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BOARD OF FIRE COMMISSIONERS

FILE NO. 12-165

To:

Board of Fire Commissioners

From:

Brian L. Cummings, Fire Chief

Subject:

PROPOSED REVISIONS TO THE DISCRIMINATION PREVENTION

POLICY HANDBOOK

FINAL ACTION: Approved Denied	Approved w/Corrections	Withdrawn
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Recommendations:

That the Fire Commission (Commission):

- 1. Adopt the Discrimination Prevention Policy Handbook (Handbook) revisions as proposed by the Fire Department (Department).
- 2. That the adoption process be completed in time to begin the Handbook's electronic and hard-copy distribution to each member of the Department no later than mid-November 2012.

Summary:

On January 31, 2012, the EEOC announced through a press release that the Department had settled a harassment and retaliation charge. The resulting Conciliation Agreement (Agreement) mandated the completion of several actions starting in 2012 and ending in 2014 – including but not limited to:

- 1) Enforcing and distributing policies and procedures against discrimination and harassment in the workplace; and
- 2) Offering and distributing information on an external Equal Employment Opportunity Complaint Procedure

Both of these actions could be accomplished through the distribution of the Department's Discrimination Prevention Policy Handbook, but in order to be in compliance with the Agreement, the first distribution and receipt confirmation process must be completed by January 31, 2013.

Analysis:

The last revisions to the Handbook were completed in 2008 by the civilian administrative staff then assigned to the Commission. However, on or about the start of Fiscal Year 2008 - 2009, the Commission's authorities, with the exception of the Commission Executive Assistant, were reassigned to the newly established EEO Unit of the Professional Standards Division (PSD). Due to the Commission's lack of staff, PSD has assumed the responsibility for generating updates to the Handbook.

In order to produce proposed revisions which were relevant, applicable and current, PSD considered a number of factors and sources of information including Complaint Tracking System and its intent, complaint trends, Board of Rights results, mediation results, inquiries received by the EEO Unit, and concerns, challenges expressed by supervisors and claims or statements made by complainants, witnesses or subject members during the investigative process.

Although the vast majority of the 2008 version of the Handbook is still relevant, a number of areas required significant recommended revisions and in some cases absolute elimination. The following list highlights some of the more significant proposed changes (pages noted correspond to the proposed revised version of the Handbook):

"Employee" Versus "Member" (See Page vi)

Both terms had been used throughout the Handbook. The Department has chosen to replace the term "employee" with "member" where appropriate, and has included a definition of the term on the introductory page.

Inclusion of the Complaint Tracking System (See Pages 21 and 44)

For the first time since its implementation, the Complaint Tracking System (CTS) is listed as an internal procedure for the filing of complaints.

Lack of Statute for the Filing of Discrimination Complaints (See Pages 19 and 43)

Unlike the Personnel Department, the Department does not have a statute for the filing of discrimination complaints. To avoid misrepresenting the Department's abilities, the proposed version of the Handbook includes mention that potential complainants must consider that the Department's ability to pursue discipline may be impacted by the statutes of limitations applicable to uniformed members.

Informal Versus Formal Complaint (See Pages 19 and 43)

The Department is proposing the elimination of the terms "informal complaint" and "formal complaint". Inclusion of this language may be creating confusion on the part of Managers, Officers and Supervisors, resulting in these same members' inability to fulfill their responsibilities when being faced with complaints of this nature. Further, CTS does not distinguish between an "informal" and "formal" complaint.

Changing Role of Commission - (See Pages 21, 22 and 44)

With the reassignment of the positions from the Commission to PSD, the Commission is no longer able to take and address such complaints. The Commission being listed as an internal procedure for the filing of complaints, may lead complainants to believe that the Commission will enter the allegation into CTS, complete the intake interview and conduct the investigation on behalf of the complainant. Concerns regarding the potential misrepresentation have also been expressed to PSD staff by Independent Assessor Steve Miller. The proposed revision explains that the Commission does not have investigative responsibility. This proposed version continues to list the Commission as a potential receiver of written complaints which have also been filed with the Fire Chief, but does not list the Commission as providing guidance and information on discrimination or harassment issues or completing the CTS entry.

Supervisory Guides (See Appendixes A, B, C and D)

These are clearly the most significantly changed areas of the Handbook. With the establishment of PSD's EEO Unit and the implementation of CTS, the Managers', Officers' and Supervisors' responsibilities were significantly altered. Although these members are no longer responsible for the investigation of allegations of discrimination, harassment, retaliation, or hazing the proposed revision provides them with clear and concise information and direction relative to their role and responsibility in maintaining a workplace free of discrimination and harassment, reporting complaints of this nature, and preserving the integrity of the complaint filing system.

Discrimination/Harassment Complaint Intake Worksheet (See back of Appendix B)

This form is proposed with the intent of facilitating the collection of information necessary to complete a CTS entry. Use of this worksheet is intended as an optional aide and is not mandatory. Its availability is anticipated to lead to more thorough CTS entries by Managers, Officers, Supervisors and potential complainants. This should eventually equate to expediting the analysis of the allegations and the selection of the proper investigative body.

During an "info only" presentation on September 28, 2012, members of the Commission's Human Relations/Personnel Committee posed several questions relative to the difference in the wording of this worksheet and the currently existing Discrimination Complaint Intake Form (Intake Form), which the Department is proposing be eliminated.

Committee members asked the following questions under *Basis for Alleged Discrimination/Harassment:*

Medical Condition - The Department has chosen to remove the word "cancer" from this basis. EEO Coordinator Maria Aslan explained that the City of Los Angeles is specific on what constitutes the basis for such discrimination — specifically mentioning that cancer was one of them. According to the EEO for Supervisors course slides currently located in the Personnel Department's intranet site genetic characteristics is the only other condition. Ms. Aslan explained that the Department's intent for removing such specificity was to eliminate the potential for complaint takers to erroneously determine the accuracy and merits of a complainant's beliefs and perceptions. This lack of specificity facilitates the intake of information and eliminates the potential need for debate between the complaint taker and complainant.

Religion and Creed – The Department has chosen to separate these terms in accordance with the Personnel Department's course slides for EEO for Supervisors. The Personnel Department provides two different definitions for these terms. Religion is defined as a belief in a higher power/system while creed is defined as a strongly held belief or feeling.

Although the California Department of Fair Employment and Housing lists "Religion" and "Religious Creed" as protected groups, the City of Los Angeles does not currently restrict the creed to be of a religious base.

The Committee members also questioned why the worksheet did not ask complainants to specify what exactly each of their alleged witnesses could attest to. Ms. Aslan explained that the Department's intent is to eliminate the opportunity for complaint takers to intentionally eliminate potential witnesses based on the complaint takers evaluation of the complainant's statement.

Informal Complaint Fact Sheet (See Appendix D)

Allowing the continued existence of this form would be in conflict with the recommended proposal that the term "informal" complaint be eliminated. Its existence also creates the opportunity for inconsistencies in documenting complaints, conveys the use of the CTS as a Manager's/Officer's/Supervisor's option versus a mandate, and may potentially create an additional file (aside from CTS) filled with adverse statements about specific uniformed members and which may have Firefighters Procedural Bill of Rights implications related to the creation of a "personnel file" containing adverse statements about a uniformed member.

Discrimination Complaint Intake Form - (See Appendix E)

Allowing the existence of this form creates the opportunity for inconsistencies in documenting such complaints, conveys the use of the CTS as a Manager's/Officer's/Supervisor's option versus a mandate, and may potentially create an additional file (aside from CTS) filled with adverse statements about specific uniformed members and which may have Firefighters Procedural Bill of Rights implications related to the creation of a "personnel file" containing adverse statements about a uniformed member.

Fiscal Impact:

The Department anticipates electronically distributing the Handbook to those members with City email accounts in order to minimize duplicating costs. Members without these accounts will receive a hardcopy. If the revisions are adopted as presented, the entire Handbook will be approximately 100 pages long.

Prior similar distributions required the generating of approximately 2400 hardcopies for members without City email accounts. Due to the size of the Handbook and number of copies required, the Administrative Services Bureau has estimated that the duplication of these materials may have to be completed by General Services at the cost of \$8400 for 2800 copies.

Conclusion:

Undoubtedly, the Handbook required significant updating – especially when considering that the implementation of CTS had occurred less than one month after the publication of the 2008 version.

The product being considered by the Commission is a joint effort on behalf of the Department's PSD and Personnel Services Section, as well as other City offices. This collaborative effort has resulted in a proposed 2012 version which includes updated information on:

- The Department's CTS and its internal complaint procedures
- The existence and role of the PSD's EEO Unit
- The role of Managers, Officers and Supervisors with respect to the complaint process and maintaining a workplace free of discrimination, harassment, retaliation and hazing
- The services provided by the Personnel Department, Office of Discrimination Complaint Resolution and the Department on Disability
- Relevant court decisions addressing retaliation (Thompson vs North American Stainless, L.P.)
- The Department's Disability and Reasonable Accommodation Policy and Accommodation Request Procedures; and
- The 2011 Lactation Accommodation Policy

Board report prepared by Professional Standards Division.

Attachment