

Fair Political Practices Commission

MEMORANDUM

To: ALL STAFF

From: Loressa Hon, Acting Executive Director

Subject: FPPC Equal Employment Opportunity Policy (EEO Policy)

Date: November 1, 2018

This memorandum SUPERSEDES the April 18, 2013 FPPC Equal Employment Opportunity Policy (EEO Policy) Memorandum.

PURPOSE

This memorandum reaffirms the Fair Political Practices Commission's (FPPC) commitment to providing equal employment opportunities for all persons and preventing unlawful workplace discrimination, harassment, and retaliation. In accordance with its commitment, the FPPC complies with all state and federal laws prohibiting discrimination and promoting equal employment opportunity. Additionally, the information and policies contained within this Equal Employment Opportunity (EEO) Policy operate in concert with those contained within the FPPC Policy Prohibiting Discrimination, Harassment, and Retaliation. Once you have read and understood the FPPC's EEO policy, please sign and return the attached acknowledgment form to the FPPC's EEO Officer or the Administration Division Chief.

The discrimination complaint process is explained within this policy and a complaint form is attached for your convenience. Please also note, complaints may be formal or informal and written or verbal.

The purpose of the FPPC's EEO Policy is to ensure all employees and applicants are provided equal access to employment. Employees include employees of all classifications, FPPC Commissioners, retired annuitants, unpaid interns, volunteers, and persons providing services under contract.

GENERAL POLICY

The Fair Political Practices Commission is an equal opportunity employer. The FPPC's hiring and promotional practices shall assure equal employment opportunity and inclusion. The FPPC is committed to providing equal access to employment opportunities for all employees and applicants for employment. It is the policy of the FPPC to provide equal employment opportunity 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, or harassment based on age, race, ethnicity, color, ancestry, national origin, military service, gender, pregnancy, childbirth, or related medical conditions, marital status,

sexual orientation, religion, medical condition, or mental or physical disability is prohibited by law and will not be tolerated.¹

The FPPC also forbids retaliation against an individual because the individual opposed a discriminatory employment practice, or because the individual participated in the discrimination complaint process.

This EEO Policy is a zero-tolerance policy and is intended to be stricter than the equal employment law prohibiting unlawful discrimination. Reports of violations of this policy will be addressed at the first known instance and inappropriate behavior must stop immediately. Violations of this EEO Policy will be addressed seriously, and appropriate corrective action will be taken.

EQUAL EMPLOYMENT OPPORTUNITY EXPLAINED

Equal employment opportunity is not a guarantee of employment, but rather, assurance that this office applies fair employment practices to all persons, based on qualifications, merit, efficiency, and fitness for duty. Equal employment opportunity is a phrase that signifies the provision of equal access to jobs, work assignments, training, promotion, and other employment-related benefits and opportunities for all qualified job applicants and employees regardless of age, race, ethnicity, color, ancestry, national origin, gender, pregnancy, marital status, sexual orientation, religion, military service, medical condition, or mental or physical disability.

UNLAWFUL DISCRIMINATION EXPLAINED

It is against the law and forbidden by FPPC EEO Policy to take an adverse employment action against an employee or applicant because of his or her protected characteristic, or inclusion in a protected category. An adverse employment action is a personnel action that materially affects the terms or conditions of employment, including hiring, firing, promotion, and pay decisions. However, simply being treated differently from another person is not unlawful discrimination. There can be legitimate reasons why two employees or prospective employees are treated differently, including, but not limited to, differences in their qualifications or duties, or to lawfully accommodate the specific needs of one employee.

EMPLOYEE AND APPLICANT RESPONSIBILITIES

Each FPPC employee and job applicant has an obligation to support FPPC's EEO program and policies by assisting in the prevention of unlawful discrimination, harassment, and retaliation in the workplace.

The EEO Officer shall oversee the FPPC's policies and procedures related to equal employment opportunity and discrimination-related issues to ensure compliance with the law. The EEO Officer reports directly to the Executive Director, and advises the Executive Director regarding

¹ California Constitution – Article 1, section 8; Article 1, section 31; California Government Code sections 12926-12951, 18500(c)(5),); 19230-19237, and 19700-19706; 42 United States Code sections 2000e-2 et seq; 42 United States Code sections 12211 et seq.; 38 U.S.C.S §§ 4301 et seq. Uniformed Services Employment and Reemployment Rights Act (USERRA)

EEO matters. The EEO Officer, in partnership with the Personnel Office, develops and disseminates information on departmental policies, procedures, and activities related to equal employment opportunity. Consistent with these duties, the EEO Officer also conducts and, as needed, commissions the investigation of all EEO-related complaints, irrespective of whether they are formal or informal, and reviews responses to such complaints.

Hiring managers, and supervisors, under the day-to-day oversight of the division chiefs, shall be directly responsible for implementing the FPPC Equal Employment Opportunity (“EEO”) Policy.

Employees or applicants who, in good faith, believe they are or have been subjected to conduct prohibited by this EEO Policy have an obligation to report the incident(s), as soon as possible, using the options set forth below. Additionally, all employees have an obligation to adhere to this EEO Policy; refrain from engaging in or condoning conduct that violates this EEO Policy; report suspected violations of this EEO Policy to a supervisor, manager, or the EEO Officer; and cooperate with any investigation regarding suspected policy violations.

COMPLAINT PROCEDURE

All complaints filed internally with the FPPC will be handled in an impartial manner in compliance with federal and state laws as well as FPPC policy. Complaints that describe discriminatory conduct prohibited by this policy will be followed by a fair, complete, and timely investigation. No employee or job applicant will be retaliated against for filing a complaint regarding incidents of unlawful discrimination or other conduct prohibited by FPPC policy, or for participating in an investigation of any such complaint. Complaints will be kept confidential to the extent possible.

An employee or applicant may also file a complaint of unlawful discrimination directly with the California Department of Fair Employment and Housing (DFEH) or the Federal Equal Employment Opportunity Commission (EEOC).

A complaint that an employee or applicant has been subjected to conduct that violates the FPPC’s EEO Policy may be made verbally or in writing. Although not required, the FPPC urges any employee or job applicant who believes he or she has been subjected to inappropriate workplace conduct in violation of this policy to submit a written statement identifying his or her concerns. All complaints, whether verbal or written, will be taken seriously addressed and responded to in accordance with this policy.

Employees or applicants who believe they are or have been subjected to unlawful conduct in violation of this EEO Policy have an obligation to report the incident(s), as soon as possible, using the options set forth below. Additionally, all employees have an obligation to adhere to this EEO Policy; refrain from engaging in or condoning conduct that violates this EEO Policy; report suspected violations of this EEO Policy to a supervisor, manager, or the EEO Officer; and cooperate with any investigation regarding suspected policy violations.

Informal Complaint Process

An employee or applicant may informally report a violation of this EEO Policy to an immediate supervisor or the EEO Officer. If the immediate supervisor is implicated, the employee or

applicant should report the complaint to the EEO Officer or the Executive Director. The FPPC will take immediate appropriate action, based on the particular circumstances.

Formal Complaint Process

To make a formal complaint, an employee or applicant who, in good faith, believes he or she has been subjected to unlawful discriminatory conduct or retaliation in connection with the report of such conduct, must file the formal complaint with the EEO Officer or the Administration Division Chief. The formal complaint must be filed with the EEO Officer or Administration Division Chief within 365 days of the alleged discriminatory conduct or incident.

Notwithstanding this limitation, it is imperative for the employee or job applicant to submit a formal complaint as soon as possible after the alleged conduct has occurred, to give the FPPC the opportunity to take prompt and appropriate action to stop the conduct and prevent future conduct.

A formal complaint should be in writing and should provide details of the alleged discriminatory conduct, the person(s) involved, and how the complainant has been harmed. The complainant should provide specific facts that support the belief that the conduct or employment action occurred because of the complainant's protected characteristic or protected activity. Providing this information will better enable the FPPC to take appropriate action to address the allegations.

If an FPPC employee or job applicant submits a written complaint to the EEO Officer or the Administration Division Chief that describes facts which, if true, indicate that discrimination or retaliation in violation of this policy occurred, then the Administration Division will accept the complaint, which becomes filed on the date of acceptance.

After a formal complaint is accepted, the EEO Officer or the Administration Division Chief will promptly initiate an impartial investigation by a qualified investigator. The investigation will fully and fairly examine the alleged discriminatory or retaliatory conduct. The investigation will include notice to both the complainant and the subject(s) of the investigation and provide both an opportunity to provide relevant information to the investigator. The FPPC's goal is to complete the investigation within 90 days after the complaint is accepted and it will use all reasonable efforts to do so. However, it is important to note that the time needed to conduct a full and fair investigation varies based on the nature of the complaint, the number of individuals involved, and other circumstances that must be taken into account.

After the investigation is completed, the FPPC will issue a written decision by the Executive Director or his or her designee. The decision will be based on the evidence collected as to whether the preponderance of the evidence supports a finding that there was a violation of FPPC's EEO Policy.

The complaint will be kept confidential to the extent possible.

The complaining employee or job applicant and all other FPPC employees, supervisors and managers are expected to cooperate fully with any investigation. No employees will be retaliated against for complaining or participating in an investigation.

If the FPPC determines that its EEO Policy has been violated, the FPPC will take appropriate corrective action.

OPTIONAL MEDIATION

Depending on the nature of the allegations of the complaint and if all involved parties agree, the FPPC may attempt to resolve the allegations through mediation. Mediation is a confidential process that is completely voluntary. Through mediation, employees, supervisors, and managers work with a professionally-trained, non-FPPC mediator in one or more sessions to attempt to reach mutually-agreeable solutions to workplace disputes.

GRIEVANCE PROCESS

The Memorandum of Understanding (MOU) for a collective bargaining unit may include provisions whereby EEO complaints may also be addressed through the grievance process. In certain cases, this process can provide an alternative resolution option. Employees considering a grievance should refer to their specific MOU and contact their union representative.

Notwithstanding an employee's filing of a grievance, the FPPC will take whatever appropriate actions are necessary depending on the circumstances and the information known, to fulfill its obligations to prevent and remedy any violations of its EEO Policy.

EXTERNAL COMPLAINT PROCEDURE

As stated above, an FPPC employee or job applicant may also choose to file an EEO complaint with a state or federal agency, such as the DFEH or the EEOC. Regardless of whether an employee or applicant uses one or more of FPPC's internal resolution options, an employee or applicant may file a complaint concurrently or alternatively with an external agency.

California Department of Fair Employment and Housing (DFEH):

The DFEH has authority to investigate complaints of discrimination and retaliation in the workplace. Generally, complaints must be filed with the DFEH within 365 days of the alleged occurrence of the discriminatory conduct, with an additional 90-day extension of time possible if the complainant first obtained knowledge of the facts which show the alleged unlawful action after the 365 days have passed. For assistance with this process, an employee or applicant may contact the DFEH at (800) 884-1684 [TTY (800) 700-2320] or obtain information at www.dfeh.ca.gov.

United States Equal Employment Opportunity Commission (EEOC):

The federal EEOC investigates charges of employment discrimination and EEO retaliation. The EEOC has jurisdiction over claims asserted under various federal EEO laws, including under 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 Disabilities Act (ADA) of 1990. Generally, employees and applicants 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 with the EEOC. Other EEOC requirements may also apply. For assistance with this process, an employee may contact the EEOC at (800) 669-4000 or obtain information at www.eeoc.gov.

State Personnel Board (SPB):

The SPB was constitutionally created in 1934 to administer the civil service system and ensure that state employment is based on merit and free of political patronage. SPB reviews disciplinary and merit related appeals. In addition, SPB establishes civil service laws, rules, and policies and conducts departmental audits to ensure compliance with the merit system. Any employee or job applicant who, in good faith, believes that he or she has been subjected to workplace discrimination in violation of State civil service laws may file a complaint with the SPB. As a prerequisite to the filing of a complaint with the SPB, the employee or applicant shall first file a written complaint with the EEO Officer or the Administration Division Chief to give the FPPC the first opportunity to address the complaint. The complained of act(s) or omission(s) must have occurred no more than one year prior to the date that the complaint was filed with the EEO Officer or the Administration Division Chief. Further information can be obtained at www.spb.ca.gov.

CONFIDENTIALITY

As stated above, the FPPC will maintain confidentiality concerning complaints and investigations to the greatest extent possible. Confidentiality facilitates FPPC's ability to consider, investigate and respond to allegations of discrimination, harassment and retaliation. Confidentiality also prevents embarrassment and further discrimination, harassment or retaliation. Concerns of individuals regarding confidentiality of information provided by them will be handled as sensitively as possible. Therefore, the EEO Officer or the Administration Division Chief files (including communication, informal resolution efforts, formal investigation reports, and other information) are kept as confidential as possible and will not be disclosed to any person except as reasonably necessary and in compliance with the law.

Employees should be aware, however, that complete confidentiality cannot be guaranteed. The FPPC is required in certain circumstances to take preventative or corrective actions that may be inconsistent with an employee's desire that a report of certain behavior be kept confidential. In addition, in the event of an administrative or other legal proceeding, investigative materials may legally be required to be disclosed to others involved in such proceedings.

The circumstances under which information and materials may be disclosed from the EEO Officer or the Administration Division Chief files will depend on the information sought, whether and to what extent the material is privileged, and the legal rights and privacy interests of all persons who would be affected by the disclosure.

EEO TRAINING

The FPPC will provide education and training for the EEO officer, the Administration Division Chief, the investigating officers, the Executive Director, and managers and supervisors in accordance with the law. The FPPC will also make educational EEO resources available to all employees. Interested employees should see the EEO Officer or their immediate supervisors for more information.

CONSEQUENCES

The FPPC will take appropriate corrective action to prevent and remedy conduct in violation of this EEO Policy. All employees will be held accountable for their conduct. An employee who is found to have engaged in conduct in violation of this zero-tolerance policy will be subject to appropriate action regardless of classification. Such action could include oral or written counseling, letters of reprimand, suspension, demotion, or termination.

CONTACT INFORMATION

Questions regarding this policy should be directed to the EEO Officer at 916-323-2937.

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