



AUSTIN FIRE DEPARTMENT
Policy and Procedure

General Order
Number

E202.3

Subject:

**Discrimination, Harassment, and
Retaliation**

Effective Date:

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Rescinds:

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Application:

All Uniformed Personnel

Authorized by:

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I. Purpose

To define and establish the Discrimination, Harassment, and Retaliation policy for Austin Fire Department (AFD) sworn personnel. AFD civilian personnel need to refer to Chapter A of the City of Austin's Personnel Policies.

II. Background

The Austin Fire Department strives to create and maintain a work environment in which people are treated with dignity, decency, and respect. The environment of all workplaces within AFD should be characterized by mutual trust and the absence of intimidation, oppression, and exploitation. Members should be able to work and learn in a safe, yet stimulating atmosphere. Accomplishing this goal is essential to the mission of AFD. For that reason, AFD is committed to equal employment opportunity and anti-discrimination. Discrimination, harassment, or retaliation to a protected class, in any form, as defined in federal, state, or local law/ordinance, will not be tolerated. Through enforcement of this policy, and by education of its members, AFD seeks to prevent, correct, and discipline behavior that violates this policy.

All members, regardless of their positions/ranks, are responsible for maintaining a professional environment free of discrimination, harassment, and retaliation, and for bringing to their chain of command's attention conduct that interferes with providing such an environment. Findings of discrimination, harassment, or retaliation against a member may result in discipline, up to and including indefinite suspension.

III. Policy

A. Definitions

1. Assault – When a person intentionally or knowingly causes physical contact with another, and said person knows or should reasonably believe the other will regard the contact as offensive or provocative. This includes a threat of bodily harm coupled with an apparent, present ability to cause that harm.
2. Bullying – Persistent conduct that is malicious or unwelcome. Abusive, obscene, or threatening conduct or communication intended to shame, injure, or instill fear in another and/or conduct that harms, intimidates, offends, degrades, or humiliates another. Bullying conduct can be verbal, non-verbal, physical, or psychological. This policy considers bullying to be a form of harassment.
3. Discrimination – The unequal or different treatment of an individual, in any employment and/or personnel action, due to their status in a protected class.
4. Harassment – Unwelcome verbal or physical conduct toward an individual or a group due to their status in a protected class. Harassment can create a hostile work environment when such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or otherwise adversely affects an individual's employment opportunities.
5. Hazing – The practice of rituals or other activities that potentially involve abuse or humiliation, and are used as a way of initiating a person into or out of a group. This policy considers hazing to be a form of harassment.
6. Protected Class – Group affiliation that includes race, color, religion, creed, sex, gender, pregnancy status, genetic information, sexual orientation, gender identity, national origin, ethnicity, age, disability, and veteran status, or other legally protected class.
7. Retaliation – An action or inaction that adversely affects the terms and conditions of employment, and is taken in response to a member's good faith complaint, participation in an investigation, proceeding or hearing, exercise of rights, or availing themselves of any benefit authorized under City and AFD policies. An adverse employment action includes, but is not limited to, suspension, demotion, and/or denial of promotional opportunity.
8. Sexual Assault – Any sexual act, threat of a sexual act, or contact of a sexual nature in which a person is forced, threatened, or coerced to engage against his/her will.
9. Sexual Harassment - Any unwelcome sex- or gender-based comments and/or conduct that occurs when:

- a. Submission to such conduct is made either openly, or by implication, as a term or condition of an individual's employment;
- b. Submission to, or rejection of, such conduct by an individual is used as a basis for employment decisions affecting that person; and/or
- c. Such conduct unreasonably interferes with a member's work performance or creates an intimidating, hostile, or offensive working environment.

B. Discrimination

As an Equal Employment Opportunity (EEO) employer, the City and AFD will recruit, hire, train, compensate, discipline, provide benefits, and promote without regard to protected class. It is the policy of the City and AFD to ensure: equal opportunity to all members and candidates, and that members be selected and promoted without discrimination.

1. In addition, the City and AFD will not discriminate in employment decisions and/or personnel actions on the basis of an individual's AIDS, AIDS Related Complex, or HIV status; nor will the City and AFD discriminate against individuals who are perceived to be at risk of HIV infection, or who associate with individuals who are believed to be at risk.
2. Reasonable accommodations shall be provided for all members and qualified applicants with a disability as defined by the Americans with Disabilities Act (ADA), as amended, provided the individual is otherwise qualified to perform the essential functions of the job and such accommodations can be provided without undue hardship for the City and AFD.

C. Harassment

1. AFD will not tolerate the harassment of members. This includes any intentional or reckless act that endangers the mental or physical health, or safety of a person, as well as any activity that intimidates or threatens a person with ostracism or subjects them to mental stress, shame, or humiliation regardless of consent. Physically endangering, intimidating, or injuring co-workers or members of the public will not be tolerated.
2. Members, independent contractors, and/or vendors shall not engage in conduct which could reasonably create a hostile work environment while on duty or on City premises, to include any work-related setting outside the workplace, such as business trips, professional conferences, etc. Such conduct will not be tolerated and may result in disciplinary action, up to and including indefinite suspension.

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3. The following list of prohibited conduct is meant to give some examples of behavior that constitutes harassment and is not a complete list of conduct prohibited under this policy:
 - a. Use of epithets, innuendos, comments, foul language or slurs, negative stereotyping, denigrating nicknames, pet names, or slang because of an individual's protected class;
 - b. Jokes, pranks, or other banter, including stereotyping based on a protected class; or
 - c. Distribution, display, viewing, downloading, or discussion of any written or graphic material, including online content, voicemail, e-mail, text messages, materials placed on walls or bulletin boards, calendars, posters, and/or cartoons that are sexually suggestive, or show hostility toward an individual or group based on a protected class.
4. While off duty, AFD members shall not engage in any form of harassment with co-workers if such conduct has the effect of interfering with an individual's subsequent work performance and/or creates an intimidating, oppressive, or hostile work environment. If a member is a victim of any such conduct, or if a member witnesses an act of harassment that occurs while off duty, he/she shall report this immediately per the reporting process of this policy.
5. Harassment can be a criminal act, but should not be confused with assault which is always a crime that shall be reported to the appropriate law enforcement agency.

D. Sexual Harassment

1. While on duty or on City premises, AFD members, independent contractors, visitors, and/or vendors shall not engage in activities that could constitute sexual harassment; members shall report such activities if they do occur. These activities include, but are not limited to, the following behaviors:
 - a. Unwanted sexual advances, requests for sexual favors, or unwanted verbal or physical conduct of a sexual nature;
 - b. Sex- or gender-based and/or sexually oriented jokes, remarks, gestures, or pictures; and/or
 - c. Distributing, displaying, viewing, downloading, or discussing any written or graphic material, including online content, voicemail, e-mail, text messages, materials placed on walls or bulletin boards, calendars, posters, and cartoons that are sexually suggestive.
2. While off duty, AFD members shall not engage in any form of conduct that interferes with an individual's subsequent work performance and/or creates an intimidating, oppressive, or hostile work environment. This includes harassing communications sent via e-mail and/or through social media while off duty. Any

such conduct shall be reported immediately.

3. Sexual harassment can occur between persons of the opposite sex or of the same sex.
4. Sexual harassment will not be tolerated and is subject to discipline up to and including indefinite suspension.
5. Sexual harassment should not be confused with sexual assault which is a crime that shall be reported to the appropriate law enforcement agency.

IV. Procedure

A. Duty to Report

1. All AFD members are required to promptly raise questions and concerns to stop offenders from engaging in behavior that discriminates, harasses, or retaliates, and shall provide assistance to individuals who are victims of discrimination, harassment, or retaliation. Promptly raising questions and/or concerns allows the opportunity for them to be addressed quickly, and can assist in preventing problems from occurring or escalating. Sometimes discrimination, harassment, or retaliation can be remedied with intervention during an initial offense.
2. Members are not prohibited from reporting or filing a complaint regarding discrimination, harassment, or retaliation on a first occurrence.
3. If the discrimination, harassment, or retaliation continues, any member who witnesses or becomes aware of the behavior has a duty to report it following the complaint process described below. Failure to report known violations of the policy may lead to disciplinary action up to and including indefinite suspension.
4. Any supervisor or manager who receives a complaint of the above prohibited conduct must, without undue delay, notify AFD's Professional Standards Office (PSO), AFD Human Resources, or the Employee Relations Division of the City's Human Resources Department (HRD) so an investigation into the allegations may begin. If the investigation confirms evidence of prohibited conduct, the supervisors or managers shall take immediate and appropriate corrective action.

B. Complaint Process

1. Any member who believes they have been subjected to discrimination, harassment based on a protected status, or retaliation based on a protected activity should file a complaint about the matter as provided in this policy.

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- a. Members may also report complaints to any supervisor, manager, chief officer, other executive management, or an AFD Human Resources representative.
 - b. Members are not required to follow the “chain of command” when reporting harassment, discrimination, or retaliation. They may instead file a complaint directly with the City’s HRD Division or the HRD Director.
 - c. Members can also make an anonymous or named complaint to the Office of the City Auditor’s Integrity Unity or through AFD’s Electronic and Anonymous Reporting System (EARS) (see Section C below).
2. The City’s HRD Director and Employee Relations Division shall investigate all complaints of sexual harassment. Further, HRD will investigate most allegations of discrimination, harassment, or retaliation brought against AFD’s executive management. Allegations received by HRD that do not meet these standards will be reviewed, then referred back to AFD’s Professional Standards Office for investigation. The HRD Director or the HRD Employee Relations Division will coordinate with AFD’s internal investigations personnel to promptly conduct any investigation warranted by the complaint.
- a. All AFD members are expected to fully cooperate with any investigation. When the offender and/or victim is a uniform member, the PSO will participate as requested by HRD investigators to compel cooperation of uniformed members or assist in the collection of facts and evidence as warranted.
 - b. HRD shall provide the investigative results to the Fire Chief and the City Manager’s office. If at any time during the course of the investigation the offense is determined to be criminal, the appropriate law enforcement agency will be notified by HRD and/or the PSO.
 - c. If an investigation finds conduct has occurred that is in violation of this policy, AFD management will take prompt and appropriate corrective action. If the investigation reveals a policy violation occurred, the Fire Chief, per civil service law, has 180 days from the date the incident occurred to take disciplinary action. If the allegation is potentially criminal in nature, then the Fire Chief, per civil service law, has 180 days from the date AFD becomes aware of the incident to take disciplinary action.
3. Failure by a supervisor or manager to notify AFD Human Resources, the HRD Director, or HRD’s Employee Relations Division of a complaint may result in discipline up to and including indefinite suspension.
4. No member shall face harassment or retaliation as a result of good-faith reporting of any policy violation or participation in the investigation of a complaint.
- C. Electronic and Anonymous Reporting System (EARS)

The Department recognizes that its members may not always feel they can safely make a report of discrimination, harassment, or retaliation. In an attempt to alleviate

these concerns, AFD has identified an alternative to the aforementioned, traditional reporting mechanisms for discrimination-, harassment-, or retaliation-related topics.

1. AFD will maintain an electronic reporting system, allowing members to make confidential reports of discrimination, harassment, or retaliation.. This system will provide members the ability to anonymously report actions related to the above conduct, with the anonymity of the reporting member protected to the fullest extent allowed by law.
2. When filing these reports, members will have the option of routing their report to any/all of the following personnel/offices within AFD:
 - a. Fire Chief;
 - b. Psychologists;
 - c. HR Representative;
 - d. AFD Peer Support Team; and/or.
 - e. AFD Professional Standards Office.

Members may also send a notification to the Austin Firefighters' Association/Local 975, but must include at least one of the other options listed above.

3. Members will have the option of providing contact information for follow-up questions or they may opt to use a blind e-mail. The blind-email option will allow the recipient of the report to ask follow up questions while maintaining the reporting member's anonymity (to the extent allowed by law). All reports of discrimination, harassment, or retaliation will be reviewed, with appropriate feedback given to the reporting member if requested.
4. Members who opt to utilize EARS to make an anonymous report are reminded of their duty to protect their peers from any ongoing/active harm, and are strongly encouraged to consider other reporting mechanisms when situationally appropriate (e.g., criminal events, impending danger, personal safety concerns, members in crisis, etc.).

D. Support for the Victim

Victims of discrimination, harassment, or retaliation are encouraged to seek support from any or all of the following sources:

1. AFD Psychologists;
2. City of Austin's Employee Assistance Program (affiliated with the City's health care program);
3. AFD Peer Support Team;

4. An AFD Chaplain; and/or
5. Austin Police Department Victim Services.

City HRD or AFD Human Resources can help with additional resources if needed.

E. Discrimination, Harassment, or Retaliation Outside of This Policy

If any member feels they have been harassed, were discriminated against, or retaliated against in a manner not covered by this policy, then they may file a complaint with the Federal Equal Employment Opportunity Commission (EEOC).

F. Retaliation Prohibited

1. AFD is committed to maintaining a work environment that is free of retaliation and where any member is free to raise questions or concerns involving the terms and conditions of any member's employment.
2. The City prohibits retaliation against any member who, in good faith, reports discrimination, harassment, or retaliation; files a complaint regarding a law, policy, practice or procedure; testifies, assists, or participates in an investigation, proceeding, or hearing; or exercises rights or avails themselves of any benefit authorized under personnel policies, such as filing a worker's compensation claim, requesting time off through the Family and Medical Leave Act (FMLA), or requesting military leave.
3. Unacceptable conduct that would likely deter an individual from reporting or supporting a claim may constitute retaliation, even if the underlying complaint is not substantiated.
4. Any member who experiences harassment, intimidation, or any form of retaliation as the result of having reported a violation of this policy should immediately report such action to any of the following:
 - a. Any AFD supervisor (civilian or uniformed);
 - b. AFD PSO;
 - c. Fire Chief;
 - d. AFD Human Resources Manager; and/or
 - e. City HRD.
5. Any member who discriminates against, harasses, intimidates, or in any other way retaliates against an individual who reports a violation of this policy in good faith or cooperates in the investigation shall be subject to discipline up to and including indefinite suspension.

G. Criminal Activity and Threat of Imminent Physical Harm

Criminal activity—such as assault and sexual assault as defined above—and any other threat of imminent physical harm shall be referred to the appropriate law enforcement agency. If a member is aware of a threat of imminent physical harm to themselves, another member, or the public, he/she should attempt to remove themselves from the situation and immediately notify appropriate law enforcement personnel by calling "911." Additionally, a member shall notify his/her co-workers who may be in peril, and report this emergency call to "911, their supervisor, or another member of management immediately.

H. Malicious Accusations

Anyone who knowingly makes a false accusation shall be subject to discipline up to and including indefinite suspension.

I. Training

All members shall receive training on this policy and its components as necessary and available. It is the purpose of this provision to create a clear standard and to raise the emphasis on achieving compliance. All members will be required to participate in refresher training on a frequency determined by the Fire Chief.