




DATE: August 23, 2019

TO: All LACERA Staff Members, Interns, Volunteers, Temporary Agency Staff, and Contractors

FROM: Steven Rice 
Chief Counsel, LACERA

SUBJECT: **Anti-Discrimination, Harassment, and Retaliation Policy and Complaint and Investigation Procedures**

LACERA is an equal opportunity employer and is committed to providing a work environment in which all individuals are treated with respect and dignity, free of discrimination, harassment, and retaliation. LACERA does not tolerate discrimination, harassment, retaliation, or any mistreatment of Staff Members and other covered individuals in the workplace. Such conduct is contrary to LACERA's values. Because the purpose of this policy is to prohibit conduct that is inappropriate, prohibited conduct need not arise to the level of a violation of state or federal law to violate this policy.

This policy establishes a procedure for reporting and investigating any violation or suspected violation of this policy. LACERA encourages reporting of all perceived incidents of discrimination, harassment, retaliation, or inappropriate conduct. Any person who believes they are the subject of or has seen or heard about conduct violating this policy is encouraged to report such conduct to a supervisor or manager, the Human Resources Division, or LACERA's Internal Audit Division so that LACERA can take steps to address and remedy any violation of this policy.

Covered Individuals

The individuals covered by this policy are all persons who are employed by LACERA and anyone in LACERA's workplace, including applicants, contractors, vendors, volunteers, interns, and visitors. This means that LACERA does not tolerate conduct prohibited by this policy from or to any individual covered by this policy.

Protected Classifications

This policy prohibits harassment and/or discrimination because of (1) an individual's protected classification, (2) the perception that an individual has a protected classification, or (3) the individual associates with a person who has or is perceived to have a protected classification.

"Protected Classification" includes race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, transgender, age (over 40), sexual orientation, or military and veteran status, status as a victim of domestic violence, sexual assault or stalking or any other basis prohibited under local, state or federal law.

Discrimination

For purposes of this policy, discrimination is defined as the disparate or adverse treatment of an individual based on any of the above classifications, on a perception that an individual has any of the above classifications, or that the individual is associated with an individual who has, or is perceived to have, any of the above classifications.

Accommodations

Please refer to the Employee Handbook for LACERA's policy on Reasonable Accommodations.

Harassment Defined and Examples

For purposes of this policy, harassment is defined as unwanted or unwelcome conduct because of the individual's actual or perceived protected classification or the association with an individual who has, or is perceived to have, any of the above classifications. The definition includes many forms of offensive behavior. The following is a partial list of prohibited behavior:

- Speech, such as epithets, derogatory comments or slurs, and propositioning on the basis of a protected classification;
- Inappropriate comments about appearance, dress, physical features, gender identification, or race-oriented stories and derogatory or insensitive jokes;
- Physical acts, such as assault, impeding or blocking movement, offensive touching, or physical interference with normal work or movement. This includes pinching, grabbing, patting, or making explicit or implied job threats or promises in return for submission to physical acts;
- Visual acts, such as derogatory posters, cartoons, emails, pictures or drawings related to a protected classification;
- Innuendos or veiled threats;
- Unwanted sexual advances, requests for sexual favors and other acts of a sexual nature, where submission is made a term or condition of employment, where submission to or rejection of the conduct is used as the basis for employment decisions, or where the conduct is intended to or actually does unreasonably interfere with an individual's work performance or create an intimidating, hostile, or offensive working environment; and
- Retaliation for having reported or threatened to report unlawful harassment.

This list of examples is not exhaustive, and there may be other behaviors that constitute unacceptable harassment under this policy.

Sexual Harassment

Sexual harassment can take two forms:

- **Hostile Work Environment:** Sexual harassment occurs when unwelcome comments or conduct based on sex unreasonably interferes with work performance or creates an intimidating, hostile, or offensive work environment. You may experience sexual harassment even if the offensive conduct was not aimed directly at you. A single act of harassment may be sufficient to be unlawful.
- **Quid Pro Quo Harassment:** Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to such conduct is made either explicitly or implicitly a term or condition of a Staff Member's employment, or when submission to or rejection of such conduct by a Staff Member is used as the basis for employment decisions affecting that Staff Member.

Sexual harassment can happen regardless of the individuals' gender, gender identity, or gender expression, occur between same-sex individuals as well as between opposite-sex individuals, and does not require that the harassing conduct be motivated by sexual desire.

Guidelines for Identifying Harassment

It is no defense that the recipient appears to have "consented" to the conduct at issue by failing to protest about the conduct. A recipient may not protest for many legitimate reasons, including the need to avoid being insubordinate or to avoid being ostracized.

Simply because no one has complained about a joke, gesture, picture, physical contact, or comment does not mean that the conduct is welcome. Harassment can evolve over time. Small, isolated incidents might be tolerated up to a point. The fact that no one is complaining now does not preclude anyone from complaining if the conduct is repeated in the future.

Even visual, verbal, or physical conduct between two people who appear to welcome the conduct can constitute harassment of a third person who witnesses the conduct or learns about the conduct later. Conduct can constitute harassment even if it is not explicitly or specifically directed at an individual.

Conduct can constitute harassment in violation of this policy even if the individual has no intention to harass. Even well-intentioned conduct can violate this policy if the conduct is directed at, or implicates a protected classification, and if a reasonable person would find it offensive or inappropriate for the workplace (e.g., gifts, over attention, endearing nicknames).

Retaliation Defined

LACERA prohibits retaliation. For purposes of this policy, retaliation is defined as adverse conduct against another for reporting an incident or filing a complaint regarding conduct that violates this policy or the law or participating in any investigation under this policy.

Adverse conduct may include but is not limited to: an adverse employment action such as a poor performance evaluation or discipline, spreading rumors, shunning and avoiding an individual, or real or implied threats of intimidation to prevent or deter an individual from reporting harassment, discrimination, or inappropriate conduct.

Retaliating against an individual is grounds for discipline, up to and including discharge.

Staff Member Responsibilities

Each Staff Member is responsible for:

- Treating all individuals in the workplace or on worksites with respect and consideration;
- Modeling behavior that conforms to this policy;
- Participating in periodic training when required;
- Cooperating with LACERA's investigations by responding fully and truthfully to all questions posed during the investigation;
- Taking no actions to influence any potential witness while the investigation is ongoing; and
- Reporting any conduct that constitutes harassment, discrimination, retaliation, or inappropriate conduct as addressed in this policy, to a supervisor, manager, the Human Resources Division, or LACERA's Internal Audit Division.

In addition to the responsibilities listed above, each manager and supervisor is also responsible for:

- Informing Staff Members of this policy;
- Taking all steps necessary to prevent harassment, discrimination, retaliation, or inappropriate conduct from occurring, including monitoring the work environment and taking immediate appropriate action to stop potential violations, such as removing inappropriate pictures or correcting inappropriate language;
- Receiving complaints in a fair and serious manner, and taking immediate action to report complaints to LACERA's Director, Human Resources or designee, or LACERA's Internal Audit Division;
- Following up with those who have complained to ensure that the behavior has stopped and that there are no reprisals;
- Assisting, advising, or consulting with Staff Members and the Director, Human Resources or designee regarding this policy and complaint procedure;
- Cooperating in the investigation of complaints involving Staff Member(s) in their divisions as directed by LACERA's Human Resources or Internal Audit Divisions.
- Implementing appropriate disciplinary and remedial actions;
- Reporting immediately potential violations of this policy to LACERA's Director, Human Resources or designee or to LACERA's Internal Audit Division, regardless of whether a complaint has been submitted; and
- Participating in mandatory training and scheduling Staff Members for training as required.

Reporting of Complaint and Investigation Procedures

LACERA encourages the prompt reporting of complaints or concerns so that rapid and constructive action can be taken before relationships become irreparably strained. Therefore, while no fixed reporting period has been established, early reporting and intervention have proven to be the most effective method of resolving actual or perceived incidents of harassment, discrimination, or retaliation.

Any individual who believes they have been subjected to a potential violation of this policy is strongly encouraged to report the matter. LACERA takes a proactive approach to potential policy violations and will conduct an investigation upon becoming aware that harassment, discrimination, retaliation, or inappropriate conduct may be occurring, regardless of whether the recipient or a third party reports a potential violation.

A covered individual who believes they have been discriminated against, harassed, retaliated against, or subject to inappropriate conduct is encouraged to make a complaint, verbally or in writing, to any supervisor, manager, the Human Resources Division or LACERA's Internal Audit Division. Any supervisory or management Staff Member who receives any such complaint should immediately notify the Director, Human Resources or designee, or LACERA's Internal Audit Division.

Upon receiving notification of a complaint under this policy, LACERA will conduct a fair, thorough, and timely investigation. The investigation may include individual interviews with the parties involved and, where necessary, with individuals who may have observed the alleged conduct or may have other relevant knowledge. LACERA will make every effort to complete investigations within 120 days. If the investigation is not completed within 120 days, LACERA will notify the complainant as to the status.

Retaliation against an individual for reporting misconduct or for participating in an investigation is a serious violation of this policy and will be subject to disciplinary action. Acts of retaliation should be reported immediately to the Human Resources Division and will be promptly investigated and addressed.

Every effort will be made to assure the confidentiality of complaints made under this policy in order to preserve the integrity of the investigation while it is ongoing, to ensure fairness to all involved, and to protect the privacy of all individuals involved in the investigation. However, complete confidentiality cannot occur due to the need to fully investigate and the duty to take effective remedial action. As a result, confidentiality will be maintained to the extent legally possible. Staff Members who are interviewed during the course of an investigation are prohibited from attempting to influence any potential witness while the investigation is ongoing.

Everyone is required to cooperate with investigations undertaken by LACERA. In particular, among other things, Staff Members are required to make themselves available to investigators immediately upon request, be forthcoming and truthful with investigators, and provide complete and accurate information.

If LACERA determines that conduct violating this policy has occurred, effective remedial action will be taken in accordance with the circumstances involved. The remedial action will be commensurate with the severity of the offense and/or prior offenses. A designated LACERA representative will advise relevant parties of the results of the investigation. LACERA will not retaliate against anyone for filing a good faith complaint or participating in any investigation and will not tolerate or permit retaliation by anyone.

An individual also has the option to report harassment, discrimination, or retaliation to the California Department of Fair Employment and Housing (DFEH) <http://www.dfeh.ca.gov/U.S> or the Equal Employment Opportunity Commission (EEOC) <https://www.eeoc.gov/contact/index.cfm>. These administrative agencies offer legal remedies and a complaint process. The nearest offices are listed on the internet, in the government section of the telephone book or posters that are located on LACERA bulletin boards.

Due Process, Grievance, and Appeal Rights

All applicable LACERA Staff Member due process, grievance and appeal rights remain under this policy.

Represented Staff Members may grieve disciplinary actions according to the terms of the applicable memorandum of understanding ("MOU") negotiated by LACERA and the Union representing its members. The MOU's may require separate or additional procedures according to its terms.

LACERA Staff Members also may appeal certain final determinations of discipline to the Civil Service Commission in accordance with the Los Angeles County Civil Service Rules.

Attachment:

Discrimination, Harassment, and Retaliation Complaint Form

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DISCRIMINATION, HARASSMENT, AND RETALIATION COMPLAINT FORM

PLEASE PRINT OR TYPE

YOUR NAME:	YOUR JOB TITLE:
YOUR DIVISION/SECTION:	
ADDRESS: _____ _____	
TELEPHONE NO.:	
Work: _____	Alternative: _____
I prefer to be contacted by telephone at: <input type="checkbox"/> Alternative <input type="checkbox"/> Work	
Please indicate the most convenient time(s) and day(s) to reach you:	
Time(s) _____	Day(s) _____

I WISH TO COMPLAIN AGAINST:

NAME OF PERSON(S) YOU ARE COMPLAINING ABOUT: JOB TITLE(S):

I ALLEGE THAT I EXPERIENCED: Discrimination Harassment Retaliation

BECAUSE OF MY ACTUAL OR PERCEIVED:

- Age- 40 and Over
- Ancestry
- Association with a Member of a Protected Class
- Color
- Disability
- Engagement in Protected Activity
- Family, Care or Medical Leave
- Genetic Information or Characteristics
- Marital Status
- Medical Condition- Cancer, Cancer Related Illness, or Genetic Characteristics
- Military or Veteran Status
- National Origin- Including Language Use Restrictions
- Race
- Religion
- Sex- Gender
- Sex- Gender Identity or Gender Expression
- Sex- Pregnancy
- Sexual Orientation
- Other (specify) _____

AS A RESULT, I ALLEGE I WAS:

- Asked Impermissible, Non-Job Related Questions
- Demoted
- Denied a Good Faith Interactive Process
- Denied a Work Environment Free of Discrimination and/or Retaliation
- Denied Continuation of Employer-Paid Health Care Coverage While On Pregnancy Disability Leave
- Denied Employment
- Denied Equal Pay
- Denied Family Care or Medical Leave
- Denied Pregnancy Leave
- Denied Promotion
- Denied Reasonable Accommodation
- Denied Reinstatement
- Denied The Right to Wear Pants
- Forced to Quit
- Laid Off
- Terminated
- Tested for Genetic Characteristics
- Other (specify)

1. Date(s) and description of alleged discrimination, harassment, or retaliation:

2. What would you consider to be an acceptable resolution to your complaint?

3. List the names, job titles and telephone numbers (if possible) of witnesses, co-workers or others you feel could provide evidence. On a separate sheet, please explain what you think each witness will be able to tell us.

<i>Name</i>	<i>Title</i>	<i>Telephone Number</i>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>

4. EMPLOYMENT DATA:

A. Date hired/applied for job:

B. Your job title at time of the alleged discrimination, harassment, or retaliation:

C. Name and title of your immediate supervisor:

5. Have you attempted to resolve your problem by discussing the matter with someone in Management?

Yes No

If yes, provide the name and title of the person(s), date(s), and state what happened:

6. Have you filed this complaint with the Equal Employment Opportunity Commission or Department of Fair Employment and Housing?

Yes

No

Agency: _____ Date: _____

If your answer is Yes, would you be interested in resolving your complaint through mediation?

Yes No Not Sure

I declare that the above statements are true to the best of my knowledge.

Signature

Date

RETURN TO:

LACERA, Human Resources
300 N. Lake Avenue, Suite 630
Pasadena, CA 91101-4199
Attention: Director, Human Resources, LACERA

For Office Use Only:

Received by: _____ Date: _____