

Administrative Bulletin

DISTRIBUTION: A - MANAGEMENT B - MGMT & SUPERVISORY C - ALL EMPLOYEES

SUBJECT Discrimination, Harassment, and Retaliation Complaint Procedures	REFERENCE Management Bulletins 03-05, 03-06 and 03-07	APPROVED BY DIRECTOR, ASD
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Supersedes Management Bulletin 99-04

PURPOSE

The purpose of this administrative bulletin is to set forth procedures to be used by job applicants and employees of the Department of Justice (Department) when reporting allegations of discrimination, harassment and retaliation.

ZERO TOLERANCE POLICY

It is the policy of the Department to provide equal employment opportunities to all employees and applicants for employment on the basis of merit and to prevent harassment, discrimination and retaliation in the workplace. Any exclusionary practice, discrimination, harassment or retaliation will not be tolerated. Such behavior will be addressed seriously and corrective action will be taken. The Department has a “**zero tolerance**” policy aimed at preventing such inappropriate behavior, so corrective action up to and including formal discipline will be taken when policy violations occur, even if they are not so serious as to be unlawful.

STATUTORY AUTHORITY

A 1984 amendment to the Fair Employment and Housing Act via chapter 1754 underscores California public policy on the enforcement of anti-discrimination laws. It states:

“The Legislature finds and declares that it is the existing policy of the State of California to prohibit harassment and discrimination in employment on the basis of any protected classification. Such conduct whether intentional or unintentional is a violation of the civil rights of California citizenry and has been shown to decrease productivity in the workforce. It is the existing policy of the State of California, as declared by the Legislature, that procedures be established by which allegations of harassment and discrimination may be filed, timely and efficiently investigated, and fairly adjudicated, and that agencies and employers be required to establish affirmative programs which include prompt and remedial internal procedures and monitoring so that work sites will be maintained free from prohibited harassment and discrimination by their agents, administrators, and supervisors as well as by their non supervisors and clientele. . . .”

DEFINITIONS

For definitions of discrimination, harassment and retaliation, as those terms are discussed in this policy, please refer to the following policies:

1. Management Bulletin 03-05, Non-Discrimination Policy
2. Management Bulletin 03-07, Sexual Harassment in the Workplace
3. Management Bulletin 03-06, Anti-Retaliation Policy (For Protected Activity)

DEPARTMENT GOAL

It is the goal of the Department through this administrative bulletin to:

- Afford all employees the opportunity to express their concerns within an approved, uniform filing process;
- Assure all employees that allegations of discrimination, harassment, and retaliation receive prompt and impartial consideration;
- Ensure the opportunity for complaints to be resolved at the lowest appropriate organizational levels; and
- Provide management the opportunity to change inappropriate attitudes and practices through education, training and corrective action.

DEPARTMENT COMPLAINT POLICY

It is the policy of the Department to provide all departmental employees and applicants for employment with various avenues and uniform methods for voicing allegations of discrimination, harassment and retaliation, and to provide prompt and impartial review of the facts to bring about appropriate resolution. Any employee who reasonably and in good faith believes he or she has been discriminated against or harassed because of the identified protected characteristics, or unlawfully retaliated against, has a right to file a complaint, with the assurance that there will be no retaliation.

COMPLAINT PROCESS

Employees have several options by which to report their complaints of discrimination, harassment, and retaliation. The discrimination complaint process is coordinated through the Equal Employment Rights and Resolution (EER&R) Office. Additionally, employees can report allegations of discrimination, harassment and retaliation:

- Directly to a supervisor or manager who will attempt to resolve it informally, where advisable, and at the lowest appropriate organizational level; or,
- Utilizing the grievance procedure up to the third level, for certain Collective Bargaining Units.

More detailed information about filing requirements is provided in the attached Standard Operating Procedures (SOP).

A. Informal/Counseling Process

In the informal process the employee may contact an Equal Employment Opportunity (EEO) Counselor directly or Robert Alderette, Director or Laurie Duval, Assistant Director of EER&R Office, at (916) 324-5482 or CALNET (8) 454-5482, who will assign an EEO Counselor to facilitate resolution of the employee's complaint. A list of designated trained EEO Counselors can be found on Department bulletin boards statewide and on the EER&R Office Intranet site at:

<http://intrepid.hdcdojnet.state.ca.us/doj/division/asd/eo/index.htm>.

Contact should be made as soon as possible. The EEO Counselor, acting as a neutral intermediary, will attempt to informally resolve the issue within 15 working days of the filing of the informal complaint and submit a written report to the EER&R Office. (See SOP, pages 9 and 10 for specific responsibilities and actions required during the informal process.)

B. Formal/Investigative Process

The formal/investigative process begins when the complainant files, with the EER&R Office, a written complaint detailing both the discriminatory, harassing or retaliatory action(s) and how the complainant has been adversely affected. For ease, the complaint can be submitted on a Discrimination Complaint Form (JUS 601). A trained EEO Investigator will then be assigned to conduct an objective fact finding investigation. The EEO Investigator submits a complete report to the director or assistant director of the EER&R Office, and a determination is then made as to whether the Department's discrimination policy was violated. The complainant and subject are notified of the determination, which is the Department's final decision. The Department is expected to render a final decision within 180 days of the filing of a formal complaint. (See SOP, pages 11 - 13 for detailed information of the process.)

Within 30 days following the Department's decision, an employee, if dissatisfied with the decision, may file an appeal with the California State Personnel Board (SPB).

C. Grievance Process

The MOUs for certain collective bargaining units have established a process whereby discrimination, sexual harassment and retaliation complaints can be addressed through the grievance process. Employees choosing this process should refer to their specific MOU and contact their union representative.

D. Mediation

Mediation is an alternative dispute resolution tool available within the Department that promotes better understanding in the workplace and assists employees, supervisor and managers in reaching mutually satisfying solutions in workplace disputes. If involved in a dispute, an employee can request mediation through the EER&R Office. The EER&R Office will contact the other parties to the dispute and, if they are in agreement, will contact the SPB for acceptance and referral to a case developer. If the case is appropriate for mediation and both parties agree to meet, then a date is set. The mediator, assigned from outside the Department, is trained to help disputing parties resolve their differences. During mediation, parties are each given an uninterrupted opportunity to tell their side of the conflict. With the guidance of the mediator, the parties eventually communicate directly with each other to develop options for resolving the conflict. Their communications are confidential.

Mediation can be used to resolve disputes arising out of:

- claims of discrimination;
- requests for reasonable accommodation;
- adverse action;
- medical issues; and
- work environment disputes.

Mediation is non-binding, and participants are free at any point in the process to pursue other avenues to address their concerns, such as filing a formal complaint under this policy. Mediation is not currently available to resolve disputes subject to the Collective Bargaining Unit's Memorandum of Understanding (MOU) contract grievance process.

E. California State Personnel Board (SPB)

If an employee is dissatisfied with the results of the Department's investigation the complainant may appeal to the SPB within 30 days of the date of the Department's final decision. The SPB is required to render a decision within four months of the date of filing the appeal. A discrimination complaint may be filed directly with the SPB when:

- the issues allege retaliation for previously using the discrimination complaint process;
- the remedy requested is outside the authority of the Department;
- the circumstances directly concern a Department director or members of the Department's executive staff; or
- the Department exceeded the 180-days period to render a final decision on the complaint.

Complaints must be filed within 365 days of the alleged occurrence of the discriminatory action or event. An additional 90 days for filing a complaint are granted if the complainant first obtained knowledge of the facts of the unlawful discrimination following the 365-day period. All direct filings of discrimination complaints with the SPB are investigated to determine if jurisdiction has been established.

Allegations of employee misconduct, including the personnel investigation and formal disciplinary processes, are handled by the Department's Personnel Office. If a formal disciplinary action is taken against an employee, the EER&R Office will not ordinarily commence investigation of any claim of discrimination, harassment or retaliation made by that employee if the claim is substantially related to the subject matter of the personnel investigation or disciplinary action. Further, the EER&R Office will ordinarily cease any investigation it has already commenced if the claim is substantially related to the subject matter of the personnel investigation or disciplinary action. Charges of discrimination, harassment and retaliation should be raised in the personnel investigation and disciplinary processes and will be investigated and evaluated as part of those processes. The EER&R Office will, nevertheless, investigate such claims at the discretion of the Director or Assistant Director of the EER&R Office.

F. Department of Fair Employment and Housing (DFEH)

The California DFEH maintains the authority to investigate complaints of employment discrimination. Employees may file DFEH discrimination complaints at anytime during the Department's informal/formal complaint processes. Complaints must be filed within 365 days of the alleged occurrence of discriminatory action, with an additional 90-day extension if the complainant first obtained knowledge of the facts of the discriminatory action after the 365 days. For assistance with this process, an employee can call 1-800-884-1684 (TTY 1-800-700-2320) or obtain information by e-mail to www.dfeh.ca.gov. If the complaint, accepted for investigation by DFEH, falls within the jurisdiction of the United States Equal Employment Opportunity Commission (EEOC), then the DFEH will forward a copy to the EEOC.

G. United States Equal Employment Opportunity Commission (EEOC)

The Federal EEOC investigates charges of employment discrimination. The Commission has jurisdiction over Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act (ADEA) of 1967, the Equal Pay Act of 1963, section 501 of the Rehabilitation Act of 1973, and the Americans with Disability Act of 1990. If the EEOC finds that discrimination has occurred, it will attempt to conciliate the case, and if it fails, may litigate the case. Employees have 300 days after the alleged discriminatory action or within 30 days of termination of any state proceeding, whichever comes first, to file a complaint and must register their complaint at the nearest Commission office to their location. An EEOC complaint, like the DFEH complaint, may be filed concurrently with the Departments's informal/formal complaint processes. As noted earlier, the EEOC and DFEH have a joint filing agreement, so a complaint filed with one agency will automatically be filed with the other.

H. United States Department of Justice

Title VI of the Federal Civil Rights Act and the Omnibus Crime Control and Safe Streets Act of 1968 as amended prohibits specified discrimination by agencies which receive Federal financial assistance. As a grant recipient agency, Department employees or job applicants may file complaints of discrimination with their nearest U.S. Department of Justice Office of Civil Rights or Civil Rights Division in Washington D.C.

DISCLOSURE

The primary law governing the disclosure of information regarding a discrimination complaint is the Information Practices Act (IPA) of 1977 (Civ. Code, §1798 et seq.). In order to protect the privacy of individuals, the IPA places specific requirements on state agencies in the collection, use, maintenance and dissemination of information relating to individuals. Per the IPA, individuals have a right, with exceptions, to information about themselves that are maintained by state agencies.

Other laws that bear on the disclosure of discrimination file records include:

- Public Records Act (Gov. Code, § 6254(c));
- Peace Officers Bill of Rights (POBOR) (Gov. Code, §§ 3300-3309, §§ 3500-3510 et seq.);
- Penal Code Section 832.7;
- Applicable provisions of collective bargaining agreements.

What specific information will be disclosed to parties involved in the Department's discrimination complaint process is as follows:

Informal Counseling Report

- Copies of informal counseling reports are for the use of the EER&R Office only and are kept confidential, as part of the mission of the informal process to resolve differences among employees.

Formal Investigative Report

- In cases of a finding of a violation of the Department's discrimination, harassment or retaliation policies, as determined by the final departmental decision by the Chief Deputy Attorney General, an excised copy of the formal investigation report can, upon written request by the complainant, be reviewed in the EER&R Office. The report will not be given to the complainant.
- If the Department's finding, as determined by the final departmental decision by the Chief Deputy Attorney General, is that no violation of policy can be sustained, then the report will not be released for review by the complainant or any other requesting party.
- Where a peace officer is either the complainant, subject or potential subject, non peace officers **will not** receive the report. Only the peace officer is entitled to obtain an excised copy of the report.

The Department may disclose a formal or informal report when appropriate in the course of litigation.

EMPLOYEE RIGHTS

Government Code section 19702(i) requires cooperation with the Department's informal/counseling and formal/investigative processes. In cooperating, employees are entitled to:

1. Their supervisor or manager taking immediate action to stop the alleged discriminatory behavior as soon as it is reported.
2. An informal, timely and confidential meeting with a competent counselor.
3. Retain anonymity until such time as the counselor is given permission to disclose the employee's identity or until such time as a formal complaint is filed.
4. Representation at each step of the complaint process by a person of the employee's choosing.
5. Freedom from influence to refrain from filing a complaint and freedom from retaliation for filing a complaint.
6. Withdraw the complaint at any time during the process (except in cases where the Department is legally required to protect employees and other individuals from harm).

7. File concurrent complaints with the DFEH and the EEOC, and other compliance agencies, such as the U.S. Department of Justice.
8. A full, objective, prompt investigation by a trained investigator if a formal complaint is filed.
9. A timely decision from the Department after full consideration of all the relevant facts.
10. An explanation of the Department's decision on his or her complaint.
11. Be made whole, if violations occur, and have preventive measures put in place to ensure violations do not reoccur.
12. File directly with the SPB (concurrently with, or subsequent to, reporting the complaint to a supervisor or manager or the EER&R Office):
 - any complaint alleging discrimination by departmental directors or members of his/her executive staff;
 - any issues involving retaliation;
 - when the Department has exceeded its 180-day time frame for completion of the formal/investigation process;
 - any remedy that would be outside the Department's authority; and
 - to appeal the Department's final position.

For employees who are peace officers, in addition to the above rights, Government Code section 3303 allows peace officers the right to be shielded from disclosure of information in reports about them to non peace officers when the complainant or the subject is a peace officer.

RETENTION

All discrimination complaint files are retained by the EER&R Office for at least five years starting from the date the Chief Deputy Attorney General (CDAG) renders the final decision regarding the complaint or the date the file is officially closed.

In instances where the informal/counseling process does not result in a formal/investigation process, records will be maintained for at least five years after the completion of the one-year statute of limitations period for the alleged incident.

In instances where an informal or formal complaint leads to a DFEH/EEOC charge or lawsuit, records will not be purged during litigation.

RETALIATION

No person shall retaliate against any individual because such individual has opposed a discriminatory act or practice or because such individual opposed a discriminatory employment practice or participated in the discrimination complaint process. (Refer to Management Bulletin 03-06, *Anti-Retaliation (For Protected Activity)*.)

**STANDARD OPERATING PROCEDURES (SOP)-DEPARTMENTAL
INFORMAL/COUNSELING PROCESS**

<u>RESPONSIBILITY</u>	<u>ACTION</u>
Complainant	1. Contacts an EEO Analyst in the EER&R Office for direct counseling or counselor referral, nearest EEO counselor or an appropriate supervisor or manager. (Note: The supervisor or manager must take appropriate steps to attempt to resolve the complaint or problem associated with the complaint, if received directly from the employee, either verbally or in writing.)
EEO Analyst	2. Assigns an EEO Counselor within seven working days of receipt of complaint. The EEO Analyst may handle the counseling in lieu of assigning it to an EEO Counselor.
EEO Counselor	3. If complainant contacts EEO Counselor directly, EEO Counselor immediately notifies EEO Analyst to advise of complaint status. 4. Meets with complainant, listens to complaint and determines if the complaint meets EEO discrimination jurisdictional requirements, in accordance with the EEO Counselor checklist. a. If within its jurisdiction, the counselor, acting as a neutral intermediary, attempts to resolve the complaint. b. Notifies the EEO Analyst of the complaint issue(s) and discusses in what manner they will proceed. c. If not within its jurisdiction, immediately informs the complainant and ends the EEO counseling process and provides other options. 5. Informs complainant of the discrimination complaint process, employee rights and responsibilities, required time frames and confidentiality. Provides complainant with a copy of the applicable management bulletins. 6. Informs complainant that in order to effectively seek resolution confidentiality cannot be guaranteed. 7. Gathers sufficient information relevant to the complaint from appropriate parties, facilitates efforts to resolve complaint and keeps EER&R Office apprised of progress.

- EEO Counselor
8. Meets with the complainant and discusses the results of the complaint.
- a. If the complaint is resolved:
1. Sends a follow up closing memo summarizing the complaint to the complainant and the subject within 15 working days advising them of complaint resolution.
 2. Sends a copy of closing memo, the completed counseling report and all related materials (summary of interviews, resolution, etc.) to the EER&R Office within 15 working days.
- b. If the complaint is not resolved:
1. Provides a copy of the form JUS 601, Complaint of Discrimination, to the complainant.
 2. Advises the complainant of filing options (see page two of the Discrimination, Harassment and Retaliation Complaint Procedures).
 3. Sends a follow up closing memo to the complainant and the subject, within 15 working days, summarizing the complaint and advising them of the outcome.
 4. Sends a copy of the counseling closing memo, the completed counseling report and all related materials (summary of interviews, resolution, etc.) to the EER&R Office within 15 working days.
- EEO Analyst
9. Notifies the supervisor/manager of the complaint and advises them whether the complaint was resolved or not resolved. Sends the Division Chief/Director an informational copy of the counseling closing memo.
10. Maintains counseling records in accordance with the retention guidelines on page six.

End of Informal/Counseling process.

STANDARD OPERATING PROCEDURES (SOP) - DEPARTMENTAL FORMAL/INVESTIGATIVE PROCESS

<u>RESPONSIBILITY</u>	<u>ACTION</u>
Complainant	1. Files a letter or formal written complaint with the EER&R Office within <u>365 days</u> from the date of the alleged incident, with an additional 90-day extension if the complainant first obtained knowledge of the facts of the discriminatory action after the 365 days. (Note: The time utilized in the informal complaint process is counted when calculating the timeliness of the formal complaint.) The DOJ "Complaint of Discrimination," JUS 601 form is available for use, but is not required.
EER&R Director	2. Reviews the letter or complaint for a prima facie showing that the Department's discrimination policies have allegedly been violated and verifies jurisdiction, i.e., basis and issue, standing, coverage and time lines. If <u>not</u> within its jurisdiction, immediately informs complainant. If within its jurisdiction, proceeds with investigation. 3. Assigns the complaint to an EEO Investigator. 4. Sends a notice in the form of a letter or memo to the complainant, subject and Division Chief/Director informing them that an investigation will be conducted, including the name of the assigned EEO Investigator. Unless the EER&R Director is notified in writing to the contrary, correspondence to the complainant and the subject will be mailed to their home addresses.
EEO Investigator	5. Gathers and reviews all sources of evidence. Conducts interviews with the complainant, subject and appropriate witnesses to obtain statement of facts. 6. Analyzes and evaluates the evidence to determine whether the findings of fact support the allegations. 7. Prepares a written investigation report summarizing the finding of facts. 8. Submits the investigation report to the EER&R Office within <u>120 days</u> . (Note: The Department has <u>180 days</u> to render a final decision.)
EER&R Director	9. Reviews the EEO Investigator's report and provides a review of the findings of fact within 20 days. 10. Makes recommendation to the Chief Deputy Attorney General (CDAG). 11. Sends the EEO Investigator's report and the EER&R Director's

recommendation to the CDAG.

12. Provides the Division Chief/Director with an informational copy of the EER&R Director's recommendation.

IN CASES WHERE THERE IS A FINDING OR VIOLATION OF THE DEPARTMENT'S POLICY

RESPONSIBILITY

ACTION

Chief Deputy
Attorney General

1. Reviews the EEO Investigator's report and the EER&R Director's recommendations.
2. Makes the final departmental decision within 20 working days of receiving the EEO Investigator's report and the EER&R Directors's recommendations.
3. Sends final departmental decision letter to the complainant, the subject and the Division Chief/Director. The complainant has 30 days to appeal to SPB. Unless the Chief Deputy is notified in writing to the contrary, correspondence to the complainant and the subject will be mailed to their home addresses.

Division Chief

4. Upon notification from the CDAG of the final Director Departmental decision:
 - a. Reviews the CDAG's departmental decision;
 - b. Advises the appropriate supervisor/manager (only those who need to know) of the decision;
 - c. Informs the subject of corrective action(s) and ensures implementation; and
 - d. Notifies the EER&R Office of the date the corrective action will be implemented.
5. Collects the following information within 30 days of the CDAG's notification:
 - a. Names and title of supervisors and managers in the individual's chain of supervision;
 - b. Names of supervisors and managers who knew or should have known of the alleged conduct or complaint;
 - c. Names of supervisors and managers who knew or should have known of alleged conduct or complaint but failed to take action;

- d. List any steps taken by supervisors and managers to stop alleged conduct; and
 - e. List any steps taken or planned to be taken to ensure that the discrimination is not repeated.
6. Notifies the CDAG in writing of proposed corrective action(s), with a copy forwarded to the EER&R Director.
- Chief Deputy
Attorney General
7. Review's the Division Chief's/Director's proposed corrective action plan. The CDAG may approve, amend or deny the Division Chief's/Director's action plan.

IN CASES WHERE THERE IS NO FINDING OR VIOLATION OF THE DEPARTMENT'S POLICY

RESPONSIBILITY

ACTION

- Chief Deputy
Attorney General
- 1. Reviews the investigation report and the EER&R Director's recommendations.
 - 2. Renders the *final* departmental decision within 20 working days of receiving the EEO Investigator's report and the EER&R Director's recommendation.
 - 3. Sends final departmental decision letter to the complainant and the subject with an informational copy to the Division Chief/Director. Unless the Chief Deputy is notified in writing to the contrary, correspondence to the complainant and the subject will be mailed to their home addresses.
 - 4. Informs complainant that they have 30 days in which to appeal to the SPB.

End of Formal/Investigative Process

Department of Justice Discrimination Complaint Process

