



DEPARTMENT NOTICE

20-102
06/12/20

Department General Order 11.07 “Prohibiting Discrimination, Harassment and Retaliation” Update Packet #65

The purpose of this directive is to announce the REVISION of Department General Order 11.07, Prohibiting Discrimination, Harassment and Retaliation, adopted by the Police Commission on May 20, 2020.

Members are expected to have a working knowledge of all directives as applicable to their respective assignment and comply with their provisions, per DGO 3.01.12. Members shall obey all written orders, policies and procedures of the Department, per DGO 2.01, Rule 10.

Department General Order update packet #65 is attached to this notice and is available to members on the SFPD Network Intranet site.

A handwritten signature in blue ink that reads "William Scott".

WILLIAM SCOTT
Chief of Police

Per DB 20-081, both sworn and non-sworn members are required to electronically acknowledge this Department Notice in HRMS. Any questions or clarification regarding this policy should be made to sfpd.writtendirectives@sfgov.org who will provide additional guidance about the directive.

General Order

PROHIBITING DISCRIMINATION, HARASSMENT AND RETALIATION

This General Order establishes the San Francisco Police Department's (Department) policy prohibiting discrimination, harassment, and retaliation, and the Department's commitment to federal, state, and City equal employment opportunity (EEO) laws prohibiting discrimination, harassment, and retaliation. All members are responsible for knowing and complying with this General Order to ensure that each member works in an environment free of discrimination, harassment, and retaliation. For the purposes of this General Order the term "member" refers to all Department sworn and civilian members, applicants, unpaid interns, volunteers, or persons providing services to the City by contract.

This General Order is not intended to limit or restrict any member's rights under federal, state or local law, or any applicable Memorandum of Understanding.

11.07.01 POLICY

- A. **FAIRNESS IN THE WORKPLACE.** The Department values diversity in its workforce and is committed to fair and equal treatment of all members in the terms, conditions and privileges of employment. The Department affirms its ethical and legal obligations to provide work environments free from discrimination, harassment and retaliation and treat all individuals professionally, with courtesy, dignity and respect.

This policy applies at all Department locations, Department-sponsored trainings or events, and any activities where a member represents the Department.

In accordance with federal, state and local law, the Department prohibits discrimination, harassment, and retaliation against all individuals, and will not tolerate such conduct. (See also DGO 5.17)

- B. **PROTECTED CATEGORIES.** The Department prohibits discrimination or harassment based on actual or perceived membership in the following protected categories:

- Age (40 or older)
- Ancestry
- Color
- National Origin
- Race
- Religion (includes religious dress and grooming practices)
- Disability (physical or mental)
- HIV and AIDS status

- Marital Status or Domestic Partner Status
- Medical Condition (associated with cancer, a history of cancer, or genetic characteristics)
- Genetic Information
- Parental Status
- Military and Veteran Status
- Sex (includes pregnancy, childbirth, breastfeeding, medical conditions relating to pregnancy, childbirth or breastfeeding)
- Gender, Gender Identity, or Gender Expression
- Sexual Orientation
- Political Affiliation
- Height
- Weight

The Department also prohibits discrimination against or harassment of any member because of that member's association with a person who is, or is perceived to be, a member of any of the protected categories listed above.

- C. RETALIATION. The Department prohibits retaliation against any member who in good faith made a complaint regarding, or who otherwise opposes, conduct the member reasonably believes to be discrimination, harassment or retaliation, or who has assisted or participated in any manner in an investigation, proceeding, hearing, or resolution of any such complaint.

11.07.02

DEFINITIONS

- A. DISCRIMINATION. Discrimination against any member is prohibited. Discrimination occurs when a member is subjected to an adverse employment action based on their actual or perceived membership in one or more of the protected categories listed above. An adverse employment action or issue complained of may include, but is not limited to, the following:

1. Denial of Employment
2. Denial of Reasonable Accommodation
3. Layoff
4. Compensation
5. Constructive Discharge
6. Denial of Promotion
7. Termination
8. Denial of Training
9. Disciplinary Action
10. Work Assignment

- B. HARASSMENT. The Department prohibits harassment of any member. Harassment is unwelcome, offensive or intimidating conduct that is directed at an individual or group of individuals because of their actual or perceived membership in one or more of the protected categories listed above, and that is, or if repeated or allowed to continue might become,

sufficiently severe or pervasive as to alter the condition of the individual's employment and create an abusive working environment.

Harassment may take many forms including but not limited to:

1. **VERBAL CONDUCT.** Verbal conduct includes but is not limited to epithets, derogatory comments, unwelcome jokes or stories, slurs, deliberate misuse of appropriate forms of address and pronouns, unwelcome sexual or romantic advances or invitations, innuendoes, suggestive comments or sounds, requests for sexual favors, or harassing phone calls.
2. **VISUAL CONDUCT.** Visual conduct includes but is not limited to derogatory, offensive or suggestive posters, cartoons, bulletins, drawings, signs, symbols, photographs, magazines, written articles or stories, notes, poems, letters, screen savers, e-mail transmissions, text messages, or social media applications.
3. **PHYSICAL CONDUCT.** Physical conduct includes but is not limited to touching, patting, pinching, grabbing, staring, leering, lewd or suggestive gestures, brushing against another's body, assault, blocking normal movement, or other physical interference.
4. **SEXUAL HARASSMENT.** Sexual harassment includes but is not limited to any unsolicited and unwelcome sexual advance, request for sexual favors, and other verbal, physical, visual, or written conduct of a sexual nature directed to persons of the same or opposite sex when:
 - a. Submission to such conduct is made explicitly or implicitly as a term or condition of employment; or
 - b. Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting the individual; or
 - c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

C. **RETALIATION.** The Department prohibits retaliation against any member. Retaliation against a member for any of the following actions undertaken in good faith is prohibited:

1. Reporting discrimination, harassment or retaliation;
2. Filing a complaint of discrimination, harassment or retaliation;
3. Opposing conduct one reasonably believes to be discrimination, harassment or retaliation;
4. Participating in or cooperating with an investigation of a complaint of discrimination, harassment or retaliation; and/or
5. Participating in or cooperating with the resolution of a complaint of discrimination, harassment or retaliation.

D. **HOSTILE WORK ENVIRONMENT.** A hostile work environment may exist when a person's inappropriate and unwelcome behavior within a workplace creates an environment that is intimidating, abusive or offensive for another person because of the person's membership in one or more protected categories.

The following factors may result in a hostile work environment:

1. An individual was subjected to inappropriate and unwelcome behavior that constitutes harassment;
2. The inappropriate and unwelcome behavior is sufficiently severe or pervasive; or
3. The inappropriate and unwelcome behavior altered the individual's employment and created an abusive work environment.

11.07.03 PROCEDURES

A. FILING A COMPLAINT

1. WHO CAN FILE

- a. **MEMBERS:** Members may make a complaint whenever they reasonably believe they been subjected to discrimination or harassment based on one or more of the protected categories listed above in section 11.07.01, POLICY B., or have been subjected to retaliation.
- b. **SUPERVISORS AND MANAGERS:** Supervisors and managers upon learning about a discrimination, harassment or retaliation complaint directly from a complaining member; indirectly through another member; by personal observation of the conduct; or by other means shall immediately report the matter in writing.

Supervisors and managers shall place the complaint, or their report of the matter, in a sealed envelope clearly marked "confidential" and hand carry the envelope to the Commanding Officer of the Risk Management Division or the EEO Liaison if the Commanding Officer is not available, by the end of their tour of duty.

If the Risk Management Office is closed, the sealed complaint shall be placed in the drop box labeled "SFPD EEO Mailbox" located near the front counter window of Southern Station's lobby. In cases where the envelope is too large to fit in the mail slot at Southern Station, supervisors and managers shall maintain custody of the envelope in a locked location until 0900 hours on the next business day when the supervisor or manager shall hand deliver the envelope to the Commanding Officer of the Risk Management Division, or the EEO Liaison if the

Commanding Officer is not available. Confidential EEO complaints shall NOT be placed in Department mail.

To ensure that EEO complaints are treated with discretion, the chain of command for discrimination, harassment or retaliation complaints is from the supervisory officer or manager who learns of the complaint or observes the conduct to the Commanding Officer of the Risk Management Division or the EEO Liaison if the Commanding Officer is unavailable.

2. WHERE TO FILE

- a. INTERNAL FILING: Members may file a complaint through any of the following internal channels:
- i. The member's supervisory officer;
 - ii. Any supervisory officer or manager outside the member's chain of command;
 - iii. The Department's EEO Liaison;
 - iv. The EEO Division in the City's Department of Human Resources (DHR)

Members who need further information on how to initiate an internal complaint may contact SFPD EEO Liaison (415) 837-7178, or DHR's Equal Employment Opportunity (EEO) Helpline at (415) 557-4900. Members with a hearing impairment can call (415) 775-9484 (TDD). The EEO Helpline is staffed during normal business hours, Monday through Friday, 8 a.m. – 5 p.m.

- b. EXTERNAL FILING. Members are not required to file their complaint through internal channels. Members may file a complaint with:
- i. the United States Equal Employment Opportunity Commission (EEOC),
 - ii. the California Department of Fair Employment and Housing (DFEH), and/or
 - iii. consult with a private attorney or union representative.

3. TIME LIMITS

All complaints alleging discrimination, harassment or retaliation in violation of this General Order shall be reported in a timely manner. Complaints filed with the SFPD or DHR shall be filed 180 days from the date of the alleged violation or no later than 180 days from the date the member should have first become aware of the violation. A complaint is considered filed on the date it is received by the City, whether that is to the Department, or directly to DHR.

The filing deadlines for the EEOC and DFEH differ from the City's deadlines. Members should consult with the EEOC or the DFEH for their specific timelines if a member wishes to file directly with one of those agencies.

4. COMPLAINT DESCRIPTION

A complaint of discrimination, harassment or retaliation should include the following information:

- a. Personal contact information, including name, contact number, and email;
- b. A#, Star number, Disaster Service Worker Number and Civil Service Classification, Bureau/Division/Team/Station, and work location;
- c. The discriminatory, harassing, or retaliatory action: *i.e.*, termination, denial of promotion, inappropriate touching, etc.;
- d. Basis or protected category, *i.e.* the reason the action occurred;
- e. The date(s) of the alleged discriminatory, harassing, or retaliatory action(s);
- f. A detailed chronology and explanation of the sequence of events believed to be discriminatory, harassing, or retaliatory;
- g. The name(s), Work Title, Bureau/Division/Team/Station and work location of the individual(s) accused of discrimination, harassment, or retaliation;
- h. The names of any witnesses to the alleged discriminatory, harassing, or retaliatory action; and
- i. The specific action sought to remedy the alleged discrimination, harassment, or retaliation.

5. CONFIDENTIALITY

The Department and DHR will maintain the confidentiality of the complaint to the fullest extent practical, although some disclosure may be necessary to assist in a thorough and complete investigation of the complaint and/or to take appropriate corrective or disciplinary action.

B. COMPLAINT PROCESS AND REVIEW

1. ROLE OF RISK MANAGEMENT OFFICE

The Chief of Police shall designate a member to act as a Liaison with DHR's EEO Division. To the extent needed, the Liaison will assist DHR in serving orders to appear for witness interviews.

Upon receipt of a complaint of discrimination, harassment or retaliation from a member, supervisory officer, or manager, the Commanding Officer of the Risk Management Division, through the EEO Liaison, shall promptly (within 5 business days) forward the complaint to DHR's EEO Division.

2. DEPARTMENT OF HUMAN RESOURCES, EEO DIVISION

All complaints alleging violation of this General Order shall be forwarded to DHR's EEO Division for review and the undertaking of one or more of the following actions:

- a. Further Investigation: If a complaint is assigned for further investigation, DHR EEO Division staff shall notify the Chief of Police and the Commanding Officer

of the Risk Management Division. The purpose of investigating further is to collect facts and gather data.

Further investigation may include interviews; review of documents, records and data; site visits; or other activities as necessary. The Commanding Officer of Risk Management, through the EEO Liaison, will make materials available for review by DHR's EEO investigators.

- b. Resolution through mediation: Mediation may be pursued, with the facilitation by trained staff, if parties are willing to participate.
- c. Administrative closure for lack of jurisdiction: Closure of a complaint by DHR does not preclude review under the Department's Internal Affairs Division for possible rule violations.

The complaining member will be notified of the action to be taken.

C. COMPLAINT RESOLUTION

1. DETERMINATION BY HUMAN RESOURCES DIRECTOR

Pursuant to the San Francisco Charter, §10.103, the City's Human Resources Director is responsible for reviewing and resolving claims of discrimination, harassment and retaliation. When a complaint has been investigated, the Human Resources Director will review the investigation and any relevant materials, including EEO investigative reports, letters of complaint, and departmental responses. The Human Resources Director shall make a determination on the charges and shall issue a letter of determination to the complainant and the Chief of Police. This determination may take the following forms:

DHR Determination	SFPD Equivalent
Finding; sufficient evidence	<ul style="list-style-type: none"> • Sustained • Policy failure • Supervision failure • Training failure
Dismissed; insufficient evidence	<ul style="list-style-type: none"> • Not sustained • Proper conduct • Unfounded
Administrative closure	<ul style="list-style-type: none"> • Information only • No finding • Withdrawal

2. APPEAL OF HUMAN RESOURCES DIRECTOR ACTION

Consistent with San Francisco Charter §10.101, the decision of the Human Resources Director may be appealed to the Civil Service Commission. Appeals may be made by the complaining party, the accused and/or the Department. Under Civil Service Rule 205.12.4, appeals must be received by the Executive Officer of the Civil Service Commission within thirty (30) calendar days following the postmarked mailing date of the determination. The Civil Service Commission does not have authority to impose discipline on civilian or sworn members of the Department.

3. ENFORCEMENT OF HUMAN RESOURCES DIRECTOR ACTION

Consistent with the San Francisco Charter, the decision of the City's Human Resources Director shall be enforced by every member, unless the decision is appealed to the Civil Service Commission, and is reversed.

Although the Human Resources Director may recommend corrective action, the Director does not have the authority to discipline members.

Following receipt of a finding of discrimination, harassment, or retaliation by the Human Resources Director, the Chief of Police shall initiate whatever disciplinary or other corrective action the Chief determines is appropriate. The Chief of Police may refer the matter to the Internal Affairs Division for further investigation consistent with time limits in Government Code § 3304. If appropriate, the Chief of Police shall schedule the matter for a Chief's Hearing or file disciplinary charges with the Police Commission, consistent with General Order 2.07.

11.07.04

RESPONSIBILITIES

A. ALL MEMBERS

All members are responsible for knowing and complying with this General Order to ensure that the Department maintains a work environment free of discrimination, harassment and retaliation. Members shall conduct themselves professionally and shall treat other members professionally, with courtesy, dignity and respect.

Members shall report discriminatory, harassing or retaliatory behavior, whether directed at themselves or co-workers. (See Section 11.07.03, Procedures.)

Each member is prohibited from using peer pressure or otherwise attempting to discourage or dissuade any member from making a complaint under this General Order.

All members are required to cooperate with the investigation of any discrimination complaint, and be truthful in such investigation. In order to maintain the integrity of each investigation, members who receive a complaint, or who participate in the investigation

or resolution of any complaint, shall refrain from discussing the complaint and/or the investigation except where members must consult with legal counsel or recognized representatives.

B. SUPERVISORY OFFICERS AND MANAGERS

All supervisory members are required to know, comply with, and enforce this General Order. The following are examples of conduct that may result in disciplinary action:

1. Direct or tacit approval of discrimination, harassment or retaliation;
2. Implementing a retaliatory transfer;
3. Failing to take action to stop potential or reported complaints of discrimination, harassment or retaliation;
4. Failing to report potential or reported complaints of discrimination, harassment or retaliation;
4. Treating discrimination, harassment or retaliation, or a complaint of such conduct as a joke; and/or
5. Concealing discrimination, harassment or retaliation, or a complaint of such conduct.

A supervisory officer or manager who learns of a possible discrimination, harassment or retaliation complaint or observes conduct that is potentially discriminatory, harassing or retaliatory shall take immediate corrective action to stop the conduct and provide some initial remedy, as appropriate. For assistance in determining how to take immediate corrective action, contact the EEO Liaison.

Supervisors shall also report the matter, in writing to the Commanding Officer of Risk Management Division by the end of their tour of duty. The Department will not accept or tolerate excuses to evade a supervisory or managerial member's responsibilities and duties under this General Order.

C. CHIEF OF POLICE

The Chief of Police shall be responsible for enforcing the determination of the Human Resources Director and, where applicable, the decisions of the Civil Service Commission; and for initiating disciplinary or other corrective action when appropriate.

The Chief of Police shall assign a sworn member to be the Department's EEO Liaison.

11.07.05 DISCIPLINE

Any member found to have engaged in unlawful discrimination, harassment or retaliation may be subject to disciplinary action, which may include written reprimand, demotion, suspension or termination of employment. A member may be subject to discipline for engaging in harassing

conduct that does not meet the definition of harassment under state or federal law but that, if repeated or allowed to continue, may meet that definition.

Any member who violates this General Order, interferes with its implementation, fails to cooperate, and/or answer truthfully during an investigation shall be subject to appropriate corrective or disciplinary action, which may include counseling, retraining, education, mediation, admonishment, demotion, or discipline up to and including suspension or termination of employment.

Any supervisory officer or manager who fails to report a complaint or who otherwise violates this General Order shall be subject to appropriate corrective or disciplinary action, which may include counseling, retraining, education, mediation, admonishment, demotion, or discipline up to and including suspension or termination of employment.

Consistent with the Department's practices in all matters involving discipline, the individuals responsible for determining whether, when and to what extent a member shall be disciplined may refer to a variety of source materials including, but not limited to, Department General Orders and Bulletins/Notices, SFPD Disciplinary Penalty & Referral Guidelines, the Civil Service Rules, applicable Memorandums of Understanding, the City Charter, and the Administrative Code.

11.07.06

RESOLUTION OF COMPLAINTS FILED WITH THE DEPARTMENT PRIOR TO EFFECTIVE DATE OF THIS GENERAL ORDER

Complaints of discrimination, harassment or retaliation filed prior to the effective date of this General Order shall be reviewed and resolved in accordance with procedures established pursuant to the Department's General Order 11.07 dated 05/06/09.

11.07.07

MANDATORY TRAINING

To ensure that all members are informed of the Department's EEO policy and in an effort to prevent discrimination, harassment (including sexual harassment) and retaliation from occurring, the Department shall provide mandatory, DHR-approved discrimination, harassment, and retaliation prevention training ("mandatory DHR training") to all members as follows:

- A. All new Department hires shall complete mandatory DHR training within 30 days of hire.
- B. All Department sworn (sergeants and above) and civilian supervisors shall attend mandatory DHR training within the first 30 days of appointment to a supervisory position.
- C. All Department members shall complete mandatory DHR training each year.

- D. Supervisors and managers are mandated to conduct annual (calendar year) discussions with their staff regarding the prevention of discrimination, harassment (including sexual harassment), and retaliation.
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References:

DGO 2.07, Discipline Process for Sworn Members
DGO 5.17 Policy Prohibiting Biased Policing
SFPD Disciplinary Penalty & Referral Guidelines
Mayor Breed Executive Directive 18-03, Recognition, Expansion and Reaffirmation of Inclusive Gender Identities
Civil Service Commission Memorandum 2017-01 – Policy of Family and Romantic Relationships at Work
Department of Human Resources – Sexual Harassment Policy
Department of Human Resources – Equal Employment Opportunity Policy
California Family Rights Act (CFRA)
California Fair Employment and Housing Act (FEHA) of 1959 (including amendments)
California Genetic Information Non-discrimination Act (GINA) of 2008
Family and Medical Leave Act (FMLA)
Title VII of the Civil Rights Act of 1964 (including amendments)
Age Discrimination in Employment Act (ADEA) of 1967
Rehabilitation Act of 1973
Americans with Disabilities Act (ADA) of 1990 (including amendments)