

SAN DIEGO POLICE DEPARTMENT PROCEDURE

DATE: SEPTEMBER 12, 2024

NUMBER: 5.03 – HUMAN RESOURCES

SUBJECT: EQUAL EMPLOYMENT OPPORTUNITY

RELATED POLICY: NA

ORIGINATING DIVISION: INTERNAL AFFAIRS

NEW PROCEDURE: ☐

PROCEDURAL CHANGE: ☒ **EXTENSIVE CHANGES**

SUPERSEDES: DP 5.03 – 09/02/2021

NEW

I. PURPOSE

This Department procedure establishes guidelines for reporting and handling potential violations of the City of San Diego’s Equal Employment Opportunity (EEO) Policy within the San Diego Police Department (Department). The procedure also reaffirms and communicates the Department’s commitment to the principles of EEO and a work environment free of discrimination, harassment, and retaliation.

II. SCOPE

This procedure applies to all members of the Department.

NEW

III. BACKGROUND

This procedure complies with the City’s EEO Policy and Administrative Regulation (AR) 96.50. It defines specific procedures for reports of EEO Policy violations filed within the Department.

NEW

IV. DEFINITIONS

- A. Complainant - an individual reporting a potential violation of the City’s EEO Policy and/or this procedure. A complainant may be the intended target of, or a witness to, the potential EEO Policy violation.

- B. Complaint - an allegation or report of a potential violation of the City's EEO Policy and/or this procedure.
- C. Discrimination – occurs when a person's Protected Classification is a substantial motivating reason for an adverse employment action. Some examples of adverse employment actions include termination of employment, discipline, a negative performance evaluation, denial of promotion, demotion, or reduction in pay.
- D. Discrimination/Harassment Control Form – a form to be used by supervisors and the EEO Unit when receiving a complaint of or documenting an observed violation of the EEO Policy and procedure. This form is available on the LAN at F:\Templates\EEO.
- E. EEO Manager – the commanding officer of the EEO Unit. The EEO Manager is responsible for the continued development, implementation, and monitoring of the Department's EEO Program. The EEO Manager coordinates the activity of all Equal Employment Liaison Officers and serves as a liaison with the City's Equal Employment Investigations Office.
- F. EEO Unit – responsible for EEO training for all Department personnel, informal consultation, counseling, mediation, and the formal investigation of incidents of suspected violations of the EEO Policy, including discrimination, harassment, or retaliation based on a Protected Classification.
- G. Equal Employment Investigations Office (EEIO) – located within the City's Personnel Department, this office is responsible for the administration of the City's internal program for the investigation and resolution of complaints of violations of the City's EEO Policy and charges of unlawful discrimination based upon Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, and other federal and state laws filed against the City with the U.S. Equal Employment Opportunity Commission (EEOC) and California Civil Rights Department (CRD). The EEIO acts as the City's liaison for communications with the EEOC and CRD. It is the duty of the EEIO to officially receive and process charges filed against the City with the EEOC and CRD; investigate and respond to such charges; arrange and schedule employee interviews; provide access to relevant records when requested by the federal or state agent or officer; and receive and respond to any findings of fact presented by the EEOC or CRD as a result of their investigation.
 - 1. In addition, the EEIO investigates internal complaints of violations of the City's EEO Policy received directly or indirectly relating to applicants for City employment, City employees, and former employees.
- H. Equal Employment Liaison Officer (EELO) – all commanding officers and department directors are designated as EEOs. Equal Employment Liaison

Officers serve as liaisons with their command and the EEO Manager regarding reported or observed EEO Policy violations.

- I. Harassment – any unwelcome, unsolicited, or unwanted conduct because of a person’s Protected Classification that offends, demeans, humiliates, embarrasses, intimidates, or otherwise causes the person distress. For purposes of this definition, offensive conduct may include, but is not limited to, the use of derogatory comments, slurs, demeaning jokes, threats, unwanted touching, offensive pictures, cartoons, or posters, or sexual advances.
- J. Protected Classification – age, ancestry, color, creed, physical or mental disability, gender, gender identity, gender expression, genetic information, marital status, medical condition, veteran or military status, national origin, pregnancy (including childbirth, breastfeeding, or related medical conditions), race, traits historically associated with race (including hair texture and protective hairstyles such as braids, locks, and twists), religion, religious belief, observance, or practice, religious creed, reproductive health decision-making, sex, sex stereotype, sexual orientation, transgender status or transitioning, use of medical or family care leave, or any other classification protected by federal, state, or local law (including being perceived, or regarded as, or associated with, any Protected Classification).
- K. Retaliation – threatening, intimidating, or harassing conduct or an adverse employment action because a person opposed or reported discrimination, harassment, or retaliation in violation of the City’s EEO Policy; filed or assisted another with a complaint under the EEO Policy; provided a statement or testimony or otherwise participated or assisted in an investigation or other proceeding arising from an alleged violation of the EEO Policy; or requested accommodation for a disability, religious belief, observance, or practice, pregnancy, childbirth, or a related medical condition, or lactation. Subtle retaliation (e.g., an unwarranted change in work assignment or location, an unreasonable denial of a leave request, or uncooperativeness) is also prohibited and will not be tolerated. Managers and Supervisors are reminded that employees have a right to report any conduct or employment action that an employee reasonably believes violates the City’s EEO Policy.
- L. Subject – an individual who has allegedly violated the City’s EEO Policy and/or this procedure.
- M. Supervisor - all Department members who have the authority to undertake or recommend employment decisions, including authority to direct the daily work activities, review work performance, and recommend or implement disciplinary actions affecting Department members. This includes first level Supervisors and above.

NEW

V. POLICY

- A. The Department is committed to ensuring that the principles of fair and equal treatment are understood, respected, and practiced throughout the workplace. All members must be familiar with and adhere to the City's EEO Policy.
- B. The current EEO Policy, and former versions of the City's EEO Policy, can be found in the Resource Library in the "EEO Policy" folder. (Link: [City EEO Policy](#))

NEW

VI. COMPLAINT REPORTING

If a member believes that a violation of the EEO Policy has occurred, they are encouraged to report it immediately to any of the following **(the employee does not have to follow the Department or divisional chain of command)**:

- A. Any Department Supervisor within or outside the member's chain of command.
- B. The Department's Human Resources Office.
- C. The City of San Diego Human Resources Department, (619) 236-6313, HumanResources@sandiego.gov.
- D. The Department's EEO Unit:

1401 Broadway, MS 709
San Diego, CA 92101
(619) 531-2801
- E. The City's Equal Employment Investigations Office:

1200 Third Avenue, 15th Floor
San Diego, CA 92101
(619) 236-7133
- F. California Civil Rights Department, (800) 884-1684, <https://calcivilrights.ca.gov>. Complaints to the CRD must be filed within three years of the alleged harassment, discrimination, or retaliation.
- G. U.S. Equal Employment Opportunity Commission, (800) 669-4000, <https://www.eeoc.gov/>.

NEW

VII. COMPLAINT INTAKE

It is the responsibility of the Department's EEO Unit to accept EEO Complaints reported to Department Supervisors. The EEO Unit is also responsible for assisting Department members with EEO-related discrimination, harassment, or retaliation questions or concerns.

- A. Supervisors must take prompt corrective action, as appropriate, and must complete and forward (to their commanding officer or department director) a Discrimination/Harassment Control Form, which can be found in the LAN system at **F:\Templates\EEO**, in any of the following instances:
 - 1. When a Department member expresses a desire to file a complaint of a potential EEO Policy violation; or
 - 2. Discussions with the member lead the supervisor to believe that an EEO Policy violation has potentially occurred, regardless if the employee wishes to file a complaint; or
 - 3. A supervisor observes behavior that is a potential EEO Policy violation.
- B. When completing the control form, the supervisor must:
 - 1. Have the complainant review the completed control form to ensure the complaint was accurately documented. The complainant will not be provided a copy of the control form.
 - 2. Have the complainant read, sign, and date the "EEO Control Form Receipt – Complainant," and answer any questions the complainant may have regarding the information provided on the receipt. The complainant and supervisor must sign the receipt.
 - 3. Provide a copy of the receipt to the complainant.
 - 4. Forward the completed control form and signed "EEO Control Form Receipt – Complainant" to the supervisor's commanding officer or department director. The commanding officer/department director will forward the completed control form to the EEO Unit for review.

NEW

VIII. DELEGATION FOR ACTION

The EEO Unit shall review the control form and determine, under the direction of the EEO Manager, if the reported behavior constitutes a violation of the City's EEO policy. Through this process, the Department must accept complaints and concerns about

discrimination, harassment, or retaliation from Department members and take prompt, responsive action.

NEW

A. Investigative Agency Determination

Once a determination is made that a complaint alleges a violation of the EEO Policy, the EEO Manager will determine whether the EEO Unit, EEIO, or an outside agency will conduct the investigation. Factors to be considered include the complainant's preference, the nature and complexity of the allegations, and any potential conflict of interest between the investigating body and the employee(s) involved in the case.

NEW

B. EEO Unit Investigation Process

For complaints investigated by the EEO Unit, the following process applies:

1. Witness and Subject interviews conducted by the investigator should occur during the employee's regular working hours. Employees must notify their Supervisor of scheduled interviews with the investigator unless extenuating circumstances exist.
 - a. All interviews of sworn personnel must be recorded.
 - b. Employees represented by the Municipal Employees Association (MEA) may decline to be recorded.
2. All employees must be provided the rights afforded to them under City policies and relevant legal authority, including appropriate MOUs, and, if applicable, California Government Code section 3303.
3. Report Determination and Close-out
 - a. All completed investigations must be reviewed by the EEO Lieutenant, EEO Manager, and EEO Police Legal Advisor.
 - b. The EEO Sergeant handling the investigation of the complaint must notify the complainant of the results of the investigation.
 - c. The subject employee's commanding officer or department director must notify the subject of the results of the investigation. The notification date must be documented in the investigative case file.

NEW

C. Non-EEO Complaints

1. If the EEO Unit reviews a Discrimination/Harassment Control Form and determines the reported behavior does not constitute a violation of the EEO Policy, the EEO Unit must do the following:
 - a. Notify the complainant the complaint was received but will not be handled by the EEO Unit due to there being no EEO nexus.
 - b. Notify the subject employee the complaint has been closed, and no EEO investigation will take place, but remind the subject employee that retaliation against the complainant is illegal and will not be tolerated.
 - c. The EEO Sergeant will document with a memorandum to the EEO Lieutenant that the complaint was submitted and the reason the complaint lacks an EEO nexus.
 - d. The memorandum, control form, and signed control form receipt will be retained by the EEO Unit in accordance with established Department retention guidelines.
 - e. The control form must not be duplicated or placed in any divisional or personnel files.
2. The EEO Manager will forward the complaint to the Internal Affairs Unit to determine whether further investigation is necessary relating to other possible Department or City policy violations.

NEW

D. Withdrawal of EEO Complaint

- A. A complainant may seek to withdraw a complaint through notification to the EEO Unit. The EEO Manager must consider the basis for the complainant's request to withdraw their complaint and may cease further investigation and close out the complaint if the alleged conduct and issues have been resolved or there is some other compelling reason for the complaint to be withdrawn and investigation closed. The EEO Manager may determine to continue an investigation, however, as appropriate, despite a complainant's request to withdraw.
- B. If a complaint is withdrawn and it is determined that no further investigation is warranted, the following process must be followed:
 1. The EEO sergeant must provide a Withdrawn EEO Complaint Notice to the complainant to confirm the complainant's withdrawal

of their complaint. The complainant must be asked to sign the notice to confirm their withdrawal, for retention by the EEO Unit.

2. The EEO Sergeant must notify the subject employee(s) that the complaint has been closed and no further investigation will take place but that retaliation against the complainant is unlawful and will not be tolerated.
3. The EEO Sergeant will document with a memorandum to the EEO Lieutenant that the complaint was withdrawn at the complainant's request. The memorandum must state the reason(s) why no further investigation is appropriate.
4. The control form, signed control form receipt, Withdrawn EEO Complaint Notice, and memorandum to the EEO Lieutenant must be retained by the EEO Unit in accordance with established Department retention guidelines.
5. The control form must not be duplicated or placed in any divisional or personnel files.
6. Within 30-60 days of a complaint being withdrawn, the EEO Sergeant previously handling the investigation of the complaint should follow-up with the Complainant to ensure the behavior and issues are still resolved and there has been no retaliation.

NEW

E. Discipline

1. The Department must take appropriate disciplinary measures against any member who violates the City's EEO Policy.
2. Discipline resulting from a violation of the City's EEO Policy must be considered during administrative clearances for promotions, transfers, or special assignments, in compliance with the member's applicable Memorandum of Understanding.
3. More serious disciplinary action, up to and including termination, may result from a violation of the City's EEO Policy.
4. Appropriate disciplinary action must also be taken against any member who intentionally or knowingly files a false complaint of discrimination, harassment, or retaliation.
5. The final determination of disciplinary action rests with the Chief of Police or their designee.

NEW

F. EEO Records Maintenance

The EEO Unit will be responsible for tracking, maintaining, and keeping an accurate record of all investigations and memorandums relating to a complaint, in accordance with established Department retention guidelines.