



# CITY *of* CLOVIS

## MEMORANDUM

### ADMINISTRATIVE MEMORANDUM NO. 47

Revised December 1, 2017

**SUBJECT:** Prohibition of Harassment in Employment

**FROM:** Luke Serpa, City Manager 

**DATE ISSUED:** September 19, 1988, Revised April 25, 1977, April 6, 2005

### PURPOSE

The purpose of this policy is to define various types of unlawful harassment; issue to all employees the City's policy on the prohibition and zero tolerance of unlawful harassment in employment; and, to provide a procedure for submitting complaints of unlawful harassment.

### POLICY

It is the intent of the City of Clovis to provide a business like work environment free from all forms of harassment that would interfere with an individual's work performance or create an intimidating, hostile or offensive working environment. To that end, an employee who believes they have been harassed on the job or who has knowledge of alleged harassment should immediately inform their respective Department Head or designee or any member of City Management of the incident so the incident can be investigated and appropriate action can be taken.

Harassment of an applicant or employee of the City by any employee or officer of the City on the basis of race, religion, religious creed, color, national origin, ancestry, physical or mental disability, medical condition, marital status, pregnancy, sex, gender, sexual orientation, gender identity, gender expression, genetic information, age, military or veteran status will not be tolerated. Disciplinary action, up to and including termination, will be instituted for behavior described in the following definition of harassment.

### DEFINITION

As defined by this policy, harassment includes, but is not limited to:

- **Verbal Forms of Harassment:** For example, epithets, derogatory comments, jokes, or slurs on the basis of race, religion, religious creed, color, national origin, ancestry, physical or mental disability, medical condition, marital status, pregnancy, sex, gender, sexual orientation, gender identity, gender expression, genetic information, age, military or veteran status.

- **Physical Forms of Harassment:** For example, assault, impeding or blocking movement, or any physical interference with normal work or movement when directed at an individual on the basis of race, religion, religious creed, color, national origin, ancestry, physical or mental disability, medical condition, marital status, pregnancy, sex, gender, sexual orientation, gender identity, gender expression, genetic information, age, military or veteran status.
- **Visual Forms of Harassment:** For example, derogatory posters, notices, bulletins, cartoons, calendars, drawings, or publications on the basis of race, religion, religious creed, color, national origin, ancestry, physical or mental disability, medical condition, marital status, pregnancy, sex, gender, sexual orientation, gender identity, gender expression, genetic information, age, military or veteran status.
- **Sexual Forms of Harassment:** For example, unwelcome sexual advances, unwelcome requests for sexual favors, and other unwelcome verbal or physical conduct of a sexual nature for which submission to the conduct is explicitly or implicitly made a term or condition of employment or affects benefits, services or activities available through the City, or is sufficiently severe or pervasive that it has the purpose or effect of having a negative impact upon work performance, or creating an intimidating, hostile or offensive work environment.

### **COMPLAINT PROCESS**

An employee who believes they have been harassed on the job or who has knowledge of alleged harassment should immediately inform the Department Head or designee or any member of City Management of the incident. Such notification should include pertinent facts such as the name of the alleged harasser, the date of the alleged harassment, names of witnesses and what allegedly harassing behavior was observed. To facilitate timely completion of the process, a complaint form has been developed and is attached to this policy.

Elements of this process are:

**Complaint Advisors:** Managers and Supervisors (Complaint Advisors) in every City department and the Personnel/Risk Management Office will be available to receive harassment complaints. Advisors will be trained, and their function will include but not be limited to:

1. Counseling the employee and discussing the process of filing a complaint;
2. Obtaining a factual written statement of the complaint to be filed with the appropriate Department Head and the Personnel/Risk Manager;
3. Assisting in the follow-up investigation by interviewing the accused, witnesses, and supervisors as appropriate; and,
4. Recommending disposition of the complaint.

**Once a complaint is received, either verbally or in writing, the manager or supervisor shall notify the Department Head and/or Personnel/Risk Management immediately.**



**Department Head and Personnel/Risk Manager:** Will authorize an investigation of the complaint to include a review of factual information collected to determine whether the alleged conduct constitutes harassment, giving consideration to the record as a whole and the totality of the circumstances including the nature of the verbal, physical, visual, or sexual favor aspect of the incident and the context in which the alleged incidents occurred. Will recommend and/or take appropriate action.

### **INVESTIGATION**

A thorough and objective investigation will be conducted in response to each complaint of alleged harassment. Such investigations may be performed by trained City staff, or depending upon the nature and scope of the allegations, an outside investigator experienced in conducting such investigations may be utilized. Each investigation will be conducted discreetly, maintaining confidentiality of the complainant and the alleged offender insofar as legally and practically possible while conducting the investigation. In order to determine whether or not the alleged conduct constitutes unlawful harassment, the investigator will evaluate the record as a whole. At the conclusion of the investigation, the person(s) filing the complaint will be advised of the outcome and action(s) to be taken to prevent recurrence.

If the conclusion of the investigation is that unlawful harassment has occurred, the City shall take appropriate action to ensure that such harassment ceases and will not recur. Any corrective action, such as training, reassignment or discipline, up to and including termination of employment, that is implemented will consider the totality of the circumstances.

### **RETALIATION PROHIBITED**

Retaliation against any individual for the exercise of the right to file a harassment complaint is strictly prohibited. To avoid retaliation and the appearance of retaliation, employees and officers are directed to:

1. Refrain from taking any action which discourages any individual from exercising the right to file a sexual harassment complaint.
2. Keep confidential the facts of any complaints or investigations made pursuant to this policy, including the identity of any witnesses or any facts which disclosed the identity of the claimants or witnesses to the extent permitted by law.
3. Each person contacted during the course of an investigation will be directed not to communicate with any complainant, witness or other person involved in the complaint about the subject matter of the complaint.

### **QUESTIONS**

Individuals who have questions about this policy or its implementation should contact the City's Personnel/Risk Manager.

### **ATTACHMENTS**

- Harassment Complaint Form
- DFEH Sexual Harassment is Forbidden By Law Flyer
- California Law Prohibits Workplace Discrimination and Harassment
- Transgender Rights in the Workplace

**City of Clovis**  
**HARASSMENT COMPLAINT FORM**

PRIOR TO COMPLETING THIS FORM, PLEASE READ THE FOLLOWING:

- Accurate completion of this form will ensure the immediate and thorough investigation of the complaint.
- This form may be submitted to your Department Head, Supervisor, or to the Personnel/Risk Manager.
- An investigation will be conducted promptly and fairly and all information to the extent possible will be confidential.
- Appropriate and immediate action will be taken if the City's harassment policy has been violated. No retaliation against an employee/applicant for filing a complaint will be tolerated.
- The employee/applicant filing the complaint will be notified of the outcome of the investigation.

***PLEASE COMPLETE ALL SECTIONS, SIGN AND DATE THE COMPLAINT FORM***

NAME: \_\_\_\_\_

DEPARTMENT: \_\_\_\_\_

Name of the person this complaint is being filed against:

\_\_\_\_\_

When did the harassment occur? \_\_\_\_\_

Where did the harassment occur? \_\_\_\_\_

Please provide a detailed statement of the circumstances constituting the harassment.

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*(Add a separate piece of paper if necessary)*

What would you request as a suggested remedy?

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Names of witnesses or other persons (if any) having knowledge of the harassment:

- (1) \_\_\_\_\_
- (2) \_\_\_\_\_
- (3) \_\_\_\_\_



# THE RIGHTS OF EMPLOYEES WHO ARE TRANSGENDER OR GENDER NONCONFORMING

## FACT SHEET



Civil Rights  
Department  
STATE OF CALIFORNIA

**CALIFORNIA LAW PROTECTS TRANSGENDER AND GENDER NONCONFORMING PEOPLE FROM DISCRIMINATION, HARASSMENT, AND RETALIATION AT WORK. THESE PROTECTIONS ARE ENFORCED BY THE CIVIL RIGHTS DEPARTMENT (CRD).**

## THINGS YOU NEED TO KNOW

### 1. Does California law protect transgender and gender nonconforming employees from employment discrimination?

Yes. All employees, job applicants, unpaid interns, volunteers, and contractors are protected from discrimination at work when based on a protected characteristic, such as their gender identity, gender expression, sexual orientation, race, or national origin. This means that private employers with five or more employees may not, for example, refuse to hire or promote someone because they identify as – or are perceived to identify as – transgender or non-binary, or because they express their gender in non-stereotypical ways.

Employment discrimination can occur at any time during the hiring or employment process. In addition to refusing to hire or promote someone, unlawful discrimination includes discharging an employee, subjecting them to worse working conditions, or unfairly modifying the terms of their employment because of their gender identity or gender expression.

### 2. Does California law protect transgender and gender nonconforming employees from harassment at work?

Yes. All employers are prohibited from harassing any employee, intern, volunteer, or contractor because of their gender identity or gender expression. For example, an employer can be liable if co-workers create a hostile work environment – whether in person or virtual – for an employee who is undergoing a gender transition. Similarly, an employer can be liable when customers or other third parties harass an employee because of their gender identity or expression, such as intentionally referring to a gender-nonconforming employee by the wrong pronouns or name.

### 3. Does California law protect employees who complain about discrimination or harassment in the workplace?

Yes. Employers are prohibited from retaliating against any employee who asserts their right under the law to be free from discrimination or harassment. For example, an employer commits unlawful retaliation when it responds to an employee making a discrimination complaint – to their supervisor, human resources staff, or CRD – by cutting their shifts.

### 4. If bathrooms, showers, and locker rooms are sex-segregated, can employees choose the one that is most appropriate for them?

Yes. All employees have a right to safe and appropriate restroom and locker room facilities. This includes the right to use a restroom or locker room that corresponds to the employee's gender identity, regardless of the employee's sex assigned at birth. In addition, where possible, an employer should provide an easily accessible, gender-neutral (or "all-gender"), single user facility for use by any employee. The use of single stall restrooms



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Department  
STATE OF CALIFORNIA

and other facilities should always be a matter of choice. Employees should never be forced to use one, as a matter of policy or due to harassment.

**5. Does an employee have the right to be addressed by the name and pronouns that correspond to their gender identity or gender expression, even if different from their legal name and gender?**

Yes. Employees have the right to use and be addressed by the name and pronouns that correspond with their gender identity or gender expression. These are sometimes known as “chosen” or “preferred” names and pronouns. For example, an employee does not need to have legally changed their name or birth certificate, nor have undergone any type of gender transition (such as surgery), to use a name and/or pronouns that correspond with their gender identity or gender expression. An employer may be legally obligated to use an employee’s legal name in specific employment records, but when no legal obligation compels the use of a legal name, employers and co-workers must respect an employee’s chosen name and pronouns. For example, some businesses utilize software for payroll and other administrative purposes, such as creating work schedules or generating virtual profiles. While it may be appropriate for the business to use a transgender employee’s legal name for payroll purposes when legally required, refusing or failing to use that person’s chosen name and pronouns, if different from their legal name, on a shift schedule, nametag, instant messaging account, or work ID card could be harassing or discriminatory. CRD recommends that employers take care to ensure that each employee’s chosen name and pronouns are respected to the greatest extent allowed by law.

**6. Does an employee have the right to dress in a way that corresponds with their gender identity and gender expression?**

Yes. An employer who imposes a dress code must enforce it in a non-discriminatory manner. This means that each employee must be allowed

to dress in accordance with their gender identity and expression. While an employer may establish a dress code or grooming policy in accord with business necessity, all employees must be held to the same standard, regardless of their gender identity or expression.

**7. Can an employer ask an applicant about their sex assigned at birth or gender identity in an interview?**

No. Employers may ask non-discriminatory questions, such as inquiring about an applicant’s employment history or asking for professional references. But an interviewer should not ask questions designed to detect a person’s gender identity or gender transition history such as asking about why the person changed their name. Employers should also not ask questions about a person’s body or whether they plan to have surgery.

**8. Does California law protect transgender and gender nonconforming employees from hate violence?**

Yes. Acts or threats of violence against a person because of their gender identity or gender expression is forbidden everywhere, including the workplace. A person targeted for hate violence can file a claim with CRD, and may be eligible for civil remedies, such as money damages and a restraining order. Also, contact the CA vs. Hate Resource Line and Network for information and support for people targeted by hate at [stophate@calcivilrights.ca.gov](mailto:stophate@calcivilrights.ca.gov) or 833-8-NO-HATE.

**9. Can my employer-provided health insurance plan exclude gender-affirming care?**

No. Under California law, employer-provided health plans must cover medically necessary gender-affirming care.



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## FACT SHEET



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STATE OF CALIFORNIA

## COMMON TERMS

**Gender expression** means a person's gender-related appearance or behavior, such as their mannerisms, clothes, or hairstyle. How someone expresses their gender may or may not be stereotypically associated with their gender identity or the sex they were assigned at birth. For example, someone who identifies as male may express his gender in stereotypically feminine ways, such as having long hair, wearing make-up, or acting "sensitive."

**Gender identity** means each person's internal understanding of their gender, such as being male, female, a combination of male and female, neither male nor female, and/or nonbinary. A person may have a gender identity different from the sex the person was assigned at birth.

**Gender nonconforming** refers to people who do not follow societal norms or stereotypes about gender identity or gender expression. A person of any gender identity can be gender nonconforming, such as a female-identified person who wears clothes typically associated with men and who uses the pronouns "they/them" and "she/her."

**Gender transition** refers to a process that some people who are transgender or gender nonconforming go through to affirm their gender identity. This can, but does not necessarily, include transitioning socially and/or physically. A person does not need to complete any particular step in a gender transition in order to be protected by the law.

- *Social transition* is a process of socially aligning one's gender expression with the internal sense of self (e.g., changes in name and pronoun, bathroom facility usage, dress, speech, or appearance).

- *Physical transition* refers to medical treatments an individual may undergo to physically align their body with their gender identity (e.g., hormone therapies or surgical procedures).

**Non-binary** is a general term for any gender identity that falls outside the gender binary of strictly male or strictly female. California officially recognizes non-binary as a gender.

**Sexual orientation** refers to a person's sexual or romantic attraction to others and may – but does not necessarily – include identification with terms like straight, gay, lesbian, bisexual, or pansexual.

**Transgender** is a general term that refers to a person whose gender identity differs from the sex they were assigned at birth, such as someone who identifies as male but whose sex on their original birth certificate was marked female.

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**If you have been subjected to discrimination, harassment, or retaliation at work, please contact CRD.**

## TO FILE A COMPLAINT

**Civil Rights Department**  
calcivilrights.ca.gov/complaintprocess  
Toll Free: 800.884.1684  
TTY: 800.700.2320

Have a disability that requires a reasonable accommodation? CRD can assist you with your complaint.

For translations of this guidance, visit:  
[www.calcivilrights.ca.gov/posters/employment](http://www.calcivilrights.ca.gov/posters/employment)



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Want to learn more?

Visit: <https://bit.ly/3hTG1EQ>

## TO FILE A COMPLAINT

### Civil Rights Department

[calcivilrights.ca.gov/complaintprocess](http://calcivilrights.ca.gov/complaintprocess)

Toll Free: 800.884.1684 / TTY: 800.700.2320

California Relay Service (711)

Have a disability that requires a reasonable accommodation?  
CRD can assist you with your complaint.



# SEXUAL HARASSMENT

## FACT SHEET



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Sexual harassment is a form of discrimination based on sex/gender (including pregnancy, childbirth, or related medical conditions), gender identity, gender expression, or sexual orientation. Individuals of any gender can be the target of sexual harassment. Unlawful sexual harassment does not have to be motivated by sexual desire. Sexual harassment may involve harassment of a person of the same gender as the harasser, regardless of either person's sexual orientation or gender identity.

## THERE ARE TWO TYPES OF SEXUAL HARASSMENT

1. **“Quid pro quo”** (Latin for “this for that”) sexual harassment is when someone conditions a job, promotion, or other work benefit on your submission to sexual advances or other conduct based on sex.
2. **“Hostile work environment”** sexual harassment occurs when unwelcome comments or conduct based on sex unreasonably interferes with your work performance or creates an intimidating, hostile, or offensive work environment. You may experience sexual harassment even if the offensive conduct was not aimed directly at you.

The harassment must be severe or pervasive to be unlawful. A single act of harassment may be sufficiently severe to be unlawful.

## SEXUAL HARASSMENT INCLUDES MANY FORMS OF OFFENSIVE BEHAVIORS

BEHAVIORS THAT MAY BE SEXUAL HARASSMENT:

1. Unwanted sexual advances
2. Offering employment benefits in exchange for sexual favors
3. Leering; gestures; or displaying sexually suggestive objects, pictures, cartoons, or posters
4. Derogatory comments, epithets, slurs, or jokes
5. Graphic comments, sexually degrading words, or suggestive or obscene messages or invitations
6. Physical touching or assault, as well as impeding or blocking movements

Actual or threatened retaliation for rejecting advances or complaining about harassment is also unlawful.

Employees or job applicants who believe that they have been sexually harassed or retaliated against may file a complaint of discrimination with CRD within three years of the last act of harassment or retaliation.

CRD serves as a neutral fact-finder and attempts to help the parties voluntarily resolve disputes. If CRD finds sufficient evidence to establish that discrimination occurred and settlement efforts fail, the Department may file a civil complaint in state or federal court to address the causes of the discrimination and on behalf of the complaining party. CRD may seek court orders changing the employer's policies and practices, punitive damages, and attorney's fees and costs if it prevails in litigation. Employees can also pursue the matter through a private lawsuit in civil court after a complaint has been filed with CRD and a Right-to-Sue Notice has been issued.

## EMPLOYER RESPONSIBILITY & LIABILITY

All employers, regardless of the number of employees, are covered by the harassment provisions of California law. Employers are liable for harassment by their supervisors or agents. All harassers, including both supervisory and non-supervisory personnel, may be held personally liable for harassment or for aiding and abetting harassment. The law requires employers to take reasonable steps to prevent harassment. If an employer fails to take such steps, that employer can be held liable for the harassment. In addition, an employer may be liable for the harassment by a non-employee (for example, a client or customer) of an employee, applicant, or person providing services for the employer. An employer will only be liable for this form of harassment if it knew or should have known of the harassment, and failed to take immediate and appropriate corrective action.

Employers have an affirmative duty to take reasonable steps to prevent and promptly correct discriminatory and harassing conduct, and to create a workplace free of harassment.

A program to eliminate sexual harassment from the workplace is not only required by law, but it is the most practical way for an employer to avoid or limit liability if harassment occurs.



# SEXUAL HARASSMENT

## FACT SHEET



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### CIVIL REMEDIES

- **Damages for emotional distress from each employer or person in violation of the law**
- **Hiring or reinstatement**
- **Back pay or promotion**
- **Changes in the policies or practices of the employer**

### ALL EMPLOYERS MUST TAKE THE FOLLOWING ACTIONS TO PREVENT HARASSMENT AND CORRECT IT WHEN IT OCCURS:

- 1.** Distribute copies of this brochure or an alternative writing that complies with Government Code 12950. This pamphlet may be duplicated in any quantity.
- 2.** Post a copy of the Department's employment poster entitled "California Law Prohibits Workplace Discrimination and Harassment."
- 3.** Develop a harassment, discrimination, and retaliation prevention policy in accordance with 2 CCR 11023. The policy must:
  - Be in writing.
  - List all protected groups under the FEHA.
  - Indicate that the law prohibits coworkers and third parties, as well as supervisors and managers with whom the employee comes into contact, from engaging in prohibited harassment.
  - Create a complaint process that ensures confidentiality to the extent possible; a timely response; an impartial and timely investigation by qualified personnel; documentation and tracking for reasonable progress; appropriate options for remedial actions and resolutions; and timely closures.
  - Provide a complaint mechanism that does not require an employee to complain directly to their immediate supervisor. That complaint mechanism must include, but is not limited to including: provisions for direct communication, either orally or in writing, with a designated company representative; and/or a complaint hotline; and/or access to an ombudsperson; and/or identification of CRD and the United States Equal Employment Opportunity Commission as additional avenues for employees to lodge complaints.
  - Instruct supervisors to report any complaints of misconduct to a designated company representative, such as a human resources manager, so that the company can try to resolve the claim internally. Employers with 50 or more employees are required to

include this as a topic in mandated sexual harassment prevention training (see 2 CCR 11024).

- Indicate that when the employer receives allegations of misconduct, it will conduct a fair, timely, and thorough investigation that provides all parties appropriate due process and reaches reasonable conclusions based on the evidence collected.
- Make clear that employees shall not be retaliated against as a result of making a complaint or participating in an investigation.

**4.** Distribute its harassment, discrimination, and retaliation prevention policy by doing one or more of the following:

- Printing the policy and providing a copy to employees with an acknowledgement form for employees to sign and return.
- Sending the policy via email with an acknowledgment return form.
- Posting the current version of the policy on a company intranet with a tracking system to ensure all employees have read and acknowledged receipt of the policy.
- Discussing policies upon hire and/or during a new hire orientation session.
- Using any other method that ensures employees received and understand the policy.

**5.** If the employer's workforce at any facility or establishment contains ten percent or more of persons who speak a language other than English as their spoken language, that employer shall translate the harassment, discrimination, and retaliation policy into every language spoken by at least ten percent of the workforce.

**6.** In addition, employers who do business in California and employ 5 or more part-time or full-time employees must provide at least one hour of training regarding the prevention of sexual harassment, including harassment based on gender identity, gender expression, and sexual orientation, to each non-supervisory employee; and two hours of such training to each supervisory employee. Training must be provided within six months of assumption of employment. Employees must be trained every two years. Please see Gov. Code 12950.1 and 2 CCR 11024 for further information.

### TO FILE A COMPLAINT

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