



TOWN OF APPLE VALLEY

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** August 25, 2015

From: Nikki Salas, Director of Human Resources, Risk Management Department **Item No:** 6

Subject: ADOPT RESOLUTION NO. 2015-31, A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, AMENDING THE PERSONNEL POLICY AND PROCEDURE MANUAL FOR THE TOWN OF APPLE VALLEY

T.M. Approval: _____ **Budgeted Item:** Yes No N/A

RECOMMENDED ACTION:

That the Town Council adopt the attached Resolution No. 2015-31, a Resolution of the Town Council of The Town of Apple Valley amending the Personnel Policy and Procedure Manual for the Town of Apple Valley.

SUMMARY:

Human Resources staff, in coordination with the Town Attorney's office, recommends updating the following section of the Town of Apple Valley Personnel Policy and Procedure Manual – Rule 8 Policy Against Employee Harassment, to ensure consistent policy language as defined by state requirements.

BACKGROUND:

On July 1, 2015, Assembly Bill 1825 provided the requirement for all supervisory staff to receive two (2) hours of sexual harassment training. The Town complies with all sections of this law as required. In January 2015, AB 2053 passed which updated language from the original bill. Town staff, in conjunction with the Town Attorney's office, reviewed the existing Town Policy and is suggesting updates to our policy to be consistent with the state requirements.

FISCAL IMPACT:

There is no financial impact to the Town for the recommended update to the Personnel Policy and Procedure Manual.

ATTACHMENT:

1. Resolution No. 2015-31

RESOLUTION NO. 2015-31

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, AMENDING THE EMPLOYEE BENEFIT PLAN, SALARY SCHEDULE, AND PERSONNEL POLICY AND PROCEDURE MANUAL FOR THE TOWN OF APPLE VALLEY

WHEREAS, the Town Council of the Town of Apple Valley has established the Personnel Policy and Procedure Manual for the Town of Apple Valley employees; and

WHEREAS, the Town Council of the Town of Apple Valley wishes to modify sections of the Policy and Procedure Manual for the Town of Apple Valley employees.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. Rule 8 Policy Against Employee Harassment
2. All resolutions, parts of resolutions in conflict herewith are hereby amended to be consistent herewith.

Unless otherwise noted, the effective date of this Resolution shall be August 26, 2015.

APPROVED and **ADOPTED** by the Town Council of the Town of Apple Valley this 25th day of August, 2015.

Larry Cusack, Mayor

ATTEST:

La Vonda M-Pearson, Town Clerk

EXHIBIT A

RULE 8 POLICY AGAINST EMPLOYEE HARASSMENT

Section 8.1 Introduction

The Town of Apple Valley is committed to providing a work environment that is free from any form of unlawful discrimination. This includes discriminatory harassment of Town employees. It can result in high turnover, absenteeism, low morale, and an uncomfortable work environment. In some cases, employee harassment may constitute a criminal offense.

Section 8.2 Policy Statement

The Town strictly prohibits unlawful harassment. This includes harassment on the basis of sex, sexual orientation, race, color, ancestry, national origin, religion, physical or mental disability, medical condition, age (over 40), pregnancy (including perceived pregnancy), childbirth, breastfeeding or related medical condition, marital status, gender identity, gender expression, genetic characteristics, military or veteran status, or any other protected class under applicable law.

Section 8.3 Application

1. This policy applies to all phases of the employment relationship, including, but not limited to, recruitment, testing, hiring, upgrading, promotion/demotion, transfer, layoff, termination, rates of pay, benefits, and selection for training.
2. This policy applies to all officers and employees of the Town, including, but not limited to, full-time and part-time employees, seasonal employees, temporary employees, casual employees, applicants, and persons working under contract for the Town.

Section 8.4 Harassment Defined

1. Harassment. Harassment may consist of offensive verbal, physical, or visual conduct when such conduct is based on or related to an individual's sex and/or membership in one of the above-described protected classifications, and:
 - a. Submission. Submission to the offensive conduct is an explicit or implicit term or condition of employment;
 - b. Submission to/Rejection. Submission to or rejection of the offensive conduct forms the basis for an employment decision affecting the employee; or
 - c. Interference. The offensive conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment.
2. Examples. Examples of what may constitute prohibited harassment include, but are not limited to, the following:

- a. Kidding or joking about sex or membership in one of the protected classifications;
- b. Hugs, pats and similar physical contact;
- c. Assault, impeding or blocking movement, or any physical interference with normal work or movement;
- d. Cartoons, posters and other materials referring to sex or membership in one of the protected classifications;
- e. Threats intended to induce sexual favors;
- f. Continued suggestions or invitations to social events outside the workplace after being told such suggestions are unwelcome;
- g. Degrading words or offensive terms of a sexual nature or based on the individual's membership in one of the protected classifications;
- h. Prolonged staring or leering at a person;
- i. Similar conduct directed at an individual on the basis of any of the protected categories discussed above.

Section 8.5 Procedure

1. Internal Reporting Procedure

- a. Any employee who believes that he or she has been the victim of sexual or other prohibited harassment by a co-worker, supervisor, member of the public, client, customer, visitor, vendor, or other individual contracting with or doing business with the Town should immediately notify the Director of Human Resources or his/her designee. An employee is not required to complain to the Director of Human Resources if that person is the individual who is harassing the employee, but may instead may report the harassment to his or her immediate supervisor or any other member of management.
- b. Supervisors who observe, receive complaints, or otherwise become aware of harassing conduct that violates this policy have a duty to immediately report the situation to the Director of Human Resources or other appropriate Town official so that an investigation may be initiated.

2 External Reporting Procedure

- a. Any employee who believes that he or she has been the victim of sexual or other prohibited harassment by a co-worker, supervisor, member of the public, client, customer, visitor, vendor, or other individual contracting with or doing business with the Town may file a complaint with the California Department of Fair Employment and Housing ("DFEH"). Contact information for the DFEH can be obtained at www.dfeh.ca.gov.

Section 8.6 Investigation

1. Upon the filing of a complaint with the Town, the complainant will be provided with a copy of this policy. The Director of Human Resources is the person designated by the Town to investigate complaints of harassment. The Director of Human Resources may, however, delegate the investigation at his/her discretion. In the event the harassment complaint is against the Director of Human Resources, an investigator shall be appointed by the Town Manager or Town Council.
2. Charges filed with the DFEH are investigated by the DFEH.

Section 8.7 Internal Documentation Procedure

1. When an allegation of harassment is made by an employee, the person to whom the complaint is made shall immediately prepare a report of the complaint according to the preceding section and submit it to the Director of Human Resources (or to the Town Manager or Town Council if the complaint is against the Director of Human Resources).
2. The investigator shall make and keep a written record of the investigation, including notes of verbal responses made to the investigator by the person complaining of harassment, witnesses interviewed during the investigation, the person against whom the complaint of harassment was made, and any other person contacted by the investigator in connection with the investigation. The investigator's notes shall be made at the time the verbal interview is in progress. Any other documentary evidence shall be retained as part of the record of the investigation.
3. Based on the written record and any other relevant information, the Director of Human Resources shall, within a reasonable period of time, determine whether the conduct of the person against whom a complaint has been made constitutes harassment within the meaning of the Town's policy. In making that determination, the Director of Human Resources shall look at the record as a whole and at the totality of circumstances, including the nature of the conduct in question; the context in which the conduct, if any, occurred; and the conduct of the person complaining of harassment and all relevant individuals. The determination of whether harassment within the meaning of the Town's policy occurred will be made on a case-by-case basis by the Director of Human Resources. The complainant and the alleged harasser will be advised of this determination.

Section 8.8 Confidentiality

All records and information relating to the investigation of any alleged harassment and resulting disciplinary action shall be confidential, except to the extent disclosure is required by law, as part of the investigatory or disciplinary process, or as otherwise reasonably necessary.

Section 8.9 Remedies

1. Disciplinary Action

- a. Prevention/Remedy. If the Director of Human Resources determines that the complaint of harassment is founded, the Director of Human Resources shall take immediate and appropriate disciplinary action consistent with the requirements of law and any personnel policies or procedures pertaining to employee discipline. Other steps may be taken to the extent reasonably necessary to prevent recurrence of the harassment and to remedy the complainant's loss, if any.
- b. Disciplinary Action. Disciplinary action shall be consistent with the nature and severity of the offense, the rank of the harasser, and any other factors relating to the fair and efficient administration of the Town's operations.

Section 8.10 Retaliation

Retaliation against anyone for opposing conduct prohibited by this policy or for filing a complaint with or otherwise participating in an investigation, proceeding or hearing conducted by the Town or the DFEH is strictly prohibited and may subject the offending person to, among other things, disciplinary action, up to and including, discharge.

Section 8.11 Employee Obligation

1. Employees are not only encouraged to report instances of harassment; they are obligated to report instances of harassment.
2. Employees are obligated to cooperate in every investigation of harassment, including, but not necessarily limited to:
 - a. Coming forward with evidence, both favorable and unfavorable to a person accused of harassment; and
 - b. Fully and truthfully making a written report or verbally answering questions when required to do so during the course of a Town investigation of alleged harassment.
3. Knowingly, falsely accusing someone of harassment, otherwise knowingly giving false or misleading information in an investigation of harassment shall be grounds for disciplinary action, up to and including, termination of employment.

Section 8.12 Mandatory Sexual Harassment Avoidance Training for Supervisors is Required

This training is offered to all supervisory employees and must be renewed every two years.