

BOARD of SUPERVISORS



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MEMORANDUM

TO: Micki Callahan, Director, Department of Human Resources
Emily Murase, PhD, Executive Director, Department on the Status of Women

FROM: *al*
sm Alisa Somera, Legislative Deputy Director
Rules Committee

DATE: May 30, 2018

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee has received the following proposed legislation, introduced by Supervisor Breed on May 22, 2018:

File No. 180546

Ordinance amending the Administrative Code to require City employees to complete harassment prevention training annually; Department of Human Resources (DHR) to post harassment prevention training and complaint information on its website; City Attorney to report harassment settlements to the Department on the Status of Women (DOSW); DOSW to post on its website reports from DHR and the City Attorney; and DHR to accept complaints of harassment, discrimination, or retaliation up to one year after the date of the alleged incident.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: alisa.somera@sfgov.org.

c: Susan Gard, Department of Human Resources
Carol Isen, Department of Human Resources
Minouche Kandel, Department on the Status of Women
Elizabeth Newman, Department on the Status of Women

1 [Administrative Code - Harassment Prevention Training for City Employees - Reporting
2 Requirements for City Departments - Time Frame for Filing Equal Employment Opportunity
3 Complaints]

4 **Ordinance amending the Administrative Code to require City employees to complete**
5 **harassment prevention training annually; Department of Human Resources (DHR) to**
6 **post harassment prevention training and complaint information on its website; City**
7 **Attorney to report harassment settlements to the Department on the Status of Women**
8 **(DOSW); DOSW to post on its website reports from DHR and the City Attorney; and**
9 **DHR to accept complaints of harassment, discrimination, or retaliation up to one year**
10 **after the date of the alleged incident.**

11 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
12 **Additions to Codes** are in *single-underline italics Times New Roman font*.
13 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
14 **Board amendment additions** are in double-underlined Arial font.
15 **Board amendment deletions** are in ~~strikethrough Arial font~~.
16 **Asterisks (* * * *)** indicate the omission of unchanged Code
17 subsections or parts of tables.

18 Be it ordained by the People of the City and County of San Francisco:

19 Section 1. The Administrative Code is hereby amended by adding Section 16.9-27, to
20 read as follows:

21 **SEC. 16.9-27. HARASSMENT PREVENTION TRAINING AND REPORTING.**

22 **(a) Findings and Purpose.**

23 (1) In federal Fiscal Year 2017, over 84,000 workplace discrimination charges were
24 filed with the U.S Equal Employment Opportunity Commission ("EEOC"), approximately 30% of those
25 charges were related to sex discrimination, and over 6,500 of those charges were for sexual
harassment.

(2) A 2016 EEOC Report by the Select Task Force on the Study of Harassment in the

1 Workplace concluded that workplace harassment remains a persistent problem, particularly sex-based
2 harassment. The vast majority, as much as 70%, of individuals who experience workplace harassment,
3 never report or discuss the harassment with a superior. Even fewer individuals among the minority who
4 report or discuss harassment with a supervisor file a formal complaint.

5 (3) Harassment in the workplace results in physical and emotional harm to employees
6 who experience the harassment directly as well as to those who witness the harassment. Additionally,
7 employers suffer as a result of workplace harassment, which causes decreased productivity and
8 imposes financial costs on employers.

9 (4) Under California Government Code Section 12950.1, all supervisors and managers
10 are required to complete a biennial online harassment prevention training, which is provided by the
11 Department of Human Resources ("DHR"). By February 2018, DHR had trained nearly 12,000
12 employees in Fiscal Year 2016-2017. Expanding this requirement to all City employees –
13 approximately 34,000 as of 2018 – would significantly expand the training's reach and impact.

14 (5) In February 2018, DHR projected receiving an increased number of sexual
15 harassment complaints in Fiscal Year 2017-2018 as compared to prior fiscal years because the existing
16 required harassment prevention training has increased awareness among employees of their obligation
17 to report harassment and their right to a harassment-free workplace, and has deepened their
18 understanding of what constitutes workplace harassment.

19 (6) Administrative Code Section 16.9-25(e)(2) requires DHR to provide an annual
20 report on the number of sexual harassment claims filed by City employees, including information as to
21 number of claims pending, and the City departments in which claims have been filed. Expanding this
22 reporting requirement to include all forms of harassment complaints, not only sexual harassment
23 claims, will provide increased transparency and accountability for addressing harassment in the
24 workplace.

25 (b) **Definitions.** For purposes of this Section 16.9-27, the following definitions apply:

1 “City” means the City and County of San Francisco.

2 “Covered Employee” means the following:

3 (1) An individual appointed to a permanent or exempt position with the City with a
4 regular schedule of at least 20 hours per week; or

5 (2) An individual appointed to a provisional or temporary position with the City
6 where there is a reasonable expectation that the employee will work at least 960 hours over a fiscal
7 year or where the employee does work at least 960 hours over a fiscal year.

8 “EEO Complaint” means a complaint filed by a City employee, an applicant for City
9 employment, a person providing services to the City by contract, an intern, or a volunteer claiming a
10 violation of the City’s Equal Employment Opportunity Policy, which prohibits discrimination and
11 harassment on the basis of characteristics protected by federal law, state law, or ordinance, and
12 further prohibits retaliation against an individual who reports, files a complaint of, or otherwise
13 opposes, conduct he or she reasonably believes to be unlawful discrimination, harassment, or
14 retaliation, or assists in the investigation of a complaint.

15 (c) **Training.** All Covered Employees shall participate in harassment prevention training
16 annually. The harassment prevention training shall educate Covered Employees on City policies
17 prohibiting harassment. The harassment prevention training shall include bystander intervention
18 training that will teach employees how to intervene and address harassment that they may observe in
19 the workplace.

20 (1) The requirement that Covered Employees participate in harassment prevention
21 training shall begin in Fiscal Year 2019-2020 unless the Board of Supervisors appropriates money for
22 the training in Fiscal Year 2018-2019 and the Controller certifies the departments have sufficient funds
23 to provide the training.

24 (2) Once the City begins providing harassment prevention training to Covered
25 Employees, a Covered Employee shall participate in harassment prevention training within 30 days of

1 the date the Covered Employee begins working.

2 (3) DHR shall prepare and administer the harassment prevention training program.

3 (4) Training that meets the requirements of California Government Code Section
4 12950.1 shall satisfy this Section 16.9-27, provided that the training includes bystander intervention
5 training. Training under Section 16.9-27 shall satisfy the City entities' obligations under Section 16.9-
6 25(d) to provide education and training to supervisors regarding the prevention of sexual harassment.

7 (6) This Section 16.9-27 does not preclude any board, commission, department, or
8 other City entity or official from taking additional reasonable steps to train City managers, officials,
9 and/or employees regarding the City's sexual harassment policy and issues pertaining to sexual
10 harassment, in accordance with Section 16.9-25(a)(4).

11 (d) **Reports.**

12 (1) Annual Reports on Training. Beginning January 1, 2019, DHR shall annually
13 post on its website the number of employees in each department who have completed harassment
14 prevention training.

15 (2) Quarterly and Annual Reports on Harassment Complaints. Beginning January
16 1, 2019, DHR shall post on its website on a quarterly and annual basis a report on the number of
17 harassment complaints filed with DHR, including the number of complaints for each department in
18 which the alleged harassment occurred. The report shall also include information on the dispositions
19 of complaints that have been concluded and the status of complaints that are pending, both composite
20 numbers and numbers as to each department in which the alleged harassment occurred. The reports
21 shall not include names or other individually identifying information disclosed in the complaints or
22 subsequent investigations.

23 (3) Annual Reports of Settlements. Beginning on January 1, 2019, the City Attorney
24 shall annually report the settlements of harassment cases to the Department on the Status of Women
25 ("DOSW"). The reports shall not include names or other individually identifying information from the

1 cases.

2 (4) Posting Reports. DOSW shall post to its website the quarterly and annual
3 reports regarding complaints described in subsection (d)(2), and the reports of harassment settlements
4 described in subsection (d)(3).

5 (5) This Section 16.9-27 does not relieve DHR of its reporting requirements under
6 Section 16.9-25(e) regarding sexual harassment.

7 (e) Deadline to File EEO Complaint. DHR shall accept EEO Complaints up to one year
8 after the date of the last alleged incident of harassment, discrimination, or retaliation.

9 (f) Undertaking for the General Welfare. In enacting and implementing this Section 16.9-
10 27, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is
11 it imposing on its officers and employees, an obligation for breach of which it is liable in money
12 damages to any person who claims that such breach proximately caused injury.

13 (g) No Conflict with Federal or State Law. Nothing in this Section 16.9-27 shall be
14 interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or
15 state law, or any provision of the City Charter.

16
17 Section 2. Effective Date. This ordinance shall become effective 30 days after
18 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
19 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
20 of Supervisors overrides the Mayor's veto of the ordinance.

21 APPROVED AS TO FORM:
22 DENNIS J. HERRERA, City Attorney

23 By: 
24 JENNIFER DONNELLAN
25 Deputy City Attorney

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LEGISLATIVE DIGEST

Administrative Code - Harassment Prevention Training for City Employees - Reporting Requirements for City Departments - Time Frame for Filing Equal Employment Opportunity Complaints

Ordinance amending the Administrative Code to require City employees to complete harassment prevention training annually; Department of Human Resources (DHR) to post harassment prevention training and complaint information on its website; City Attorney to report harassment settlements to the Department on the Status of Women (DOSW); DOSW to post on its website reports from DHR and the City Attorney; and DHR to accept complaints of harassment, discrimination, or retaliation up to one year after the date of the alleged incident.

Existing Law

California law requires only supervisory personnel to take biennial harassment prevention training. California Government Code Section 12950.1. City law requires the City to “[t]rain and educate employees regarding sexual harassment issues and policy” and requires each appointing officer to provide for its supervisory personnel a periodic training program designed to educate and thereby prevent sexual harassment. Administrative Code Sections 16.9-25(a)(4)(B) & 16.9-25(d).

The Human Resources Director is required to provide on a quarterly basis to the Commission on the Status of Women (“CSOW”) a written report on the number of sexual harassment complaints, the departments involved, and disposition complaints. Administrative Code Section 16.9-25(e).

The Human Resources Director is required to provide on an annual basis to the Mayor, the Board of Supervisors, the Human Rights Commission, and CSOW a written report on the number of claims of sexual harassment filed, including information on the number of claims pending and the departments in which claims have been filed. Administrative Code Section 16.9-25(f).

The City Attorney must submit to the CSOW a monthly report of settlements of lawsuits and claims filed by female employees alleging employment discrimination. Administrative Code Section 33.7(c).

The Human Resources Director must review and resolve allegations of discrimination. City Charter Section 10.103. There is no existing law on how long the employee has to file an internal complaint of harassment, discrimination, or retaliation with the City. It is currently set by Department of Human Resources (“DHR”) policy.

Amendments to Current Law

This proposed ordinance would require City departments to provide annual harassment prevention training to permanent and certain long-term temporary employees. The harassment prevention training would include bystander intervention training. DHR would be required to report annually on its website the number of employees at each department who have completed harassment prevention training.

Additionally, this proposed ordinance would require DHR to post on its website on a quarterly and annual basis a report on the number of harassment complaints filed with DHR and the departments that were involved. The City Attorney would be required to report annually the settlements of harassment cases to Department on the Status of Women ("DOSW"). The DOSW would post both the DHR reports and the City Attorney report to its website.

Finally, this proposed ordinance would require DHR to accept harassment, discrimination and retaliation complaints up to one year after the date of the last alleged incident.

Background Information

The DOSW recommended the proposed amendments.

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