, Ph.D.
Interim Director

Robert G. Splawn, M.D.
Interim Chief Medical Officer

DHS HUMAN RESOURCES
5555 Ferguson Drive
Commerce, CA 90022

Tel: (323) 890-7935
Fax: (323) 869-0374

www.dhs.lacounty.gov

To improve health through leadership, service and education.

June 11, 2008

TO: Floyd McDonald, Senior Deputy Compliance Officer
Office of Affirmative Action Compliance

FROM: David Cochran, Organizational Manager
Department of Health Services
Human Resources

SUBJECT: CORRECTIVE ACTION PLAN – DHS07-[redacted]

This is to inform you of the corrective action taken in the above named matter. On May 5, 2008 [redacted] the SOI in this case, was presented with a written reprimand.

Please let me know if you have further questions in this matter.

Attachment

DC:dc

C: OAAC file
Linda Vaisa

www.dhs.lacounty.gov

ATTACHMENT 19

OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

HEALTH SERVICES INVESTIGATIONS

September 20, 2010

To: David Kim
Risk Manager

From: Comelita Brown
Senior Deputy

Subject: **DEPARTMENT OF HEALTH SERVICES (DHS)**
CORRECTIVE ACTION PLANS (CAPS)

The DHS was requested to provide CAPS within ten business days for the following investigations that revealed violations of County policy. Attempts have been made, however, to date, none have been received. I am requesting your assistance in securing the CAPS.

Complaining Party	Case Number	CAP Request Date
Jane Smith	HSI_2008_000	April 1, 2010
John Doe	HSI_2008_000	May 1, 2010

If I can be of additional assistance, please contact me at (213) 202-5835.

CB:SS
J:\TEMPLATE\SOP 2010\RM Referral_CAPS - 19.doc

c: Hayward Harris, Jr., Principal Deputy

ATTACHMENT 20

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 780
Los Angeles, CA 90012
(213) 974-1080
Fax (213) 626-7034 TTY (888) 478-3502
http://oaac.co.la.ca.us

Dennis A. Tafoya
Director

Members of the Board
Gloria Molina
Mark Ridley-Thomas
Zev Yaroslavsky
Don Knabe
Michael D. Antonovich

CONFIDENTIAL
PERSONNEL INFORMATION

September 30, 2010

Bella Estrella
000 Galaxy Drive
Sunland, CA 90001

LETTER OF DETERMINATION
OAAC # HSI_2010_000

Dear Ms. Estrella:

The employment discrimination complaint you recently filed was investigated by the Office of Affirmative Action Compliance. The investigation, which included reviewing pertinent facts and interviewing witnesses regarding your allegations, did not reveal a violation of County or departmental EEO policies.

This concludes the investigation of your complaint. If you are dissatisfied with these findings, you have the right to file your complaint with the U.S. Equal Employment Opportunity Commission or the California Department of Fair Employment and Housing.

If I can be of additional assistance, please call me at (213) 202-5835.

Sincerely,

LETITIA ELLISON-COOPER
Deputy Compliance Officer

CB:LEC
J:\TEMPLATE\SOP-2010\CP-LOD-Unsub – 20A.doc

c: David Cochran, Department of Health Services

SAMPLE

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 780
Los Angeles, CA 90012
(213) 974-1080
Fax (213) 626-7034 TTY (888) 478-3502
http://oaac.co.la.ca.us

Dennis A. Tafoya
Director

Members of the Board
Gloria Molina
Mark Ridley-Thomas
Zev Yaroslavsky
Don Knabe
Michael D. Antonovich

CONFIDENTIAL
PERSONNEL INFORMATION

September 30, 2010

Rosey Posey
111 Tulip Street
County, CA 90001

LETTER OF DETERMINATION
OAAC # HSI_2010_000

Dear Ms. Posey:

The employment discrimination complaint you recently filed was investigated by the Office of Affirmative Action Compliance. The investigation, which included reviewing pertinent facts and interviewing witnesses, did not reveal a violation of County or departmental EEO Policies. However, the matter was referred to DHS Human Resources for administrative review for potential violations of departmental policy.

This concludes the investigation of your complaint. If you are dissatisfied with these findings, you have the right to file your complaint with the U.S. Equal Employment Opportunity Commission or the California Department of Fair Employment and Housing.

If I can be of additional assistance, please call me at (213) 202-5836.

Sincerely,

LETITIA ELLISON-COOPER
Deputy Compliance Officer

CB:LEC:lec
J:\TEMPLATE\SOP 2010\BOS CP LOD-Unsub – 20B.doc

c: David Cochran, Department of Health Services

SAMPLE

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 780
Los Angeles, CA 90012
(213) 974-1080
Fax (213) 626-7034 TTY (888) 478-3502
http://oaac.co.la.ca.us

Dennis A. Tafoya
Director

Members of the Board
Gloria Molina
Mark Ridley-Thomas
Zev Yaroslavsky
Don Knabe
Michael D. Antonovich

CONFIDENTIAL
PERSONNEL INFORMATION

September 30, 2010

Tom Jones
0002 Wish Way
West Town, CA 90001

LETTER OF DETERMINATION
CASE #DHS08-0000 / HSI_2008_000

Dear Mr. Jones:

The employment discrmination complaint you recently filed was investigated by the Office of Affirmative Action Compliance. The investigation, which included reviewing pertinent facts and interviewing witnesses regarding your allegations, ***did reveal OR did not reveal*** a violation of County or departmental EEO policies.

As a result, DHS will take corrective action that it believes to be sufficient to prevent any further violation of County policy from occurring. If at any time there is another incident or you believe you have been retaliated against, please report it immediately.

This concludes the investigation of your complaint. If you are dissatisfied with these findings, you have the right to file your complaint with the U.S. Equal Employment Opportunity Commission or the California Department of Fair Employment and Housing.

If I can be of additional assistance, please call me at (213) 202-5836.

Sincerely,

LETITIA ELLISON-COOPER
Deputy Compliance Officer

CB:LEC:lec
Document4

SAMPLE

ATTACHMENT 21

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 780
LOS ANGELES, CALIFORNIA 90012
(213) 974-1080
FAX (213) 626-7034 / TTY (888) 478-3502
HTTP://OAAC.CO.LA.CA.US

DENNIS A. TAFOYA
DIRECTOR

MEMBERS OF THE BOARD
GLORIA MOLINA
MARK RIDLEY-THOMAS
ZEV YAROSLAVSKY
DON KNABE
MICHAEL D. ANTONOVICH

CONFIDENTIAL
PERSONNEL INFORMATION

September 20, 2010

Lola Sola
001 Sun Street
Sunland, California 90000

LETTER OF DETERMINATION
OAAC #HSI_2010_000

Dear Ms. Sola:

Thank you for your cooperation in the investigation conducted by the Office of Affirmative Action Compliance (OAAC). A thorough investigation of the allegations did not substantiate a violation of County or departmental EEO Policies.

You can be assured the records of the investigation will be treated confidentially. You are advised to treat the complaint, the investigation, and the outcome as a confidential matter.

If you have any questions in this regard, please contact me at (213) 893-0025.

Sincerely,

STEPHEN STRATI
Deputy Compliance Officer

CB:SS:ss
\\HSI\Lola.Sola.HSI_2010_000.LOD-Unsub.doc

c: David Cochran

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 780
Los Angeles, CA 90012
(213) 974-1080
Fax (213) 626-7034 TTY (888) 478-3502
http://oaac.co.la.ca.us

Dennis A. Tafoya
Director

Members of the Board
Gloria Molina
Mark Ridley-Thomas
Zev Yaroslavsky
Don Knabe
Michael D. Antonovich

CONFIDENTIAL
PERSONNEL INFORMATION

September 30, 2010

John Smith
100 Main Street
County, CA 90001

LETTER OF DETERMINATION
OAAC #HSI_2010_000

Dear Mr. Smith:

Thank you for your cooperation in the investigation conducted by the Office of Affirmative Action Compliance. A thorough investigation did not reveal a violation of the County or the departmental EEO policies. However, the matter was referred to DHS Human Resources for administrative review for potential violations of departmental policy.

I hope this investigation has not caused you any undue inconvenience. You can be assured that the records of the investigation will be treated confidentially and will not in any way influence any decisions about your employment with the County. Please treat the complaint, the investigation, and the outcome as a confidential matter.

If I can be of additional assistance, please call me at (213) 202-5836.

Sincerely,

LETITIA ELLISON-COOPER
Deputy Compliance Officer

CB:LEC:lec
SOI LOD - Unsub follow-up - 21B.doc

c: David Cochran, Department of Health Services

SAMPLE

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 780
Los Angeles, CA 90012
(213) 974-1080
Fax (213) 626-7034 TTY (888) 478-3502
http://oaac.co.la.ca.us

Dennis A. Tafoya
Director

Members of the Board
Gloria Molina
Mark Ridley-Thomas
Zev Yaroslavsky
Don Knabe
Michael D. Antonovich

CONFIDENTIAL
PERSONNEL INFORMATION

September XX, 2010

John Smith
100 Main Street
County, CA 90001

LETTER OF DETERMINATION
OAAC CASE #HSI_2010_000

Dear Mr. Smith:

Thank you for your cooperation in the investigation recently conducted by the Office of Affirmative Action Compliance (OAAC). A thorough investigation of this matter revealed a violation of County or departmental EEO policies. A separate letter will be forthcoming advising you of corrective measures to be taken by the *department name*.

Do not contact the Charging Party(ies) or conduct yourself in a manner that could be interpreted as retaliation. You are required to treat the complaint, the investigation, and the outcome as a confidential matter.

If you have any questions regarding this matter, please contact Mr. David Cochran, DHS Organizational Manager, at (323) 890-7935.

If I can be of additional assistance, please call me at (213) 202-5836.

Sincerely,

LETITIA ELLISON-COOPER
Deputy Compliance Officer

CB:LEC:lec
SOI LOD - Sub - 21C.dot

c: David Cochran, Department of Health Services

SAMPLE

ATTACHMENT 22

STATE OF CALIFORNIA · STATE AND CONSUMER SERVICES AGENCY

ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING
West Sixth Street, Suite 1500, Los Angeles, CA 90017
439-6770 (800) 700-2320 Fax (213) 439-6780

September 22, 2008

KEISHA DENISE LAVENDER
P.O. BOX 26
SAN GABRIEL, CA 91778

RE: E200708R1334-00-e/37AA812040
LAVENDER/LOS ANGELES, COUNTY OF/DEPT. OF HEALTH SERVICES

Dear KEISHA DENISE LAVENDER:

NOTICE OF CASE CLOSURE

The consultant assigned to handle the above-referenced discrimination complaint that was filed with the Department of Fair Employment and Housing (DFEH) has recommended that the case be closed effective September 22, 2008. Please be advised that this recommendation has been accepted.

Based upon its investigation, DFEH is unable to conclude that the information obtained establishes a violation of the statute. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this complaint.

This letter is also your Right-To-Sue Notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. This is also applicable to DFEH complaints that are filed under, and allege a violation of Government Code section 12948 which incorporates Civil Code sections 51, 51.7, and 54. The civil action must be filed within one year from the date of this letter. However, if your civil complaint alleges a violation of Civil Code section 51, 51.7, or 54, you should consult an attorney about the applicable statutes of limitation. If a settlement agreement has been signed resolving the complaint, it is likely that your right to file a private lawsuit may have been waived.

This case may be referred to the U.S. Equal Employment Opportunity Commission (EEOC) for further review. If so, pursuant to Government Code section 12965, subdivision (d)(1), your right to sue will be tolled during the pendency of EEOC's review of your complaint.

DFEH does not retain case files beyond three years after a complaint is filed, unless the case is still open at the end of the three-year period.

Sincerely,

Tina Walker

Tina Walker
District Administrator

cc: Case File

DENNIS TAFOYA
AFFIRMATIVE ACTION COMPLIANCE OFF
LOS ANGELES, COUNTY OF/DEPT. OF HEALTH SERVICES
500 W. TEMPLE ST., ROOM 780

NEGOTIATED SETTLEMENT AGREEMENT
Charge No. 480-2007-01110 Page 2 of 2
Pages

5. The parties agree that this Agreement may be specifically enforced in COURT and may be used as evidence in a subsequent proceeding in which any of the parties allege a breach of this Agreement.

6. The Charging Party acknowledges with being advised to consult an attorney and having been of time given a reasonable period within which to consider before the settlement agreement signing this agreement.

Signatures

Respondent — Date: 6-14-07

[redacted] — Date: 6-11-07

7. This clause is deemed incorporated as part of this Agreement if and when signed by EEOC Office Director:

In reliance on the promises made in paragraphs (2), (3), and (5) EEOC agrees to terminate the investigation which it has begun and not to use the above-referenced charge as the jurisdictional basis for a civil action under the Age Discrimination in Employment Act of 1967, as amended.

EEOC does not waive or in any manner limit its right to, process or seek relief in any other charge or investigation including, but not limited to a charge filed by a member of the Commission against the Respondent.

On Behalf of the Commission:

Date ____/____/____

Olophius S. Perry, District Director Los Angeles District

ATTACHMENT 23

EEOC Form 161 (2/98)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Dr. Eugene Harding
P.O. Box 901
Harbor City, CA 90710

From: Los Angeles District Office
255 E. Temple St. 4th
Los Angeles, CA 90012

☐ *On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR §1601.7(a))*

EEOC Charge No.	EEOC Representative	Telephone No.
480-2007-02314	Joyce L. Mills, Investigator	(213) 894-1022

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐ Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐ Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

☐ Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.

☐ While reasonable efforts were made to locate you, we were not able to do so.

☐ You were given 30 days to accept a reasonable settlement offer that affords full relief for the harm you alleged.

☒ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

☐ The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☐ *Other (briefly state)*

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for wilful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

On behalf of the Commission

Enclosure(s)

Olophius E. Perry,
District Director

(Date Mailed)

cc:

KING-DREW MEDICAL CENTER

ATTACHMENT 24

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 780
Los Angeles, CA 90012
(213) 974-1080
Fax (213) 626-7034 TTY (888) 478-3502
http://oaac.co.la.ca.us

Dennis A. Tafoya
Director

Members of the Board
Gloria Molina
Mark Ridley-Thomas
Zev Yaroslavsky
Don Knabe
Michael D. Antonovich

CONFIDENTIAL
PERSONNEL INFORMATION

September 30, 2010

To: David Cochran, Organization Manager
DHS Human Resources
Department of Health Services

From: Stephen Strati
Deputy Compliance Officer

Subject: **DFEH CHARGE NO. E200708-R-[redacted]**
OAAC CASE NO. HSI_2010_000
CP NAME

Thank you for your cooperation in the above-referenced matter. Please know that the State of California Department of Fair Employment and Housing (DFEH) dismissed this case effective September 22, 2010, on the basis of: DFEH is unable to conclude that the information obtained establishes a violation of the statute. Attached for your records is copy of a "Notice of Case Closure" from DFEH regarding this matter.

I recommend you maintain your file in this case as Complainant has one year from the date of the Notice of Case Closure to exercise her legal recourse.

If I can be of further assistance, please call me at (213) 202-5897.

CB:SS
J:\TEMPLATE\Investigations\LOD to Dept - External Closure - 24.doc

Attachment

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 780
Los Angeles, CA 90012
(213) 974-1080
Fax (213) 626-7034 TTY (888) 478-3502
http://oaac.co.la.ca.us

DENNIS A. TAFOYA
DIRECTOR

MEMBERS OF THE BOARD
GLORIA MOLINA
MARK RIDLEY-THOMAS
ZEV YAROSLAVSKY
DON KNABE
MICHAEL D. ANTONOVICH

CONFIDENTIAL
PERSONNEL INFORMATION

September 20, 2010

To: David Cochran, Organizational Manager
DHS Human Resources
Department of Health Services

From: Jane Q. Matsuzaki
Deputy Compliance Officer

Subject: **EEOC CHARGE NO. 480-2010-00**
OAAC # HSI_2010_

This is to inform you that OAAC has submitted a Position Statement to the U.S. Equal Employment Opportunity Commission (EEOC) in response to the above-referenced matter.

Please be advised the case is still open with the EEOC. A copy of the EEOC Closure Letter will be provided upon receipt.

If you have any questions regarding this matter, please call me at (213) 202-5898.

CB:JM
J:\TEMPLATE\SOP 2010\Letter to Dept-External Submission – 24A.doc

Attachment

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 780
LOS ANGELES, CALIFORNIA 90012
(213) 974-1080 / FAX (213) 626-7034
HTTP://OAAC.CO.LA.CA.US

DENNIS A. TAFOYA
DIRECTOR

MEMBERS OF THE BOARD
GLORIA MOLINA
MARK RIDLEY-THOMAS
ZEV YAROSLAVSKY
DON KNABE
MICHAEL D. ANTONOVICH

CONFIDENTIAL
PERSONNEL INFORMATION

September 20, 2010

To: David Cochran, Organizational Manager
DHS Human Resources
Department of Health Services

From: [redacted]
Deputy Compliance Officer

Subject: [redacted]
OAAC # HSI_2010_000
[redacted]

This is to inform you that OAAC has submitted a Position Statement to the [redacted] in response to the above-referenced matter.

Please be advised the case is still open with the [redacted]. A copy of the [redacted] Closure Letter will be provided upon receipt.

If you have any questions regarding this matter, please call me at (213) 202-[redacted].

CB:[redacted]
J:\TEMPLATE\SOP 2010\Letter to Dept-Case Closure – 24B.doc

Attachment

ATTACHMENT 25

OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

HEALTH SERVICES INVESTIGATIONS

October 23, 2010

To: Comelita Brown
Senior Deputy Compliance Officer

From: Stephen Strati
Deputy Compliance Officer

Subject: **AGREEMENT TO WITHDRAW COMPLAINT**
OAAC #HSI_2010_000 – JANE SMITH

On June 19, 2008, Ms. Smith filed an internal discrimination complaint. She alleged that she was not promoted due to age and race. According to her complaint, she is an Assistant Staff Analyst Health. The class specifications for Staff Analyst Health describe her workload. She is in Band II and has not been promoted, although others in Band II have. Mediation was scheduled for September 8, 2008, however at the last minute, Ms. Smith cancelled.

In speaking with the CP, she originally was interested in withdrawing her complaint, stating that she was planning on retiring in the near future. On September 29, we scheduled a meeting for October 8, 2008 to go over the issues of her complaint. She cancelled the appointment on October 3, 2008. The meeting was rescheduled for October 16, 2008.

On October 16, 2008, Ms. Smith cancelled the meeting, stating she was unable to meet and restated that she was planning on retiring in a year. The meeting was rescheduled for today.

Yesterday afternoon, I received a call from Ms. Smith. She went to LACERA and retired. Her official retirement date is next week and she wants to withdraw her complaint.

Based on the above information, I recommend approval of Ms. Smith's request to withdraw.

CB:SS
L:\HSI\SOP\Agreement to Withdraw Memo.doc

ATTACHMENT 26

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 780
LOS ANGELES, CALIFORNIA 90012
(213) 974-1080
FAX (213) 626-7034 TTY (888) 478-3502
HTTP://OAAC.CO.LA.CA.US

DENNIS A. TAFOYA
DIRECTOR

MEMBERS OF THE BOARD
GLORIA MOLINA
MARK RIDLEY-THOMAS
ZEV YAROSLAVSKY
DON KNABE
MICHAEL D. ANTONOVICH

AGREEMENT TO WITHDRAW COMPLAINT

COMPLAINANT: JANE SMITH **OAAC Case # HSI_2010_000**

In exchange for the promises made herein, the Complainant agrees to withdraw from consideration by any state or federal agency or court of law or court of law or other government entity, including, but not limited to, the Los Angeles County Office of Affirmative Action Compliance (OAAC), any charge or complaint of discrimination or other claims relating to illegal discrimination, as referenced in the above-described complaint, which are now pending on Complainant's behalf against the Department of Health Services , its officers, agents or employees.

Further, Complainant will not institute or cause to be instituted any action in state or federal court, or before any state, local or federal government entity arising from or attributable to any alleged unlawful practice of the Department of Health Services, its officers, agents or employees arising from or attributable to the above-referenced complaint. OAAC agrees to permit Complainant to withdraw his/her employment discrimination complaint at Complainant's request and will close its case without further investigation.

In signing this agreement the Complainant and OAAC acknowledge that neither OAAC, nor any of its agents or employees, has served as legal advisor to the Complainant.

Complainant acknowledges that this agreement has been entered without coercion or fear of retaliation.

_____ _____
Complainant Date

_____ _____
Senior Deputy Compliance Officer Date

CB:SS
L:\HSI\SOP\Agreement to Withdraw Complaint.doc

ATTACHMENT 27

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 780
Los Angeles, CA 90012
(213) 974-1080
Fax (213) 626-7034 TTY (888) 478-3502
http://oaac.co.la.ca.us

Dennis A. Tafoya
Director

Members of the Board
Gloria Molina
Mark Ridley-Thomas
Zev Yaroslavsky
Don Knabe
Michael D. Antonovich

CONFIDENTIAL
PERSONNEL INFORMATION

September 30, 2010

Jane Smith
1234 Main Street
Los Angeles, CA 90012

NOTICE OF COMPLAINT WITHDRAWAL
OAAC #HSI_2010_000

Dear Ms. Smith:

Your above-referenced employment discrimination complaint has been closed on the basis of your withdrawal of the complaint and execution of an Office of Affirmative Action Compliance Agreement to Withdraw Complaint.

Please be advised that retaliation for filing an employment discrimination complaint is a violation of the County's Equal Employment Policy. If, in the future, you feel that you are being discriminated or retaliated against for having filed this complaint, please report it immediately.

If I can be of additional assistance, please call me at (213) 202-5836.

Sincerely,

STEPHEN STRATI
Deputy Compliance Officer

CB:SS:ss
CP - Withdrawal letter - 27.doc

c: David Cochran, Department of Health Services

SAMPLE

ATTACHMENT 28

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 780
LOS ANGELES, CALIFORNIA 90012
(213) 974-1080 / FAX (213) 626-7034
HTTP://OAAC.CO.LA.CA.US

DENNIS A. TAFOYA
DIRECTOR

MEMBERS OF THE BOARD
GLORIA MOLINA
MARK RIDLEY-THOMAS
ZEV YAROSLAVSKY
DON KNABE
MICHAEL D. ANTONOVICH

CONFIDENTIAL
PERSONNEL INFORMATION

September 20, 2010

John Doe
1234 Main Street
Los Angeles, CA 90012

NOTICE OF COMPLAINT WITHDRAWAL
OAAC #HSI_2008_000

Dear Mr. Doe:

The above-referenced employment discrimination complaint has been withdrawn by the Charging Party. As a result, no further administrative action will be taken relevant to this complaint. You are reminded not contact the Charging Party(ies) or conduct yourself in any manner that could be interpreted as retaliation.

I hope this matter has not caused you any undue inconvenience. You can be assured that the records of the investigation will be treated confidentially and will not in any way influence any decisions about your employment with the County.

If I can be of additional assistance, please call me at (213) 202-5836.

Sincerely,

STEPHEN STRATI
Deputy Compliance Officer

CB:SS:ss
\\isdowfsv02\d063home\E173159\UPDATED LODS 8-09\SOI Notice of Complaint withdrawal - 28.doc

c: David Cochran, Department of Health Services

ATTACHMENT 29

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 780
Los Angeles, CA 90012
(213) 974-1080
Fax (213) 626-7034 TTY (888) 478-3502
http://oaac.co.la.ca.us

Dennis A. Tafoya
Director

Members of the Board
Gloria Molina
Mark Ridley-Thomas
Zev Yaroslavsky
Don Knabe
Michael D. Antonovich

Address all correspondence to:
EMPLOYMENT DISCRIMINATION INVESTIGATIONS
World Trade Center Building
350 South Figueroa Street, Suite 990
Los Angeles, CA 90071

CONFIDENTIAL
PERSONNEL INFORMATION

September 30, 2010

To: David Cochran, Organizational Manager
Department of Health Services

From: Stephen Strati
Deputy Compliance Officer

Subject: **JANE SMITH**
OAAC #HSI_2010_000

Please be advised that the above-referenced employment discrimination complaint has been closed. The Charging Party withdrew the complaint and executed an Office of Affirmative Action Compliance Agreement to Withdraw Complaint.

If I can be of further assistance in this matter, please call me at (213) 202-5897.

CB:SS:ss
Agreement to Withdraw - Dept notice - 29.doc

SAMPLE

ATTACHMENT 30

RISK MANAGEMENT

SETTLEMENT REVIEW & APPROVAL

DATE _____

Deputy Name: _____

Case Name: _____ Department: _____

Case Number: _____ RM Case Number: _____

Complaint type: ☐ Internal investigation ☐ Board Referral ☐ Memorandum

☐ Assessment

Send to Mediation: ☐ Mediation

REVIEW DATE	REVIEWER	APPROVE	NOT APPROVE
_____	_____ SENIOR DEPUTY	☐	☐
_____	_____ RISK MANAGER	☐	☐
_____	_____ PRINCIPAL DEPUTY	☐	☐
_____	_____ CHIEF DEPUTY DIRECTOR	☐	☐
_____	_____ DIRECTOR	☐	☐

COMMENTS

ATTACHMENT 31

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 780
LOS ANGELES, CALIFORNIA 90012
(213) 974-1080
FAX (213) 626-7034 TTY (888) 478-3502
HTTP://OAAC.CO.LA.CA.US

DENNIS A. TAFOYA
DIRECTOR

MEMBERS OF THE BOARD
GLORIA MOLINA
MARK RIDLEY-THOMAS
ZEV YAROSLAVSKY
DON KNABE
MICHAEL D. ANTONOVICH

NO-FAULT SETTLEMENT AGREEMENT

RESPONDENT: Department of Health Services **OAAC#** HSI_2010_000

COMPLAINANT: John Doe

In exchange for the promises made by the Respondent contained in this agreement, the Complainant agrees to withdraw from consideration complaints by any state or federal agency or court of law or other government entity, including, but not limited to, the Los Angeles County Office of Affirmative Action Compliance (OAAC), any charge or complaint of discrimination or other claims relating to illegal discrimination, as referenced in the above-described complaint, which are now pending on Complainant's behalf against the Respondent, its officers, agents or employees. The Complainant further agrees that submission of this agreement to the OAAC will constitute a request for closure of the OAAC Case No. HSI_2010_000.

Further, Complainant will not institute or cause to be instituted any action in state or federal court, or before any state, local or federal government entity arising from or attributable to any alleged unlawful practice of the Respondent, its officers, agents or employees arising from or attributable to the above-referenced complaint.

It is understood that this agreement does not constitute an admission by the Respondent of any violation of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, The Americans With Disabilities Act of 1990, the Equal Pay Act (29 U.S.C. Section. 206(d), the California Fair Employment and Housing Act, and/or the Los Angeles County Code Sections 5.08.010 and 5.09.010, as amended.

In exchange for the promises of the Complainant contained in this agreement, the Respondent agrees to:

1. Restore Complainant's pay status and benefits retroactively to April 23, 2007, effective immediately.

2. The Department of Health Service will identify and locate a job assignment consistent with Complainant's classification and restrictions.

In signing this agreement the Complainant and Respondent acknowledge that neither the OAAC, nor any of its agents or employees, has served as legal advisor to either the Complainant or the Respondent.

Complainant – John Doe, Senior Clerk	Date
Respondent – XXXX, Assistant Director DHS Human Resources	Date
Director – Dennis A. Tafoya, Office of Affirmative Action Compliance	Date

ATTACHMENT 32

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Los Angeles District Office

255 E. Temple Street, 411. Floor
Los Angeles, CA 90012
(213) 894-1000
TTY (213) 894-1121
FAX (213) 894-1118

Charge No.: 480-20076-01110
Charging Party: [redacted]

Los Angeles County
500 W. Temple St., Room 780
Los Angeles, CA 90012 Attention:
Letitia Ellison-Cooper

Dear Ms. Ellison-Cooper,

Enclosed please find a copy of the Negotiated Settlement Agreement, as approved on behalf of the Commission, in the above captioned cases.

If at any time we can be of further assistance to you, please feel free to contact us at the above address. Thank you for your cooperation in this matter.

Sincerely,

Date 6/20/07

Olophius Perry, District Director /
Los Angeles District Office

Encl.: Negotiated Settlement Agreement

OEP:PAK:jlm

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Los Angeles District Office

255 E. Temple Street, 41h Floor
Los Angeles, CA 9001
(213) 894-100
TTY (213) 894-1121
FAX (213) 894-1118

Charge No.: 480-2007-01110

Charging Party:

[redacted]
Los Angeles, CA 9004~

L.A. County Probation Department
9150 E. Imperial Highway
Downey, CA 90242

Respondent

NEGOTIATED SETTLEMENT AGREEMENT

1. The following Agreement refers to Charge Number 480-200701110, on file with the Equal Employment Opportunity Commission (EEOC) under the Age Discrimination in Employment Act of 1967, as amended (ADEA).

2. In exchange for satisfactory fulfillment by Respondent of promises contained in paragraph (3) of this Agreement, the Charging Party agrees not to institute a lawsuit with respect to the above referenced charge. Through execution of this Agreement, the Charging Party also waives his right to pursue an action under the California Fair Employment and Housing Act, California Government Code Section 12900 et.seq.

3. In exchange for the promises of the Charging Party contained in paragraph 2 of this A~reement, the Respondent agrees:

   a. For all future employment reference inquiries, the Respondent agrees, as has been standard practice, to continue to only provide neutral reference information, such as the Charging Party's dates of employment and job titles held, but excluding inquiries when the Respondent is issued a subpoena to release additional information or when the Respondent receives a release signed by Charging Party, which authorizes the release of additional information.

4. It is understood that this Agreement does not constitute an admission by the Respondent of any violation of the Age Discrimination in Employment Act of 1967, as amended.

5. The parties aqree that this Agreement may be specifical~y enforced in COUJ:'t and may be used as evidence in a subsequent proceeding in which a.ny of the parties allege a breach of this Agreement.

6. The Cbarging J?arty acknowledges withbeing advised to c:onsu.l t an attorney and having been of time given a reasonable period within which to consider before the settlement a9~eementr signing this agreement.

Signatures

Respondent — Date 6-14-07

[redacted] — Date 6-11-07

7. This clause ;i.s deemed incorporated as part of this Agreement if and when signed by EEOC Office Director:

In reliance on the promises made in paragra.phs (2), (3), and (5) r EEOC agrees to texminate the investi!lation which it has bequn and not to use the above--eferenced charge as the jurisdictional basis for a civil action under the Age Discrimination in EmpJ.:oyment Act of] 967 r as amended.

EEOC does not waive or in any manner llmit its right to, process or seek relief in any other charqe or investigation including, but not limited top a charge filed by a member of the Commission a9a~nst the Respondent.

On Benalf of the Commission:

Data

Olopbius S. Pel:ry, Distdc;:t Di.rector Los Angeles District

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Los Angeles District Office

255 E. Temple Street, 41h Floor
Los Angeles, CA 9001
(213) 894-1000
TTY (213) 894-1121
FAX (213) 894-1118

Charge No.: 480-2007-01110

Charging Party:

[redacted]
Los Angeles, CA 9004~

L.A. County Probation Department
9150 E. Imperial Highway
Downey, CA 90242

Respondent

NEGOTIATED SETTLEMENT AGREEMENT

1. The following Agreement refers to Charge Number 480-200701110, on file with the Equal Employment Opportunity Commission (EEOC) under the Age Discrimination in Employment Act of 1967, as amended (ADEA).

2. In exchange for satisfactory fulfillment by Respondent of t promises contained in paragraph (3) of this Agreement, the Charging Party agrees not to institute a lawsuit with respect to the above referenced charge. Through execution of this Agreement, the Charging Party also waives his right to pursue an action under the California Fair Employment and Housing Act, California Government Code Section 12900 et.seq.

3. In exchange for the promises of the Charging Party contained in paragraph 2 of this A~reement, the Respondent agrees:

   a. For all future employment reference inquiries, the Respondent agrees, as has been standard practice, to continue to only provide neutral reference information, such as the Charging Party's dates of employment and job titles held, but excluding inquiries when the Respondent is issued a subpoena to release additional information or when the Respondent receives a release signed by Charging Party, which authorizes the release of additional information.

4. It is understood that this Agreement does not constitute an admission by the Respondent of any violation of the Age Discrimination in Employment Act of 1967, as amended.

5. The parties aqree that this Agreement may be specifical~y enforced in COUJ:'t and may be used as evidence in a subsequent proceeding in which a.ny of the parties allege a breach of this Agreement.

6. The Cbarging J?arty acknowledges withbeing advised to c:onsu.l t an attorney and having been of time given a reasonable period within which to consider before the settlement a9~eementr signing this agreement.

Signatures

Respondent — Date 6-14-07

[redacted] — Date 6-11-07

7. This clause ;i.s deemed incorporated as part of this Agreement if and when signed by EEOC Office Director:

In reliance on the promises made in paragra.phs (2), (3), and (5) r EEOC agrees to texminate the investi!lation which it has bequn and not to use the above--eferenced charge as the jurisdictional basis for a civil action under the Age Discrimination in EmpJ.:oyment Act of] 967 r as amended.

EEOC does not waive or in any manner 11mit its right to, process or seek relief in any other charqe or investigation including, but not limited top a charge filed by a member of the Commission a9a~nst the Respondent.

On Benalf of the Commission:

Data

Olopbius S. Pel:ry, Distdc;:t Di.rector Los Angeles District

CASE REVIEW PROGRESS REPORTS

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

DEPUTY CASE REVIEW FORM

Review Period: _____ **Review Date:** _____

DCO Name: _____ **Section:** _____

DEPUTY CASE ACTIVITY		
Open Investigations: ____ Current Investigations >90 days old: _____ Closed Investigations: _____		
Investigations Completed: _____ (90 days): _____ (91 to 120 days): _____ (>121 days): _____		
Assessments Completed: _____ (15 days): _____ (>15 days): __0__		
Pending Assessments: _____ Cases in Mediation: _____		
JOB COMPETENCIES		
PRODUCTIVITY Ability to meet established time frames (completed 3 investigations per month and assessments within 15 business days)	☐Did not meet expectations	☐Met expectations ☐Exceeded expectations
Comments:		
KNOWLEDGE Demonstrated knowledge of the Elements of Proof (Applied correct theory and elements during investigation)	☐Did not meet expectations	☐Met expectations ☐Exceeded expectations
Comments:		
WRITTEN PRODUCT Reports & Assessments (Reflected understanding of Elements of Proof in the analysis of the information and conclusion)	☐Did not meet expectations	☐Met expectations ☐Exceeded expectations
Comments:		
GOALS: _____ _____ _____ _____		

Acknowledgement of Case Review discussion:
(Print & Sign name)

_____ _____
Deputy Signature Date

_____ _____
Senior Deputy Signature Date

COUNTY OF LOS ANGELES
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

SENIOR DEPUTY CASE REVIEW FORM

Review Period: _____ **Review Date:** _____

Senior Name: _____ **Section:** _____

SECTION CASE ACTIVITY

Cases Received: _____ Cases Assessed: _____ Jurisdictional: _____ Non-Jurisdictional: _____

Cases Assessed: (<or =15 days): _____ (>15 days): _____ Cases in Mediation: _____

Closed Investigations: _____ (<90 days): _____ (91 to 120 days): _____ (>121 days): _____ Substantiated: _____

Current Investigations: _____ (<90 days): _____ (91 to 120 days): _____ (>121 days): _____

JOB COMPETENCIES

PRODUCTIVITY Ability to meet established time frames (Staff met established timeframes 3 investigations per month and assessments within 15 business days)	☐Did not meet expectations ☐Met expectations ☐Exceeded expectations
Comments:	
KNOWLEDGE Demonstrated knowledge of the Elements of Proof (Applied correct theory and elements during investigation)	☐Did not meet expectations ☐Met expectations ☐Exceeded expectations
Comments:	
WRITTEN PRODUCT Reports & Assessments (Reflected understanding of Elements of Proof in the analysis of the information and conclusion)	☐Did not meet expectations ☐Met expectations ☐Exceeded expectations
Comments:	
SUPERVISORY ABILITY Assigning, training and instructing, disciplinary control, evaluating performance, leadership, making decisions, fairness and impartiality, approachability	☐Did not meet expectations ☐Met expectations ☐Exceeded expectations
Comments:	
GOALS: _____ _____ _____	

Acknowledgement of Case Review discussion: (Print & Sign name)

_____ Senior Deputy Signature _____ Date

_____ Principal Deputy Signature _____ Date

WORK PLAN (EMPLOYEE PERFORMANCE MANAGEMENT)

COUNTY OF LOS ANGELES PERFORMANCE MANAGEMENT PROJECT
PERFORMANCE WORK PLAN

Deputy Affirmative Compliance Officer – 1681

Definition
Investigates, evaluates, provides training, develops programs, conducts research, and monitors the County's diversity, equal opportunity, and civil rights-related programs.

Part 1: WORK PRODUCTS AND SERVICES		
Work Products or Services:	**Performance Expectations:** *(Quality, Quantity, Time, and/or Manner of Performance)*	**Relevant Strategic or Program Goal:**
1. Investigates, evaluates, and monitors the implementation of the County's diversity, equal opportunity, and Civil Rights-related programs. ☐ **Not Applicable**	• Employment discrimination investigations are conducted in accordance with County and departmental policies, processes and procedures. • Work meets standards/expectations and is in accordance with departmental policy, procedures and requirements. • Investigations are thoroughly and accurately conducted. • Investigations are completed within established timelines. • The implementation of programs is evaluated and monitored thoroughly, effectively and within established timelines. • Documentation and report writing are thorough and grammatically correct with significant facts and conclusions. • Documentation and report writing are and completed within established timelines. • The supervisor is made aware of time sensitive issues and/or critical problems.	• Goal 3 - Organizational Effectiveness

2. Conducts comprehensive training programs, facilitates mediations, attends meetings and conferences, and provides advice and information to line departments concerning issues of program development and Civil Rights. ☐**Not Applicable**	• Training programs are planned, scheduled, and conducted according to County and departmental goals and policies. • Trainings and meetings are conducted and completed within established timelines. • At least 80% of surveys and feedback of related training and/or mediation activities are positive. • The implementation of programs is evaluated and monitored thoroughly, effectively and within established timelines. • Advice provided to line departments is based on existing anti-discrimination laws and policies. • Meetings facilitated are well organized and presented in a professional manner. • Documentation and report writing are thorough and grammatically correct with significant facts and conclusions. • The supervisor is made aware of time sensitive issues and/or critical problems.	• Goal 3 - Organizational Effectiveness
3. Conducts focus groups or utilizes interviews, surveys, and other diagnostic methods designed to identify, mediate, or resolve inter-group conflicts associated with issues of diversity. ☐**Not Applicable**	• Sessions and meetings are planned, scheduled, and conducted according to County and departmental goals and policies. • Sessions and meetings are conducted and completed within established timelines. • At least 80% of surveys of related activities are positive. • Meetings facilitated are well organized and presented in a professional manner. • Documentation and report writing are thorough and grammatically correct with significant facts and conclusions. • Facilitation of group dynamics is handled effectively and professionally based on participant's positive feedback. • The supervisor is made aware of time sensitive issues and/or critical problems.	• Goal 3 - Organizational Effectiveness

4. Assists and advises County line departments in areas of policies, plans, and procedures for the effective implementation of departmental diversity, equal opportunity, and Civil Rights-related programs (e.g. Title II of ADA, etc). ☐**Not Applicable**	• Advice to line departments is given in accordance with County and departmental policies, processes and procedures. • Advice is thorough and accurate. • Work meets standards/expectations and is in accordance with Departmental policy, procedures and requirements. • The implementation of programs are evaluated and monitored thoroughly, effectively and within established timelines. • Report writing is thorough and grammatically correct with significant facts and conclusions. • Report writing is completed within established timelines. • The supervisor is made aware of time sensitive issues and/or critical problems.	• Goal 3 - Organizational Effectiveness
5. Analyzes and makes recommendations to management on issues related to employment discrimination and employee behaviors of stereotyping, prejudice or bias and/or on new case laws and proposed legislation. ☐**Not Applicable**	• Discrimination complaints are analyzed in accordance with applicable policies, processes and procedures. • Work meets standards/expectations and is in accordance with departmental policy, procedures and requirements. • Analyses of work products are completed within established timelines. • The implementation of programs is evaluated and monitored thoroughly, effectively and within established timelines. • Documentation and report writing are thorough and grammatically correct with significant facts and conclusions. • Recommendations to management on equal opportunities and/or Civil Rights issues are on point and consistent with policies, processes and procedures. • New case laws and/or proposed legislation are researched to determine facts and gain relevant information to determine its effect on County government. • Appropriate recommendations are submitted to supervisor within established timelines. • The supervisor is made aware of time sensitive issues and/or critical problems.	• Goal 3 - Organizational Effectiveness

6. Reviews, analyzes, and interprets federal and State equal opportunity regulations to ensure County Compliance. ☐**Not Applicable**	• Program compliance is reviewed and analyzed prior to submitting written recommendations to the supervisor. • Work meets standards/expectations and is in accordance with departmental procedures and requirements. • Analyses of work products are completed within established timelines. • Documentation and report writing are thorough and grammatically correct with significant facts and conclusions. • Recommendations to management on changes to equal opportunities are on point and consistent with applicable laws. • New case laws and/or proposed legislation are researched to determine its effect on County policies. • Appropriate recommendations are submitted within established timelines. • The supervisor is made aware of time sensitive issues and/or critical problems.	• Goal 3 - Organizational Effectiveness ← ? [redacted]

WORK BEHAVIORS

Work Behavior	Performance Expectation (Behavioral Descriptions)	Strategic or Program Goal/Performance Measure
1. ***Applying Job Related Knowledge and Skills***-- Demonstrates sufficient job related knowledge and skills to successfully perform the duties and accomplish the objective of the position.	• Performs job independently as required. • Uses required tools and equipment, appropriately. • Performs job in a safe manner. • Performs job in an efficient manner. • Knows and applies appropriate work methods. • Uses required computer skills (data base, word processing) appropriately. • Produces or completes desired product or assignments in a thorough, neat, timely and accurate manner.	• County Value: Accountability • County Value: Responsiveness • County Value: Professionalism
2. ***Oral Communication***--Pays attention to verbal and nonverbal messages others and responds in ways that are appropriate and clearly understood.	• Takes into account the audience and nature of the information when communicating. • Listens to make sure h/she understands before offering opinions or making judgments. • Communicates effectively with the public and with people at all levels of the organization. • Conveys information and ideas in a brief, clear, and organized manner. • Provides accurate information. • Asks appropriate questions to obtain relevant information or to clarify instructions.	• County Value: • Respect for diversity • County Value: Professionalism • County Value: • Compassion
3. ***Written Communication***-- Expresses facts and ideas in writing in a manner that is clear, organized, and appropriate for the purpose and audience.	• Recognizes and uses appropriate grammar, punctuation, and spelling. • Produces written information, which may include technical material that is appropriate for the intended audience. • Delivers information effectively in the proper format, (e.g., letters, memos, reports). • Ensures final work product is ready for presentation, (e.g., proofreads documents).	• County Value: Professionalism • County Value: • Respect for diversity

4. ***Customer Service and Satisfaction***--Treats customers (internal and external) with courtesy, dignity and respect; works proactively to facilitate customer access to services; strives to provide efficient, effective and timely services in a safe and welcoming environment.	• Demonstrates a caring and thoughtful attitude in his/her interactions with customers. • Displays courtesy and respect for customers in all interactions. • Listens carefully to customers' concerns, problems. • Provides (if necessary) service to customers with translation needs. • Provides, (if necessary) accommodation to ensure customers with disabilities have equal access to services. • Provides (if necessary) advocate or appeal information to customers. • Participates in outreach efforts to promote available services. • Prevents unnecessary delays for customers. • Navigates organizational obstacles to help customers. • Follows up with customers as appropriate. • Responds to customer service needs by directly providing the service or by making an appropriate referral.	• Strategic Goal 1 • County Value: Respect for diversity • County Value: Responsiveness • County Value: Professionalism • County Value: Commitment
5. Information Security – Acts in accordance with countywide and/or departmental information technology security policies, procedures, standards, and guidelines.	• Maintains a secured workstation. • Maintains and wears proper employee identification badge. • Immediately reports all potential security incidents to their immediate supervisor or manager. • Use e-mail, internet, and other computing systems for County business purposes only. • Uses appropriate operational safeguards when using personal computers, laptops, notebooks, etc., (e.g. passwords). • Protects computer password security. • Notifies supervisor of irregularities in information systems (e.g., viruses, inappropriate content).	• County Value: Accountability • County Value: Integrity • County Value: Professionalism

6. ***Self Management***-- Acts in accordance with policies, procedures, rules, and regulations and avoids behaviors that have negative effects on the organization.	• Complies with departmental policies on punctuality. Complies with departmental policies related to use of sick time and other leave. • Makes appropriate use of his/her work time. • Makes appropriate use of County resources (e.g., money, materials, staff time, etc.). • Complies with department safety regulations and rules. • Complies with department policies regarding Nondiscrimination. • Acknowledges mistakes. • Honors commitments. • Follows supervisory instructions. • Takes responsibility for performance and conduct. • Avoids behavior which may be viewed as a conflict of interest. • Complies with department policies and procedures regarding confidentiality.	• County Value: Accountability • County Value: Integrity • County Value: Professionalism • County Value: A "Can-Do" Attitude • County Value: Respect for Diversity

7. ***Peer, Team and Organizational Performance***--Helps co-workers, facilitates the work of the unit, looks out for and shows commitment to the department's interests, builds positive and constructive working relationships.	• Keeps supervisor informed of progress and any problems in a timely manner. • Shares information with staff and line managers that is important to the organizational mission and goals. • Assists co-workers with work-related problems. • Offers ideas to improve the functioning of the work unit. • Takes appropriate action to protect the organization from potential problems. • Gives constructive feedback or suggestions on various operational issues individually or in group settings. • Demonstrates a caring and thoughtful approach to the work h/she produces. • Demonstrates a willingness to learn from others. • Provides support and backup to co-workers as needed. • Respects others' ideas and expertise. • Uses tact and diplomacy in negotiations or resolving conflicts with others. • Shares credit and opportunities appropriately. • Demonstrates awareness of own style and how it affects others, and makes adjustments as necessary. • Responds positively to constructive suggestions or criticism.	• County Value: Respect for diversity • County Value: Responsiveness • County Value: Compassion • County Value: Professionalism
8. ***Work Effort***--Demonstrates focus and persistence to meet the objectives of the work unit.	• Persists when work is difficult or tedious. • Maintains focus until work is completed. • Gets work done under less than optimal conditions. • Reviews work product for thoroughness, neatness and accuracy. • Performs with minimal instructions and supervision. • Meets deadlines.	• County Value: Commitment • County Value: Integrity

KNOWLEDGE, SKILLS, AND ABILITIES

Knowledge

Information Systems and Accounting — Knowledge of accounting principles and practices, and the analysis and design of information systems for reporting of financial data.

English Language — Knowledge of the structure and content of the English language including the meaning and spelling of words, rules of composition, and grammar.

Customer and Personal Service — Knowledge of principles and processes for providing customer and personal services. This includes customer needs assessment, meeting quality standards for services, and evaluation of customer satisfaction.

Computers and Electronics — Knowledge of processors, electronic equipment, and computer hardware and software, including applications and programming.

Mathematics — Knowledge of arithmetic, statistics and their applications.

Administration and Management — Knowledge of business and management principles involved in strategic planning, resource allocation, leadership techniques, production methods, and coordination of people and resources.

Skills

me Management — Managing one's own time and the time of others.

Mathematics — Using mathematics to solve problems.

Active Learning — Understanding the implications of new information for both current and future problem-solving and decision-making.

Critical Thinking — Using logic and reasoning to identify the strengths and weaknesses of alternative solutions, conclusions or approaches to problems.

Reading Comprehension — Understanding written sentences and paragraphs in work related documents.

Active Listening — Giving full attention to what other people are saying, taking time to understand the points being made, asking questions as appropriate, and not interrupting at inappropriate times.

Writing — Communicating effectively in writing as appropriate for the needs of the audience.

Coordination — Adjusting actions in relation to others' actions.

Judgment and Decision Making — Considering the relative costs and benefits of potential actions to choose the most appropriate one.

Speaking — Talking to others to convey information effectively.

Meeting Management – Organizing and conducting effective meetings that accomplish their goal within the allotted timeframe.

Abilities

Written Comprehension — The ability to read and understand information and ideas presented in writing.

Inductive Reasoning — The ability to combine pieces of information to form general rules or conclusions (includes finding a relationship among seemingly unrelated events).

Near Vision — The ability to see details at close range (within a few feet of the observer).

Oral Comprehension — The ability to listen to and understand information and ideas presented through spoken words and sentences.

Problem Sensitivity — The ability to tell when something is wrong or is likely to go wrong. It does not involve solving the problem, only recognizing there is a problem.

Oral Expression — The ability to communicate information and ideas in speaking so others will understand.

Mathematical Reasoning — The ability to choose the right mathematical methods or formulas to solve a problem.

Number Facility — The ability to add, subtract, multiply, or divide quickly and correctly.

Speech Clarity — The ability to speak clearly so others can understand you.

Speech Recognition — The ability to identify and understand the speech of another person.

COUNTY OF LOS ANGELES PERFORMANCE MANAGEMENT PROJECT
PERFORMANCE WORK PLAN

Senior Deputy Affirmative Compliance Officer – 1682

Definition
Supervises subordinate staff involved in the implementation of affirmative action, diversity, equal opportunity, and civil rights-related programs.

Part 1: WORK PRODUCTS AND SERVICES		
Work Products or Services:	**Performance Expectations:** *(Quality, Quantity, Time, and/or Manner of Performance)*	**Relevant Strategic or Program Goal:**
1. Supervises program operations by planning, organizing and assigning the work of professional staff engaged in investigating, employment discrimination complaints, evaluating, training, researching, developing, mediating, monitoring 'iversity and Civil Rights-ıted programs. ☐ **Not Applicable**	• Program operations are managed in accordance with County and Departmental policies and procedures. • Staff's work meets standards/expectations and is in accordance with Departmental policy, procedures and requirements. • Meetings are conducted regularly to discuss changes to policies and procedures and project status (e.g. one on one, section, etc). • Staff work is assigned based on Section's existing caseload, departmental program goals, Performance Counts, priorities and available resources. • Work assignments are adjusted in collaboration with the Principal Deputy to adapt with availability of resources and/or change in priorities. • Examples of required work products are provided and/or explained clearly to staff within established timelines. • The Principal Deputy is made aware of time-sensitive issues and/or critical problems.	• Goal 3 - Organizational Effectiveness

2. Develops and evaluates professional staff's competency in diversity, equal employment opportunity/affirmative action, and other Civil Rights-related issues. ☐**Not Applicable**	• Performance evaluations developed are consistent with County policy and procedures. • Performance expectations are communicated and performance feedback (work that is deficient and work that exceeds expectations) is provided to employees, at minimum, bi-annually. • Performance including, coaching/counseling meetings, training, work that is deficient, and work that exceeds expectations is documented. • Evaluations submitted are accurate and complete requiring minimal revisions. • Performance evaluation reports are completed within established timelines. • Required training is provided to staff per current policy and regulations. • Approved training is made available for all staff according to available resources and recorded in the County's online training system (Learning Management System). • The Principal Deputy is made aware of time-sensitive issues and/or critical problems.	• Goal 3 - Organizational Effectiveness
3. Assists in the development and implementation of program, budget, and personnel policies and procedures. ☐**Not Applicable**	• Programs are developed according to Federal, State and/or County, departmental policy and/or regulations. • The budget is prepared according to County/departmental policy, procedure, and/or guidelines. • Accurate program budget information including narrative, revenue and expenditures, is submitted to the Principal Deputy. • Program budget is developed and submitted to Principal Deputy by established timelines. • Supplemental budget information is submitted as required and by established timeline. • Approved budget is implemented accurately and within established timelines. • Personnel policies and procedures are complied with by subordinates. • The Principal Deputy is made aware of time-sensitive issues and/or critical	• Goal 3 - Organizational Effectiveness • Goal 4 - Fiscal Responsibility

Reviews work for thoroughness, soundness of recommendations, compliance with established policies and regulations, and uniform application and interpretation of program procedures, rules and laws. ☐ **Not Applicable**	• Subordinates' work products are in compliance with established policies, regulations, uniform application and interpretation of program procedures, rules and laws. • Subordinates' work products are reviewed for thoroughness and soundness of recommendations. • Employment discrimination investigations are conducted in accordance with County and Departmental policies, processes and procedures. • The subordinates' investigations are ensured to be thorough and accurate. • The subordinates' investigations are completed and submitted within established timelines. • The subordinates' work of monitoring and/or implementing programs are ensured to be thorough, effective and within established timelines. • The subordinates' documentation and report writing are ensured to be thorough and grammatically correct with significant facts and conclusions. • The subordinates' documentation and report writing is submitted and completed within established timelines. • The Principal Deputy is made aware of time-sensitive issues and/or critical problems.	• Goal 3 - Organizational Effectiveness • Goal 4 - Fiscal Responsibility

5. Consults with County departments, agencies, and other governmental jurisdictions, as directed by the Principal Deputy Affirmative Action Compliance Officer on matters involving the County's diversity, equal opportunity, and Civil Rights-related programs. ☐**Not Applicable**	• Consultations with County departments, agencies, and other governmental jurisdictions on matters involving the County's diversity, equal opportunity, and Civil Rights-related programs is in compliance with County and departmental policy and procedures. • Meeting objectives are clearly identified and is prepared before hand e.g. agenda, etc. • Meetings with County departments, agencies, and other governmental jurisdictions are held in an organized and efficient manner (including equipment, agendas, materials/handouts). • Consultations with County departments, agencies, and other governmental jurisdictions are documented and findings communicated to Principal Deputy. • Positive feedback, in the form of surveys etc., is 80% or above. • The Principal Deputy is made aware of time-sensitive issues or critical problems raised in the meeting.	• Goal 3 - Organizational Effectiveness
6. Develops and maintains effective liaisons with other departments, agencies, and governmental jurisdictions. ☐**Not Applicable**	• Liaison activities with other departments, agencies, and governmental jurisdictions are in compliance with County and departmental guidelines. • Positive rapport with other departments, agencies, and governmental jurisdictions is established by developing relationships and on-going communication. • Liaison activities are maintained and viewed favorably by other departments, agencies, and governmental jurisdictions based on a continued relationship and sufficient involvement and support. • The Principal Deputy is made aware of time-sensitive issues and/or critical problems.	• Goal 3 - Organizational Effectiveness • Goal 4 - Fiscal Responsibility

WORK BEHAVIORS

Work Behavior	Performance Expectation (Behavioral Descriptions)	Strategic or Program Goal/Performance Measure
1. ***Applying Job Related Knowledge and Skills***-- Demonstrates sufficient job related knowledge and skills to successfully perform the duties and accomplish the objective of the position.	• Performs job independently as required. • Uses required tools and equipment, appropriately. • Performs job in a safe manner. • Performs job in an efficient manner. • Knows and applies appropriate work methods. • Uses required computer skills (data base, word processing) appropriately. • Produces or completes desired product or assignments in a thorough, neat, timely and accurate manner.	• County Value: Accountability • County Value: Responsiveness • County Value: Professionalism
2. ***Oral Communication***--Pays attention to verbal and nonverbal messages of others and responds in ways that are appropriate and clearly understood.	• Takes into account the audience and nature of the information when communicating. • Listens to make sure h/she understands before offering opinions or making judgments. • Communicates effectively with the public and with people at all levels of the organization. • Conveys information and ideas in a brief, clear, and organized manner. • Provides accurate information. • Asks appropriate questions to obtain relevant information or to clarify instructions.	• County Value: • Respect for diversity • County Value: Professionalism • County Value: • Compassion
3. ***Written Communication***-- Expresses facts and ideas in writing in a manner that is clear, organized, and appropriate for the purpose and audience.	• Recognizes and uses appropriate grammar, punctuation, and spelling. • Produces written information, which may include technical material that is appropriate for the intended audience. • Delivers information effectively in the proper format, e.g., letters, memos, reports. • Ensures final work product is ready for presentation, e.g., proofreads documents.	• County Value: Professionalism • County Value: • Respect for diversity

Customer Service and Satisfaction--Treats customers (internal and external) with courtesy, dignity and respect; works proactively to facilitate customer access to services; strives to provide efficient, effective and timely services in a safe and welcoming environment.	• Demonstrates a caring and thoughtful attitude in his/her interactions with customers. • Displays courtesy and respect for customers in all interactions. • Listens carefully to customers' concerns, problems. • Provides (if necessary) service to customers with translation needs. • Provides (if necessary) accommodation to ensure customers with disabilities have equal access to services. • Provides (if necessary) advocate or appeal information to customers. • Participates in outreach efforts to promote available services. • Prevents unnecessary delays for customers. • Navigates organizational obstacles to help customers. • Follows up with customers as appropriate. • Responds in a timely manner to customer service needs by directly providing the service or by making an appropriate referral.	• Strategic Goal 1 • County Value: Respect for diversity • County Value: Responsiveness • County Value: Professionalism • County Value: Commitment
5. Information Security – Acts in accordance with countywide and/or departmental information technology security policies, procedures, standards, and guidelines.	• Maintains a secured workstation. • Maintains and wears proper employee identification badge. • Immediately reports all potential security incidents to their immediate supervisor or manager. • Use e-mail, internet, and other computing systems for County business purposes only. • Uses appropriate operational safeguards when using personal computers, laptops, notebooks, etc., (e.g. passwords). • Protects computer password security. • Notifies supervisor of irregularities in information systems (e.g., viruses, inappropriate content).	• County Value: Accountability • County Value: Integrity • County Value: Professionalism

Self Management-- Acts in accordance with policies, procedures, rules, and regulations and avoids behaviors that have negative effects on the organization.	• Complies with departmental policies on punctuality. • Complies with departmental policies related to use of sick time and other leave. • Makes appropriate use of his/her work time. • Makes appropriate use of County resources (e.g., money, materials, staff time, etc.). • Complies with department safety regulations and rules. • Complies with department policies regarding Nondiscrimination. • Acknowledges mistakes. • Honors commitments. • Follows supervisory instructions. • Takes responsibility for performance and conduct. • Avoids behavior which may be viewed as a conflict of interest. • Complies with department policies and procedures regarding confidentiality.	• County Value: Accountability • County Value: Integrity • County Value: Professionalism • County Value: A "Can-Do" Attitude • County Value: Respect for Diversity

Peer, Team and Organizational Performance--Helps co-workers, facilitates the work of the unit, looks out for and shows commitment to the department's interests, builds positive and constructive working relationships.	• Keeps supervisor informed of progress and any problems in a timely manner. • Shares information with staff and line managers that is important to the organizational mission and goals. • Assists co-workers with work-related problems. • Offers ideas to improve the functioning of the work unit. • Takes appropriate action to protect the organization from potential problems. • Gives constructive feedback or suggestions on various operational issues individually or in group settings. • Demonstrates a caring and thoughtful approach to the work h/she produces. • Demonstrates a willingness to learn from others. • Provides support and backup to co-workers as needed. • Respects others' ideas and expertise. • Uses tact and diplomacy in negotiations or resolving conflicts with others. • Shares credit and opportunities appropriately. • Demonstrates awareness of own style and how it affects others, and makes adjustments as necessary. • Responds positively to constructive suggestions or criticism.	• County Value: Respect for diversity • County Value: Responsiveness • County Value: Compassion • County Value: Professionalism
8. ***Work Effort***--Demonstrates focus and persistence to meet the objectives of the work unit.	• Persists when work is difficult or tedious. • Maintains focus until work is completed. • Gets work done under less than optimal conditions. • Reviews work product for thoroughness, neatness and accuracy. • Performs with minimal instructions and supervision. • Meets deadlines.	• County Value: Commitment • County Value: Integrity

KNOWLEDGE, SKILLS, AND ABILITIES

Knowledge

Information Systems and Accounting — Knowledge of accounting principles and practices, and the analysis and design of information systems for reporting of financial data.

English Language — Knowledge of the structure and content of the English language including the meaning and spelling of words, rules of composition, and grammar.

Customer and Personal Service — Knowledge of principles and processes for providing customer and personal services. This includes customer needs assessment, meeting quality standards for services, and evaluation of customer satisfaction.

Computers and Electronics — Knowledge of processors, electronic equipment, and computer hardware and software, including applications and programming.

Mathematics — Knowledge of arithmetic, statistics and their applications.

Administration and Management — Knowledge of business and management principles involved in strategic planning, resource allocation, leadership techniques, production methods, and coordination of people and resources.

Skills

Time Management — Managing one's own time and the time of others.

Mathematics — Using mathematics to solve problems.

Active Learning — Understanding the implications of new information for both current and future problem-solving and decision-making.

Critical Thinking — Using logic and reasoning to identify the strengths and weaknesses of alternative solutions, conclusions or approaches to problems.

Reading Comprehension — Understanding written sentences and paragraphs in work related documents.

Active Listening — Giving full attention to what other people are saying, taking time to understand the points being made, asking questions as appropriate, and not interrupting at inappropriate times.

Writing — Communicating effectively in writing as appropriate for the needs of the audience.

Coordination — Adjusting actions in relation to others' actions.

Judgment and Decision Making — Considering the relative costs and benefits of potential actions to choose the most appropriate one.

Speaking — Talking to others to convey information effectively.

Meeting Management – Organizing and conducting effective meetings that accomplish their goal within the allotted timeframe.

Abilities

Written Comprehension — The ability to read and understand information and ideas presented in writing.

Inductive Reasoning — The ability to combine pieces of information to form general rules or conclusions (includes finding a relationship among seemingly unrelated events).

Near Vision — The ability to see details at close range (within a few feet of the observer).

Oral Comprehension — The ability to listen to and understand information and ideas presented through spoken words and sentences.

Problem Sensitivity — The ability to tell when something is wrong or is likely to go wrong. It does not involve solving the problem, only recognizing there is a problem.

Oral Expression — The ability to communicate information and ideas in speaking so others will understand.

Mathematical Reasoning — The ability to choose the right mathematical methods or formulas to solve a problem.

Number Facility — The ability to add, subtract, multiply, or divide quickly and correctly.

Speech Clarity — The ability to speak clearly so others can understand you.

Speech Recognition — The ability to identify and understand the speech of another person.

INVESTIGATIONS TRACKING MANAGEMENT SYSTEM

- List of Reports
- Screen Shots

LIST OF REPORTS

List of Reports for ITMS Demonstration

(Note: Listing is NOT sorted by importance or relevance.)

Deputy Open Cases Report

Real-time assessment on specific deputy's caseload status and provides visual cue on problem cases.
Time to run report: ~ 65 seconds

Complaints Received Online

See real-time data on complaints filed online, showing which department and current status of publically submitted cases.
Time to run report: ~ 5 seconds

Complaint Basis Report

Readily available real-time Complaint Basis data for statistical analysis.
Time to run report: ~ 24 seconds

Deputy Utilization Chart

Real-time data on deputy utilization and workload. Facilitates management's case load assignment decision making.
Time to run report: ~ 6 seconds

Returned From Mediation Queue Report

Gives management status of cases returned from Mediation and pending deputy action.
Time to run report: ~ 5 seconds

Open Cases Report SSEDI

Gives management all open cases data for quick overview of division's case assignments and status.
Time to run report: ~ 23 seconds

Gen Fraud Hotline and Board Referrals Report

Gives management quick overview of these two priority referral complaints.
Time to run report: ~ 10 seconds

Case Summary Page

Gives management quick overview on specific case information and all investigative notes entered by deputies.
Time to run report: ~ 17 seconds

CP/SOI Search Page

Gives management ability to search and obtain specific case information (Case Summary Page) using CP or SOI names.
Time to run report: ~ 5 seconds

Assessments Due Report

Real-time data on Assessments that are due to Senior Deputies with highlights on overdue assessments.
Time to run report: ~ 12 seconds

Closed Cases Report

Gives management quick overview of closure performance using statistics and visual cues.
Time to run report: ~ 19 seconds

7 to 90 Days Statistical Report

Gives management quick overview of how division is doing over the past 90 days.
Time to run report: ~ 76 seconds

Open Cases Report for: *Judy Herndon*

Open case data as of Sep 27, 2010

Breakdown by Status

	Active Investigation	Referral Process	Closure Pending	Assessment Process	Mediation Process	Total
Investigated	5	0	1	2	3	11
Total	5	0	1	2	3	11

Breakdown by Days Open

	< 90 days	91 - 120 days	121 - 180 days	181 - 240 days	> 240 days	Total
Investigated	5	1	0	0	0	6
Total	5	1	0	0	0	6

Report Details

Investigation Type	Case Status	Case No.	Case Name	Assessed Date	Med Return Date	Days in Mediation	Case Due Date	Department	Current Status	Filing Type	Days Open
Investigated	Active Investigation	Fire_2010_2636		8/11/10	9/14/10	21	1/27/11	Fire Department	Active - Under Investigation	Internal	
		Fire_2010_2387		7/7/10	8/17/10	24	12/29/10	Fire Department	Active - Under Investigation	Internal	
		Fire_2010_2407		7/13/10	8/2/10	13	12/13/10	Fire Department	Active - Under Investigation	Internal	
		Fire_2010_2277		5/26/10	6/21/10	14	10/27/10	Fire Department	Active - Under Investigation	Internal	
		Fire_2010_2153		5/19/10	6/15/10	16	10/21/10	Fire Department	Active - Under Investigation	Internal	
	Assessment Process	Fire_2010_2864						Fire Department	Assessment Process	Internal	
		Fire_2010_2866						Fire Department	Assessment Process	Internal	
	Mediation Process	Fire_2010_2637		9/13/10				Fire Department	Mediation Convening	Internal	
		Fire_2010_2765		9/20/10				Fire Department	Submitted to Mediation	Internal	
		Fire_2010_2616		8/11/10				Fire Department	Mediation Convening	Internal	
	Pending Closure	EDC_2010_1867		2/10/10	5/19/10	66	9/24/10	Parks and Recreation	Requesting Senior Deputy Closure	Internal	94
Investigated		11									
Summary		11									

SCREEN SHOTS

Complaints Submitted Online Report

Summary

	Received via Web
Consolidated Departments Investigations	80
Employment Discrimination Mediation	2
Health Services Investigations	12
Public Health Investigations	8
Public Social Services Investigations	9
Total	**111**

Report Detail

Submit Date	Unit	Department	Case No.	Case Name	Current Status	Closed Date	Final Disposition
9/23/10	CDI	Internal Services	CDI_2010_2868		Assessment Process		
9/21/10	CDI	Children and Family Services	CDI_2010_2861		Assessment Process		
9/20/10	CDI	Mental Health	CDI_2010_2856		Assessment Process		
9/20/10	CDI	Internal Services	CDI_2010_2855		Assessment Process		
9/17/10	MED	Public Safety	MED_2010_2846		Assessment Process		
9/14/10	CDI	Children and Family Services	CDI_2010_2827		Assessment Process		
9/13/10	CDI	Mental Health	CDI_2010_2824		Assessment Process		
9/13/10	CDI	Mental Health	CDI_2010_2823		Assessment Process		
9/8/10	CDI	Parks and Recreation	CDI_2010_2808		Closed - Not Investigated	9/24/10	Non Jurisdictional
9/3/10	CDI	Mental Health	CDI_2010_2795		Closed - Not Investigated	9/27/10	Non Jurisdictional
9/1/10	PSSI	Public Social Services	PSSI_2010_2772		Closed - Not Investigated	9/16/10	Non Jurisdictional
8/19/10	CDI	Registrar-Recorder/County Clerk	CDI_2010_2725		Mediation Convening		
8/12/10	CDI	Probation Department	CDI_2010_2702		Returned from Mediation		
8/8/10	CDI	Children and Family Services	CDI_2010_2692		Closed - Report Issued	9/22/10	Unsubstantiated
8/4/10	CDI	Mental Health	CDI_2010_2660		Active - Under Investigation		
7/28/10	CDI	Probation Department	CDI_2010_2635		Active - Under Investigation		
7/23/10	CDI	Children and Family Services	CDI_2010_2618		Process Mediation Closure		
7/23/10	CDI	Mental Health	CDI_2010_2617		Active - Under Investigation		
7/20/10	CDI	Mental Health	CDI_2010_2598		Mediation Convening		
7/12/10	PSSI	Public Social Services	PSSI_2010_2556		Mediation Convening		
7/6/10	CDI	Mental Health	CDI_2010_2522		Closed - Not Investigated	7/23/10	Non Jurisdictional
6/28/10	CDI	Children and Family Services	EDC_2010_2500		Closed - Not Investigated	7/20/10	Non Jurisdictional
6/25/10	CDI	County Counsel	EDC_2010_2494		Closed - Not Investigated	7/26/10	Non Jurisdictional
6/24/10	HSI	Health Services - HS Admin	HSI_2010_2484		Active - Under Investigation		
6/23/10	CDI	Probation Department	EDC_2010_2472		Active - Under Investigation		
6/22/10	MED	Sheriff	MED_2010_2465		Active - Under Investigation		
6/17/10	EDC	Mental Health	EDC_2010_2437		Closed - Not Investigated	6/25/10	Non Jurisdictional
6/11/10	HSI	Health Services - Rancho Los Amigos	HSI_2010_2417		Closed - Not Investigated	6/23/10	Non Jurisdictional
6/4/10	CDI	Probation Department	EDC_2010_2385		Closed - Not Investigated	7/7/10	Non Jurisdictional
6/2/10	HSI	Health Services - HS Admin	HSI_2010_2377		Ready to Investigate		

Complaints Submitted Online Report

Submit Date	Unit	Department	Case No.	Case Name	Current Status	Closed Date	Final Disposition
					Investigation		
5/29/09	EDC	Probation Department	EDC_2009_1074		Closed - Not Investigated	6/16/09	Non Jurisdictional
5/28/09	EDC	Children and Family Services	EDC_2009_1071		Closed - Report Issued	2/5/10	Unsubstantiated
5/21/09	HSI	Health Services - Harbor UCLA	HSI_2009_1050		Closed - Report Issued	12/30/09	Unsubstantiated
5/2/09	EDC	Regional Planning Department	EDC_2009_989		Closed - Report Issued	3/18/10	Unsubstantiated
5/1/09	HSI	Health Services - Harbor UCLA	HSI_2009_988		Closed - Report Issued	10/20/09	Unsubstantiated
4/30/09	EDC	Agricultural Commissioner/Weights and Measures	EDC_2009_978		Closed - Not Investigated	5/20/09	Non Jurisdictional
Summary			111				

Complaint Basis Report

Received Between Jan 1, 2010 and Sep 16, 2010

Age	35	5.0%
Ancestry	3	0.4%
Color	16	2.3%
Disability	80	11.4%
Harassment	38	5.4%
Marital Status	3	0.4%
Medical Condition	4	0.6%
National Origin	56	8.0%
Race	115	16.3%
Religion	8	1.1%
Retaliation	132	18.8%
Sex	130	18.5%
Sexual Harassment	49	7.0%
Sexual Orientation	12	1.7%
Veteran	0	0.0%
Other	15	2.1%
Unknown	8	1.1%
Total Filed Bases	**704**	**100.0%**

Investigation Division - Deputy Utilization Summary

Note: A deputy may work cases in multiple investigative sections and thus may appear more in more than one section in the chart below.

Unit	Deputy	Active - Under Investigation	Assessment Process	Mediation Process	Referral/ Reassignment Process	Pending Closure	TOTAL
CDI	Bates	31	1	1	0	0	33
	Bilbrew	1	0	0	0	0	1
	Deputy	1	0	7	0	0	8
	Diaz	17	9	4	0	0	30
	Edwards	1	0	0	0	0	1
	Givhan	14	3	8	0	0	25
	Harper	2	0	0	0	0	2
	Herndon	1	0	0	0	0	1
	Johnson	6	2	0	0	0	8
	King	2	0	0	0	0	2
	Lewis	1	0	0	0	0	1
	Lough	7	1	1	0	0	9
	McDow	25	0	0	0	0	25
	Morehead	5	2	1	0	0	8
	Peters	4	0	0	0	2	6
	Rivero	15	2	1	0	0	18
	Sakai	2	0	0	0	0	2
	Sanders	13	6	4	0	0	23
	Shahgaldian	16	5	7	0	0	28
	Tamoush	5	0	0	0	0	5
	Unassigned	0	1	0	0	0	1
	Wilson	7	6	7	0	0	20
	Wong	1	0	0	0	0	1
	Woo	17	0	3	0	0	20
		194	38	44	0	2	278
Fire	Harper	4	5	1	0	0	10
	Herndon	5	3	2	0	0	10
		9	8	3	0	0	20
HSI	Bilbrew	3	2	3	0	0	8
	Gama	6	1	2	0	0	9
	Greer	8	3	1	0	0	12
	Lewis	5	4	1	0	0	10
	Matsuzaki	7	3	4	0	0	14
	Tamoush	5	4	0	0	0	9
		34	17	11	0	0	62
PHI	Ellison	3	0	0	0	0	3
	Sakai	1	1	0	0	0	2
		4	1	0	0	0	5
PSSI	Edwards	6	2	6	0	1	15
	Gomez	7	1	5	0	0	13
	Jen Kin	9	2	1	0	2	14

Investigation Division - Deputy Utilization Summary

Unit	Deputy	Active - Under Investigation	Assessment Process	Mediation Process	Referral/ Reassignment Process	Pending Closure	TOTAL
PSSI	King	6	0	2	0	0	8
		28	5	14	0	3	50
PWI	McDow	4	4	1	0	0	9
	Unassigned	0	2	0	0	0	2
	Woo	6	1	1	0	0	8
		10	7	2	0	0	19
RM	Richardson	3	1	0	0	0	4
		3	1	0	0	0	4
TOTAL		282	77	74	0	5	438

Shared Services Employment Discrimination Investigations
Returned from Mediation Queue Report

Summary

Unit	Returned
Consolidated Departments Investigations	1
Fire Investigations	1
Public Social Services Investigations	2
Total	**4**

Detail Report

Unit	Case No.	Case Name	Returned From Med Date	Days In Med	Filing Type	Department	Closure Reason	Days in Queue	Deputy
CDI	CDI_2010_2702		9/15/10	4	Internal	Probation Department	Declined	9	Rivero
CDI	**1**								
Fire	Fire_2010_2376		9/27/10	70	Internal	Fire Department	Impasse	0	Harper
Fire	**1**								
PSSI	PSSI_2010_2438		9/27/10	58	Internal	Public Social Services	Impasse	0	Edwards
	PSSI_2010_2539		9/27/10	39	Internal	Public Social Services	Settlement	0	Edwards
PSSI	**2**								
Summary	**4**								

Shared Services Employment Discrimination Investigations
Open Cases Summary
Case Data as of Sep 27, 2010, 4:16 PM

Active Investigation	207
Assessment Process	60
Mediation Process	69
Pending Closure	2
Total # Open Cases	**338**

Active - Under Investigation

	< 90 Days	91 - 120 Days	121 - 180 Days	> 180 Days	Total
Internal	132	23	9	4	168
Fraud Hotline	4	0	0	0	4
External	30	1	2	0	33
Board	2	0	0	0	2
Total	**168**	**24**	**11**	**4**	**207**

Assessment Pending

	Pending	OverDue	Total
Internal	54	6	60
Total	**54**	**6**	**60**

Mediation Pending

	< 30 Days	31 - 45 Days	46 - 60 Days	> 60 Days	Total
Internal	46	8	6	0	60
External	2	5	2	0	9
Total	**48**	**13**	**8**	**0**	**69**

Closure Pending

	< 90 Days	91 - 120 Days	121 - 180 Days	> 180 Days	Total
Internal	1	1	0	0	2
Total	**1**	**1**	**0**	**0**	**2**

Shared Services Employment Discrimination Investigations
Open Frand and Board Cases Report

Fraud Hotline

	< 90 Days	91 - 120 Days	121 - 180 Days	> 180 Days	Total
Consolidated Departments Investigations	3	0	0	0	3
Public Social Services Investigations	1	0	0	0	1
Total	4	0	0	0	4

Fraud Cases Detail Report

Unit	Case No.	OCI Case No.	Case Name	Assigned Date	Assessed Date	Due Date	Current Status	Days Open	Deputy
Consolidated Departments Investigations	CDI_2010_2759	2010-4884		8/31/10	9/15/10	1/28/11	Active - Under Investigation		Shahgaldian
	CDI_2010_2675	2010_4814		8/6/10	8/6/10	12/17/10	Active - Under Investigation		Wilson
	CDI_2010_2623	2010_4754		7/27/10	8/3/10	12/16/10	Active - Under Investigation		Shahgaldian
Consolidated Departments Investigations	3								
Public Social Services Investigations	PSSI_2010_2560	2010_4712		7/13/10	7/21/10	12/13/10	Active - Under Investigation		Edwards
Public Social Services Investigations	1								
Summary	4								

Board

	< 90 Days	91 - 120 Days	121 - 180 Days	> 180 Days	Total
Health Services Investigations	1	0	0	0	1
Public Social Services Investigations	1	0	0	0	1
Total	2	0	0	0	2

Board Cases Detail Report

Unit	Case No.	Case Name	Board Member List	Assigned Date	Assessed Date	Due Date	Current Status	Days Open	Deputy
Health Services Investigations	HSI_2010_2760		Don Knabe, Gloria Molina, Mark Ridley-Thomas, Michael D. Antonovich, Zev Yaroslavsky	8/31/10	8/31/10	10/14/10	Active - Under Investigation		Gama
Health Services Investigations	1								
Public Social Services Investigations	PSSI_2010_2780		Gloria Molina	9/2/10	9/17/10	11/4/10	Ready to Investigate		Jen Kin
Public Social Services Investigations	1								
Summary	2								

Office of Affirmative Action Compliance

CONFIDENTIAL PERSONNEL INFORMATION

Case No.: EDC_2010_2104

Lead Deputy: Kenneth King

Current Status: Active - Under Investigation

Charging Party:
CP's Department: Internal Services
Filing Type: Internal
External No.:
Filed Complaint Basis: Harassment

Subject of Investigation:
SOI's Department: Internal Services
Board Member:
Referral Source: Department Request
Actual Complaint Basis: National Origin, Retaliation

Received: 3/24/10
Assigned: 3/24/10
Assessed: 3/30/10
Assessment Approval: 3/31/10

Sent To Mediation: 3/31/10
Returned From Mediation: 5/4/10
Days In Mediation: 24
Days to Assess: 4

Mediation Lead Deputy: Patricia Guevara
CP Response: Accepted
Department Response: Accepted

Mediation Start Date: 5/4/10
Mediation Close Date: 5/4/10

Closure Reason:
Mediation Outcome: Impasse

Case Due Date: 10/13/10
Case Closed Date:
Days To Close:

Final Disposition:
Correction Action Taken:

Case Notes:

Date	Notes	Hours	Entered By
3/25/10	Reviewed and analyzed all documents in file. Called CP and lm to call me.	1.0	Woo
3/29/10	Called CP at work, co-worker stated he is not in yet, try calling later. Called CP and we discussed his case and conducted clarifying interview. Spoke about his prior complaint also.	3.0	Woo
3/30/10	Typed Assessment and letter to the Dept. Scanned docs and given to SS to review and approve.	3.0	Woo
3/31/10	Case received back from SS. Filed all paperwork in file and given to MA to process.	0.5	Woo
4/1/10	Received email from Dept. to clarify which case and basis claim is filed on. Emailed Dept. back to clarify.	0.2	Woo
4/7/10	Dept has accepted mediation; T/C to Cp @ work # LWTC.	0.2	Gomez
4/7/10	Received call	0.5	Woo
4/12/10	t/c to Cp, accepted mediation; agreed to contact him with mediation date and f-u with confirmation letter. T/C and email to C. Carlos to communicate acceptance and request possible dates for mediation.	0.3	Gomez
4/15/10	4/12 Emails to and from C. Carlos to schedule mediation date. 4/15 T/C to CP to communicate mediation date, adv Confirmation Letter will follow. Prepared conf. letters and sent to all parties.	2.5	Gomez
5/11/10	ISD – Rec'd and processed complaint for investigation.	0.5	Lough
6/25/10	Reviewed Case notes. ISD	1.0	Diaz
7/14/10	Reviewed emails and affidavit from CP. ISD	1.0	Diaz
7/21/10	Reviewed case notes and prepared questions for CP interview. ISD	1.6	Diaz
7/28/10	Reviewed case notes and prepared questions. ISD	1.2	Diaz
8/26/10	Checked database for notes, reviewed complaint and assessment. Developed case action plan. Prepare questions for CP interview.	1.5	Peters
8/27/10	Add case to personal tracking log	0.1	Peters
8/30/10	Setup cases files and begin on questions. Started on report of investigation, putting background information.	0.6	Peters
9/2/10	Case file received from CL. Scheduled to meet with CL on 9/7/10 to discuss action plan.	0.2	King
9/3/10	Reviewed complaint and prepared action plan for discussion with CL.	1.0	King
9/7/10	Discussed action plan with CL.	0.5	King
9/8/10	Case reassigned to me by SS on ITMS.	0.1	King

Office of Affirmative Action Compliance

CONFIDENTIAL PERSONNEL INFORMATION

Date	Notes	Hours	Entered By
9/13/10	Prepared CP interview questions.	1.5	King
9/13/10	TC and email to Christina Carlos (ISD HRD) scheduling CP interview.	0.2	King
9/14/10	Sent follow up email to C. Carlos regarding request to interview CP and witnesses on 9/15/10.	0.1	King
9/15/10	Prepared CP and witness interview questions.	2.5	King
9/15/10	Reviewed complaint.	1.0	King
9/15/10	SOI interview confirmed for 9/20/10 at 8AM.	0.1	King
9/15/10	TC and emails to and from C. Carlos scheduling CP, SOI, and witness interviews. CP and witness interviews confirmed for 9/16/10 at 1PM.	0.5	King
9/16/10	Conducted CP and witness interviews.	4.0	King
9/20/10	Conducted SOI interview.	2.0	King
9/20/10	Reviewed personnel folders.	1.0	King
Total Hours		**33.4**	

Extension Requests:

Request Date	Approved Date	Request Reason	Request Status	Requested By
8/26/10	8/30/10	Competing priorities.	Approved	King

Search Results

Returned 4 cases.

Charging Party	Case No.	Department	Subject of Investigation	Filing Type	Submit Date	Closed Date	Case Status	Final Disposition	Deputy
	EDC_2009_613	District Attorney		Internal	9/5/08	7/30/09	Closed	Unsubstantiated	Lough
	PWI_2010_1930	Public Works		Internal	2/11/10	7/1/10	Closed	Substantiated	Diaz
	PWI_2010_2123	Public Works		External	3/26/10		Open		McDow
	EDC_2009_1408	Chief Executive Office		Internal	9/1/09		Open		Woo

Shared Services Employment Discrimination Investigations
Assessments Due Report

Case Data as of Sep 27, 2010, 4:08 PM

Note: Does not include cases submitted to OAAC and have not been assigned to deputies.

Summary

Deputy	Pending	OverDue	Total
Bilbrew	2	0	2
Diaz	4	4	8
Edwards	1	0	1
Gama	1	0	1
Givhan	2	0	2
Gomez	1	0	1
Greer	1	0	1
Harper	2	0	2
Herndon	2	0	2
Jen Kin	1	0	1
Johnson	4	0	4
Lewis	1	0	1
Lough	3	0	3
Matsuzaki	1	0	1
McDow	2	0	2
Morehead	6	0	6
Richardson	0	1	1
Rivero	5	0	5
Sanders	5	1	6
Shahgaldian	4	0	4
Tamoush	2	0	2
Wilson	3	0	3
Total	53	6	59

Detail Report

Unit	Deputy	Case No.	Case Name	Assigned Date	Assessment Due Date	Days Over Due	Department	Filing Type
CDI	Diaz	CDI_2010_2654		8/3/10	8/24/10		Probation Department	Internal
		CDI_2010_2729		8/19/10	9/9/10		Mental Health	Internal
		CDI_2010_2747		8/25/10	9/15/10		Children and Family Services	Internal
		CDI_2010_2764		8/31/10	9/21/10		Internal Services	Internal
		CDI_2010_2813		9/10/10	10/1/10		Parks and Recreation	Internal
		CDI_2010_2838		9/15/10	10/6/10		Community and Senior Services	Internal
		CDI_2010_2851		9/20/10	10/11/10		Internal Services	Internal
		CDI_2010_2868		9/24/10	10/15/10		Internal Services	Internal
	Diaz	8						
	Givhan	CDI_2010_2853		9/20/10	10/11/10		Internal Services	Internal
		CDI_2010_2870		9/24/10	10/15/10		Probation Department	Internal
	Givhan	2						
	Johnson	CDI_2010_2824		9/14/10	10/5/10		Mental Health	Internal
		CDI_2010_2857		9/20/10	10/11/10		Children and Family Services	Internal
		CDI_2010_2861		9/22/10	10/13/10		Children and Family Services	Internal
		CDI_2010_2873		9/24/10	10/15/10		Probation Department	Internal

Shared Services Employment Discrimination Investigations
Assessments Due Report

Case Data as of Sep 27, 2010, 4:08 PM

Note: Does not include cases submitted to UAAC and have not been assigned to deputies.

Unit	Deputy	Case No.	Case Name	Assigned Date	Assessment Due Date	Days Over Due	Department	Filing Type
CDI	**Johnson**	**4**						
	Lough	CDI_2010_2854		9/20/10	10/11/10		Mental Health	Internal
		CDI_2010_2863		9/22/10	10/13/10		Internal Services	Internal
		CDI_2010_2871		9/24/10	10/15/10		Probation Department	Internal
	Lough	**3**						
	Morehead	CDI_2010_2816		9/10/10	10/1/10		Children and Family Services	Internal
		CDI_2010_2823		9/14/10	10/5/10		Mental Health	Internal
		CDI_2010_2843		9/16/10	10/7/10		Internal Services	Internal
		CDI_2010_2856		9/20/10	10/11/10		Mental Health	Internal
		CDI_2010_2865		9/22/10	10/13/10		Internal Services	Internal
		CDI_2010_2872		9/24/10	10/15/10		Parks and Recreation	Internal
	Morehead	**6**						
	Rivero	CDI_2010_2826		9/14/10	10/5/10		Probation Department	Internal
		CDI_2010_2858		9/20/10	10/11/10		Registrar-Recorder/County Clerk	Internal
		CDI_2010_2859		9/21/10	10/12/10		Internal Services	Internal
		CDI_2010_2862		9/22/10	10/13/10		Mental Health	Internal
		CDI_2010_2874		9/27/10	10/18/10		Internal Services	Internal
	Rivero	**5**						
	Sanders	CDI_2010_2779		9/2/10	9/23/10		Mental Health	Internal
		CDI_2010_2804		9/8/10	9/29/10		Probation Department	Internal
		CDI_2010_2811		9/9/10	9/30/10		Registrar-Recorder/County Clerk	Internal
		CDI_2010_2828		9/14/10	10/5/10		Internal Services	Internal
		CDI_2010_2849		9/20/10	10/11/10		Internal Services	Internal
		CDI_2010_2860		9/21/10	10/12/10		Mental Health	Internal
	Sanders	**6**						
	Shahgaldian	CDI_2010_2812		9/10/10	10/1/10		Probation Department	Internal
		CDI_2010_2837		9/15/10	10/6/10		Mental Health	Internal
		CDI_2010_2850		9/20/10	10/11/10		Internal Services	Internal
		CDI_2010_2867		9/24/10	10/15/10		Parks and Recreation	Internal
	Shahgaldian	**4**						
	Wilson	CDI_2010_2827		9/14/10	10/5/10		Children and Family Services	Internal
		CDI_2010_2845		9/16/10	10/7/10		Parks and Recreation	Internal
		CDI_2010_2855		9/20/10	10/11/10		Internal Services	Internal
	Wilson	**3**						
CDI		**41**						
Fire	Harper	Fire_2010_2782		9/7/10	9/28/10		Fire Department	Internal
		Fire_2010_2793		9/7/10	9/28/10		Fire Department	Internal
	Harper	**2**						
	Herndon	Fire_2010_2864		9/22/10	10/13/10		Fire Department	Internal
		Fire_2010_2866		9/22/10	10/13/10		Fire Department	Internal
	Herndon	**2**						
Fire		**4**						
HSI	Bilbrew	HSI_2010_2788		9/10/10	10/1/10		Health Services - LAC-USC	Internal

Shared Services Employment Discrimination Investigations
Assessments Due Report

Case Data as of Sep 27, 2010, 4:08 PM

Note: Does not include cases submitted to OAAC and have not been assigned to deputies.

Unit	Deputy	Case No.	Case Name	Assigned Date	Assessment Due Date	Days Over Due	Department	Filing Type
HSI	Bilbrew	HSI_2010_2835		9/15/10	10/6/10		Health Services - Harbor UCLA	Internal
	Bilbrew	**2**						
	Gama	HSI_2010_2832		9/15/10	10/6/10		Health Services - LAC-USC	Internal
	Gama	**1**						
	Greer	HSI_2010_2833		9/15/10	10/6/10		Health Services - LAC-USC	Internal
	Greer	**1**						
	Lewis	HSI_2010_2836		9/15/10	10/6/10		Health Services - LAC-USC	Internal
	Lewis	**1**						
	Matsuzaki	HSI_2010_2834		9/15/10	10/6/10		Health Services - Harbor UCLA	Internal
	Matsuzaki	**1**						
	Tamoush	HSI_2010_2773		9/10/10	10/1/10		Health Services - LAC-USC	Internal
		HSI_2010_2841		9/16/10	10/7/10		Health Services - HS Admin	Internal
	Tamoush	**2**						
HSI		**8**						
PSSI	Edwards	PSSI_2010_2803		9/8/10	9/29/10		Public Social Services	Internal
	Edwards	**1**						
	Gomez	PSSI_2010_2818		9/10/10	10/1/10		Public Social Services	Internal
	Gomez	**1**						
	Jen Kin	PSSI_2010_2825		9/15/10	10/6/10		Public Social Services	Internal
	Jen Kin	**1**						
PSSI		**3**						
PWI	McDow	PWI_2010_2800		9/14/10	10/5/10		Public Works	Internal
		PWI_2010_2801		9/14/10	10/5/10		Public Works	Internal
	McDow	**2**						
PWI		**2**						
RM	Richardson	Fire_2010_2316		8/16/10	9/6/10	[redacted]	Fire Department	Internal
	Richardson	**1**						
RM		**1**						
Summary		**59**						

Public Social Services Investigations - Cases Closed Report

Closed Between Aug 1, 2010 and Aug 31, 2010

Closures Summary

	Substantiated	Unsubstantiated	Non Jurisdictional	Transferred to RM	Total	CAP Received
Internal	0	0	10	0	10	0
External	0	2	0	0	2	0
Board	0	0	1	0	1	0
Total	0	2	11	0	13	0

Jurisdictional Closures Performance

	< 90 Days	91 - 120 Days	121 - 180 Days	> 180 Days	Total	% Closed < 90 Days
Internal	0	0	0	0	0	na
External	2	0	0	0	2	100%
Board	0	0	0	0	0	na
Total	2	0	0	0	2	100%

Detail Report

Filing Type	Final Disposition	Case No.	Case Name	Submit Date	Returned Date	Due Date	Closed Date	Days to Close	Closure Category	Corrective Action Taken
Internal	Non Jurisdictional	PSSI_2010_2671		8/5/10			8/13/10	6	90	
		PSSI_2010_2717		8/18/10			8/26/10	6	90	
		PSSI_2010_2678		8/6/10			8/19/10	9	90	
		PSSI_2010_2649		8/2/10			8/18/10	11	90	
		PSSI_2010_2648		8/2/10			8/19/10	12	90	
		PSSI_2010_2585		7/15/10			8/2/10	13	90	
		PSSI_2010_2607		7/22/10			8/11/10	14	90	
		PSSI_2010_2659		8/4/10			8/25/10	15	90	
		PSSI_2010_2679		8/6/10			8/30/10	17	90	
		PSSI_2010_2567		7/14/10			8/13/10	21	90	
External	Unsubstantiated	PSSI_2010_2020		3/9/10	4/19/10	8/24/10	8/10/10	81		
		PSSI_2010_2019		3/9/10	4/23/10	8/30/10	8/25/10	89		
Board	Non Jurisdictional	PSSI_2010_2501		6/29/10			8/10/10	30	90	
Summary		13								

Shared Services Employment Discrimination Investigations

7-, 30-, 60-, and 90-Days Statistical Report

Past 7 calendar days (between Sep 13, 2010 and Sep 20, 2010):

Received:	28
Closed:	17
Jurisdictional Closures:	4
Jurisdictional Closures < 90 days:	2
% Jurisdictional Closures < 90 days:	50%
% Jurisdictional Closures < 120 days:	75%
Open: *	214
open past 90 days:	39
% open past 90 days:	18%

Last 30 calendar days (between Aug 20, 2010 and Sep 20, 2010):

Received:	112
Closed:	106
Jurisdictional Closures:	58
Jurisdictional Closures < 90 days:	21
% Jurisdictional Closures < 90 days:	36%
% Jurisdictional Closures < 120 days:	47%

Last 60 calendar days (between Jul 20, 2010 and Sep 20, 2010):

Received:	228
Closed:	265
Jurisdictional Closures:	135
Jurisdictional Closures < 90 days:	53
% Jurisdictional Closures < 90 days:	39%
% Jurisdictional Closures < 120 days:	51%

Last 90 calendar days (between Jun 20, 2010 and Sep 20, 2010):

Received:	350
Closed:	363
Jurisdictional Closures:	192
Jurisdictional Closures < 90 days:	85
% Jurisdictional Closures < 90 days:	44%
% Jurisdictional Closures < 120 days:	56%

* Note: Open case data is as of **Sep 20, 2010** and does not include cases pending Assessment and Mediation.

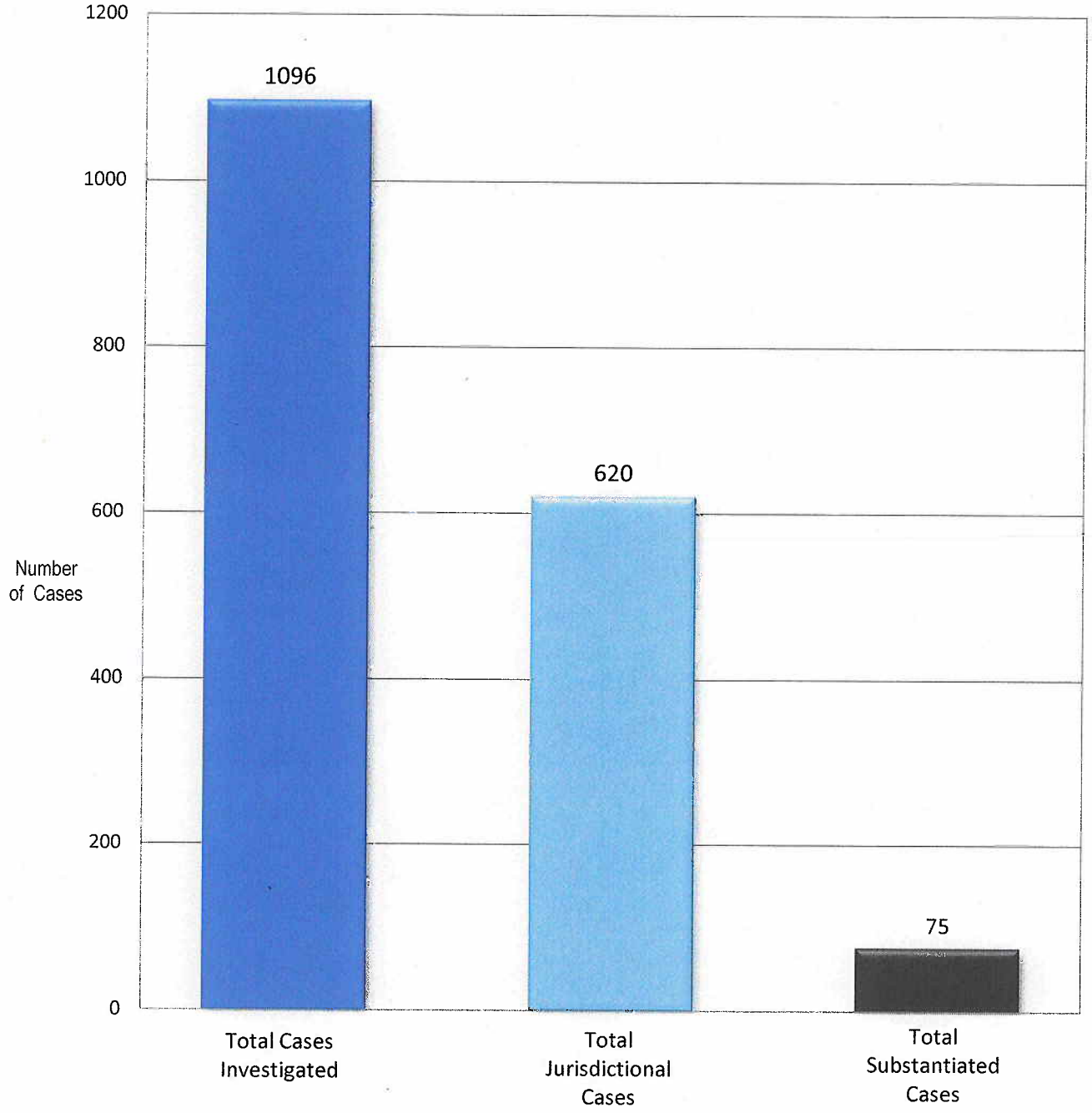
METRICS

- Investigations
- Dispute Resolution Mediation

INVESTIGATIONS

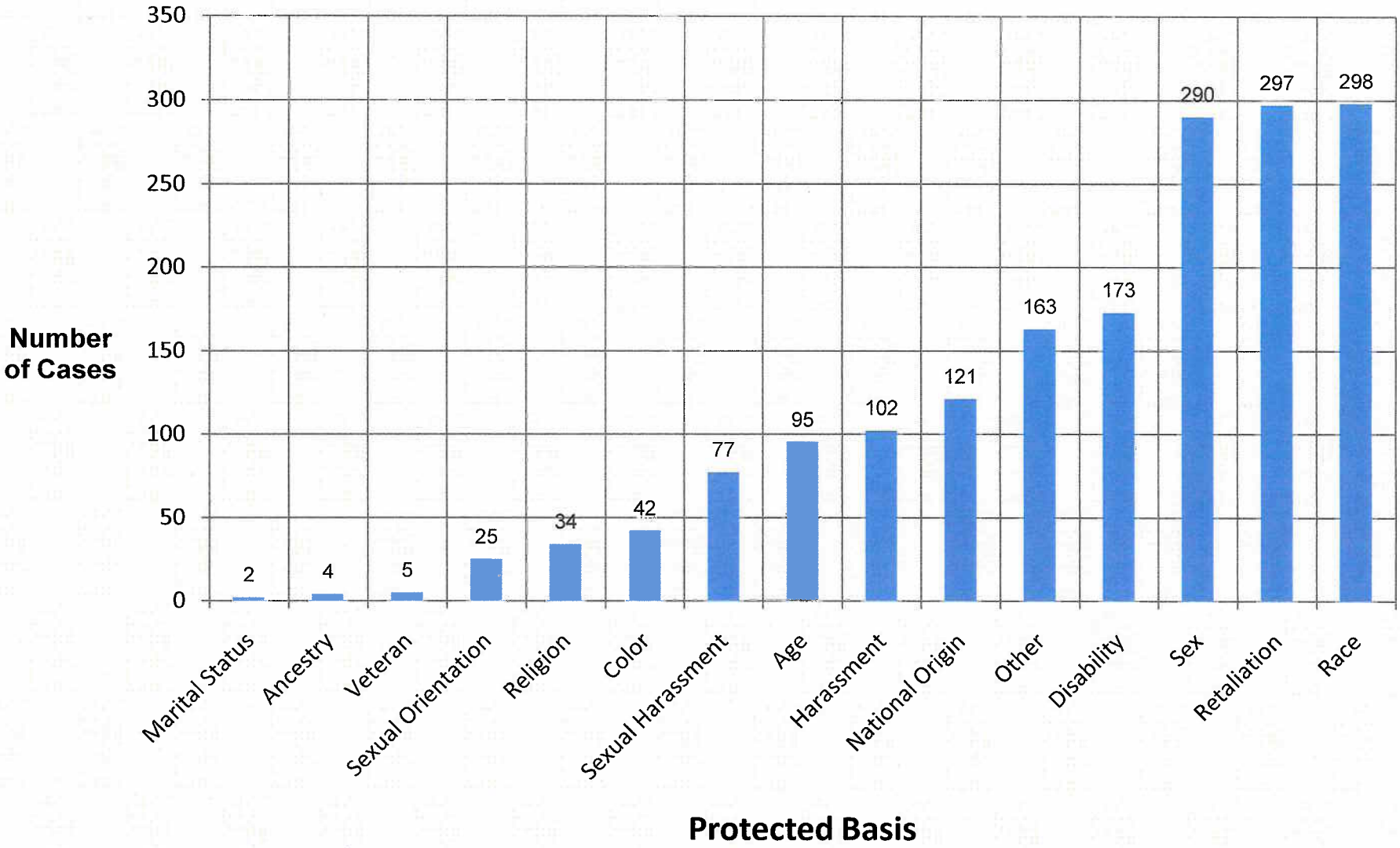
County of Los Angeles
Office of Affirmative Action Compliance

Countywide Employment Discrimination Complaints
Fiscal Year 2009-10



County of Los Angeles
Office of Affirmative Action Compliance

Internal Discrimination Complaints Filed By Basis

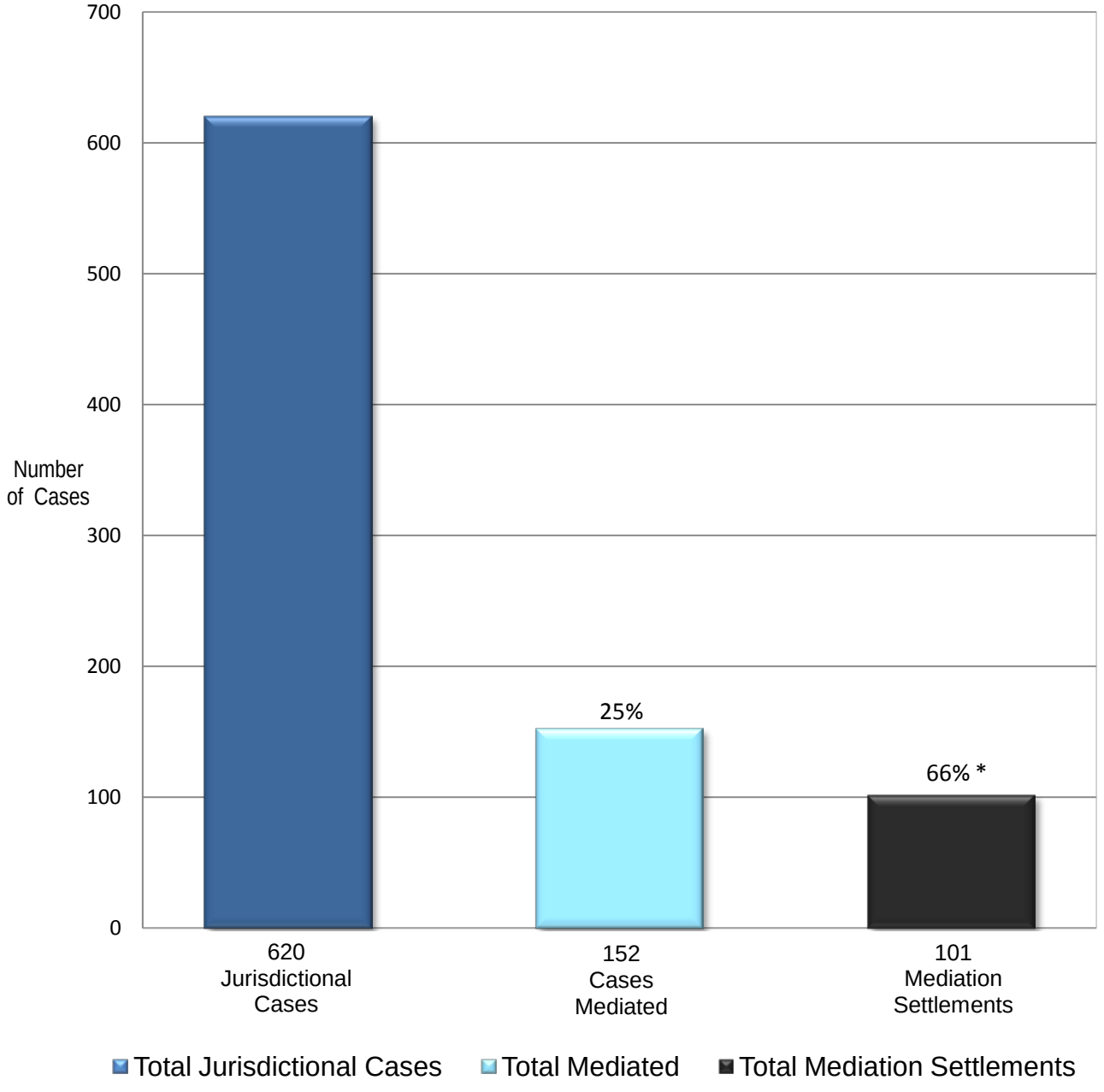


DISPUTE RESOLUTION
MEDIATION

County of Los Angeles

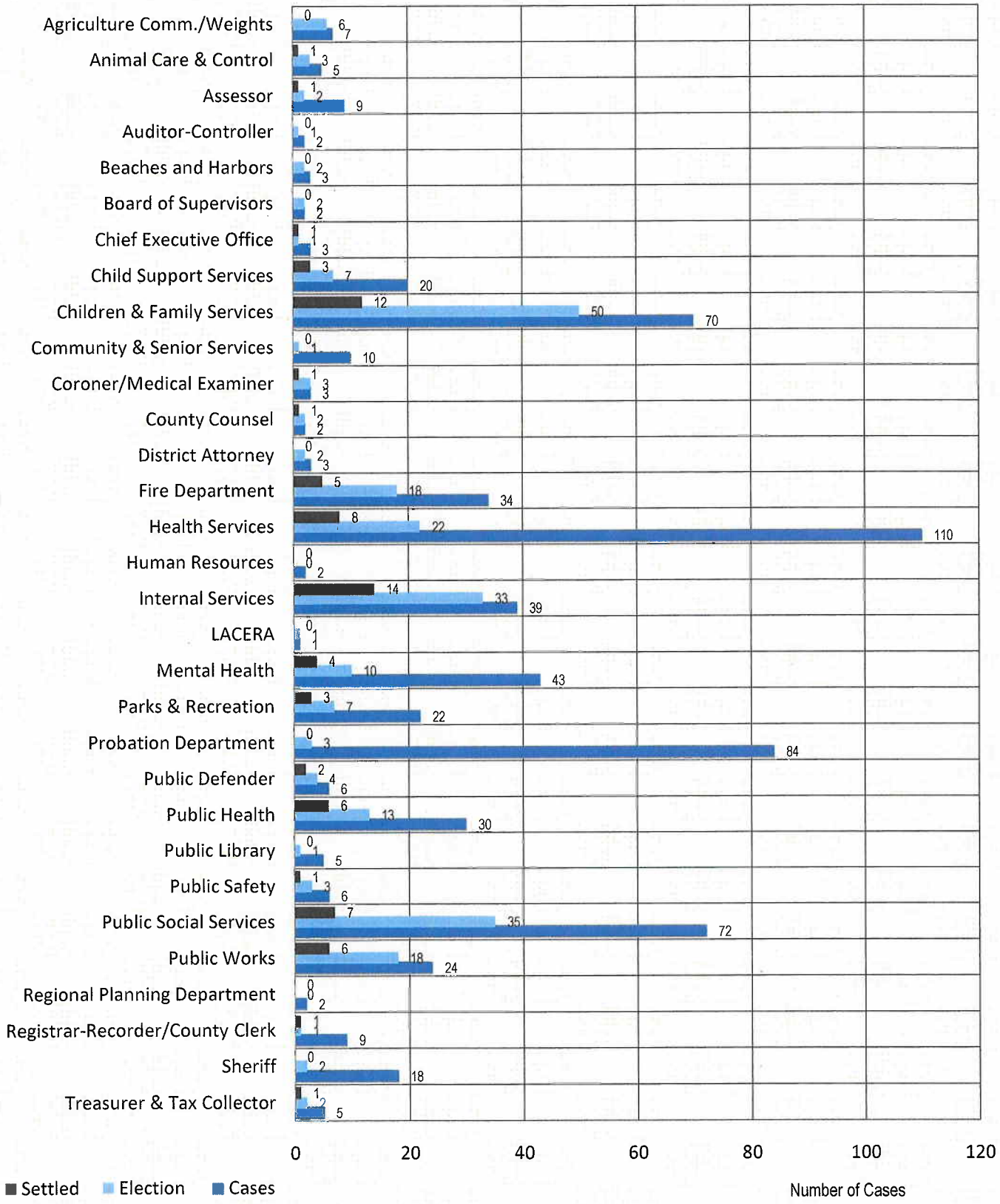
Office of Affirmative Action Compliance

Dispute Resolution Mediation Results
Fiscal Year 2009-10



* A total of 101 or 16% of the total cases to be investigated were successfully mediated. A total of 101 or 66% of the 152 cases electing mediation were successfully settled.

County of Los Angeles

Office of Affirmative Action Compliance

Mediation Election & No-fault Settlements By County Departments For Fiscal Year 2009-10