

# ELIZABETH POLICE DEPARTMENT GENERAL ORDERS



**VOLUME: 2**

**CHAPTER: 8**

**# OF PAGES: 7**

**SUBJECT: DISCRIMINATION AND HARASSMENT IN THE  
WORKPLACE**

**EFFECTIVE DATE:**

**January 10, 2023**

**ACCREDITATION STANDARDS:**

**NJSACOP - 1.4.2**

**CALEA (LE1) - 26.1.3**

**BY THE ORDER OF**

**CHIEF GIACOMO SACCA**

**BY AUTHORITY OF:**

**POLICE DIRECTOR EARL J. GRAVES**

**SUPERSEDES ORDER #: G.O. 132, 161**

**PURPOSE:** The purpose of this general order is to establish the procedures for defining the behavior, for reporting responsibilities of personnel, investigating the complaint and training personnel on the department's policy and procedures concerning harassment in the workplace. Unlawful discrimination/harassment undermines the integrity of the employment relationship, compromises equal employment opportunity, debilitates morale and interferes with work productivity.

**POLICY:** The Elizabeth Police Department is committed to providing every employee with a workplace free from discrimination, harassment and differential treatment. All forms of unlawful discrimination are prohibited and will not be tolerated. Sexual harassment is a form of unlawful gender discrimination and will not be tolerated.

This general order applies to all employees, both sworn and civilian and applicants for employment in the Elizabeth Police Department. The Elizabeth Police Department will not tolerate harassment or discrimination by anyone in the workplace including supervisors, co-workers, business associates or other non-employees.

This general order applies to conduct which occurs in the workplace and also extends to conduct which occurs at any location that can be reasonably regarded as an extension of the workplace, such as any field location, any off-site business-related social function, or any facility where Elizabeth Police Department business is being conducted and discussed.

This general order pertains to all employment practices such as recruitment, selection, hiring, training, promotion, transfer, assignment, layoff, return from layoff, termination, compensation, fringe benefits, working conditions and career development.

## PROCEDURE:

### I. DEFINITIONS

- A. Discrimination is defined as disparate treatment against any person because of their protected class that includes: race, creed, color, belief, national origin, ancestry, age, sex, gender identity or expression, affectional or sexual orientation, marital status, domestic partnership status, familial status, liability for service in the Armed Forces of the United States, disability, including AIDS and HIV related illnesses, atypical hereditary cellular or blood trait, genetic information, nationality, pregnancy or other protected class. (N.J.S.A. 10:5-1 et seq.)
- B. Harassment is defined as abusive conduct against any person because of their protected class that includes: race, creed, color, belief, national origin, ancestry, age, sex, gender identity or expression, affectional or sexual orientation, marital status, domestic partnership status, familial status, liability for service in the Armed Forces of the United States, disability, including AIDS and HIV related illnesses, atypical hereditary cellular or blood trait, genetic information, nationality, pregnancy or other protected class which alters the employee's work environment. (N.J.S.A. 10:5-1 et seq.)
- C. Sexual Harassment is further defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature including, but not limited to:
1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
  2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
  3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
  4. Sexual harassment generally falls into two categories:
    - a. Quid pro quo sexual harassment includes unwelcome sexual advances, requests for sexual favors, sexual bribery or other verbal or physical conduct based on the gender of the affected employee when submission to such conduct is made either explicitly or implicitly a term or condition of employment or submission to or rejection of such conduct by an individual is used as a basis for employment decisions.
    - b. Hostile work environment sexual harassment includes unwelcome sexual advances, sexual assault, sexual coercion, requests for sexual favors, seductive behavior and other verbal or physical conduct of a sexual nature which has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. Gender-based harassment may give rise to a claim of a hostile environment whether or not sexual activity or language is involved, if it has the purpose or effect of abusing, devaluing, or subordinating the

members of one sex and it adversely affects an individual's employment opportunities.

5. The harassing conduct must be unwelcomed and coercive. Sexual harassment may be homosexual or heterosexual in nature. Gender based harassment need not be sexual in nature to violate the law. Harassment can be in the form of either sexual advances or intimidation or hostility towards a person solely because of gender.

## **II. AUTHORITY**

- A. Authority is established under:
  1. Title VII of the Civil Rights Act of 1964 as amended;
  2. 42 U.S.C. §1981 (Equal rights law);
  3. N.J.S.A. 10.5-1 et seq. (New Jersey Law Against Discrimination);
  4. N.J.S.A. 11A:1-1 et seq.; and
  5. N.J.A.C. 4A:7-1 et seq.

## **III. PROHIBITED CONDUCT**

- A. It is a violation of this general order for any person to use their authority to make any sexual advance toward an individual over whom the person is authorized to make, recommend or otherwise to influence personnel actions; to grant, recommend, or refuse to take personnel action on the basis of an employee's gender or sexual orientation or in exchange for sexual favors; or to take or fail to take a personnel action as reprisal against any employee for rejecting or reporting a sexual advance. Sexual advances or requests for sexual favors can be in the form of either expressed or implied comments, writings, actions, or inactions.
- B. It is a violation of this general order to engage in any employment practice that treats a person less favorably based upon their protected class.
- C. It is a violation of this general order to use derogatory or demeaning slurs, or other inappropriate comments, to refer to a person's protected class that may have the effect of harassing a person or creating a hostile work environment. Harassment or the creation of a hostile work environment can occur even if there was no intent on the part of an individual to harass or demean another.
- D. Examples of prohibited behaviors that constitute sexual harassment include, but are not limited to:
  1. General or specific gender-based remarks and comments;
  2. Unwanted physical contact such as intentional touching, grabbing, pinching, brushing against another's body, impeding or blocking movement;

3. Verbal or written sexually suggestive or obscene comments, jokes or propositions including letters, notes, e-mails, text messages, invitations, gestures or inappropriate comments about a person's clothing that do not relate to the uniform/dress policy;
  4. Visual contact, such as leering or staring at another's body, gesturing, displaying sexually suggestive objects, cartoons, posters, magazines or pictures of scantily clad or clothed individuals;
  5. Explicit or implicit suggestions of sex by a supervisor or manager in return for a favorable employment action such as hiring, compensation, promotion, or retention;
  6. Suggesting or implying that failure to accept a request for a date or sex would result in an adverse employment consequence with respect to any employment practice such as performance evaluations, work assignment or promotional opportunity;
  7. Continuing to engage in certain behaviors of a sexual nature after an objection has been raised by the target of such inappropriate behavior;
  8. Retaliation against the complainant or another individual because of an individual's complaint or testimony about harassment.
- E. Examples of behaviors that may constitute prohibited workplace discrimination or harassment include, but are not limited to:
1. Discriminating against an individual with regard to terms and conditions of employment because of that individual's protected class;
  2. Treating an individual differently because of their protected class or because an individual has the physical, cultural or linguistic characteristics of a protected class or group;
  3. Treating an individual differently because of marriage to or association with persons of a protected class or group; or because an individual's name or spouse's name is associated with a protected class or group;
  4. Calling another by an unwanted nickname which refers to one or more of the above characteristics, or telling ethnic, racial, etc. jokes, stories, or insensitive comments that could make an officer feel uncomfortable or adversely affect the work environment;
  5. Using derogatory references regarding any of protected characteristics in any job-related communication;
  6. Engaging in threatening, intimidating, or hostile acts in the workplace based upon the protected class;
  7. Displaying or distributing material in the workplace that contains language or images that are derogatory or demeaning based upon any protected class.

#### **IV. EMPLOYEE'S RESPONSIBILITIES**

- A. It is the responsibility of each employee to respect the rights of co-workers.
- B. Employees subjected to any form of prohibited discrimination/harassment, including sexual harassment, are encouraged, whether directly or through a third party, to notify the alleged harasser that the behavior in question is offensive and unwelcome. However, failure to do so does not preclude filing a complaint.
- C. Employees are expected to document all incidents of prohibited discrimination/harassment in order to provide the fullest basis for investigation.
- D. Any employee who believes that they had been harassed/discriminated against or are being harassed or discriminated against shall report the incident(s) as soon as possible, in writing, so that the appropriate steps are taken to protect the employee from further harassment/discrimination and so that appropriate investigative measures are initiated.
- E. Employees who observe any behavior by another employee that constitutes prohibited discrimination/harassment or possess knowledge of any form of prohibited discrimination/harassment, whether directed at them or against others shall promptly report the incident to their supervisor. Employees who observe any condition, such as graffiti, cartoons, posters or calendars that are sexual in nature, sexually suggestive, discriminatory or harassing in nature shall promptly report the condition to their supervisor.
- F. Employees should submit their complaint to their immediate supervisor.
  - 1. If the offending person is in the employee's chain of command, the employee may report the incident to the next level of command above the offending person or directly to Internal Affairs, Chief of Police, Police Director, or the Business Administrator.
    - a. The complaint should include as many facts and circumstances mentioned above.
  - 2. If the offending person is the Chief of Police or designee, the complaint shall be forwarded to the Union County Prosecutor's Office after notification to the Police Director and Business Administrator.

#### **V. SUPERVISOR'S RESPONSIBILITIES**

- A. In order to ensure the integrity of the work environment, supervisors are required to ensure adherence to and compliance with this general order and to create an atmosphere free from harassment and to communicate the department's policy of non-discrimination to all subordinates. Upon becoming aware of possible prohibited discrimination/harassment, including sexual harassment, supervisors are required to:
  - 1. Take appropriate immediate action to stop the discriminating/harassing condition and/or behavior; and

2. Inform the employee of their right to file a complaint; and
  3. Document and preserve any evidence/exemplars present; and
  4. Notify the Chief of Police or designee through the chain of command of the incident and the action taken; and
  5. Submit a report documenting their actions and observations.
- B. Each supervisor shall be responsible for preventing acts of discrimination/harassment. This responsibility includes:
1. Monitoring the work environment on a daily basis for signs that discrimination/harassment may be occurring;
  2. Counseling all employees on the types of behavior prohibited, and the department procedures for reporting and resolving complaints of discrimination/harassment;
  3. Stopping any observed acts that may be considered discrimination/harassment;
  4. Taking immediate action to limit the work contact between two employees where there has been a complaint of discrimination/harassment, pending investigation.
- C. Each supervisor has the responsibility to assist any employee of this department, who comes to that supervisor with a complaint of discrimination/harassment, in documenting and filing a complaint with the department's Internal Affairs function.

## **VI. INVESTIGATION PROCEDURES**

- A. Departmental investigation procedures for discrimination/harassment in the workplace complaints shall be in accordance with the department's general order on Internal Affairs and the New Jersey Attorney General's Internal Affairs Directive.

## **VII. SUPPLEMENTAL**

- A. Retaliation
1. Retaliation against any employee who alleges that they were the victim of prohibited discrimination/harassment, including sexual harassment, or against any employee who provides information in the course of the investigation into claims of prohibited discrimination/harassment, including sexual harassment, in the workplace is prohibited.
  2. Any employee bringing forward a complaint, providing information for an investigation, or testifying in any proceeding under this general order shall not be subjected to adverse employment consequences based on such involvement or be the subject of retaliation.

B. False Accusations and Information

1. Purposely or knowingly making a false accusation of unlawful discrimination/harassment, including sexual harassment, or knowingly providing false information in the course of an investigation of a complaint is grounds for criminal, civil, and administrative sanctions. However, complaints made in good faith, even if found to be unsubstantiated, will not be considered false accusations.

C. Confidentiality

1. All complaints and investigations shall be handled to the extent possible, in a manner that will protect the privacy of those involved.
2. To the extent practical and appropriate under the circumstances, confidentiality will be maintained throughout the investigatory process. In the course of an investigation it may be necessary to discuss claims with the alleged harasser or other persons who may have relevant knowledge. It therefore may be necessary to disclose information to persons with a legitimate need to know about the matter. All persons interviewed will be directed not to discuss any aspect of the investigation with others in light of the important privacy interests of all concerned. Failure to comply with this confidentiality policy may result in disciplinary action.

D. Training

1. Training regarding this general order shall be provided to all employees on an annual basis through the current department training software. The current software in use is PowerDMS.

E. Additional Remedies

1. This general order does not preclude any employee from filing a complaint or grievance with the New Jersey Division on Civil Rights and the United States Equal Opportunity Commission.
2. Superior Court of New Jersey
3. Federal District Court
4. Collective Negotiations Agreements - Grievance Procedure

F. Corrective/Disciplinary Action

1. Corrective/Disciplinary action shall be consistent with department's rules and regulations.