

COMPLAINTS CONCERNING DISCRIMINATION IN EMPLOYMENT

Complaint Procedure

Discrimination Prohibited

The Office will not engage in discrimination against any person employed by or seeking employment with the Office on the basis of race, color, national origin, ethnic group identification, ancestry, religion, sex (including childbirth and medical conditions related to pregnancy and childbirth), sexual orientation, gender identity, mental or physical disability, medical condition, (cancer-related or genetic characteristics), marital status, age (over 40), status as a covered veteran, or actual or perceived characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code, as consistent with the provisions of applicable State and Federal laws.

Reporting Discrimination

An employee who feels that the employee is being discriminated against, or any employee who has knowledge of conduct by employees, volunteers, or other individuals, which may constitute discrimination, shall promptly report the incident. This report may be made to the employee's supervisor or division director, if these individuals are not themselves involved. Alternatively, an employee may always report any claim of discrimination to either Labor Relations or the Chief Academic Administration Officer. In all instances, the employee will suffer no reprisal or retaliation for reporting such allegation.

Any complaint by an employee or job applicant alleging discrimination or harassment shall be addressed in accordance with the following procedures:

1. **Notice and Receipt of Complaint:** Any employee or job applicant (the "complainant") who believes the employee or job applicant has been subjected to prohibited discrimination or harassment shall promptly inform the employee or job applicant's supervisor, the Office's Labor Relations Advocate or designee, the Chief Academic Administration Officer, or, if available, a complaint hotline.

The complainant may first attempt to resolve the situation informally with the complainant's supervisor before filing a written complaint.

A supervisor or manager who has received information about an incident of discrimination or harassment, or has observed such an incident, shall report it to the Labor Relations Advocate or designee, whether or not the complainant files a written complaint. Management should consult with Labor Relations or the Chief Academic Administration Officer, to assure compliance with the law, as well as the policies and regulations regarding discrimination.

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The written complaint should contain the complainant's name, the name of the individual who allegedly committed the act, a description of the incident, the date and location where the incident occurred, any witnesses who may have relevant information, any available evidence of the discrimination or harassment, and any other pertinent information which may assist in investigating and resolving the complaint.

(cf. 0410 - Nondiscrimination in Office Programs and Activities)

(cf. 4030 - Nondiscrimination in Employment)

(cf. 4032 - Reasonable Accommodation)

(cf. 4119.11/4219.11/4319.11 - Sexual Harassment)

2. Investigation Process: The Labor Relations Advocate or designee shall initiate an impartial investigation of an allegation of discrimination or harassment upon receiving notice of the behavior, regardless of whether a written complaint has been filed or whether the written complaint is complete.

The Labor Relations Advocate or designee shall meet with the complainant to describe the Office's complaint procedure and discuss the actions being sought by the complainant in response to the allegation. The Labor Relations Advocate or designee shall inform the complainant that the investigation of the allegations will be fair, timely, and thorough and will be conducted in a manner that provides all parties due process and reaches reasonable conclusions based on the evidence collected. The Labor Relations Advocate or designee shall inform the complainant that the allegations will be kept confidential to the extent possible, but that some information may be disclosed as necessary to conduct an effective investigation.

(cf. 3580 – LACOE Records)

(cf. 4112.6/4212.6/4312.6 - Personnel Files)

(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)

If the Labor Relations Advocate or designee determines that a detailed fact-finding investigation is necessary, the Labor Relations advocate or designee shall begin the investigation immediately. As part of this investigation, the Labor Relations Advocate or designee should interview the complainant, the person accused, and other persons who could be expected to have relevant information.

The Labor Relations Advocate or designee shall track and document the progress of the investigation to ensure reasonable progress and shall inform the parties as necessary.

When necessary to carry out his/her investigation or to protect employee or student safety, the Labor Relations Advocate or designee may discuss the complaint with the County Superintendent or designee, Office legal counsel, or the Office's Risk Manager.

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The Labor Relations Advocate or designee shall also determine whether interim measures, such as scheduling changes, transfers, or leaves, need to be taken before the investigation is completed in order to prevent further incidents. The Labor Relations Advocate or designee shall ensure that such interim measures do not constitute retaliation.

3. Summary letter on Findings and Corrective Action: No more than 60 days after receiving the complaint, the Labor Relations Advocate or designee shall conclude the investigation and prepare a summary letter of the Labor Relations Advocate or designee's findings. This timeline may be extended for good cause. If an extension is needed, the Labor Relations Advocate or designee shall notify the complainant and explain the reasons for the extension.

The summary letter shall include the decision and the reasons for the decision and shall summarize the steps taken during the investigation. If a determination has been made that discrimination or harassment occurred, the summary letter shall also include any corrective action(s) that have been or will be taken to address the behavior, correct the effect on the complainant, and ensure that retaliation or further discrimination or harassment does not occur.

The summary letter shall be presented to the complainant, the person accused, and the County Superintendent or designee.

4. All reports, as well as investigative and supporting materials, concerning claims of discrimination will be kept in separate files with the Chief Academic Administration Officer, or his/her designee. If an allegation of discrimination is not substantiated, no records, reports, or supportive materials will be placed in the responding employee's personnel file. However, if it is determined that discrimination occurred, all reports and supportive documentation, as well as copies of any disciplinary procedures, will be placed in the employee's personnel file.

(cf. 1312.1 - Complaints Concerning Office Employees)

(cf. 9321 - Closed Session Purposes and Agendas)

Other Remedies

In addition to filing a discrimination or harassment complaint with the Office, a person may also file a complaint with either the California Department of Fair Employment and Housing (DFEH) or the Equal Employment Opportunity Commission (EEOC). The time limits for filing such complaints are as follows:

1. For filing a complaint with the DFEH alleging a violation of Government Code 12940-12952,, within three years of the alleged discriminatory act(s), unless an exception exists pursuant to Government Code 12960 (Government Code 12960)

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2. For filing a complaint with the EEOC, within 180 days of the alleged discriminatory act(s) (42 USC 2000e-5)
3. For filing a valid complaint with the EEOC after first filing a complaint with the DFEH, within 300 days of the alleged discriminatory act(s) or within 30 days after the termination of proceedings by the DFEH, whichever is earlier (42 USC 2000e-5)

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination

GOVERNMENT CODE

12920-12921 Nondiscrimination

12940-12948 Discrimination prohibited; unlawful practices, generally

UNITED STATES CODE, TITLE 20

1681-1688 Title IX of the Education Amendments of 1972

UNITED STATES CODE, TITLE 29

621-634 Age Discrimination in Employment Act

794 Section 504 of the Rehabilitation Act of 1973

UNITED STATES CODE, TITLE 42

2001d-2001d-7 Title VI, Civil Rights Act of 1964

2001e-2001e-17 Title VII, Civil Rights Act of 1964, as amended

2000ff-2000ff-11 Genetic Information Nondiscrimination Act of 2008

2001h-2-2001h-6 Title IX of the Civil Rights Act of 1964

12101-12213 Americans with Disabilities Act

CODE OF FEDERAL REGULATIONS, TITLE 28

35.101-35.190 Americans with Disabilities Act

CODE OF FEDERAL REGULATIONS, TITLE 34

106.8 Designation of responsible employee for Title IX

Management Resources:

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION PUBLICATIONS

Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, October 2002

Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors, June 1999

WEB SITES

California Department of Fair Employment and Housing: <http://www.dfeh.ca.gov>

U.S. Equal Employment Opportunity Commission: <http://www.eeoc.gov>