

HONOLULU POLICE DEPARTMENT

POLICY HUMAN RESOURCES AND TRAINING

March 27, 2019

Policy Number 3.28

SEXUAL HARASSMENT

POLICY

- I. All employees have a right to expect a workplace free of sexual harassment. All supervisors have a responsibility to prevent acts of sexual harassment.
- II. No employee of the department shall engage in the sexual harassment of any other employee or prospective employee.
- III. Violation of this policy by any employee may result in disciplinary action up to and including termination.

PROCEDURE

I. DEFINITIONS

Departmental Equal Employment Opportunity (EEO) officer:
The commander of the Human Resources Division.

Division-level element: An element headed by a major or anyone of lower rank who is directly subordinate to an assistant chief or officer of higher rank.

Employee: Anyone performing work for the department in any capacity. This includes city officers and all other personnel (whether elected, appointed, or otherwise employed) and any person participating as an advisor, consultant, or otherwise in performing a governmental function.

Manager: An employee in charge of a division- or higher-level element or an officer at the rank of captain or above.

Offender: An employee who has engaged in sexual harassment.

Prospective employee: An individual who is under consideration for employment with the department.

Sexual harassment: Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or visual display of a sexual nature when:

- A. Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment;
- B. Submission to or rejection of such conduct is used as the basis for employment decisions or for accepting or rejecting the individual for employment;
- C. Such conduct has the purpose or effect of substantially interfering with an individual's work performance or application for employment; or
- D. Such conduct has the purpose or effect of creating an intimidating, hostile, or offensive working environment.

Supervisor: An employee who holds the rank of sergeant/detective or above or is formally charged with the responsibility of supervising other employees.

Victim: An employee or prospective employee who has been subjected to sexual harassment.

II. MANAGEMENT RESPONSIBILITIES

- A. Under the federal Equal Employment Opportunity Commission (EEOC) guidelines, managers may be held responsible for sexual harassment occurring at the workplace by supervisory-level personnel, coworkers, and outsiders if they knew, or should have known, that sexual harassment was occurring.
- B. Managers shall ensure compliance with this policy. All actions or inactions by managers will be examined to ascertain the extent of their efforts to control sexual harassment. Failure by managers to prevent and/or take action against sexual harassment may be cause for disciplinary action.

- C. Managers shall ensure that this policy and the avenues available for resolution of sexual harassment issues at the workplace are communicated to all employees. They shall also ensure that supervisors are kept aware of the requirement to guard against the various types of harassment that might occur within their areas of responsibility.
- D. Each manager shall ensure that the Chief of Police is informed of all complaints and that each sexual harassment complaint is properly investigated and acted upon in accordance with the procedures outlined in this directive.

III. SUPERVISORY RESPONSIBILITIES

- A. The supervisor represents management to subordinate employees. Each supervisor is responsible for taking reasonable measures to prevent sexual harassment and to stop any sexual harassment that is occurring within the department. A supervisor who is aware of sexual harassment in another element shall notify the commander (division-level or higher) of the alleged victim.
- B. Failure by a supervisor to control sexual harassment may be cause for disciplinary action against the supervisor. Supervisors may be held to a higher standard of accountability as management representatives.

IV. INDIVIDUAL RESPONSIBILITIES

All personnel, whether an officer or employee, must refrain from conduct of a sexual nature that could be considered inappropriate or unwelcome in the workplace, including (but not limited to) the following conduct:

- A. Making unwelcome sexual advances or requests for sexual favors;
- B. Making remarks of a sexual nature;
- C. Using gender-based or sexually abusive language and sexual innuendoes;
- D. Visually displaying materials of a sexual nature; and
- E. Physical contact of a sexual nature.

V. "REASONABLE PERSON OF THE SAME GENDER" STANDARD

In determining whether alleged conduct constitutes sexual harassment, a supervisor, non-supervisor, or team investigating a complaint of sexual harassment shall use the "reasonable person of the same gender" standard. Under this standard, sexual harassment shall be deemed to have occurred if the alleged offender's conduct would be considered sexual harassment from the perspective of a reasonable person of the alleged victim's gender.

VI. COMPLAINT AND INVESTIGATION PROCEDURES

A. Who May File a Complaint

1. Any employee who feels that he or she is being subjected to sexual harassment should immediately make a complaint to his or her immediate supervisor, unless the supervisor is the alleged offender. If the immediate supervisor is the alleged offender, the complaint should be reported to the supervisor at the next higher level.

Such complaints may also be reported directly to the departmental EEO officer, the Chief of Police, or the city's EEO officer.

2. A prospective employee who feels subjected to sexual harassment should immediately make a complaint to the immediate supervisor of the alleged offender, who should immediately notify the commander or second in command of the Human Resources Division to initiate an investigation.

Such complaints may also be reported directly to the departmental EEO officer, the Chief of Police, or the city's EEO officer.

B. Complaint

1. An alleged victim may make an informal complaint, either verbally or in writing, or a formal complaint in writing.
 - a. A formal complaint may be made at any time the alleged victim desires to do so. It is not necessary for the alleged victim to make an informal complaint first or to wait while the resolution of an informal complaint is pending.

- b. A formal complaint should be made on the city complaint form for reporting discrimination, harassment, or sexual harassment. Copies of this form are available in all elements.
 2. When making a complaint, the alleged victim shall name the alleged offender and state the nature and circumstances of the alleged sexual harassment. The following basic information is required in each sexual harassment complaint:
 - a. Complaining employee's name, element, and position title;
 - b. Name of person accused of committing the sexual harassment;
 - c. Nature and circumstances of alleged sexual harassment (include duration and circumstances of sexual harassment; witnesses, if available; and any employment action taken in relation to the harassment); and
 - d. Whether such harassment has been reported previously and, if recalled, the date and to whom.
 3. A team from the Human Resources Division (HRD) shall promptly investigate the complaint.
 - a. The team shall be selected by the Chief of Police or a designee, or, if the Chief is the alleged offender, by the city's EEO officer;
 - b. The team shall consist of at least three members. Both sexes shall be represented, and one member shall be the departmental EEO officer or designee;
 - c. In order to ensure that all members of the investigative team possess the investigative skills necessary to conduct an unbiased investigation, the Chief of Police may request assistance from other city departments and agencies when designating such investigators; and

- d. The team shall obtain a case tracking number from the Professional Standards Office before initiating the investigation.

C. Investigation

- 1. The investigation shall be conducted in an unbiased, fair, and discreet manner, with appropriate safeguards to maintain confidentiality and protection from embarrassment.
- 2. The team shall notify the alleged offender of his or her right to representation in accordance with the current collective bargaining agreement.
- 3. The team shall allow the alleged offender to respond to the complaint.
- 4. The team's goals will be to ascertain the facts and contribute to the immediate cessation of any harassment. In determining whether conduct constitutes sexual harassment, the investigators shall consider the record as a whole and the totality of the circumstances, such as the nature of the sexual harassment and the context in which the alleged incidents occurred.
- 5. The team shall investigate, interview all witnesses, and prepare a written report that includes the findings of the investigation.
- 6. The completed investigation shall be transmitted to one of the following:
 - a. Honolulu Police Commission, when the alleged offender is the Chief of Police;
 - b. Chief of Police, when the alleged offender is a deputy chief of police;
 - c. Chief of Police and both deputy chiefs, when the alleged offender is an assistant chief, major, captain, or a civilian equivalent; or
 - d. Administrative Review Board (ARB), when the alleged offender is a lieutenant or below or a civilian equivalent.

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7. The reviewing authority shall make and forward its recommendation to the Chief of Police on any disciplinary action.

In cases where the alleged offender is the Chief of Police, the reviewing authority shall make and forward its recommendation to the Director of the Department of Human Resources (DHR) or designee in accordance with the city's sexual harassment policy.

3-4-2021

8. The complete, original report (with the department's recommendation) shall be forwarded to the Director of the DHR or designee for review and forwarding to the city's EEO officer for final approval. The city's EEO officer shall be informed of any prolonged delays in the investigation.

VII. DISCIPLINARY AND OTHER ACTIONS

- A. If the complaint is deemed true, the offender shall be notified in writing of the investigation results and any disciplinary action. Additionally, the offender will be warned that sexual harassment and retaliation against the victim are violations of federal and state laws and city and departmental policy.
 - 1. Due process procedures shall be adhered to when any discipline is imposed. The victim shall be notified that appropriate disciplinary action has been taken and that there will be no retaliation; and
 - 2. All disciplinary actions shall be carried out in accordance with civil service rules or applicable collective bargaining agreements.
- B. If the complaint is not sustained or is unsupported by the evidence, the complaint shall be dismissed. Both parties shall be notified in writing of the dismissal.

VIII. CONFIDENTIALITY

- A. During the investigation of a complaint, the names of the alleged victim and offender shall remain confidential but may be revealed to the following:
 - 1. Each other;
 - 2. Any employee investigating a complaint;
 - 3. The Chief of Police;
 - 4. The city's EEO officer;
 - 5. The Director of the DHR or designee;
 - 6. Witnesses to the alleged sexual harassment; and
 - 7. Any other person to whom revealing the names is necessary for a comprehensive investigation and a determination regarding disciplinary action.

- B. Witnesses and all others involved in the investigation shall be directed to maintain the confidentiality of the incident and investigation. The team's report, supporting documents, and other related materials shall remain confidential.

- C. The written report on a complaint and investigation shall remain confidential. In order to minimize departmental exposure to liability, inspection of the complaint report shall be permitted only by the following:
 - 1. Personnel involved in conducting the investigation and/or managing, supervising, or disciplining the parties to the complaint;
 - 2. The city's EEO officer;
 - 3. The Director of the DHR or designee; and
 - 4. Other individuals authorized by law or ordinance.

- D. Because the investigation necessitates that potentially defamatory statements be repeated, the investigation shall be conducted professionally and as discreetly as possible, with disclosures made only when the investigation requires.

IX. RETENTION OF WRITTEN REPORT ON COMPLAINT AND INVESTIGATION

A. General

A complete, confidential record of each investigation shall be maintained by the HRD for future reference and proceedings for the time period and proper disposition as defined for all such reports.

B. Complaints That Are Upheld

1. Reports and supporting documentation of complaints that are upheld shall be retained by the departmental EEO officer for a period consistent with the current collective bargaining agreements, civil service rules, and applicable laws.
2. Thereafter, such documentation shall be forwarded to the city's EEO officer or designee to preserve evidence that might be needed for legal defense in cases filed against the city. In addition, for Bargaining Unit 12 and excluded personnel, the departmental EEO officer shall retain a summary notation of the complaint and investigation for at least five years after the offender terminates service as an employee of the department.

C. Complaints That Are Dismissed

Reports of dismissed complaints shall be forwarded and retained by the city's EEO officer or designee for preservation of evidence.

X. WHEN THE COMPLAINANT IS NOT SATISFIED WITH THE RESOLUTION

When the complainant is not satisfied with the resolution of the complaint, he or she may:

- A. Submit a grievance under the collective bargaining grievance procedure, if applicable; or

- B. File a complaint with the Honolulu Civil Service Commission, if applicable; or
- C. File a complaint with the Hawaii Civil Rights Commission within 180 calendar days of the alleged occurrence of sexual harassment, if applicable; or
- D. File a complaint with the federal EEOC within 300 calendar days from the date of the alleged occurrence of sexual harassment. The toll-free information number and the local office number are listed under the Equal Employment Opportunity Commission in the U.S. Government section of the telephone directory.

Employees are strongly encouraged to seek internal remedies before using outside agencies.

XI. NON-RETALIATION

- A. There shall be no retaliation or discrimination against an employee who has complained of sexual harassment, conducted an investigation of a complaint, or acted as a witness during an investigation of a complaint. Retaliatory conduct is illegal and constitutes a separate violation of law and rules. Any retaliation or discriminatory action should be reported by the victim and shall be dealt with promptly and severely by management.
- B. An employee who retaliates against another employee or prospective employee shall be disciplined in accordance with the provisions of this policy or as authorized by law, ordinance, or rule. If the employee to be disciplined is covered by a collective bargaining agreement, the disciplinary actions shall comply with that agreement.

XII. FOLLOW-UP

- A. Follow-up inquiries shall be made by the departmental EEO officer or designee and the division-level manager to ensure that harassment has not resumed and the victim has not suffered retaliation. (If a division-level manager is the alleged offender, the inquiries shall be made by the departmental EEO officer or designee and the manager's supervisor.) If inquiries reveal such occurrences, they shall be promptly and severely dealt with by management. Management shall notify the DHR and the city's EEO officer of the occurrences and their corrective action.

- B. Even when the results of inquiries are inconclusive, the situation shall be closely monitored and reviewed by the departmental EEO officer or designee and the division-level manager in order to ensure that the problem has been solved. (If a division-level manager is the alleged offender, the monitoring and reviewing shall be carried out by the departmental EEO officer or designee and the manager's supervisor.)

XIII. MALICIOUS AND/OR FALSE COMPLAINT

- A. An employee shall not make a malicious and/or false complaint.

- B. An employee who makes a malicious and/or false complaint shall be subject to appropriate disciplinary action imposed in accordance with this policy or as authorized by law, ordinance, or rule.

- C. Disciplinary action against an employee making a malicious and/or false complaint shall not be considered retaliation prohibited by section XI above.

XIV. TRAINING

- A. All personnel shall complete an annual training program on sexual harassment.
- B. The DHR is responsible for formulating and coordinating the training program on sexual harassment.
- C. An employee's failure to attend sexual harassment training may result in disciplinary action.

XV. DISSEMINATION OF INFORMATION

- A. The contents of this policy shall be communicated to all employees, including supervisors. It may be posted on employee bulletin boards and at places where applications for employment with the department are accepted. This information shall be discussed with new employees in orientation and training classes and, from time to time, in departmental staff meetings. Widespread dissemination of this information and compliance with this policy will be evidence of affirmative action in the evaluation of the city's antidiscrimination program.
- B. In addition, managers shall ensure that the contents of this policy are again communicated to all employees on at least an annual basis.

XVI. COLLECTIVE BARGAINING AGREEMENTS

In the event of a conflict between this policy and applicable collective bargaining agreements, the provisions of the collective bargaining agreements shall take precedence unless superseded by law.



SUSAN BALLARD
Chief of Police

Post on bulletin
board for one week

Policy first issued
October 14, 1996