

DFEH ISSUES SAMPLE EQUAL EMPLOYMENT OPPORTUNITY POLICY TO ASSIST CALIFORNIA EMPLOYERS

On July 10, 2018, the California Department of Fair Employment & Housing (DFEH) issued a sample Equal Employment Opportunity Policy for employers to use to develop workplace-specific equal employment opportunity (EEO) policies.

California law requires employers to develop and distribute to employees a written policy about the prevention of discrimination, harassment, and retaliation in the workplace. The mandatory components of an EEO policy are listed in the California Code of Regulations at 2 CCR § 11023 and include a description of legal categories, a legally compliant process, instructions for supervisors, and the identification of DFEH and the U.S. Equal Employment Opportunity Commission (EEOC) as additional avenues for employees to lodge complaints.

In releasing the sample policy, the DFEH noted that, while the law requires an employer to develop a detailed EEO policy, hundreds of thousands of California employers do not have easy access to counsel. This sample policy is intended to be a resource to help employers develop and implement effective policies.

The DFEH's sample policy is attached to this *Briefing* and can also be found at the DFEH website.

Please contact your Keenan Account Manager for questions regarding this *Briefing*.

Keenan & Associates is not a law firm and no opinion, suggestion, or recommendation of the firm or its employees shall constitute legal advice. Clients are advised to consult with their own attorney for a determination of their legal rights, responsibilities and liabilities, including the interpretation of any statute or regulation, or its application to the clients' business activities.

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DFEH Issues Sample Equal Employment Opportunity Policy For California Employers

Sample Policy Can be Used to Develop Workplace-Specific Policies Required by Law

Sacramento – The California Department of Fair Employment and Housing (DFEH) announced today the release of a sample Equal Employment Opportunity (EEO) policy to assist employers in meeting their legal obligation to develop harassment, discrimination, and retaliation prevention policies.

California law requires employers to develop and distribute to employees a written policy about the prevention of discrimination, harassment, and retaliation in the workplace. The mandatory components of every workplace EEO policy are listed in the California Code of Regulations at 2 CCR § 11023 and include a description of legal categories, a complaint process, instructions for supervisors, and identification of DFEH and the U.S. Equal Employment Opportunity Commission (EEOC) as additional avenues for employees to lodge complaints.

The sample policy is intended to assist employers in meeting legal requirements while developing their own workplace-specific policies. The document also contains a sample complaint form that employers can revise and adopt for internal use.

“While the law requires employers to develop a detailed EEO policy, hundreds of thousands of California employers do not have easy access to legal counsel,” said DFEH Director Kevin Kish. “That should not be a barrier to the development and use of a clear anti-discrimination policy in every workplace, and DFEH is pleased to provide this resource to help employers develop and implement effective policies.”

The sample EEO policy is available in pdf and Word form on DFEH’s employment resources page at <https://www.dfeh.ca.gov/resources/posters-and-brochures-and-fact-sheets/poster-and-brochure-tab-list/?target=employment>. It can be viewed directly in pdf form at <https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2018/07/SampleEEOPolicy.pdf>.

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The DFEH is the state agency charged with enforcing California’s civil rights laws. The mission of the DFEH is to protect the people of California from unlawful discrimination in employment, housing and public accommodations and from hate violence and human trafficking. For more information, visit the DFEH’s web site at www.dfeh.ca.gov.



SAMPLE EQUAL EMPLOYMENT OPPORTUNITY (EEO) POLICY

Table of Contents

Policy: Discrimination, Harassment, and Retaliation Prevention Policy 2

 POLICY 2

 Scope of Protection 3

 Applicant/Employee Rights 3

 CONDUCT PROHIBITED BY THIS POLICY / DEFINITIONS 3

 Discrimination: 3

 Harassment: 4

 Sexual Harassment: 5

 Retaliation: 6

 TRAINING REQUIREMENTS 6

 ADDRESSING AND REPORTING VIOLATIONS OF THIS POLICY 7

 FILING OF COMPLAINTS OUTSIDE OUR COMPANY 8

 CORRECTIVE ACTION GUIDELINES 8

 COMPLAINT FORM 9

Policy: Discrimination, Harassment, and Retaliation Prevention Policy

POLICY

Name of Organization is committed to providing a professional work environment free from discrimination and harassment, including discrimination and harassment based on a protected category, and an environment free from retaliation for participating in any protected activity covered by this policy. **Name of Organization** is committed to providing equal employment opportunities to all employees and applicants for employment. Accordingly, we have adopted and maintain this anti-discrimination policy designed to encourage professional and respectful behavior and prevent discriminatory and harassing conduct in our workplace. We will implement appropriate corrective action(s), up to and including formal discipline, in response to misconduct--including violations of **Name of Organization's** anti-discrimination policy--even if the violation does not rise to the level of unlawful conduct.

Name of Organization prohibits discrimination or harassment based on the following categories: race, color, religion, religious creed (including religious dress and grooming practices), national origin, ancestry, citizenship, physical or mental disability,¹ medical condition (including cancer and genetic characteristics), genetic information, marital status, sex (including pregnancy, childbirth, breastfeeding, or related medical conditions), gender, gender identity, gender expression, age (40 years and over), sexual orientation, veteran and/or military status, protected medical leaves (requesting or approved for leave under the Family and Medical Leave Act or the California Family Rights Act), domestic violence victim status, political affiliation, and any other status protected by state or federal law. In addition, **Name of Organization** prohibits retaliation against a person who engages in activities protected under this policy. Reporting, or assisting in reporting, suspected violations of this policy and cooperating in investigations or proceedings arising out of a violation of this policy are protected activities under this policy.

All employees are expected to assume responsibility for maintaining a work environment that is free from discrimination, harassment and retaliation. Employees are encouraged to promptly report conduct that they believe violates this policy so that we have an opportunity to address and resolve any concerns. Managers and supervisors are required to promptly report conduct that they believe violates this policy. We are committed to responding to alleged violations

¹ **Name of Organization** recognizes and supports the obligation to reasonably accommodate employees with disabilities or religious beliefs or practices in order to allow those employees to perform the essential functions of their jobs. If an employee believes they need a reasonable accommodation based on disability or a religious belief or practice, the employee should discuss the matter with their supervisor or the human resources unit.

of this policy in a timely and fair manner and to taking appropriate action aimed at ending the prohibited conduct.

Scope of Protection

This policy applies to **Name of Organization** applicants and employees (co-workers, supervisors and managers). As used in this policy, the term “employee” includes contractors and volunteers in our workplace. In addition, this policy extends to conduct with a connection to an employee’s work, even when the conduct takes place away from **Name of Organization’s** premises, such as a business trip or business-related social function.

Applicant/Employee Rights

- The right to a discrimination, harassment, and retaliation-free work environment.
- The right to file a complaint of discrimination, harassment, or retaliation. Employees are encouraged to report inappropriate conduct immediately and, whenever possible, to put the complaint or concern in writing.
- The right to a full, impartial and prompt investigation by a **Name of Organization** representative or designee into allegations of conduct that would violate this policy.
- The right to be timely informed of appropriate information related to the outcome of an investigation either as a complainant or a respondent in the investigation.
- The right to be represented by a person of the complainant’s choosing at each and all steps of the complaint process.
- The right to be free from retaliation or reprisal after filing a complaint or participating in the complaint process.
- The right to file a complaint directly with the California Department of Fair Employment and Housing, the federal Equal Employment Opportunity Commission or other appropriate state or federal agencies, or to file a civil action in the appropriate court.

CONDUCT PROHIBITED BY THIS POLICY / DEFINITIONS

Discrimination:

As used in this policy, discrimination is defined as the unequal treatment of an employee or applicant in any aspect of employment, including discrimination based solely or in part on the employee’s, or applicant’s, protected category. Protected categories include: race, color, religion, religious creed (including religious dress and grooming practices), national origin, ancestry, citizenship, physical or mental disability, medical condition (including cancer and genetic characteristics), genetic information, marital status, sex (including pregnancy, childbirth,

breastfeeding, or related medical conditions), gender, gender identity, gender expression, age (40 years and over), sexual orientation, veteran and/or military status, protected medical leaves (requesting or approved for leave under the Family and Medical Leave Act or the California Family Rights Act), domestic violence victim status, political affiliation, and any other status protected by state or federal law. Discrimination includes unequal treatment based upon the employee or applicant's association with a member of these protected classes.

Discrimination may include, but is not necessarily limited to: hostile or demeaning behavior towards applicants or employees because of their protected category; allowing the applicant's or employee's protected category to be a factor in hiring, promotion, compensation or other employment related decisions unless otherwise permitted by applicable law², and providing unwarranted assistance or withholding work-related assistance, cooperation, and/or information to applicants or employees because of their protected category.

Harassment:

As used in this policy, harassment is defined as disrespectful or unprofessional conduct, including disrespectful or unprofessional conduct based on any of the protected categories listed above. Harassment can be verbal (such as slurs, jokes, insults, epithets, gestures, or teasing), visual (such as the posting or distribution of offensive posters, symbols, cartoons, drawings, computer displays, or emails), or physical conduct (such as physically threatening another person, blocking someone's way, making physical contact in an unwelcome manner, etc.).

² For example veterans preference as permitted under [Government Code 18973.1](#).

Sexual Harassment:

As used in this policy sexual harassment is defined as harassment based on sex or conduct of a sexual nature, and includes harassment based on sex (including pregnancy, childbirth, breastfeeding, or related medical conditions), gender, gender identity or gender expression. It may include all of the actions described above as harassment, as well as other unwelcome sex-based conduct, such as unwelcome or unsolicited sexual advances, requests for sexual favors, conversations regarding sexual activities, or other verbal or physical conduct of a sexual nature. Sexually harassing conduct need not be motivated by sexual desire and may include situations that began as reciprocal relationships, but that later cease to be reciprocal.

Sexual harassment is generally categorized into two types:

1. Quid Pro Quo Sexual Harassment (“this for that”)
 - Submission to sexual conduct is made explicitly or implicitly a term or condition of an individual's employment.
 - Submission to or rejection of the conduct by an employee is used as the basis for employment decisions affecting the employee.

2. Hostile Work Environment Sexual Harassment
Conduct of a sexual nature or on the basis of sex by any person in the workplace that unreasonably interferes with an employee's work performance and/or creates an intimidating, hostile or otherwise offensive working environment. Examples include:
 - Unwelcome sexual advances, flirtation, teasing, sexually suggestive or obscene letters, invitations, notes, emails, voicemails or gifts.
 - Sex, gender or sexual orientation-related comments, slurs, jokes, remarks or epithets.
 - Leering, obscene or vulgar gestures or making sexual gestures.
 - Displaying or distributing sexually suggestive or derogatory objects, pictures, cartoons, or posters or any such items.
 - Impeding or blocking movement, unwelcome touching or assaulting others.
 - Any sexual advances that are unwelcome as well as reprisals or threats after a negative response to sexual advances.
 - Conduct or comments consistently targeted at one gender, even if the content is not sexual.

Retaliation:

As used in this policy retaliation is defined as any adverse employment action taken against an employee because the employee engaged in activity protected under this policy. Protected activities may include, but are not limited to, reporting or assisting in reporting suspected violations of this policy and/or cooperating in investigations or proceedings arising out of a violation of this policy.

Adverse employment action is conduct or an action that materially affects the terms and conditions of the employee's employment status or is reasonably likely to deter the employee from engaging in protected activity. Even actions that do not result in a direct loss of compensation may be regarded as an adverse employment action when considered in the totality of the circumstances.

Examples of retaliation under this policy include but are not limited to: demotion; suspension; reduction in pay; denial of a merit salary increase; failure to hire or consider for hire; refusing to promote or consider for promotion because of reporting a violation of this policy; harassing another employee for filing a complaint; denying employment opportunities because of making a complaint or for cooperating in an investigation; changing someone's work assignments for identifying harassment or other forms of discrimination in the workplace; treating people differently such as denying an accommodation; or not talking to an employee when otherwise required by job duties, or otherwise excluding the employee from job-related activities because of engagement in activities protected under this policy.

TRAINING REQUIREMENTS

Every two years, all supervisory employees must attend Sexual Harassment Prevention and Workplace Civility training aimed at increasing their understanding of and preventing workplace sexual harassment (including harassment on the basis of sexual orientation, gender identity, and gender expression) and their role in creating an underlying culture of mutual respect in our workplace. Specific components of the training will include how to promptly and effectively respond to sexual harassment when it occurs, the effects of abusive conduct in the workplace, and ways to appropriately intervene if one witnesses behavior that is not in keeping with this policy. The training must be provided by trainers who, in addition to the other requirements set forth in [2 CCR 11024](#), have the ability through training or experience to train supervisors on how to identify, investigate, report, and respond to unlawful harassment, discrimination, and retaliation in the workplace.

ADDRESSING AND REPORTING VIOLATIONS OF THIS POLICY

Any employee or applicant who experiences or witnesses behavior that they believe violates this policy is encouraged to immediately tell the offending individual that the behavior is inappropriate and, if they feel comfortable doing so, to tell the offending individual to stop the behavior. The applicant or employee should also immediately report the alleged violation to his/her supervisor, manager or the EEO Officer. There is no chain of command when contacting the EEO Officer; an individual does not need supervisor or manager approval to do this. If the alleged offender is the employee's supervisor or manager, the employee should report the conduct to any other supervisor, manager or the EEO Officer. A complaint may be brought forward verbally or in writing. Written complaints can be made using the EEO Complaint Form (attached to this policy).

Supervisors or managers who learn of any potential violation of this policy are required to immediately report the matter to the EEO Officer, and must follow that officer's instructions as to how best to proceed.

Name of Organization will promptly look into the facts and circumstances of any alleged violation, as appropriate. Even in the absence of a formal complaint, **Name of Organization** may initiate an investigation where it has reason to believe that conduct that violates this policy has occurred. Moreover, even where a complainant conveys a request to withdraw their initial formal complaint, **Name of Organization** may continue the investigation to ensure that the workplace is free from discrimination, harassment and retaliation. Anonymous complaints will also be investigated. The method will depend on the details provided in the anonymous complaint. If the complaint is sufficiently detailed, the investigation may be able to proceed in the same manner as any other complaint. If the information is more general, **Name of Organization** may need to do an environmental assessment or survey to try to determine if misconduct has occurred. All investigations will be fair, impartial, timely, and completed by qualified personnel.

To the extent possible, **Name of Organization** will endeavor to keep the reporting of the applicant or employee's concerns confidential; however, complete confidentiality cannot be guaranteed when it interferes with **Name of Organization's** ability to fulfill its obligations under this policy. All employees are required to cooperate fully with any investigation. This includes, but is not limited to, maintaining an appropriate level of discretion regarding the investigation and disclosing any and all information that may be pertinent to the investigation. Upon completion of the investigation, if misconduct is substantiated, **Name of Organization** will take appropriate corrective and preventive action calculated to end the conduct up to and including formal discipline where warranted.

Contact information for **Name of Organization's** EEO Officer is:

[Insert name and contact info here]

FILING OF COMPLAINTS OUTSIDE OUR COMPANY

Employees and applicants may file formal complaints of discrimination, harassment, or retaliation with the agencies listed below. Individuals who wish to pursue filing with these agencies should contact them directly to obtain further information about their processes and time limits.

California Department of Fair Employment and Housing

2218 Kausen Drive, Suite 100

Elk Grove, CA 95758

800-884-1684 (voice), 800-700-2320 (TTY) or California's Relay Service at 711

contact.center@dfeh.ca.gov

<https://www.dfeh.ca.gov>

U.S. Equal Employment Opportunity Commission

450 Golden Gate Avenue 5 West,

P.O Box 36025

San Francisco, CA 94102-3661

1-800-669-4000 or 510-735-8909 (Deaf/hard-of-hearing callers only)

<http://www.eeoc.gov/employees>

CALIFORNIA STATE AGENCIES ONLY:

State Personnel Board Appeals Division

801 Capitol Mall

Sacramento, CA 95814

(916) 653-0799 or TDD Line (916) 653-1498

www.spb.ca.gov

CORRECTIVE ACTION GUIDELINES

Name of Organization will take appropriate corrective action(s) up to and including formal discipline against any employee(s) when an investigation has found that misconduct occurred. Such corrective action(s) may include, but are not limited to, letters of reprimand, suspension, demotion, or termination. Additionally, depending on the nature of the violation, civil liability could be imposed on the violator as well as **Name of Organization**.

Name of Organization
**DISCRIMINATION, HARASSMENT, AND RETALIATION PREVENTION POLICY
COMPLAINT FORM**

COMPLAINANT INFORMATION

NAME:

DIVISION / UNIT:

OFFICE LOCATION:

WORK PHONE:

IMMEDIATE SUPERVISOR:

Please describe the conduct that you believe violates the Discrimination, Harassment or Retaliation Prevention Policy. In your narrative, describe: (1) What happened to you; (2) Why you believe you are being discriminated, harassed, or retaliated against, including the reason or evidence you have to support your belief, and; (3) When the acts of discrimination, harassment, or retaliation occur (attach additional pages if needed). If you require assistance with completing this form as a reasonable accommodation, please contact the EEO officer.

PERSON(S) ALLEGED TO HAVE VIOLATED THE POLICY

Person #1 - Name: Position: Work Location:

Person #2 - Name: Position: Work Location:

Person #3 - Name: Position: Work Location:

PERSON(S) WITH INFORMATION/KNOWLEDGE OF THE ALLEGED INCIDENTS

Witness Name: Position: Work Location:

Witness Name: Position: Work Location:

Witness Name: Position: Work Location:

HAVE YOU COMPLAINED TO ANYONE AT NAME OF ORGANIZATION ABOUT THIS MATTER?

If yes, explain the situation. When did you complain, to whom, and what was the result?

Please submit to the Equal Employment Opportunity Officer: