

POLICY

Discrimination Policy and Complaint Procedures

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Distribute to All DCA Employees & Executive Officers, Bureau, Program, Policy & Division Chiefs	Approved by _____ Title _____		
Originating unit Equal Employment Opportunity Office	Policy partners None		
Author _____			
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Purpose The purpose of the discrimination complaint procedures is to provide all DCA employees and applicants for employment with a uniform method to raise allegations and complaints of discrimination. The procedures are intended to resolve complaints at the lowest possible organizational level, while assuring that such allegations and complaints receive full consideration and appropriate remedy as applicable, without fear of reprisal or retaliation. These procedures for resolving discrimination complaints shall be adopted by all Boards, Bureaus, Divisions, Programs and Commissions.

Complaints of discrimination, which the Department has authority to investigate, must allege that the complainant was discriminated against on the basis of age, race, sex (including sexual harassment), ancestry, color, religion, disability, national origin, marital status, political affiliation or opinion, sexual orientation, pregnancy, or retaliation. (See the attachment entitled "Basis of Discrimination").

Applicability All employees, including Executive Officers, Bureau, Program, Policy and Division Chiefs.

Policy It is the policy of the Department of Consumer Affairs (DCA) to enforce and promote all laws, rules and regulations prohibiting discrimination based on age, race, sex (including sexual harassment), ancestry, color, religion, sexual orientation, pregnancy, or such other classifications as may be provided specific protection in employment by California or United States Statute. All Departmental policies and practices in employment, development, advancement and treatment of its employees must be free of unlawful discriminatory practices.

Authority State and Federal laws mandate that employees have the right to work in an environment that is free from all forms of discrimination. The key legal mandates are referenced below:

- Title VII of the Civil Rights Act of 1964
- Government Code Sections 19700-19706
- Government Code Section 12940

Age Discrimination Acts of 1967 and 1978
Pregnancy Discrimination Act of 1978
Americans with Disabilities Act of 1990
Federal Rehabilitation Act of 1973
Equal Pay Act of 1963
California Executive Order B-54-79
Labor Code Section 1102.1 (2), Sections 1101 and 1102

Provisions ROLES AND RESPONSIBILITIES:

Equal Employment Opportunity (EEO) Manager

The EEO Manager is responsible for providing leadership in resolving informal and formal complaints of discrimination by working with managers and supervisors, providing EEO counseling, and investigating complaints as necessary. He/she must determine if the Department has jurisdiction: The legal power to act on a complaint in order to investigate it or attempt resolution.

A complaint can be received formally or informally, directly from the complainant, with or without the supervisor's knowledge. It can be forwarded by a supervisor after initial review or it can be brought to the attention of the EEO Manager by a third party.

The EEO Manager is responsible for developing and implementing a plan to resolve each individual complaint. The plan can include 1) EEO counseling, 2) informal complaint resolution procedures, and/or 3) procedures for formal complaint investigation and findings.

Managers and Supervisors

It is the managers/supervisors' responsibility to:

promote a discrimination-free work environment, and take appropriate action to prevent or stop any and all forms of discrimination, including sexual harassment;
ensure that all employees are informed of the Department's discrimination complaint process prior to the need to know, and again if a complaint is brought forth;
ensure that subordinate managers/supervisors and employees attend training as a preventive measure, and to sensitize them to conduct and/or behavior that constitutes discrimination and the consequences of such actions.

When a discrimination complaint is filed (formally or informally) or brought to the managers/supervisors' attention, it is the managers'/supervisors' responsibility to:

Listen to the complainant and take the complaint seriously (employees should not be discouraged from reporting such complaints);

Provide the complainant with a copy of the Statement of Rights (Form 99K-70, attached);

Contact the EEO Office immediately. The EEO Manager will provide assistance to resolve the issue informally or determine if other action is necessary;

Record and document the complaint and perform an immediate preliminary investigation to determine the validity of the complaint;

Provide a copy of the preliminary investigation report to the EEO Office regardless of the findings;

In conjunction with the EEO Office, initiate appropriate and immediate action against the respondent where discrimination is found;

Ensure that the complainant is made aware of the actions taken against the respondent (within guidelines of the Information Practices Act) to give the victim a sense of redress;

Protect the employee(s) complaining of discrimination or sexual harassment from any reprisal or retaliation.

EMPLOYEES

An employee who perceives the comments, gestures, or actions of another employee, supervisor or manager to be discriminatory and offensive should immediately communicate to that person that such behavior is not appropriate and/or is unwelcome. Employees who feel threatened or have difficulty expressing disapproval may seek informal assistance from the EEO Office. Failure to confront the harasser, however, does not interfere with the employee's rights to file a discrimination complaint.

an employee who believes he/she has incurred discrimination or witnessed discrimination has the responsibility to report it to the appropriate supervisor or the EEO Office and to provide all relevant information in a manner that allows the Department the best opportunity to resolve the complaint at the lowest level possible.

An employee or applicant for employment may file a discrimination complaint informally, formally, or externally. The complainant decides which level or type of complaint to file. He/she may contact the EEO Office at any time to consult with staff to determine if his/her concerns constitute discrimination.

PROCEDURES FOR RESOLVING DISCRIMINATION COMPLAINTS

The stages of the discrimination complaint process are described below. Before discussing them, however, there are several points that should be highlighted.

The identification of qualified and capable persons to serve as equal Employment Opportunity Counselors and Investigators is critical to the success of DCA's discrimination complaint process. It is the responsibility of the EEO Manager to see that persons selected to these positions (if they are not already part of the EEO Office staff) are knowledgeable, empathetic, flexible and resourceful people who can diplomatically correct misunderstandings and help forge stronger relationships between people working in the same work environment. He/she must maintain the employees' concerns in the strictest confidence.

Those who conduct investigations must maintain the role of fact finder. His/her responsibility is to assemble enough information to provide a basis for deciding whether the action was or was not discriminatory. Therefore, he/she should never act in such a way as to leave an impression of personal interest in the outcome of the investigation. The EEO Counselor should also avoid becoming the intermediary between the complainant and the Department in any efforts on their part in seeking a resolution of the complaint during an investigation. The importance of neutrality cannot be overemphasized. The EEO Investigator must not communicate any personal judgement or opinion on the merits of any complaint he/she investigates.

The Department has two levels for raising concerns of possible discrimination: an informal process using trained EEO Counselors and a formal process using trained EEO

Investigators. Employees are urged to resolve complaints on an informal process and file a complaint of discrimination directly through the formal process.

INFORMAL COMPLAINT PROCESS

To initiate an informal complaint of discrimination, an employee or job applicant may:

Contact the EEO Office at (916) 322-9861 and request a referral to an EEO Counselor; or Complete a Discrimination Complaint Form (99K-60, attached) designating Informal and submitting it to the EEO Office. The EEO Manager will review the complaint to determine whether or not the allegations fall within the EEO Office jurisdiction, and, if merited, will assign the case to an EEO Counselor.

The EEO Counselor will:

provide the complainant with a copy of the Statement of Rights (Form 99K-70);
discuss the complaint with the complainant and the appropriate Office Manager/supervisor or Executive Officer or Bureau/Division Chief, where appropriate, to assess whether the issues can be resolved within thirty (30) days;
conduct a preliminary investigation;
determine whether informal resolution is the most appropriate means to resolve the issues;
propose a course of action and discuss the proposal with the complainant and other parties evolved to determine if the resolution is acceptable and can be accomplished within 30 days;
if the complaint is resolved to the complainant's satisfaction, provide the complainant and management with a confirmation of informal complaint resolution on the actions that have or will be taken to resolve the issues; inform the complainant of appeal rights and plans for future monitoring;
if the complaint cannot be resolved within 30 days on an informal basis, the complainant will be advised of the right to file a formal complaint.

FORMAL COMPLAINT

To file a formal complaint of discrimination, a Discrimination Complaint Form (99K-60) must be completed, designated Formal, and submitted to the EEO Office.

The EEO Manager will:

review the complaint to determine whether the allegations fall within the EEO Office's jurisdiction.
if merited, notify the complainant in writing that the complaint will be investigated and provide the complainant with a Statement of Rights (Form 99K-70); or
if outside the jurisdiction of the EEO Office, direct the employee to the appropriate process for resolution of his/her issue. This may include referral to the Personnel Office, the complainant's supervisor, the Return-to-Work Coordinator, the Labor Relations Office, etc.

The EEO Investigator will:

investigate all aspects of the complaint.
prepare and submit a report of findings to the EEO Manager.

The EEO Manager will:

evaluate the evidence and make a determination on the allegation(s).

submit the report with recommendations for resolution to the Director for review and approval.
notify the complainant and the respondent of the findings.
notify management, where appropriate, of the findings and proposed action.
as necessary, work with the Legal Office to carry out measures to make the complainant whole or to carry out adverse action(s).
work with management and supervisors to implement corrective measures.

ADDITIONAL INFORMATION:

ACCESS TO RECORDS

The EEO Office shall have access to all information deemed necessary to determine the validity of the complaint in both the informal and formal stages of the process. The cooperation and assistance of all employees, supervisors and managers involved is required. If an employee of the Department refuses or threatens to refuse to cooperate in an investigation, the State Personnel Board (SPB) may directly investigate or hear the complaint. Subpoenas or any other action deemed appropriate will be used to effect the purpose of the investigation.

APPEAL PROCESS

A complainant who is not satisfied with the Department's decision may file an appeal with the Executive Officer of the SPB within thirty (30) days from the date of receipt of the Department's decision, in accordance with Article 4, Rules 51.2 and 547.1 of the SPB Regulations.

A complaint that is not resolved by the Department within 180 days from the date of formal filing with the Department, may be referred to the State Personnel Board as an appeal for remedial action.

CONFIDENTIALITY

Generally, all discussions with a complainant are confidential and resolution will not be pursued without the concurrence of the complainant. However, when the issues are serious in nature (sexual harassment) or involve potential criminal activity, (abuse, rape, property damage) the EEO Manager or the EEO Counselor must advise the complainant that the information provided must be referred to the appropriate authority in order to remedy the conduct of the offending party. In addition, once the complainant requests resolution, confidentiality may no longer be assured.

When a complaint becomes formal, confidentiality provisions do not apply. Persons charged with discriminatory practices will be informed of the charge and allowed to respond once an investigation is initiated. Information gathered during the investigation regarding the complainant or charged party(s) will be kept confidential to the extent possible.

Persons interviewed during an investigation shall be informed that their comments will remain confidential unless the information is to be used for a basis for action. In these cases the information may be presented in a public forum.

Involved participants will be informed that Federal and State EEO regulatory agencies require a report on both formal and informal discrimination complaints filed with the Department. The identity of the complainant and other involved persons may be released to those agencies.

PARALLEL REVIEW

the discrimination complaint procedure is separate and distinct from employee grievance procedures. an employee will not be allowed a parallel review under both the employee grievance and discrimination complaint procedures.

Complaints or issues that do not allege discrimination are handled through the employee grievance procedure or other applicable processes. The Personnel and Labor Relations Offices could be involved.

The grievance procedure is used to address terms and conditions of employment such as working hours, out of class claims, overtime requirements, etc.

If a grievance is found to meet the discrimination complaint criteria, the grievance process will cease at that point and the matter will be referred to the EEO Office.

If during the course of the DCA discrimination complaint investigation, a rejection during probation or an adverse action appeal is filed with the SPB and the employee alleges discrimination, the Department will suspend its investigation and the complaint will be examined and adjudicated by the SPB.

RELEASE TIME

The complainant may use a reasonable amount of State time based on the complexity and sensitivity of the issues, as determined by the EEO Manager, to discuss the complaint with a certified EEO Counselor or an EEO Investigator.

RETALIATION AND INTIMIDATION

No person shall intimidate, threaten, coerce, or discriminate against any individual because he/she; 1) opposed an employment practice made unlawful by the laws (Federal and State) prohibiting employment discrimination; or 2) made a complaint or testified, assisted, or participated in any manner in any investigation, proceeding, or hearing regarding a discrimination complaint.

RIGHT TO REPRESENTATION

The complainant has the right to representation at each step of the process by a person of his/her choosing.

TIME LINES

Filing Complaints

An employee or applicant has the right to file a discrimination complaint immediately after such incident occurs and has up to three hundred sixty-five (365) calendar days to file the complaint. This period may be extended up to 90 days if a person allegedly aggrieved by the discrimination first obtained knowledge of the facts after the expiration of the one-year period.

A Discrimination Complaint Form (99K-60) must be completed by the complainant, indicating whether the complainant wants to file an informal or formal complaint.

The time requirement for filing a discrimination complaint is in conformity with all other Federal and State statutes and policies. However, both the Department of Fair Employment and Housing and the Federal Equal Employment Opportunity Commission Title VII guidelines do not allow the additional 90-day exception provided under the SPB administered process.

RESPONDING TO COMPLAINTS

Upon receipt of a Discrimination Complaint Form (99K-60), the EEO Office will review the complaint and notify the complainant within ten(10) days whether the allegations(s) meets the criteria to be handled through the discrimination complaint procedure.

In accordance with the Department of Consumer Affairs stated process, the Department has one hundred eighty (180) calendar days from the date the complaint is filed to issue a final decision on a formal discrimination complaint. This time frame may be extended upon mutual written agreement with the EEO Manager and the complainant.

The Department has thirty (30) days to resolve an informal discrimination complaint. If the complaint cannot be resolved in 30 days, the complaint will be handled formally unless the complainant and the EEO Manager have agreed to extend that period.

EXTERNAL COMPLIANCE

EXTERNAL COMPLIANCE AGENCIES

The department discrimination complaint procedures are not intended to prohibit employees from filing a charge of discrimination with the State Personnel Board (SPB), the Equal Employment Opportunity Commission (EEOC), the Department of Fair Employment and Housing (DFEH), and/or the Division of Labor Standards Enforcement (DLSE), Department of Industrial Relations. Employees are not required to exhaust the administrative procedure to file a formal discrimination complaint prior to exercising their right to file with an outside compliance agency.

The SPB will accept direct jurisdiction of a discrimination complaint under the following four circumstances:

When the complainant is alleging discrimination based upon retaliation;

When the circumstances directly involve a high level administrator of the Department; or

When the Department has exceeded its 180-day requirement to respond to the complaint.

The EEOC and DFEH maintain separate jurisdiction over discrimination complaints filed by State civil service employees. By mutual agreement, both EEOC and DFEH will cross-file discrimination complaints between each agency; thus the agency initially receiving the complaint will automatically cross-file with the other agency.

The Department of Industrial Relations, Division of Labor Standards Enforcement (DLSE) handles complaints of discrimination on the basis of sexual orientation.

PROCESS

The external agency makes it a practice to notify the Department that a complaint has been filed and may request information pertaining to the complaint. Commonly EEOC, DFEH, and SPB will file a notice with the Department's Equal Employment Opportunity Office, advising that a complaint has been filed and requesting a position statement on the charges filed.

Should the notice of filing be received at the Board/Bureau/Division, a copy of the notice should immediately be forwarded to the EEO Office for response.

The EEO Office is responsible for providing a response to the outside compliance agency. The EEO Office sends a request to the appropriate Executive Officer, Division/Policy Chief with a copy of the charges filed. The Board/Bureau/Division is requested to provide the needed information within two weeks.

Because the complaint filed with an outside compliance agency in essence names the Department itself as "respondent", the information contained in the complaint should be maintained as sensitive in nature. Those persons directly named in a charge filed with an outside compliance agency are notified directly by the compliance agency.

All files will be maintained and monitored by the EEO Office. The EEO Office will be responsible for making any determination of case file information release. Any request for information contained in a discrimination complaint investigative file needs to be referred to the EEO Office.

Attachments:

Basis of Discrimination

Discrimination Complaint Process Flowchart

Discrimination Complaint Form (99K-60)

Statement of Rights Form (99K-70)

Acknowledgement of Receipt and Understanding of Discrimination Policy and Complaint Procedures

Revisions

Determination of the need for revision of this policy is the responsibility of the Chief, Equal Employment Opportunity Office (EEO). Questions about the status or maintenance of this policy should be directed to the Policy, Research and Planning Division at (916) 322-3525. Questions about Discrimination Policy Complaint Procedures should be directed to the EEO At (916) 322-9861 or to the EEO hotline at (888) 226-5001.

Related documents

Basis of Discrimination

Discrimination Complaint Process Flowchart

Discrimination Complaint Form (99K-60)

Statement of Rights Form (99K-70)

Acknowledgement of Receipt and Understanding of Discrimination Policy and Complaint Procedures