

November 6, 2012

LOS ANGELES FIRE DEPARTMENT



BRIAN L. CUMMINGS
FIRE CHIEF

October 24, 2012

BOARD OF FIRE COMMISSIONERS
FILE NO. 12-179

TO: Board of Fire Commissioners

FROM: Brian L. Cummings, Fire Chief

SUBJECT: PROPOSED REVISIONS TO THE DISCRIMINATION PREVENTION
POLICY HANDBOOK - ADDENDUM TO BOARD OF FIRE
COMMISSIONERS FILE NO. 12-165

FINAL ACTION:	<input type="checkbox"/> Approved	<input type="checkbox"/> Approved w/Corrections	<input type="checkbox"/> Withdrawn
	<input type="checkbox"/> Denied	<input type="checkbox"/> Received & Filed	<input type="checkbox"/> Other

Recommendation:

That the Fire Commission (Commission) adopt the attached modified language for the proposed Discrimination Prevention Policy Handbook (Handbook) originally scheduled to be considered at the Commission meeting of October 16, 2012.

Summary:

The Professional Standards Division (PSD) was prepared to present its proposed revisions to the Handbook at the Commission meeting of October 16, 2012. However, during the presentation, Commissioner Casimiro U. Tolentino deferred further discussions of the Handbook until the Commission meeting of November 6, 2012. The intent of Commissioner Tolentino's deferment was to give Commissioners Genethia Hudley-Hayes and Alan J. Skobin the opportunity to discuss their concerns and recommendations, since they were not present for the October 16, 2012 meeting.

Although a deferment was requested, the Commission expressed the following preliminary concerns with the proposed version:

- 1) The lack of a clear and accurate description on the action(s) taken by the Commission upon receiving a complaint of harassment or discrimination
- 2) The inclusion of potentially outdated terminology in the Sexual Harassment Prevention Policy and Complaint Procedures
- 3) The lack of reference to the Health Insurance Portability and Accounting Act (HIPAA) under the confidentiality requirement contained in the Disability and Reasonable Accommodation Policy and Accommodation Request Procedures

Analysis:

The Role of the Fire Commission

Commissioner Andrew Friedman expressed concern with the proposed description of the Fire Commission's role in receiving a complaint of harassment and discrimination. PSD was subsequently directed to work with the Independent Assessor in drafting the proper description.

The newly proposed language clearly communicates that, as the head of the Fire Department (Department), the Commission may be accessed with such concerns or complaints and the Commission will refer such concerns and complaints to members under their command, including PSD or the Fire Chief.

Outdated Terminology

Commissioner Tolentino expressed his concern that the Department's Sexual Harassment Prevention Policy and Complaint Procedures contained the potentially outdated term of "paramour".

This term has been removed and the section reworded with clear terminology of the types of relationships which may create potential issues.

Confidentiality and the Health Insurance Portability and Accounting Act (HIPAA)

Commissioner Tolentino questioned whether or not the confidentiality section of the Department's Reasonable Accommodation Policy and Accommodation Request Procedures should make reference to HIPAA.

This concern was shared with Senior Personnel Analyst II Cynthia White, the Department's Reasonable Accommodation Coordinator. The proposed revised language for this section was provided by Ms. White after her consultation with Battalion Chief Allen Norman, who is currently serving as the Department's HIPAA Privacy Officer.

Fiscal Impact:

None

Conclusion:

The Professional Standards Division has worked with the proper Department representatives, including the Independent Assessor, in drafting these proposed revisions. It is the Department's anticipation that these revisions correctly address the Commission's first round of concerns.

Board report prepared by Professional Standards Division

Attachment

Modified Language for the Proposed Discrimination Prevention Policy Handbook

Page 21

From:

3. FIRE CHIEF AND FIRE COMMISSION: A member may file a discrimination or harassment complaint in writing or verbally with the office of the Fire Chief. Although the Board of Fire Commissioners does not have investigative responsibilities, a member may also file the same written complaint concurrently with the Board of Fire Commissioners. Depending on the nature of the complaint, potential complainants can refer to Appendixes B and C of this Handbook for suggested information to be included on the written complaint.

To:

3. FIRE CHIEF AND FIRE COMMISSION: A member may file a discrimination or harassment complaint in writing or verbally with the office of the Fire Chief and/or with the Board of Fire Commissioners. Such complaints will typically be referred to the Professional Standards Division for investigation or referral to the appropriate investigating party. Depending on the nature of the complaint, potential complainants can refer to Appendixes B and C of this Handbook for suggested information to be included in the written complaint.

Page 30

From:

- A consensual relationship may lead to claims by non-involved members who believe that they were disadvantaged when favoritism is shown to a paramour, but is not shown to a member who did not have a romantic relationship with the member granting the favors. This may create an atmosphere where members believe they must consent to such relationships as a term or condition of employment.

To:

- A consensual romantic, intimate or sexual relationship between members may lead other members to claim the existence of favoritism or that they were disadvantaged because they were not involved in a similar relationship with the member granting favors or benefits. This may create an atmosphere where members believe they must consent to such relationships as a term or condition of employment.

Modified Language for the Proposed Discrimination Prevention Policy Handbook

Page 44

From:

3. FIRE CHIEF AND FIRE COMMISSION: A member may file a verbal or written complaint of sexual harassment with the office of the Fire Chief. Although the Board of Fire Commissioners does not have investigative responsibilities, a member may also file the same written complaint concurrently with the Board of Fire Commissioners. Potential complainants may refer to Appendixes B and C for suggested information to include in their written complaint.

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Page 60

From:

G. CONFIDENTIALITY

All information regarding the member's medical history, condition, disability or restrictions is strictly confidential. The ADA requires employers to treat any medical information obtained from a disability-related inquiry or medical examination (including medical information from voluntary health or wellness programs), as well as any medical information voluntarily disclosed by an employee, as a confidential medical record. Information may not be released to any person or organization without a release signed by the employee.

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As the City of Los Angeles and the Los Angeles Fire Department have been designated as "hybrid entities" under the Health Insurance Portability and Accounting Act (HIPAA) and the HITECH Act of 2009, the Fire Department is required to comply with all applicable privacy issues contained within HIPAA and HITECH. Any release or transmission of either individually identifiable health information or protected health information must comply with applicable HIPAA and/or HITECH regulations.

Questions regarding security, privacy, or confidentiality shall be directed to the Department's designated HIPAA Privacy Officer.