

APPENDIX C

SUPERVISORY GUIDE

SEXUAL ORIENTATION, GENDER IDENTITY OR GENDER EXPRESSION DISCRIMINATION/HARASSMENT COMPLAINT INTAKE PREVENTION

SUPERVISORY GUIDE

SEXUAL ORIENTATION, GENDER IDENTITY OR GENDER EXPRESSION DISCRIMINATION/~~HARASSMENT COMPLAINT~~ ~~INTAKE~~PREVENTION

INTRODUCTION

~~Although Managers, Officers and Supervisors are not tasked with investigating claims of discrimination and harassment based on sexual orientation, gender identity or gender expression, the Department is dependent on them to gather and enter into the Complaint Tracking System (CTS) as much information as possible, in order to facilitate the Professional Standards Division's ability to route the complaint to the appropriate investigative team and begin the investigation with minimal delays.~~

~~As in any case of discrimination and harassment, This Supervisory Guide provides additional information to assist officers, managers and supervisors in carrying out their responsibilities as described in the LAFD Discrimination Prevention Policy Handbook. It is important to take prompt and appropriate action to stop, report and deter discrimination and harassment based on known or perceived sexual orientation, gender identity or gender expression. Prevention and education are the best tools.~~

~~This Guide also explains the processing of discrimination and harassment complaints made on these bases. While there are basic elements similar to any discrimination complaint, it is important to understand the unique circumstances Managers, Officers and Supervisors may experience or consider when collecting information relating to a complaint of that may result in sexual orientation, gender identity or gender expression discrimination and harassment complaints. This Guide provides assistance in the use of proper terminology and inquiries for complaints made on these bases.~~

EXPLANATION

~~For further information on this topic, members can refer to Executive Directive No. 12, Policy against Discrimination in Employment based on Sexual Orientation, Gender Identity or Gender Expression and the Sexual Orientation, Gender Identity and Gender Discrimination Complaint Procedure, located in Appendix () of this Handbook.~~

~~Discrimination and harassment on the basis of sexual orientation, and gender identity or gender expression is a violation of the City's policy and State law. Discrimination and harassment is prohibited on the basis of one's actual or perceived sexual orientation, including actual or perceived heterosexual, lesbian, gay, transgender, or bisexual orientation.~~

~~Sexual orientation refers to an individual's physical and/or emotional attraction to adults of the same sex and/or opposite sex. This includes homosexual (attraction to individuals of one's own gender), bisexual (attraction to individuals of either gender), or heterosexual (attraction to individuals of the opposite gender).~~

~~IMPORTANT: Claims of discrimination and harassment based on Ssexual orientation does not is not limited only refer to gay people, it but also includes heterosexuals, as . Sexual orientation refers to all individualsemployees working for the City of Los Angeles because we all have a sexual orientation.~~

Harassment on the basis of actual or perceived sexual orientation, gender identity or gender expression is prohibited in the workplace. It is also prohibited to interact in a demeaning manner or provide a differing level of service based on an individual's actual or perceived sexual orientation, gender identity or gender expression. Harassment on these bases includes the creation of or contribution to a hostile, intimidating, threatening, offensive, or abusive environment based on sexual orientation, gender identity or gender expression through written, spoken, graphic or demonstrative derogatory terms, slurs, comments, gestures, ridicule, threats, rumors, or jokes regarding sexual orientation, gender identity or gender expression. The conduct must be sufficiently severe or pervasive that it unreasonably interferes with the work environment or the individual's job performance or creates an intimidating, hostile, or offensive working environment. However, members are reminded that even though such actions may not rise to the level of creating a hostile work environment under the law, such actions are nevertheless unacceptable and violate the Fire Department's zero-tolerance policy.

CREATING AND MAINTAINING A SUPPORTIVE WORK ENVIRONMENT

- ❖ Avoid presumptions about an individual's sexual orientation, gender expression or gender identity - whether heterosexual or homosexual
- ❖ Don't share, tolerate or encourage derogatory comments or jokes at the expense of other protected groups, including gays and lesbians
- ❖ Respect the privacy of every individual, including Fire Department members, and avoid and prohibit the sharing of non-work related details.

DEFINITIONS

The following definitions are provided to assist Managers, Officers and Supervisors in understanding the basis of such complaints and to assist them in using the appropriate terminology while discussing potential complaints of this nature.

Sexual orientation: The term used when referring to an individual's physical, spiritual and/or emotional attraction to the same and/or opposite sex, including homosexual, bisexual or heterosexual orientations. Persons with a homosexual orientation are

sometimes referred to as **gay** (both men and women) or as **lesbian** (women only).

Discrimination: Any employment practice, which intentionally or unintentionally results in the unequal treatment of an individual or group on the basis other than job-related reasons.

As it relates to sexual orientation, gender identity or gender expression, it is differential treatment based on a person's real or perceived sexual orientation, gender identity or gender expression.

Homophobia: Conscious prejudice against homosexuals or homosexuality. Apprehension, fear and/or hatred of lesbians and gay men. Typically, this takes the form of conscious harassment and/or discrimination against homosexuals or the subject of homosexuality.

We as humans develop unconscious biases based on human traits or orientations. Biases are one thing, but when people consciously act on them, it is called homophobia.

Coming out: The process of becoming aware of, accepting, and expressing one's sexual identity to oneself and others.

To "come out" and publicly declare and affirm one's gay, lesbian, or bisexual identity can take public expression. It is a life long process. People forge a lesbian, gay or bisexual identity first to themselves, and then may reveal it to others.

Rainbow Flag: A symbol used worldwide since 1978 signifying gay unity and diversity.

LGBT: The acronym for "lesbian, gay, bisexual and transgender."

Transgender: An umbrella term for persons who have a self-image or gender identity not traditionally associated with their biological sex.

Some transgender persons wish to change their anatomy to correspond with their self-perception. Others do not have such a desire. The term refers to the self and not to sex partners. It is independent of sexual orientation. Transgender persons can be heterosexual, homosexual or bisexual.

Gender expression: Behavior, including clothing that communicates one's status as a man or as a woman.

Gender Identity: An individual's self-conception as being male or female, as distinguished from actual biological sex.

Cross-dresser: Person who enjoys dressing in clothes considered appropriate only for the other sex. Cross-dressers are sometimes called *transvestites*.

Transition: The process of changing from living as a member of one sex to living as member of the other sex.

Transsexual: Person who has transitioned or desires to transition from one sex to the other, usually includes sex reassignment surgery.

Sex Reassignment Surgery: Surgical transformation of the genital area from the appearance characteristic of one sex to that of the other sex.

Domestic partnership: In general, this is a long-term commitment between two adults (whether gay, lesbian or heterosexual) who reside together, and are financially and emotionally interdependent.

Partner: A term chosen by many lesbians and gay men, and some heterosexuals, to denote the person to whom they are romantically involved. Other terms in use are "significant other," "lover," and "spouse."

When completing the initial intake interview, Do not intentionally or inadvertently use derogatory terminology. Also, do not use "sexual preference" as a synonym for sexual orientation. Also, because the lesbian and gay community is diverse ethnically, racially, economically, socially, politically, culturally, the term gay or lesbian "lifestyle" is inaccurate. These terms are offensive to many people.

Creating a Supportive Work Environment

- ~~❖ Avoid presumptions about anyone's sexual orientation, heterosexual or homosexual~~
- ~~❖ Don't tell or tolerate jokes at the expense of gays and lesbians, women, people of color, or other ethnic groups~~
- ~~❖ Respect the privacy of every employee. Everyone has control over sharing information about themselves at work~~

BEHAVIOR STANDARDS AND EXPECTATIONS

Managers, Officer and Supervisors shall refrain from holding a member who is or perceived to be lesbian, gay, bisexual, or transgender to a different standard of behavior and expectations than his/her actual or perceived heterosexual co-workers.

For example, while at work and discussing personal lives, a member may mention their latest trip with their same sex partner.

- Are such comments sexual in nature solely because they identify the member's

sexual orientation and should you prohibit such comments or discussions?

- Would these same details being discussed by a heterosexual member be prohibited?

Unless the discussion is filled with specific details or innuendoes that are sexual in nature, such as description of physical characteristics, sexual acts or props or attire, such a discussion may not be a form of harassment. However, discussions which include description of physical characteristics or sexual acts, props or attire may constitute sexually harassing behavior of the verbal type – regardless of the sexual orientation, gender identity or gender expression of the member or non-member (See *Sexual Harassment Prevention Policy and Complaint, Sexually Harassing Behavior*).

- If a member is offended by the mere mention of a same sex partner and believes they are being harassed by even hearing this, what should a Manager, Officer or Supervisor do?

When faced with such a claim by a member, Managers, Officers and Supervisors should consider how the same type of comments from a heterosexual member – absent specific sexual details and innuendoes - would be perceived or received. When addressing claims of harassment based on sexual orientation, gender identity or gender expression, Managers, Officers and Supervisors must focus on the alleged behaviors and not the sexual orientation, gender identity or gender expression of the involved parties.

COMPLAINT IN-TAKE PROCESSING

While accepting a complaint or any information associated with the complaint, Officers, Managers and Supervisors are **not required nor should attempt** to confirm the complainant's sexual orientation, gender identity or gender expression. If the complainant self-identifies, confirm with the complainant if they wish for that information to be included in the actual complaint entered into CTS.

Managers, Officers and Supervisors who become aware of potential harassment or discrimination based on sexual orientation or gender identity or gender expression shall follow the intake guidelines described in Appendix B of this Handbook.

For further guidance Managers, Officers and Supervisors should also refer to *Appendix D, Basic Things To Avoid During The Initial Discrimination/Harassment Complaint Intake Process*.

A. OFFICER, MANAGER AND SUPERVISOR

1. When a supervisor or manager receives a sexual orientation, gender identity

~~or gender expression discrimination complaint about an employee, it is imperative to maintain objectivity while pursuing the following questions with the complainant:~~

- ~~• Determine if the complainant wants to make a formal complaint or is seeking advice or counseling information only.~~
- ~~• What happened?~~
- ~~• Who is the alleged harasser?~~
- ~~• What did she/he say and/or do?~~
- ~~• Where did the incident take place?~~
- ~~• Did anyone else witness the incident?~~
- ~~• Is this the only incident, or have there been others?~~
- ~~• What did the complainant do?~~
- ~~• Did the complainant indicate to the alleged harasser that the conduct was unwelcome? When?~~
- ~~• How did the complainant feel at the time? Now?~~
- ~~• Did the complainant tell anyone else about the alleged incident? Who else can give me relevant information?~~
- ~~• Did the complainant document or keep any notes about the alleged incident?~~
- ~~• Does the complainant have knowledge of others who have been affected by this person?~~
- ~~• Was the complainant's ability to perform work affected?~~
- ~~• What action does the complainant believe will resolve the issues?~~

~~When asking these questions, it is important to incorporate the following:~~

- ~~• If the complainant or accused does tell you their sexual orientation, make sure they understand that the case is based on the behaviors involved, and not their sexual orientation.~~

Ask him/her if he/she wants you to record in the investigation notes what was just said about their sexual orientation.

- ~~Be careful not to hold someone who is gay/lesbian/bisexual to a different standard than his/her heterosexual co-workers.~~

Example:

~~Is the comment sexual in nature when someone who is gay/lesbian talks about his/her latest trip with their same-sex partner?~~

~~If an employee is offended by this and believes they are being harassed by even hearing this, what should you do?~~

- ~~When investigating claims of sexual orientation, gender identity or gender expression harassment, remember it is based on behaviors and not the gender or sexual orientation of the parties.~~

~~Examples: Heterosexual men can sexually harass lesbians, and vice versa. Gay men can sexually harass heterosexual women, and vice versa. Heterosexual men can sexually harass gay men, and vice versa. Heterosexual women can sexually harass lesbians, and vice versa.~~

~~2. The questions in Section 1 are suggestions and intended to be a guideline for collecting relevant information. They are not intended to limit the lines of communication, as good follow-up questions are essential for drawing out and clarifying the information that you obtained. Once this information has been discussed:~~

- ~~Assure the employee that you are taking the matter seriously.~~
- ~~Repeat information back to complainant for confirmation of the facts.~~
- ~~If a formal complaint is to be made, do not make promises of confidentiality but do discuss that to the extent possible, confidentiality will be maintained. A Supervisor cannot act as a confidante if he or she believes sexual orientation, gender identify or gender expression harassment has occurred.~~
- ~~Tell the complainant what you intend to do and when you will get back to the complainant.~~
- ~~Document and date your discussion with the complainant.~~

- Urge the complainant to report to you immediately if there is any repetition of the problem behavior or if reprisals occur.

3.After you have taken the above steps, it is also advisable to:

- Inform your supervisor and the Department EEO Counselor at (213) 473-7725 about the situation immediately after your discussion.
- Maintain confidentiality to the extent possible and continue to document appropriate facts that may surface while processing the complaint. If you cannot proceed without disclosing the complainant's identity, you should limit the number of persons contacted and require that each one maintain confidentiality. Consult with the Department EEO Counselor.

4.After you have met with the complainant, it is advisable to:

- Assure the complainant that you will do everything possible to prevent any reprisals.
- SINCE YOU HAVE KNOWLEDGE OF (ALLEGED) SEXUAL ORIENTATION, GENDER IDENTITY OR GENDER EXPRESSION HARASSMENT, YOU MUST TAKE IMMEDIATE AND APPROPRIATE ACTION. This may take the form of reporting it to your supervisor, the Departmental EEO Counselor, and/or proceed with the following steps:

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- Arrange to talk to the alleged harasser in private. The accused has a right to representation during an investigation interview. NOTE: Documentation required.
- Inform the alleged harasser that you have received a complaint about his or her behavior. Be clear that you are responding to an allegation and that you want to hear his or her side of the story. (Be neither accusatory nor dismissive of the seriousness of the complaint. Remain nonjudgmental.)
- Explain the specific nature of the complaint, indicating the precise behavior that has been alleged.
- Ask if the allegations are true. If the employee admits to the allegations:

~~•Inform the employee that the behavior is unwelcome and must stop.~~

~~•Remind the employee of the Department's sexual orientation, gender identity or gender expression discrimination prevention policy.~~

~~•Advise the employee that further appropriate corrective action may have to be taken, including discipline.~~

~~•Document the conversations and any actions taken.~~

~~e.If the alleged harasser denies the allegations, advise the employee that a formal investigation will be necessary to properly resolve the complaint.~~

~~f. Cooperate with department staff investigators when formal investigations are necessary.~~

~~5.After investigation and resolution, generally advise the complainant that the investigation is completed and appropriate actions will be taken. Additionally, if necessary, advise the complainant of his or her employee rights and the procedure for pursuing the complaint further if he or she is not satisfied.~~

~~6.If the supervisor receives a complaint against a non-employee, the supervisor shall conduct an investigation as indicated above and consult with the Department EEO Counselor. The extent of the City's control and any other legal responsibility, which the City may have with respect to the conduct of the non-employee, shall be considered.~~

~~If the investigation finds that sexual orientation, gender identity or gender expression harassment occurred during the scope of work for a non-employee, this information must be forwarded to their employer for corrective action. If the non-employee has no employer affiliation, such as a private citizen, appropriate action should be taken to prevent a reoccurrence. Such action may include modification of assignments to ensure no future contact, provide or add security, etc.~~

~~Each case for non-employees must be handled on an individual basis to determine the most effective remedy to stop the sexual orientation, gender identity or gender expression harassment.~~

APPENDIX D

INFORMAL COMPLAINT FACT SHEET

RECOMMENDED ELIMINATION

**LOS ANGELES FIRE DEPARTMENT
INFORMAL COMPLAINT FACT SHEET**

☐ Walk In ☐ Phone In

Date: _____

Complainant Name: _____

Home Address: _____

Work Address (Station or Unit): _____

Battalion or Section: _____

Home Phone: _____

OK to Call: _____

Work Phone: _____

OK to Call: _____

Yes / No

Yes / No

Class Title: _____

Supervisor: _____

Status: ☐ Regular/Fulltime
☐ Limited

☐ Part Time

☐ Exempt

☐ Emergency

☐ Probation

☐ Terminated

☐ Candidate for Employment

☐ Other: _____

Nature or Complaint: _____

Action Taken By LAFD Staff: _____

Taken By: _____

Referred By: _____

Person Contacted: _____

Phone: _____

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**BASIC THINGS TO AVOID DURING THE INITIAL
DISCRIMINATION/HARASSMENT COMPLAINT
INTAKE PROCESS**

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BASIC THINGS TO AVOID DURING THE INITIAL DISCRIMINATION/HARASSMENT COMPLAINT INTAKE PROCESS

Although Managers, Officers and Supervisors are not tasked with leading investigations into claims of discrimination, harassment, retaliation or hazing, their actions during the initial intake and information collection process can negatively affect any good faith effort to investigate and address these complaints.

In order to preserve the intent of the complaint intake process and avoid negatively impacting the investigative process and incurring complaints filed against them, BASIC LIST OF THINGS Managers, Officers and Supervisors shall refrain from the following TO AVOID when receiving complaints of discrimination

- ❖ Allowing personal or religious beliefs to impede their fulfillment of responsibilities as described in this Handbook
- ❖ Don't assume every case is the same or becoming over-reliant on this Supervisory Guide. Remember that these guidelines are not intended to limit the lines of communication.
- ❖ Don't ask or assume the sexual orientation, gender identity or gender expression of the complainant or accused. REMEMBER, THAT DISCRIMINATION AND HARASSMENT IS PROHIBITED BASED ACCORDING TO THE LAW, IT IS ON ACTUAL OR PERCEIVED SEXUAL ORIENTATION.
- ❖ Don't refuse to accept the complaint because the Manager, Officer or Supervisor you feels nothing happened, that the act or incident was it is not that serious, or that such an incident or kind of behavior is "no big deal" or is part of the Fire Department culture.
- ❖ Don't fail to follow through with the complaint reporting processes because the complainant does not want anything done, "She or he told me not to do anything". As a supervisor or manager, Remember that the City requires you all Managers, Officers and Supervisors to take timely and effective action to prevent and to stop and report discriminatory and harassing conduct, in accordance with their respective department's policies and procedures.
- ❖ Don't tell the complainant:
 - Not to let the offensive conduct bother the complainant him/her
 - That she/he the complainant might have misunderstood what the accused/subject member intended

- That the alleged accused/subject member "is just like that," ~~or "is just a joker"~~, ~~or "doesn't mean anything by it"~~, or "treats everybody the same way"
- That filing dealing with the complaint or reporting the alleged act or incident may cause the complainant embarrassment, hurt the complainant's his/her career or reputation, cause the complainant other harm, or "out" the complainant him/her
- That the complaint or complainant will ruin the accused/subject member's career, marriage, reputation, etc.
- That the complainant ~~One~~ should expect this kind of behavior because of the complainant's ~~your~~ sexual orientation, gender identity or gender expression

❖ Don't ~~Automatically discounting~~ the credibility of the complainant because the complainant:

- ~~Of Has a~~ prior disciplinary history~~problems~~
- ~~Complainant is~~ known to be openly lesbian, gay, ~~lesbian~~, bisexual, transgender or heterosexual
- ~~Complainant d~~Delayed reporting

❖ Don't ~~t~~Telling the complainant that the alleged facts are:

- Alleged facts are Awful
- ~~The A~~accused should not have done it
- Accused has done such things before

❖ Don't believe any story until you get the other side(s)

❖ Applying credibility to the allegation before the completion of any investigation, based on:

- The reputation of the complainant or accused/subject member
- The "history" between the complainant and the accused/subject member
- The complainant's relationship to other Department members

❖ Don't ~~T~~Telling the accused or complainant to stay away from the other party or parties as a substitute for investigating whether the alleged acts occurred.

B. COMPLAINANT

~~An employee who believes he or she is the victim of inappropriate behavior that may be sexual orientation, gender identity or gender expression harassment should be prepared to provide an officer/counselor with the following:~~

• What happened?

- Who is the alleged harasser?
- Did you indicate to the harasser that the alleged conduct was unwelcome?
- Where did the incident(s) take place?
- When did the incident(s) take place?
- How has your ability to perform work been affected?

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- Did anyone else witness the incident?
- Was this the only incident, or were there others?
- What action(s) did you take?
- What were your feelings at the time? Now?
- Did you talk to anyone else about it? When?
- Did you document the incident by recording it in a diary, memo, or letter?
- How can the situation be resolved?

~~All allegations of sexual orientation harassment will be thoroughly investigated.~~

~~All persons named as potential witnesses by the complainant will be contacted during the course of the investigation. Anyone who is alleged to have committed acts of sexual orientation harassment will be contacted during the investigation to allow him or her to respond to the allegations.~~

~~Any employee who observes an incident of sexual orientation, gender identity or gender expression harassment shall cooperate in any investigation. ALL MEMBERS ARE ASSURED THAT THEY MAY COOPERATE IN SUCH INVESTIGATION WITHOUT FEAR OF RETALIATION OR REPRISAL BY THE CITY, DEPARTMENT MANAGEMENT, OR THEIR IMMEDIATE SUPERVISOR.~~

~~C. ACCUSED~~

~~If you are an employee that is named as the accused harasser in a sexual orientation, gender identity or gender expression harassment complaint, you have the right to have representation during the investigation interview and you should be prepared to cooperate fully during the investigation. Just as the complainant has the right to a fair investigation, so does the accused. Provide the investigator with the following:~~

- ~~• From your perspective, what happened?~~
- ~~• Did the complainant indicate to you that the alleged conduct was unwelcome?~~

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- ~~• Reflect upon the allegation(s) identified, and ask yourself from the complainant's perspective: Could my actions have been interpreted differently? By the complainant or others?~~
- ~~• Where did the incident(s) take place?~~
- ~~• When did the incident(s) take place?~~
- ~~• Did anyone else witness the incident?~~
- ~~• What action(s) did you take?~~
- ~~• What were your feelings at the time? Now?~~
- ~~• Did you talk to anyone else about it?~~
- ~~• Did you document the incident by recording it in a diary, memo, or letter?~~
- ~~• Do you have any other information that may be relevant to the investigation?~~

~~Persons named as witnesses by the accused harasser also will be interviewed. Once you have been notified that you are the accused harasser, you are still expected to adhere to a standard of conduct that is respectful to all employees in the department, including the complainant, any witness or supporter. Reprisals or vengeful acts will be perceived as retaliation and may result in an additional charge of discrimination.~~

~~Employees who have questions about rights and obligations set forth in this manual should contact the Department EEO Counselor at (213) 473-7725 or the Personnel Department Citywide Sexual Orientation Coordinator at (213) 473-9123.~~