

CITY OF SAN DIEGO
ADMINISTRATIVE REGULATION

SUBJECT EQUAL EMPLOYMENT OPPORTUNITY POLICY AND COMPLAINT RESOLUTION PROCEDURES	Number 96.50	Issue 2	Page 1 of 8
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1. PURPOSE

- 1.1. To reaffirm and communicate the City of San Diego's commitment to the principles of equal opportunity and to a work environment free of discrimination, harassment and retaliation.
- 1.2. To establish procedures for effectively handling *Reports* of potential violation of the City's Equal Employment Opportunity Policy when such *Reports* are brought forward within City departments, and to ensure that *Reported* issues are resolved in a prompt, appropriate and consistent manner which supports and promotes the well-being of employees as well as the business needs of the City.

(*Reports* of EEO Policy violations which are filed with the Personnel Department's *Equal Employment Investigations Office* will be handled pursuant to Civil Service Rule XVI and Personnel Manual Index Code K-2. See Section 5.8.1 for additional *Reporting* options available to employees).

2. SCOPE

- 2.1. This policy shall apply to all employees in the City of San Diego, including contract employees, interns and volunteers.

3. DEFINITIONS

- 3.1. *Equal Employment Opportunity Committee (City EEOC)* – Committee composed of representatives from the Human Resources Department, the City Attorney's Office, *Equal Employment Investigations Office*, and representative managers from operating departments, which meets on a periodic basis to review and recommend changes in the City's EEO policies and procedures.
- 3.2. *Equal Employment Investigations Office (EEIO)* – Located within the Personnel Department, this office is responsible for the administration of the City's internal program for the investigation and resolution of *Complaints* or charges of unlawful discrimination based upon Title VII of the Civil Rights Act of 1964. The *EEIO* acts as the City's liaison and primary contact with all Federal and State compliance agencies. As such, it is the duty of the *EEIO* to officially receive and process formal *Complaints* lodged by the agencies;

(Supersedes Administrative Regulation 96.50, Issued 1, effective September 5, 2000)

Authorized

Signature on File

CHIEF OPERATING OFFICER

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investigate and respond to such *Complaints*; arrange and schedule employee interviews and provide access to relevant records when requested by the state or federal agent or officer; and to receive and respond to any findings of fact presented by the compliance agencies as a result of their investigation. In addition, the *EEIO* receives internal *Complaints* directly or indirectly from applicants for City employment, employees, former employees, contract employees, interns, and employee representatives.

- 3.3. *Department Head* – All *Department Directors* and *Executive Directors* responsible for a Department or a Program.
- 3.4. *Deputy Director* - For this A.R., “*Deputy Director*” shall mean all positions given the Appointing Authority responsibility generally exercised by the head of a division, or major sub unit, within a department.
- 3.5. *Supervisor* – Any employee who has authority to undertake or recommend employment decisions, including authority to direct the daily work activities, review work performance, and recommend or implement disciplinary actions affecting one or more City employees. This includes first-level *Supervisors* and above.
- 3.6. *Complaint (or Report)* – An allegation of potential violation of the City’s EEO Policy, as documented on an EEO *Report Form* (see EDP-100).
- 3.7. *Complainant (or Reporting Employee)* – An individual *Reporting* a potential violation of the City’s EEO Policy.
- 3.8. *Subject Employee* – An individual who has allegedly violated the City’s EEO Policy.

4. POLICY

- 4.1. The City of San Diego’s Equal Employment Opportunity Policy is incorporated into this Administrative Regulation by reference as if fully duplicated at this point.

5. RESPONSIBILITY

- 5.1. *Equal Employment Opportunity Committee (City EEOC)*

The *City EEOC* will serve as the City’s working body for the review of Citywide EEO policies and procedures. This committee will meet periodically to discuss changes in federal and state EEO law and their impact on City procedures and policies; will review unique or atypical EEO *Complaints* and investigations to ensure procedural issues are adequately addressed; will review the impact this Administrative Regulation has on improving the City’s EEO *Complaint* resolution efforts; and will educate and inform departments on EEO issues.

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5.2. Human Resources Department

The Human Resources Department will serve as an additional resource regarding individual or Citywide EEO policy issues.

5.3. Personnel Department - *Equal Employment Investigations Office (EEIO)*

It is the responsibility of the *EEIO* to record, track, and periodically review *Complaint* filings to identify potential areas of concern with regard to the timeliness of investigation and the resolution of complaints by departments. (Additional responsibilities of this office are outlined in Personnel Manual Index, Code K-2.)

5.4. City Attorney's Office

The City Attorney's Office shall review and disseminate, on an ongoing basis, any changes to the statutory requirements concerning EEO issues. The City Attorney's Office shall also review new cases interpreting the statutes. Any changes in the laws will be brought before the EEO Committee, which will review such changes and recommend necessary City-wide policy revisions.

5.5. *Deputy Director*

The *Deputy Director* shall be responsible for ensuring that individual *Reports* of potential EEO Policy violations are processed and resolved consistent with this regulation. The *Deputy Director* will be accountable for monitoring patterns of *Complaints* within their areas of responsibility and for ensuring that steps are taken to address potential violations on a preventive basis.

5.6. *Supervisors*

5.6.1. *Supervisors* are required to monitor City workplaces for actual or alleged violations of the EEO Policy and to take steps to stop actions contrary to these policies when they occur. Specifically, *Supervisors* shall:

- a. use appropriate education and training measures to both inform employees regarding the City's EEO Policy, and to ensure that employees are aware of the procedures for *Reporting* potential policy violations;
- b. stop behavior in violation of the City's EEO Policy when directly observed or upon direct knowledge of;
- c. ensure that instances of actual or potential EEO Policy violations are *Reported* as outlined in Section 5.8, below;

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- d. manage the effect in the workplace of EEO Policy violation *Reports* by maintaining confidentially, insofar as practical, regarding the allegations, the *Complainant* and other identified individuals; and
- e. ensure that individuals involved in EEO investigations, either as the *Complainant*, *Subject Employee*, or as a witness, are not subjected to direct or indirect retaliation.

5.7. Employees

- 5.7.1. It is the City's policy that employees must set an example of acceptable conduct and will not participate in or provoke behavior that is discriminatory, harassing, or retaliatory.
- 5.7.2. Employees who observe or feel they have been subjected to conduct in violation of the City's EEO Policy should *Report* these as outlined in Section 5.8.1, below.
- 5.7.3. In addition, employees are responsible for maintaining confidentiality when they participate in a *Complaint* process as a witness, subject or *Complainant*.

5.8. *Report* Origination Procedure

- 5.8.1. If an employee believes that a violation of the City's EEO Policy has occurred, she/he is encouraged to *Report* these instances immediately to any of the following (the employee does not have to follow the departmental or divisional chain of command):
 - a. The employee's *Supervisor*;
 - b. Another *Supervisor* within or outside the employee's "chain-of-command"
 - c. The employee's *Deputy Director*, or *Department Head*
 - d. The departmental Human Resources office
 - e. The Human Resources Department (619) 236-6313
 - f. The Personnel Department's EEIO, at:
1200 3rd Avenue, Suite 1501
San Diego, CA 92101
Telephone: (619) 236-7133
Fax: (619) 236-7138
The time frame for filing a *Complaint* is one year from the most recent incident.
 - g. The State of California Department of Fair Employment and Housing (DFEH), at:
Telephone: (800) 884-1684
Website: <http://www.dfeh.ca.gov>
The time frame for filing DFEH *Complaints* is one year from the date of the alleged violation.

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- h. U.S. Equal Employment Opportunity Commission (U.S. EEOC), at:
555 West Beech Street, Suite 504
San Diego, CA 92101
Telephone: (619) 557-7235
Website: www.eeoc.gov
The time frame for filing U.S. EEOC *Complaints* is 180 days from the date of the alleged violation.

- 5.8.2. If the employee *Reports* possible violations to any of the above, the *Complaint* procedures listed in this section shall apply.
- a. *Complaints* filed with the Personnel Department's *EEIO* will be subject to procedures detailed in Personnel Manual Index Code K-2.
 - b. *Complaints* filed with the DFEH or U.S. EEOC will be subject to procedures of the respective agencies.
 - c. The ability to complete an effective and thorough investigation is in part dependent upon the length of time between the alleged act and when it is *Reported*.

5.9. *Complaint* Intake Procedure

- 5.9.1. *Supervisors* shall complete and forward to their *Deputy Director*, an Equal Employment Opportunity *Report* Form in any of the following instances:
- a. an employee expresses a desire to file a *Complaint* of potential EEO Policy violation;
 - b. discussions with an employee leads the *Supervisor* to believe that an EEO Policy violation with regard to workplace harassment may have occurred, whether or not the employee wishes a *Complaint* filed; or
 - c. a *Supervisor* determines that observed employee behavior is one which is contrary to City's EEO Policy and which will likely lead to written discipline.
- 5.9.2. Instructions on proper EEO *Report* Form completion and routing, including key information to be aware of when taking an employee *report*, are found on the back of the form.
- 5.9.3. When completing the EEO *Report* Form, the *Supervisor* shall:
- a. also inform the *Complainant* of the alternate *Reporting* avenues listed in Section 5.8.1;
 - b. advise the employee that confidentiality will be maintained to the highest degree possible, but cannot be guaranteed; advise the employee of his/her responsibility to protect confidentiality;
 - c. inform the employee that she/he will be officially notified of *Complaint* results; and

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- d. emphasize that if the employee feels she/he is being retaliated against, she/he should notify any of the individuals listed in Section 5.8.1 above immediately.

These points are summarized on the Employee Record portion of the EEO Report Form, (see EDP 100) which the *Supervisor* and *Employee* shall sign for the record.

- 5.9.4. All *Complaints* received shall be held in strict confidence to protect individual privacy rights and the reputations of those involved, and will be shared only with individuals who have a legitimate operational responsibility for investigating or resolving the issues identified.

5.10. EEO Report Form Review and Delegation for Action

- 5.10.1. The *Deputy Director* shall review the EEO Report Form and determine what, if any, additional action will be taken (e.g. formal fact finding) including by whom and when. The *Deputy Director* shall route a preliminary copy of the EEO Report Form to the *EEIO* through confidential transmittal, and refer, if appropriate, the *Reported* issue(s) to the delegated staff member for follow-up action, to be completed within 60 days absent extenuating circumstances.

- 5.10.2. A management designee, shall review the final results of any investigatory or follow-up action for thoroughness and consistency with established EEO policies, procedures and City-wide investigatory practices. (For actions involving formal fact finding investigations, refer to the Dimensions in Discipline training manual, which outlines appropriate procedures for effectively completing these types of investigations.)

- 5.10.3. Upon the conclusion of the follow-up action, notification is made to the *Reporting* and *Subject Employees* that the preliminary investigation, or follow-up action, has been completed. (No *Report Determination* information, such as that outlined in Section 5.11.1, is shared at this time.) The *Subject* and *Reporting Employee* are also notified that they will be informed of final determination subsequent to any disciplinary action and appeal, within an additional 60 days.

5.11. Report Determination and Close-Out

- 5.11.1. Upon conclusion of the disciplinary process and appeal, if any, the *Deputy Director* shall record the final determination of the *Complaint* on the EEO Report Form, based on the following classifications:
 - a. Unfounded – The alleged act(s) did not occur.
 - b. Not Sustained – Follow-up investigation could not clearly prove or disprove the allegations

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- c. No Violation – Alleged act(s) did not violate any City Policy
- d. Violation of City EEO Policy – Alleged act(s) occurred and violate the City’s EEO Policy.
- e. Violation of City Policies – Alleged act(s) occurred and violate City Policy(ies).

5.11.2. The *Deputy Director* or his/her designee will ensure that the *Reporting* and *Subject Employees* are notified of the final determination of the *Complaint*, based on the classifications above. The date of notification and the signature of the individual performing the notification shall be recorded on the *EEO Report Form*.

5.11.3. The *Deputy Director* shall ensure that appropriate disciplinary measures are taken against any employee who violates the City’s EEO Policy or procedures. The final action(s) resulting from the *Complaint* (e.g., reprimand, counseling) is recorded on the *Complaint form*.

5.11.4. The *Deputy Director* shall designate appropriate follow-up contact with the *Complainant*, witness, or others who may have participated in any investigation, to ensure that direct or indirect retaliation has not taken place. Follow-up action(s) to be performed are recorded on the *EEO Report Form* in the space provided. The original form is then signed by the *Deputy Director* and forwarded to the *EEIO* for records retention.

5.12. Records Maintenance

5.12.1. The Personnel Department’s *EEIO* shall maintain a record of *Report Form* filings. The *EEIO* shall maintain these records in such a fashion that a list of *EEO Report* filings whose final determinations have not been completed within 120 days shall be forwarded to the respective *Department Heads* to ensure prompt completion, absent extenuating circumstances. This 120 day period is defined as the time between the date of *Report* filing and notification to the *Reporting Employee* of the final *Complaint* determination.

5.12.2. The *EEIO* will review incoming *EEO Report Form* filings and bring forward to departments any specific issues regarding these filings, based upon the circumstances surrounding individual policy violations or violation trends.

5.12.3. The *EEIO* will maintain the confidentiality of *EEO Report Form* records by releasing information only at the request of *Department Heads, Deputy Directors,* or appropriate designees for good and sufficient cause.

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APPENDIX

Legal References

Civil Service Rule XVI - Discrimination *Complaints*
Personnel Manual Index Code K-2, Discrimination *Complaint* Procedures
“Fact Finding Investigations” - Dimension in Discipline Manual
Equal Employment Opportunity Policy – Annual Statement

Forms

Equal Employment Opportunity *Report* Form (EDP-100)

Subject Index

Personnel
Equal Employment Opportunity Policy and *Complaint* Resolution Procedures

Administering Department

Personnel Department



THE CITY OF SAN DIEGO
Equal Employment Opportunity
REPORT FORM (AR 96.50)

(SEE REVERSE OF PAGE 3 FOR INSTRUCTIONS)

Ref- _____

1 NAME (TYPE OR PRINT) _____ SS# _____ DATE _____

JOB CLASS _____ DEPT./DIV. _____

WORK LOCATION _____ SUPERVISOR _____

WORK PH. _____ (ALTERNATE PH. _____) WORK PH. _____

2 CONCERNS EXPRESSED BY EMPLOYEE (WHO, WHAT, WHERE, WHEN, HOW LONG HAS THIS BEEN GOING ON? HAVE YOU TOLD ANYONE ELSE?):

WITNESS LIST ATTACHED
 ADDITIONAL PAGES ATTACHED

3 WHY DOES THE EMPLOYEE FEEL THE ABOVE EVENT(S) IS / ARE OCCURRING?

ADDITIONAL PAGES ATTACHED

REMEDY SOUGHT BY EMPLOYEE: NO REMEDY SOUGHT

4 IMMEDIATE CORRECTIVE ACTION TAKEN, IF ANY (NON-DISCIPLINARY):

ADDITIONAL PAGES ATTACHED

5 FILING AND ROUTING RECORD:

REPORTING SUPERVISOR: _____ SIGNATURE _____ DATE _____

ROUTED TO (PRINT): _____ SIGNATURE _____ DATE _____

6 EEO RELATED: RACE/ETHNICITY/NATIONAL ORIGIN GENDER RELIGION SEXUAL ORIENTATION AGE
 DISABILITY/MEDICAL CONDITION MARITAL STATUS PREGNANCY SEXUAL HARASSMENT OTHER

RETALIATION BASED UPON PREVIOUS COMPLAINT REGARDING:

ACTION REQUIRED. REFERRAL TO: _____

NO FURTHER ACTION REQUIRED (GO TO #8 BELOW)

FACT FINDING TO BE CONDUCTED BY: _____

TARGET COMPLETION DATE: _____

COMMENTS: _____

ADDITIONAL PAGES ATTACHED

DEPUTY DIRECTOR (PRINT): _____ SIGNATURE _____ DATE _____

CC: PERSONNEL DEPARTMENT - EQUAL EMPLOYMENT INVESTIGATIONS OFFICE

7 PRELIMINARY NOTIFICATION TO

REPORTING EMPLOYEE: BY _____ DATE _____

SUBJECT: BY _____ DATE _____

8 REPORT DETERMINATION: UNFOUNDED NO VIOLATION VIOLATION OF CITY / DEPT. EEO POLICY (IES)
 NOT SUSTAINED VIOLATION OF OTHER CITY / DEPT. POLICY (IES)

FINAL NOTIFICATION TO:

EMPLOYEE BY _____ DATE _____ SUBJECT BY _____ DATE _____

9 FINAL ACTION(S) RESULTING FROM EEO REPORT:

NO ACTION(S) REQUIRED RESULTING DISCIPLINE BASED SOLELY ON NON-EEO POLICY VIOLATIONS

10 SPECIFY FOLLOW-UP MONITORING TO BE PERFORMED BY: _____ DATE: _____

COMMENTS: _____

DEPUTY DIRECTOR (PRINT): _____ SIGNATURE _____ DATE _____

ROUTE TO: PERSONNEL DEPARTMENT - EQUAL EMPLOYMENT INVESTIGATIONS OFFICE



THE CITY OF SAN DIEGO
Equal Employment Opportunity

REPORT FORM RECEIPT

Ref- _____

REPORTING SUPERVISOR RECORD

ROUTED TO (PRINT) _____ SIGNATURE _____ DATE _____

ROUTED TO (PRINT) _____ SIGNATURE _____ DATE _____

This portion of the Report Form Receipt is retained by the Reporting Supervisor as a record of timely forwarding. Do not keep any copies of the original Report Form.

As a supervisor, you are responsible for managing the effect reports of potential EEO policy violations have in the workplace by maximizing confidentiality, insofar as practical, regarding the allegations, the reporting Employee, and other identified individuals.

In addition, your responsibilities include ensuring that individuals involved in EEO investigations, either as a reporting Employee or as a witness, are not subjected to direct or indirect retaliation.

Refer to AR 96.50 regarding the City's procedure for handling reports of potential EEO policy violations.

(TEAR GOLDENROD COPY ALONG DOTTED LINE)

EMPLOYEE RECORD

Thank you for coming forward with your concern regarding potential violation(s) of the City's Equal Employment Opportunity Policy. This notification copy is being provided to you as a record of your report and as assurance that prompt and appropriate action will be taken on the issues you raised.

- 1. You have the right to report any conduct which you believe violates the City's Equal Employment Opportunity Policy. Your report is taken seriously and will be investigated pursuant to EEO procedures detailed in AR 96.50.
2. In addition to filing this report with your Department, you also have the right to file a complaint directly with any of the following agencies: the City's Labor Relations Office (619)236-6313; the City's Employee Development Program (619) 235-5802; the City's Equal Employment Investigations Office (619) 236-7133; the State of California Department of Fair Employment and Housing (800) 884-1684; or the US Equal Employment Opportunity Commission (619) 557-7235.
3. The information you reported will be confidential to as great a degree as legally permissible and reasonably practical.
4. You have a responsibility to protect the confidentiality of this report by not discussing these issues in the workplace.
5. You will be notified of the final results of this report. Should you not receive such results within 120 days, you should follow up with your Deputy Director, Department Director, or the City's Equal Employment Investigations Office.
6. Retaliation towards you for filing this report is illegal and will not be tolerated.

EMPLOYEE _____ SIGNATURE _____ DATE _____

REPORTING SUPERVISOR _____ SIGNATURE _____ DATE _____

REF: _____

(Reference A.R. 96.50)

The EEO Report Form and Report Form Receipt are used to record and track a report of alleged violations of the City's Equal Employment Opportunity Policy. Supervisors are required to use this form whenever allegations of EEO policy violations are brought to their attention. This generally occurs in three ways: 1) an employee expresses a desire to formally file a report of EEO violation; 2) a supervisor observes employee behavior contrary to City's EEO policy which may warrant written discipline; and 3) discussion with an employee leads the supervisor to believe that an EEO policy violation regarding workplace harassment may have occurred, **whether or not the employee wishes a complaint filed**. While it may seem reasonable to let the employee determine whether to pursue a complaint, the City must fulfill its responsibility to prevent discrimination and harassment and to take corrective action despite the employee's wishes.

INSTRUCTIONS:

(For these instructions, "Deputy Director" is an individual who is given the Appointing Authority responsibility generally exercised by the head of a division, or major sub-unit, within a department; "Employee" is the person reporting the potential violation; "Reporting Supervisor" is the supervisor or EEOL to whom the report is made; and "Subject" is the individual who has allegedly violated the EEO Policy.)

① The Employee or Reporting Supervisor completes the top portion of the form which records general information on the Employee. Social Security Number is requested because the City uses this number as the Employee Identification Number to track employees throughout its personnel systems.

② The Reporting Supervisor completes this section by recording the alleged policy violations as relayed by the Employee (or as directly observed). Key elements to record are listed (*who, what, where, when*). In addition, it is important to record how long the alleged violations may have been occurring. For example, "*at least two weeks*"; "*since John was promoted*". Ask about and record the names of any individual who may be a potential witness to the allegations. Ask if the Employee has spoken to anyone about this or has spoken with the person who allegedly violated the policy. Ask about any written documentation which may support the allegations. If the Employee has these, attach them to the form, but instruct the Employee not to go "hunting for evidence" if s/he does not already have documentation.

③ Record here the reason the Employee feels the reported actions have occurred. Examples may include: favoritism, conflict of interest, poor supervision, discrimination, lack of knowledge. "Remedy Sought" may include reassignment, correction of problem, or simply "wanted to inform supervisor."

④ The Reporting Supervisor records what, if any, immediate action was taken in response to the reported act. In all instances it is critical that no formal discipline, such as counselings or reprimands, be taken until directed to do so.

The Reporting Supervisor and the Employee both sign the bottom of the Report Form Receipt (EDP 100A). A copy of the bottom half is retained by the Employee as his/her record of report filing.

⑤ The Reporting Supervisor routes the form to his/her Deputy Director, obtaining the signature of the Deputy in the spaces provided on the Report Form and top half of the Report Form Receipt. Use routing methods consistent with those used for other highly confidential material. The Reporting Supervisor retains a copy of the top half of the Report Form Receipt as record of routing.

⑥ The Deputy Director reviews the information and records what follow-up action, if any, will be performed within 60 days. The Deputy also makes a preliminary assessment regarding the specific EEO "protected status" (e.g. race, religion, gender, etc.) to which the complaint may be related. In the event of unique or serious circumstances, contact is made with Personnel Department's Equal Employment Investigative Office (619) 236-7133 to ensure a suitable course of action.

A copy of the Report Form is sent via confidential transmittal to the Personnel Department's Equal Employment Investigative Manager to initiate proper tracking of the EEO Report Form.

⑦ Upon completion of follow-up action, such as a fact finding investigation, preliminary notification is made to both the Employee and Subject that follow-up action has been completed and additional action, including discipline and related appeal, if any, will be completed within 60 days. Record this preliminary notification including the name of the person performing the notification and the date.

⑧ Upon conclusion of the disciplinary process, final determination is recorded by checking the relevant box(es):

Unfounded: The alleged acts did not occur.

Not Sustained: Follow-up investigation could not clearly prove or disprove the allegations.

No Violation: Alleged acts did not violate any City policy(ies).

Violation of City / Dept EEO policy(ies): Alleged act(s) occurred, and some or all violate City / Dept EEO policy(ies).

Violation of Other City policy(ies): Alleged act(s) occurred, and some or all violate non-EEO policy(ies).

The Deputy Director then ensures that the Employee and the Subject receive notification of this information. **Disciplinary action, if any, is not shared.** Record notification information in the space provided.

⑨ Any action, such as discipline, which results from the EEO report is recorded here.

⑩ Key to demonstrating the City's commitment to a long-term EEO discrimination prevention program is regular follow-up, typically 3 and 6 months after the final resolution, with the Employee and witnesses to ensure that retaliatory actions have not occurred. In the space provided, indicate the nature and date of follow-up action(s) to be performed. For example, include the names of those to be contacted, the date and the name of individual delegated to follow-up.