

SAN BERNARDINO MUNICIPAL WATER DEPARTMENT

POLICIES AND PROCEDURES MANUAL

POLICY 33.050 – SEXUAL HARASSMENT

Date:	February 11, 2008
Revision No.:	1
Supersedes:	June 1998
First Adopted:	June 17, 1998

PURPOSE:

Sexual harassment in employment is a violation of State and Federal law as well as a violation of a person's privacy and dignity. It can cause emotional, physical and economic damage to its victims. It undermines the integrity of the employment relationship. It can result in economic loss to the employer and employee, excessive absenteeism and turnover, loss of morale, polarization of staff, sabotaged work, a decrease in management credibility and a decrease in productivity. The purpose of this policy is to confirm the San Bernardino Municipal Water Department's (Department) commitment to maintain a work environment free from unlawful sexual harassment.

This policy:

- Defines sexual harassment and retaliation under this policy;
- Confirms the Department's commitment to prohibit and prevent unlawful sexual harassment and retaliation in employment;
- Provides a Department complaint and investigation procedure to resolve complaints of alleged sexual harassment and retaliation in violation of law or this policy.

POLICY:

It is the policy of the Department to provide a work environment free from sexual harassment. Therefore, the Department will not tolerate any form of sexual harassment or retaliation and expects individuals to adhere to a standard of conduct that is respectful to all persons within the work environment. This policy is intended to allow the Department to resolve complaints of sexual harassment and retaliation internally. It is meant to supplement, not replace, any applicable State and Federal remedies.

The Department further acknowledges and understands that in order to implement a non-harassment policy of the type hereby promulgated, it is essential that all persons who witness or experience sexual harassment of the type prohibited by this policy report that harassment immediately in order to facilitate early, effective, efficient and impartial investigation and

intervention by the Department. Accordingly, any retaliation against a person for filing a sexual harassment complaint, reporting sexual harassment which he or she has witnessed, or assisting in a sexual harassment investigation is strictly prohibited.

In interpreting and implementing this policy, the constitutional rights of free speech and association shall be accommodated in a manner consistent with applicable Federal and State law in a manner consistent with the intent of this policy.

SCOPE:

This policy applies to all employees (including temporary and contracted employees), officers, agents, as well as third parties (e.g., vendors, contractors, members of the public) regularly entering the work environment.

DEFINITION:

Sexual harassment is a recognized form of sexual discrimination. It includes unsolicited and unwanted sexual advances, requests for sexual favors and other verbal, physical, or visual conduct of a sexual nature (even if the complainant is not the target of the sexual advances, but believes that engaging in sexual conduct or solicitations is a prerequisite to fair treatment) which occurs under any one of three circumstances:

1. Submission to such conduct is made either explicitly or implicitly as a term of condition of employment.
2. Submission or rejection of such conduct by an employee is used as a basis for employment decisions affecting the individual.
3. Such conduct has the purpose or effect of substantially interfering with an individual's work performance and/or creating an intimidating, hostile, or otherwise offensive working environment.

For the purpose of further clarification, sexual harassment includes, but is not limited to:

1. Making unsolicited, unwelcome and/or offensive written, verbal, physical and/or visual contact with sexual overtones:
 - **Written examples:** suggestive or obscene letters, notes, or invitations.
 - **Verbal examples:** suggestive or obscene invitations, propositions, jokes, or comments.
 - **Physical examples:** assault, impeding or blocking movement, touching in a sexually suggestive manner, touching of the private parts of another for sexual gratification, pinching, grabbing or patting.
 - **Visual examples:** leering, gestures, display of sexually suggestive objects or pictures, cartoons, or posters.

2. Continuing to express sexual interest, repeated offensive sexual flirtations, advances, or propositions after being informed that the interest is unwelcome. (Reciprocal attraction is not considered sexual harassment.)
3. Making reprisals, threats of reprisal, or implied threats of reprisal following a negative response. For example, implying or actually withholding support for an appointment, promotion, or change of assignment; suggesting a poor performance report will be prepared, or suggesting probation will be failed.
4. Engaging in implicit or explicit coercive sexual behavior which is used to control, influence, or affect the career, salary and/or work environment of another employee. Sexual harassment does not refer to occasional compliments of a socially acceptable nature.
5. Offering favors or employment benefits, such as promotions, favorable performance reports, favorable assigned duties or shifts, recommendations, reclassifications, etc., in exchange for sexual favors.
6. When employment benefits are granted because of sexual favor, other qualified persons who are denied the benefits may be considered to be victims of sexual harassment.
7. Widespread sexual favoritism that is severe or pervasive enough to alter the complainant's working conditions and create a hostile work environment.
8. A finding of sexual harassment may be made even though the conduct occurs outside of the workplace.

Not all physical or verbal harassment in the workplace is considered sexual harassment. Ordinary socialization is not actionable as harassment unless the conduct is sufficiently severe or pervasive to create an objectively hostile or abusive work environment. However, it is best to err on the side of caution and always consider fellow employees' feelings and sensitivities.

DEFINITION OF RETALIATION:

Retaliation as used in this policy prohibits retaliation against a person who files a sexual harassment complaint, reports sexual harassment, or assists in a sexual harassment investigation. Retaliation includes threats, intimidation, reprisals, revenge, retribution and/or adverse actions related to employment.

POTENTIAL CONSEQUENCES OF SEXUAL HARASSMENT:

Sexual harassment violates a person's privacy and dignity. It can cause physical and/or economic problems for its victims. In addition to the anxiety these demands may cause, there may be an underlying message that non-compliance will lead to reprisals. These reprisals can include escalation of the harassment, poor work assignments, sabotaging work, sarcasm, unsatisfactory evaluations, threatened demotions, transfers, poor job references, slander, gossip, blackmail and other forms of retributions.

Sexual harassment undermines the integrity of the employment relationship. Sexual harassment can result in economic loss to both the employer and employee, excessive absenteeism and turnover, loss of morale, polarization of staff, a decrease in management credibility and decline in productivity.

Consensual sexual or romantic relationships between supervisors/lead workers and employees create serious potential liabilities for the Department. An employee who is involved in a sexual or romantic relationship with another employee may not work for, supervise, or have supervisory authority over the employee with whom he or she is involved. The Department reserves the right to take prompt action if an actual or potential conflict of interest arises concerning individuals who occupy positions at any level (higher or lower) in the same line of authority that may effect employment decisions. It is the responsibility and obligation of the employees involved to disclose the existence of the relationship to the General Manager, Deputy General Manager or Human Resources to enable the Department to determine whether any conflict or potential conflict exists. The Department will work with the parties involved to consider options for resolving the conflict by making sure that the parties involved no longer work together on matters where one is able to influence the other or take action on matters such as hiring, firing, promotions, performance evaluation and/or compensation decisions. A reallocation of duties or transfer may be necessary to avoid any actual or perceived reward or disadvantage. Failure to cooperate with the Department to resolve such situations in a mutually agreeable fashion may be deemed insubordination and, therefore, serve as a cause for disciplinary action, up to and including termination. In addition, failure to report such situations before a conflict, or perceived conflict, exists may result in disciplinary action up to and including termination.

The Department will undertake all appropriate necessary actions against any employee found to be in violation of this policy to prevent further sexual harassment or retaliation. Appropriate necessary action may include corrective action (e.g., counseling and/or training) and/or disciplinary action up to and including termination from employment. Employees found to be retaliating against another employee for filing a sexual harassment charge or complaint shall be subject to disciplinary action up to and including termination.

In the case of elected officials, disciplinary actions are limited to private or public censure, unless otherwise prohibited by the City of San Bernardino Charter.

In the case of a citizen, contractor, or vendor the Department shall take such actions to prevent further sexual harassment as may be within its power.

Any manager, supervisor, or designated employee responsible for reporting or responding to sexual harassment and/or retaliation who knew about the sexual harassment and/or retaliation and took no action to stop it or failed to report the afore mentioned prohibited conduct also may be subject to disciplinary action up to and including termination.

DEPARTMENT RESPONSIBILITIES:

The Department shall take prompt, appropriate action to avoid or minimize sexual harassment, retaliation and liability to the Department. The Department will pursue every possible

preventative measure to insure employees are not subject to sexual harassment and retaliation; will investigate all complaints of sexual harassment, retaliation and all instances which it has good cause to believe to have occurred; and will take appropriate disciplinary action against any employee(s) found to be in violation of this policy.

The Deputy General Manager and/or Human Resources shall be responsible for insuring that this policy and complaint procedures are disseminated to all employees; providing training and assistance to division directors, supervisors and employees in preventing and addressing sexual harassment and retaliation; and investigating, resolving and making findings and recommendations on complaints of unlawful sexual harassment and retaliation.

Division directors shall be responsible for assisting the Deputy General Manager and/or Human Resources by disseminating this policy and ensuring that the workplace remains free of sexual harassment and/or retaliation; coordinating and cooperating with the General Manager, Deputy General Manager and/or Human Resources in resolving complaints involving employees in their respective departments; and, when sexual harassment and/or retaliation has occurred, to take prompt and appropriate remedial action against the perpetrator/harasser, take reasonable steps to protect the complainant from further sexual harassment and/or retaliation and take action to remedy the effects of sexual harassment and/or retaliation.

Employees shall cooperate fully with all investigations of sexual harassment and retaliation, implementation of remedial measures and shall not retaliate against complainants or witnesses.

EMPLOYEES' RIGHTS AND RESPONSIBILITIES

1. Complainant:

Any employee, who believes he or she has been sexually harassed, asked to perform a sexual favor, retaliated against, or has reason to believe that someone else has been the subject of sexual harassment and/or retaliation has the obligation to take immediate action to assure the situation does not persist. An employee may inform the harasser directly, in writing, or verbally that their actions are unwelcome and offensive and must cease, and/or likewise notify the employee's supervisor, division director or Human Resources of the harasser's actions. However, the employee has the right to file a complaint of sexual harassment and/or retaliation with the Department of Fair Employment and Housing (FEHA) and/or the Equal Employment Opportunity Commission (EEOC) without seeking resolution through the Department or the City Equal Employment Opportunity (EEO) Officer and is assured retaliation will not occur if such action is taken.

If the employee wishes to seek resolution within the Department, the incident should be reported immediately to his/her supervisor. The employee may choose to report the incident to any management employee with whom the employee feels safe doing so. If the employee does not feel that the situation was adequately resolved, he/she should report the incident to the City EEO Officer. If the employee still feels the situation was not adequately resolved, the employee may then seek the intervention of State and Federal agencies.

If the harasser is the employee's supervisor, he/she must report the incident to the next level supervisor, the Deputy General Manager, a Division Director, Human Resources or directly to the City EEO Officer. If the employee still feels the situation was not adequately resolved, the employee may then seek the intervention of State and Federal agencies.

Any person to whom a report of sexual harassment is made shall immediately prepare a written report and advise the General Manager, Deputy General Manager, or Division Director. A prompt, thorough investigation must follow the report. Unless otherwise authorized by the General Manager, no one other than the General Manager, Deputy General Manager, Division Director or independent agent (e.g., attorney or investigator) may conduct the investigation.

It is important to keep records of all offensive incidences; what was said or what happened, your response, date, time and any witnesses to the incident. Also document any action or inaction by your supervisor to correct the situation.

The Department does provide the following guaranteed rights to employees:

- A. The right to a work environment free from sexual harassment and/or retaliation.
- B. The right to an informal, confidential hearing by the City EEO Officer.
- C. The right to a full impartial and prompt investigation by a trained investigator including the right to produce witnesses and to have them interviewed.
- D. The right to review all relevant information developed and discovered during the course of the inquiry into the matter.
- E. The right to a timely decision after full consideration of all relevant facts and circumstances.
- F. The right to be represented by legal counsel or other representative at his/her own cost at each and all steps of the process.
- G. The right to be advised of the results of the investigation and conclusions. (If discipline is imposed, the specific terms of the discipline will not be communicated to the complainant).
- H. The right to be free from retaliation for filing a complaint or otherwise participating in an investigation of sexual harassment.

Any employee who engages in unlawful sexual harassment or retaliation, including any supervisor or manager who knew about the sexual harassment and took no action to stop it, may be held personally liable for monetary damages to victims, including awards for assault, battery and intentional infliction of emotional distress.

Any employee who witnesses an incident of sexual harassment must report it to the General Manager, Deputy General Manager, a Division Director, or Human Resources. Failure to report an observed incident of sexual harassment may be grounds for discipline. The witness should also support the harassed employee in reporting the incident and is guaranteed freedom from reprisal or retaliation for doing so. Third party non-participants or witnesses may file harassment complaints if they are offended by the conduct of others or are denied employment benefits due to the sexual “bargaining” of others.

If the harasser is a customer or vendor, the harassed employee and any employee witnessing the incident have the responsibility to report the incident to the harassed employee’s supervisor. The Department shall take such steps as are within its power to investigate and eliminate this form of sexual harassment.

Employees may also file complaints of sexual harassment and/or retaliation with the following State and Federal Offices:

Department of Fair Employment
& Housing (DFEH)
Los Angeles District Office
611 West Sixth Street, Suite 1500
Los Angeles, CA 90017
Phone: (800) 884-1684

Equal Employment Opportunity
Commission (EEOC)
Roybal Federal Building
255 East Temple Street, 4th Floor
Los Angeles, CA 90012
Phone (800) 669-4000

2. Respondent:

Any employee who has been accused of sexual harassment and/or retaliation (“Respondent”) has a responsibility to cooperate with the investigation and also has the right to be represented by legal counsel or other representative, at his/her own cost, at all stages of the proceedings.

3. Employee:

It shall be the responsibility of any supervisor or other employee to whom alleged sexual harassment and/or retaliation has been reported to maintain such report as a matter of strict confidence. Such report may be discussed only with the General Manager, Deputy General Manager, Human Resources, the City EEO Officer or any independent agent retained by the department to investigate, prior to the investigation.

4. Confidentiality:

Confidentiality of information relating to investigations of complaints of sexual harassment shall be maintained to the extent practical and appropriate under the circumstances and to the extent permitted by law. Individuals charged with implementing this policy shall share information with regard to given incidents of sexual harassment only with those who have a “need to know” in order to implement this policy.

A copy of this policy shall be distributed to all employees and appointed or elected officials.

**CITY OF SAN BERNARDINO MUNICIPAL WATER DEPARTMENT
COMPLAINT OF SEXUAL HARASSMENT**

Your Full Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Home Phone: _____ Work Phone: _____

Your Job Title: _____ Dept.: _____

Name of Alleged Harasser: _____ Dept: _____

Date of Occurrence: _____

Have you discussed the harassment with your supervisor: Yes No

Description of harassment (attach additional pages, if necessary): _____

What corrective action do you want taken on your behalf regarding this complaint?

Signature: _____ Date: _____

**ACKNOWLEDGEMENT OF MANDATORY COMPLIANCE WITH
CITY OF SAN BERNARDINO MUNICIPAL WATER DEPARTMENT POLICY ON
SEXUAL HARASSMENT**

I hereby acknowledge receipt of the City of San Bernardino Municipal Water Department Policy on Sexual Harassment (Policy No. 33.050). I understand that compliance with this policy is mandatory and violation of this policy may result in discipline up to and including termination.

DATE

Employee Signature

Employee Name (Print)