

TITLE: **400** **HUMAN RESOURCES ADMINISTRATION**

CHAPTER **108** **EMPLOYMENT PRACTICES**

PART **1** **DISCRIMINATION, HARASSMENT, SEXUAL**
 HARASSMENT, RETALITATION

EFFECTIVE DATE: **November 1, 2017**

PURPOSE: To provide fair employment practices for employees, applicants and clients and procedures to address discrimination complaints from or about employees, applicants, students, volunteers, clients and all others within LOPD workplaces.

APPLICABILITY: All LOPD employees

AUTHORITY: Section 31-15-7 NMSA 1978

CROSS REFERENCES: 10.12.11 NMAC Discipline; 10.12.6.13 NMAC Employee Complaints; 10.12.6.15 NMAC Duty to Cooperate; Human Rights Act, § 28-1-7, NMSA 1978; Title VII of the Civil Rights Act of 1964.

RELATED FORMS: None

DEFINITIONS

Complainant: An employee, contractor, or client who files a discrimination complaint, an internal complaint or a grievance.

Client: A person who receives LOPD services.

New Mexico Human Rights Act. A State law protecting employees from acts of discrimination on the basis of race, age, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, physical or mental handicap, serious medical condition, and age, or as provided in 1978 NMSA § 28-1-7.

Student Intern: A student who works at LOPD as part of a university educational program for credit or a grade or experience.

Volunteer: Any unpaid person (community member, student, etc) who provides services to clients or otherwise participates in the LOPD workplace.

Workplace: Any LOPD office, parking lot, or other location being used or accessed to conduct

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LOPD business.

1 Equal Employment Opportunity: The LOPD provides all employees and applicants equal employment opportunity. All personnel actions including hiring, recruitment, layoff, dismissal, benefits, compensation, promotion, transfers, training and working conditions are conducted in a nondiscriminatory manner. No employee or applicant is discriminated against on the basis of race, sex, color, religion, age, national origin, disability, serious medical condition, ancestry, or spousal affiliation sexual orientation or gender identity.

A. LOPD is committed to a work environment in which all individuals are treated with respect and dignity. Each individual has the right to work in a professional atmosphere that promotes equal employment opportunities and prohibits discriminatory practices, including harassment. Therefore, LOPD expects that all relationships among persons in the office will be businesslike, respectful and free of bias, prejudice and harassment. This extends to clients of LOPD, who have the right to apply for and receive services and benefits free from harassment or discrimination. The LOPD encourages reporting of all perceived incidents of discrimination or harassment; investigates or refers such reports for investigation, and prohibits retaliation against any individual who reports discrimination or harassment or participates in an investigation of such reports.

B. **Discrimination** on the basis of any state or federal protected characteristic is strictly prohibited. Under this policy, discrimination includes severe and/or pervasive verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of any characteristic protected by state or federal law, and that a) has the purpose or effect of creating an intimidating, hostile or offensive work environment, b) has the purpose or effect of unreasonably interfering with an individual's work performance, c) otherwise adversely affects an individual's employment opportunities, or d) unreasonably interferes with a client's ability to apply for or receive services from LOPD.

Discriminatory conduct includes, but is not limited to, epithets, slurs or negative stereotyping; threatening, intimidating or hostile acts; denigrating jokes; and written, electronic or graphic material that denigrates or shows hostility or aversion toward an individual or group and that is placed on walls, email or elsewhere on LOPD premises or is circulated in the workplace.

C. **Sexual Harassment.** No employee, client, student intern, or volunteer, either male or female, should be subjected to unwelcome sexual overtures or conduct, either verbal or physical, by coworkers, supervisors, clients, or non-employees who conduct business with LOPD. Sexual harassment includes same sex harassment and "unwelcome" means that the employee did not solicit or incite the conduct and regards the conduct as undesirable or offensive.

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1. Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, or other verbal or physical acts of a sexual or sex-based nature when:

- i. Submission to such conduct is made either explicitly or implicitly a term or a condition of an individual's employment; or
- ii. an employment decision is based on an individual's acceptance or rejection of such conduct; or
- iii. such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive work environment, or
- iv. such conduct is unwelcome and unreasonably alters an individual's conditions of employment, or is sufficiently severe or pervasive as to create a hostile, intimidating or offensive work environment. Sexual harassment is not an occasional compliment that is socially acceptable in nature.
- v. For LOPD clients, sexual harassment includes any sexual advances, requests for sexual favors, and/or other verbal or physical conduct of a sexual nature made by a LOPD employee to a LOPD client, when such conduct is unwelcome to the client and/or unreasonably alters a client's ability to apply for and receive services.

2. The LOPD takes appropriate action to remedy any substantiated report of sexual harassment. Examples of behavior/conduct that are considered sexual harassment or retaliation are listed below. The examples are provided to illustrate the kind of behavior/conduct prohibited by this policy and the list is not exhaustive.

- i. Physical conduct that is sexual in nature, such as touching, kissing, pinching, patting, grabbing, or brushing against another employee's body.
- ii. Sexually oriented gestures, noises, remarks, jokes, or comments about a person's sexuality or sexual experience directed at or made in the presence of any employee who indicates in any way that such conduct is unwelcome.
- iii. Preferential treatment or promises of preferential treatment to any employee for submitting to sexual conduct, including soliciting or attempting to solicit any employee to engage in sexual activity for compensation or reward.
- iv. Subjecting, or threatening to subject, an employee to unwelcome sexual attention or conduct.
- v. Intentionally making performance of the employee's job more difficult because of that employee's unwillingness to engage in sexual behavior.
- vi. Displaying pictures, posters, calendars, graffiti, objects, promotional materials, reading materials, or other materials that are sexually suggestive, sexually demeaning, sexually explicit or pornographic, or bringing into the work environment any such material to read, display, or view at work. A picture is sexually suggestive if it depicts a person of either sex who is not fully clothed or in clothes that are not suited to or ordinarily accepted for the

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accomplishment of routine work in and around the workplace, and who is posed for the obvious purpose of displaying or drawing attention to the private portions of his or her body.

- vii. Allowing employees to engage in sexually oriented behavior which is pervasive throughout the LOPD workplace and alters the conditions of the workplace.

3. Prohibited behavior/conduct by LOPD employees toward clients, student interns, volunteers or any other non-employee in a LOPD workplace concerning sexual harassment includes but is not limited to:

- i. Verbal or written sexual statements, comments, or questions, other than statements, comments, or questions required as part of an employee's normal job responsibilities;
- ii. Requests, demands, or subtle pressure for sexual activity as an expressed or implied condition for securing benefits or access to services or funding;
- iii. Overt promises or any practice that implies preferential treatment in exchange for dates, sexual attention or sexual behavior;
- iv. Sexual insult and innuendo, including lewd remarks, obscene gestures, sexually suggestive materials, or derogatory comments of a sexual nature;
- v. Any physical sexual contact, including kissing, touching, patting, pinching, brushing against or hugging;
- vi. Allowing employees to engage in sexually oriented behavior which is pervasive throughout the worksite and which a reasonable person would find offensive;
- vii. Displaying sexually suggestive visuals.

D. Retaliation. It is unlawful to retaliate or take reprisal in any manner against anyone who has expressed a concern or made a complaint about sexual harassment or discrimination. Further, retaliation against an employee, client, student intern, or volunteer alleging sexual harassment or discrimination or against an employee, client, student intern or volunteer participating in the investigative process is prohibited. Retaliation for sexual harassment and discrimination complaints includes, but is not limited to:

- 1. Disciplining, changing work assignments of, providing inaccurate work information, denying benefits of employment, or refusing to cooperate or discuss work-related matters with any employee because that employee has complained about or resisted harassment, discrimination, or retaliation.
- 2. Pressuring, falsely denying, lying about or otherwise covering up or attempting to cover up conduct, such as that described in any item above.
- 3. Withholding or interfering with a client's access to LOPD services.

2 Procedure: Responsibilities and procedure for employees. Any employee who believes that he or she is or has been the subject of sexual harassment, discrimination or

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retaliation, or has knowledge of any instance of sexual harassment, discrimination, or retaliation in the workplace, reports the alleged charge immediately in accordance with the following procedures.

A. An employee reports sexual harassment, discrimination or retaliation to his or her supervisor or directly to Human Resources (HR). If the supervisor is the harasser or if the employee is not comfortable with reporting this information to the supervisor, the next-in-line supervisor is notified or the employee reports directly to HR. An employee may directly contact HR without going through the chain-of-command and should do so if they are not contacted by HR within five working days to confirm receipt of the report by the supervisor.

B. Any employee who receives a complaint from a client, or has knowledge of sexual harassment or discrimination or retaliation of a client, shall report the incident immediately to his or her supervisor. Employees who fail to report incidents of sexual harassment, discrimination or retaliation of clients are subject to discipline.

C. Any student intern, or volunteer who believes that he or she is or has been the subject of sexual harassment, discrimination or retaliation, or has knowledge of any instance of sexual harassment, discrimination, or retaliation in the workplace, reports the alleged charge immediately to their supervisor or any employee. The supervisor or employee will follow the reporting protocols for grievances and complaints for investigation.

3 Responsibilities of Managers and Supervisors. Managers and supervisors are required to enforce this policy by complying with the following.

A. Fostering a workplace environment free of sexual harassment, discrimination and retaliation against employees, clients, student interns, and volunteers by addressing prohibited conduct when you become aware of it.

B. Know the sexual harassment, discrimination and retaliation policy, respond appropriately when policy violations are observed or reported and report sexual harassment and discrimination promptly to HR. Discuss this policy with all employees, and inform them of the proper procedure for reporting sexual harassment, discrimination or retaliation.

C. Abstain from making any statements or engaging in any behavior that could be interpreted as sexual harassment, discrimination or retaliation.

D. Supervisors receiving the reports of sexual harassment, discrimination or retaliation shall inform their supervisor or HR within 24 hours or the next business day of receiving the complaint or report even in cases where the individual making the report asks that no action be taken. Supervisors and managers failing take prompt action in response to incidents of sexual harassment, discrimination or retaliation are subject to discipline.

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E. Cooperate with the individuals conducting an investigation of a sexual harassment, discrimination or retaliation complaint. Under no circumstances may a supervisor withhold any information about reported or observed sexual harassment, discrimination or retaliation.

F. Monitor the circumstances and the individuals concerned to assess if the harassment has stopped and to report retaliation.

G. Ensure that anyone involved in making a sexual harassment or discrimination complaint is not subjected to retaliation. Any employee found to retaliate against a sexual harassment or discrimination complainant is subject to discipline.

H. Supervisors may address any prohibited conduct that comes to their attention by responding immediately and making a follow up report to HR even if the issue appears to be resolved. The use of progressive discipline is not required when determining the nature of the discipline to be taken when sexual harassment, discrimination or retaliation is substantiated against an employee.

4 Procedure: Human Resource Bureau Responsibilities HR staff investigates or monitors and reviews the results of investigations conducted by other trained investigators and/or supervisors. All complaints or reports of sexual harassment, discrimination or retaliation are reviewed by HR and an inquiry or investigation is conducted, as appropriate. The scope of an inquiry or investigation may range from consulting with the supervisor by phone to hiring an outside investigator.

A. Complaints of sexual harassment, discrimination or retaliation are accepted in writing or orally.

B. HR evaluates the situation to determine if it is necessary to remove the harasser or the victim from the worksite.

C. All allegations that are apparent violations of policy or law are promptly investigated in as confidential a manner as is practical and appropriate under the circumstances. Every effort is made to hold all information in strictest confidence, and is disclosed only on a need-to-know basis in order to investigate and resolve the matter through appropriate action. During the investigation process, witnesses or potential witnesses who are interviewed are required to maintain confidentiality about their interviews. It is the duty of LOPD employees to participate in an investigation; therefore, employees are required to do so, and must participate in good faith. A breach of confidentiality, refusal to participate, and/or failure to participate in good faith in an investigation may subject an employee to disciplinary action.

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D. HR maintains a file on the original charge and any follow-up investigation. The file is available to the investigators, appropriate HR staff, the Office of General Counsel, and to federal, state and local agencies charged with equal employment enforcement.

5 Mandatory Training In accordance with *400.110 Training* every employee, student intern, and volunteer receives training on the prevention of the harassment, sexual harassment, discrimination and retaliation policy; the process for reporting harassment, sexual harassment, discrimination and retaliation; and the consequences of engaging in behavior constituting harassment, sexual harassment, discrimination and retaliation.

A. Employees review and acknowledge receiving the applicable policies upon hire into the LOPD.

B. Employees attend a classroom presentation within one (1) years and every two (2) years thereafter for the balance of employment.

C. Failure to attend training shall be noted on the employee's performance evaluation document.

Authorized Signature

APPROVED: _____

Bennett J. Baur, Chief Public Defender
Law Offices of the Public Defender