

INTRADEPARTMENTAL CORRESPONDENCE

April 12, 2022

1.14

TO: The Honorable Board of Police Commissioners

FROM: Chief of Police

SUBJECT: VARIOUS DEPARTMENT MANUAL SECTIONS PERTAINING TO
WORKPLACE EQUITY – ESTABLISHED AND/OR REVISED

RECOMMENDED ACTION

That the Board of Police Commissioners REVIEW and APPROVE the established policy pertaining to Workplace Equity complaints.

DISCUSSION

The City and the Department are committed to providing and maintaining a professional, equitable, and inclusive workplace, and recognize that a workforce of individuals with diverse backgrounds, ideas, talents and experiences facilitates an opportunity for each individual to uniquely contribute to the workplace.

Recently, Mayor Eric Garcetti signed an Executive Directive pertaining to the City's Workplace Equity Policy. Although this policy in general is reflected in existing Department policy, this Order establishes policy and procedures pertaining to the reporting, investigating, and classifying of Workplace Equity complaints, commensurate with the City's Workplace Equity Policy.

The policy revision adds Section 3/814 and revises Sections 3/805.25; 3/817.05; and, 3/818 of the Department Manual.

Should you have any questions regarding this matter, please contact Director Lizabeth Rhodes, Office of Constitutional Policing and Policy, at (213) 486-8730.

Respectfully,



MICHEL R. MOORE
Chief of Police

Attachments

OFFICE OF THE CHIEF OF POLICE

SPECIAL ORDER NO.

APPROVED BY THE BOARD OF POLICE COMMISSIONERS ON

**SUBJECT: VARIOUS DEPARTMENT MANUAL SECTIONS PERTAINING TO
WORKPLACE EQUITY – ESTABLISHED AND/OR REVISED**

PURPOSE: The City and the Department are committed to providing and maintaining a professional, equitable, and inclusive workplace, and recognize that a workforce of individuals with diverse backgrounds, ideas, talents, and experiences facilitates an opportunity for each individual to uniquely contribute to the workplace.

Recently, Mayor Eric Garcetti signed an Executive Directive pertaining to the City's Workplace Equity Policy. Although this policy in general is reflected in existing Department policy, this Order establishes policy and procedures pertaining to the reporting, investigating, and classifying of Workplace Equity complaints, commensurate with the City's Workplace Equity Policy.

PROCEDURE:

- I. WORKPLACE EQUITY COMPLAINTS – ESTABLISHED.** Department Manual Section 3/814, *Workplace Equity Complaints*, has been established. Attached is the established Department Manual Section.
- II. MISCONDUCT – DEFINED; CLASSIFYING A COMPLAINT AS NON-DISCIPLINARY OR DISCIPLINARY; AND, NON-DISCIPLINARY COMPLAINTS – REVISED.** Department Manual Sections 3/805.25; 3/817.05; and, 3/818 have been revised. Attached are the revised Department Manual Sections with the revisions indicated in italics.

AMENDMENTS: This Order adds Section 3/814, and revises Sections 3/805.25; 3/817.05; and, 3/818 of the Department Manual.

AUDIT RESPONSIBILITY: The Commanding Officer, Audit Division, shall review this directive and determine whether an audit or inspection shall be conducted in accordance with Department Manual Section 0/080.30.



MICHEL R. MOORE
Chief of Police

Attachment

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805.25 MISCONDUCT – DEFINED. *For purposes of this Section, misconduct is defined as:*

- Commission of a criminal offense;
- Neglect of duty;
- Violation of Department policies, rules, or procedures; or,
- Conduct which may tend to reflect unfavorably upon the employee or the Department.

***Note:** Complaints of Inequitable Conduct, as defined in Department Manual Section 3/814, are not necessarily considered misconduct by itself. Employees are reminded that more serious instances of Inequitable Conduct are already prohibited by the Department’s harassment, discrimination, sexual harassment, and retaliation policies.*

814 WORKPLACE EQUITY COMPLAINTS. *Workplace Equity complaints involve conduct or misconduct that causes an employee to feel that they are being treated differently or wrongly, based on a protected class or activity. Misconduct includes harassment, discrimination, sexual harassment, and retaliation on the basis of any protected category or protected activity. Other conduct covered under this policy that may not be misconduct is defined as Inequitable Conduct.*

Inequitable Conduct is any inappropriate conduct based on a protected category as defined below. Inequitable Conduct includes any instance of unwelcome conduct directed at one or more employees or applicants, that is committed by any City employee, because of the employee(s)’ or applicant(s)’ actual or perceived protected class or protected category. Similarly, unwelcome conduct that is sexual in nature may also violate this Policy.

***Note:** For purposes of this Section, “applicant” means any individual who has applied for a position within the Department, including all full and part-time employee positions, volunteers, contractors, or reserve officers.*

Inequitable Conduct may be similar in nature to conduct defined as discrimination, harassment, sexual harassment, and retaliation under this Policy; however, to be considered Inequitable Conduct, the conduct shall be lesser in severity.

***Definitions.** Inequitable Conduct may include, but is not limited to, one or more instances of the following, depending on the context in which it occurs:*

- *Microaggressions (indirect, subtle or unintentional verbal or behavioral conduct that communicates hostile, derogatory, or negative attitudes toward protected classes);*
- *Stray remarks (e.g., a male employee says that a female co-worker is too emotional; a younger employee comments on how an older co-worker has no clue on how to use social media; an employee makes a mocking comment about a co-worker’s religious belief);*
- *Hostilities in vocal tone and body language (e.g., elevated voice, sarcastic tone, or positioning one’s body within uncomfortable proximity to another); or,*
- *Sexual innuendos (words or phrases that have a thinly-veiled hidden meaning of a sexual nature).*

*When a Workplace Equity complaint involves Inequitable Conduct that is **not** misconduct, the complaint is deemed to be a Non-Disciplinary Complaint with a Workplace Equity-Only Complaint*

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classification that is subject to the procedures in Department Manual Section 3/818.

Protected Categories under this Policy include, but are not limited to:

- *Acquired Immune Deficiency Syndrome (AIDS) or the Human Immunodeficiency Virus (HIV) Status;*
- *Age (40 and over);*
- *Ancestry;*
- *Color;*
- *Disability - Mental or Physical;*
- *Domestic Violence Victim Status;*
- *Ethnicity;*
- *Gender, Gender Expression and/or Gender Identity;*
- *Genetic Information (including family medical history);*
- *Marital Status;*
- *Medical Condition (cancer and/or other genetic characteristics);*
- *Military and Veteran Status;*
- *National Origin (including but not limited to language use restrictions);*
- *Race (including natural hair texture and/or protected hairstyles);*
- *Religious Creed (including but not limited to religious dress and grooming practices);*
- *Sex (including but not limited to pregnancy, childbirth, breastfeeding, and related medical conditions);*
- *Sexual Orientation; and,*
- *Any Protected Category under local, state or federal law.*

Supervisor's Duty to Report Workplace Equity Complaints. *Supervisors who receive a report of a Workplace Equity complaint, even without any additional allegation, shall initiate a Complaint Form, Form 01.28.00, with a completed preliminary investigation. To the extent practicable, supervisors shall include the complainant's rationale for believing the conduct occurred on the basis of a protected category or protected act.*

Prior to submitting the Complaint Form in the Complaint Management System (CMS), supervisors shall contact the Workplace Investigation Section, Professional Standards Bureau (PSB), for advice on whether the behavior described contains an allegation of disciplinary misconduct or non-disciplinary behavior.

When the conduct described does not contain an allegation of misconduct, such as in a complaint for Inequitable Conduct from a perceived microaggression, the Department shall be named as the accused employee. Employees associated with the conduct occurring shall be listed as "Other Involved Employees."

In addition to the completion of the Complaint Form, Form 01.28.00, supervisors shall also cross report Workplace Equity Complaints to the City using the MyVoiceLA.org portal, located on the City's home webpage. Supervisors shall select the reporting option "I am an LAPD Supervisor

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reporting an incident” and include the Intake Summary of the Complaint Form in the incident description narrative. Supervisors shall indicate whether a Complaint Form has been completed for the incident.

After completing the MyVoiceLA report and receiving the report number (e.g., COM-013154-2021), supervisors shall include this number in the CMS database.

Receiving Workplace Equity Complaints from the City. *When a MyVoiceLA report for a potential Workplace Equity violation is received from the City, Personnel Division or the Area/division receiving the complaint report shall forward the MyVoiceLA report to PSB.*

Professional Standards Bureau shall review the MyVoiceLA report to determine if the selection was made to indicate whether a Complaint Form was completed. If the completion of a Complaint Form is indicated, PSB shall ensure the CMS entry includes the MyVoiceLA report number. If the MyVoiceLA report does not indicate that a Complaint Form was completed, PSB shall query CMS for the complainant/involved employee(s) to determine whether a Department complaint has been completed.

When a MyVoiceLA report is received and no Department complaint investigation exists, PSB shall initiate a complaint according to procedures delineated in the Department Manual Sections pertaining to Non-Disciplinary and Disciplinary Complaints.

817.05 CLASSIFYING A COMPLAINT AS NON-DISCIPLINARY OR DISCIPLINARY.

Complaints reported on a Complaint Form shall be classified as either Disciplinary (Manual Section 3/820) or Non-Disciplinary. The watch commander, Section Officer In Charge, or civilian equivalent is responsible for the initial complaint classification, *except for Workplace Equity complaints where this responsibility lies with the Workplace Investigation Section, Professional Standards Bureau.* When necessary, the employee’s commanding officer may reclassify the complaint at any time. A commanding officer’s decision to classify a complaint as Non-Disciplinary shall be final unless a substantial justification for changing it can be articulated at the Bureau level.

818 NON-DISCIPLINARY COMPLAINTS. A complaint may be classified as Non-Disciplinary when the following criteria is met:

- The complaint, as stated, would not amount to the commission of a felony or misdemeanor crime;
- The complaint, as stated, may not result in discipline against the employee, or the complained of act or omission by the employee has no nexus to the employee’s position with the Department;
- The complaint was not initiated as a result of a Department integrity audit conducted by Professional Standards Bureau, Special Operations Division;
- The complaint does not allege any of the following: unauthorized force; discrimination of any kind; unlawful search and/or unlawful seizure of person or property; dishonesty; domestic violence; improper/illicit use of alcohol, narcotics, or drugs; sexual misconduct; theft, or retaliation/retribution against another employee;

Exception: When it is clearly proven at the time of the preliminary complaint investigation

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that the alleged misconduct is Demonstrably False, as defined in this Section, the allegation may be classified as Non-Disciplinary.

- The complaint was not as a result of concerns arising out of a criminal prosecution, or, dismissal of California Penal Code Section 148 charges, or otherwise initiated by a judge or prosecutor acting in their official capacity;
- The accused employee has no apparent pattern of similar behavior (should generally be limited to the past five years) for which he *or* she is accused; and,
- The complaint was not initiated in response to civil suits or claims for damages involving on-duty conduct and civil lawsuits regarding off-duty conduct required to be self-reported by employees.

Commanding Officer's Responsibilities. A commanding officer who recommends a Non-Disciplinary classification shall check the appropriate box on the Complaint Form, Form 01.28.00, and select the appropriate disposition/rationale as follows:

- ***Workplace Equity-Only Complaint.*** *The facts of the case demonstrate that the complaint concerns workplace conduct that would not constitute disciplinary misconduct but are recorded and reported to the MyVoiceLA.org portal, located on the City's home webpage.*

An example of a complaint of an employee perceiving a "microaggression" from unintentional actions by another employee would be Employee A believes Employee B's statement of "wow, this is actually a really good arrest report" to be a microaggression reflecting a negative default attitude towards Employee A's protected class.

An example of a complaint of an employee perceiving a "hostile tone" from unintentional actions by another employee would be Employee A, in the presence of Employee B, C, and D, states "Employee B, you did a great job on the last project." Employee C mumbles, "yeah right, sure she did."

For Workplace Equity-Only Complaints, the Department shall be the named accused employee; employees named by the complainant as contributing to the alleged conduct shall be named as Other Involved Employee(s).

Further actions taken should be provided, including:

- *Mediating the issue at an Area/divisional level;*
- *Referral to the Ombuds Section, Diversity, Equity, and Inclusion Division; or,*
- *Counseling with training and/or comment card.*

Note: *For purposes of Workplace Equity-Only Complaints, inclusion as an Other Involved Employee shall not be the sole basis for determining a pattern of behavior in any future allegation of misconduct.*

- **Policy/Procedure.** The facts of the case revealed that the complaint relates to Department policy/procedure and not to a specific employee's actions.

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Note: Complaints against Department policy and procedure not specifically addressing an employee's actions shall still be initiated on a Complaint Form, Form 01.28.00. In such cases, the Department shall be named as the accused employee, and the complaint will be adjudicated as Non-Disciplinary. Individuals making complaints against Department policy and procedure shall also be referred to the Department entity having functional oversight of the policy or procedure. If the complainant cannot be satisfied, he/she shall be referred to the Board of Police Commissioners.

- **Employee's Actions Did Not Rise to the Level of Misconduct.** A preliminary investigation revealed that the allegations did not rise to the level of misconduct and/or the named employee(s)' actions were protected by law or found to be consistent with Department policy or procedure.
- **Employee's Actions Could Have Been Different.** The facts in the complaint revealed the employee's actions could have been different. However, the employee's act or omission is best addressed through corrective action by the employee's commanding officer. The corrective action(s) taken was:
 - Counseling;
 - Training;
 - Employee Comment Sheet (Comment Card), Form 01.77.00;
 - Notice to Correct Deficiencies, (City) Form General 78; or,
 - Referral.
- **Demonstrably False.** When it is clearly proven that an allegation did not occur.

Note: An allegation is considered to be "clearly proven" as Demonstrably False under the following circumstances:

- The complainant is determined to be vexatious, i.e., the complainant demonstrates an irrational thought process and/or has established a pattern of making chronic or *false* complaints; or,
- Body Worn Video (BMW) or Digital In-Car Video System (DICV) footage, or other audio or video evidence captured the entire incident or citizen contact, and conclusively shows that the employee(s) did not commit the alleged misconduct or did not violate Department policy or procedures.

Consistent with Department policy, all allegations of misconduct initiated by a member of the public, including those determined to be Demonstrably False, *shall* be recorded on a Complaint Form, Form 01.28.00. However, when an audio or video recording clearly proves that an allegation of misconduct is Demonstrably False, the accused and witness officers need not be interviewed regarding the Demonstrably False allegation.

- **Department Employee(s) Not Involved.** The preliminary investigation revealed that the complaint did not involve a Department employee(s).

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- **Resolved Through Alternative Complaint Resolution.** The complainant and the accused employee(s) resolved the complaint through the Alternative Complaint Resolution (ACR) mediation process.