


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:  Alisa Somera, Legislative Deputy Director
Rules Committee

DATE: October 3, 2018

SUBJECT: SUBSTITUTE LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee has received the following proposed substitute legislation, introduced by Supervisor Cohen on October 2, 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 Department on the Status of Women (DOSW); DOSW to post on its website reports from DHR and the City Attorney; and recommending that the Civil Service Commission adopt a rule requiring 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]

3 **Ordinance amending the Administrative Code to require City employees to complete**
4 **harassment prevention training annually; Department of Human Resources (DHR) to**
5 **post harassment prevention training and complaint information on its website; City**
6 **Attorney to report harassment settlements to Department on the Status of Women**
7 **(DOSW); DOSW to post on its website reports from DHR and the City Attorney; and**
8 **recommending that the Civil Service Commission adopt a rule requiring DHR to accept**
9 **complaints of harassment, discrimination, or retaliation up to one year after the date of**
10 **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. Article 1 of Chapter 16 of the Administrative Code is hereby amended by
20 adding Section 16.9-27, to 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
25 those charges were related to sex discrimination, and over 6,500 of those charges were for sexual
harassment.

1 (2) A 2016 EEOC Report by the Select Task Force on the Study of Harassment in the
2 Workplace concluded that workplace harassment remains a persistent problem, particularly sex-based
3 harassment. The vast majority, as much as 70%, of individuals who experience workplace harassment,
4 never report or discuss the harassment with a superior. Even fewer individuals among the minority who
5 report or discuss harassment with a supervisor file a formal complaint.

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

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

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

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

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

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

3 “Covered Employee” means the following:

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

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

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

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

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

25 (2) Once the City begins providing harassment prevention training to Covered

1 Employees, a Covered Employee shall participate in harassment prevention training within 30 days of
2 the date the Covered Employee begins working.

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

4 (4) Training that meets the requirements of California Government Code Section
5 12950.1 shall satisfy this Section 16.9-27, provided that the training includes bystander intervention
6 training. Training under Section 16.9-27 shall satisfy the City entities' obligations under Section 16.9-
7 25(d) to provide education and training to supervisors regarding the prevention of sexual harassment.

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

12 (d) **Reports.**

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

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

24 (3) Annual Reports of Settlements. Beginning on January 1, 2019, the City Attorney
25 shall annually report the settlements of harassment cases to the Department on the Status of Women (“

1 DOSW”). The reports shall not include names or other individually identifying information from the
2 cases.

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

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

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

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

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17 Section 2. Consistent with the press release entitled New Recommendations on
18 Strengthening Sexual Harassment Prevention and Response issued March 1, 2018 by the
19 Department on the Status of Women, the Board of Supervisors urges the Civil Service
20 Commission to adopt a rule requiring the Department of Human Resources to accept EEO
21 Complaints, for up to one year after the date of the last alleged incident of the harassment,
22 discrimination, or retaliation.

1 Section 3. Effective Date. This ordinance shall become effective 30 days after
2 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
3 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
4 of Supervisors overrides the Mayor's veto of the ordinance.

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7 APPROVED AS TO FORM:
8 DENNIS J. HERRERA, City Attorney

9 By: 
10 JENNIFER DONNELLAN
Deputy City Attorney

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REVISED LEGISLATIVE DIGEST
(Substituted, 10/2/2018)

Administrative Code - Harassment Prevention Training for City Employees; Reporting Requirements for City Departments

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 Department on the Status of Women (DOSW); DOSW to post on its website reports from DHR and the City Attorney; and recommending that the Civil Service Commission adopt a rule requiring DHR to accept complaints of harassment, discrimination, or retaliation up to one year after the date of the alleged incident.

Existing Law

California law (California Government Code Section 12950.1.) requires supervisory personnel to take biennial harassment prevention training. 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 (“COSW”) a written report on the number of sexual harassment complaints received, the departments involved, and the disposition of 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 COSW 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. Charter Section 10.103. There is no existing law on how long the employee has to file a complaint of harassment, discrimination, or retaliation with the City. It is currently set by Department of

Human Resources (“DHR”) policy under authority provided to it by the Civil Service Commission.

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 post 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, in an uncodified section of this proposed ordinance, the Board recommends that the Civil Service Commission adopt a rule requiring 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.

A previous version of this ordinance required that DHR accept harassment, discrimination and retaliation complaints up to one year after the date of the last alleged incident. DHR policy provides that the City will accept EEO Complaints up to 180 days after the last alleged incident, and the DHR promulgated this policy under the authority provided to it by the Civil Service Commission. (CSC Rule 103.3.3)