

THE  
SUPERVISOR'S GUIDE  
TO  
AFFIRMATIVE ACTION  
IN THE  
CITY OF LOS ANGELES

City of Los Angeles Personnel Department Equal Employment Opportunities Section Human Resources and Benefits  
Division June, 1990

## TABLE OF CONTENTS

	Page
I. Introduction	1
II. City Policy on Affirmative Action	3
<ul style="list-style-type: none"><li>• City Council Equal Employment Opportunities Policy Resolution</li><li>• Mayor's Executive Directive No. 1 - Affirmative Action Program</li><li>• Civil Service Commission Discrimination Complaint Processing Handout</li><li>• Mayor's Executive Directive No. 1-A (Revised) Sexual Harassment</li><li>• City's Sexual Harassment Complaint Procedure</li><li>• Mayor's Executive Directive No. 5 (Revised) - The Rule of Three Whole Scores and the Employee Selection Process</li><li>• Mayor's Executive Directive No. 27 - Contact with State and Federal Compliance Agencies Regarding Discrimination Complaints</li><li>• City's Pregnancy Leave Policy</li></ul>	
III. Responsibility for Affirmative Action in the City of Los Angeles	7
IV. Equal Employment Opportunity Legislation and Policy	13
<ul style="list-style-type: none"><li>• Federal Legislation: the Equal Pay Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Equal Employment Opportunity Act, the Rehabilitation Act, the Pregnancy Discrimination Act.</li><li>• State of California Legislation: The Fair Employment and Housing Act</li></ul>	

	Page
V. Discrimination Complaint Investigation Procedures	16
<ul style="list-style-type: none"><li>• Guideline on Investigating Discrimination Complaints</li><li>• Guideline on Processing Sexual Harassment Complaints</li></ul>	
VI. Supervising and-Working With the Disabled	32
<ul style="list-style-type: none"><li>• Reasonable Accommodation for the Disabled</li><li>• Interviewing Disabled Candidates for Employment</li><li>• Summary of Guidelines for Certification Interviewers of Disabled Candidates</li><li>• Resources for Information on Employment of the Disabled</li></ul>	
VII. Appendices	41
A. Responsibilities of Departmental EEO Coordinator, Coordinator for the Disabled, and Sexual Harassment Counselor	
B. Court Cases	
<ul style="list-style-type: none"><li>• Business Necessity/Legitimate Business Justification</li><li>• mixed Motives</li><li>• Accommodation for Religious Beliefs</li><li>• Physical Handicap</li><li>• Voluntary Affirmative Action Plans</li><li>• California Law versus Federal Law</li></ul>	
C. Glossary of Equal Employment Opportunity (EEO) Terms	

## I. INTRODUCTION

Equal employment opportunity, which is the right of all persons to work and to advance on the basis of merit, ability, and potential, has deep roots in our American heritage. For many years this right was severely restricted by discriminatory employment practices operating against - various groups in our society. Original actions to prohibit such discrimination by State Fair Employment laws and Presidential Orders in the 1940's and 1950's proved insufficient. Finally, Congress provided Federal legal enforcement for equal employment in the Civil Rights Act of 1964.

Title VII of the Civil Rights Act of 1964 expressly forbids discrimination on the basis of race, color, religion, sex, or national origin in all employment practices. This law was amended by the Equal Employment Opportunities Act of 1972, which extended coverage of that law to public employees, gave the Equal Employment Opportunity Commission enforcement powers, and established complaint guidelines for victims of unfair employment practices prohibited by Title VII. The Federal Age Discrimination in Employment Act of 1967 prohibits an employee from discriminating against individuals age 40 and above, in terms of hiring, compensation, discharge, and other major aspects of employment. The Rehabilitation Act of 1973 extended protection against discrimination to handicapped persons.

California enacted a Fair Employment Practice Act in 1959. The Act now makes it illegal to discriminate on the basis of race, religion, color, age, marital status, national origin, ancestry, sex, medical condition (cancer), or physical handicap. The Act was amended to prohibit discrimination in housing and now is called the Fair Employment and Housing Act (FEHA).

Consistent with both Federal and State legislation for providing equal employment opportunity and affirmative action the City of Los Angeles has adopted an Affirmative Action Program to ensure that: the City does not discriminate in employment on the basis of race, religion, national origin, sex (includes sexual harassment and pregnancy discrimination), age, marital status, sexual preference, disability, creed, color, ancestry, medical condition (cancer), affliction or perceived affliction with AIDS, or retaliation for having filed a discrimination complaint; employment decisions are based on the qualifications truly needed to perform the job; and efforts are made to increase the representation in the City's workforce in each occupational category, based upon population parity.

It is the City's hope that, as equality of opportunity is provided in all aspects of our society, all people may have the realistic opportunity to achieve a place in the workforce which meets their interests and capabilities. In the setting of specific goals for improved representation, the City clearly understands that achievement of both short-range and long-range

goals depends upon the availability of qualified and interested applicants, the use of merit practices, and the availability of revenue to support the level of services and activities currently provided by the City. The overriding objective is to provide each person with a realistic opportunity to develop and succeed according to his or her potential.

## II. CITY POLICY ON AFFIRMATIVE ACTION

The following documents are the framework for the City's Equal Employment Opportunity and Affirmative Action policies and procedures and include: the City Council's Equal Employment Opportunity Policy Resolution (Appendix B of the City's Affirmative Action Program), Mayoral Executive Directives describing City policy in specific areas related to affirmative action, and information regarding the city's Sexual Harassment Complaint Procedure and Pregnancy Leave Policy.

CITY COUNCIL  
EQUAL EMPLOYMENT OPPORTUNITIES POLICY  
RESOLUTION

WHEREAS, Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, State and other Federal laws prohibit discrimination in employment; and

WHEREAS, such laws and regulations have established a national and state policy of nondiscrimination in employment; and

WHEREAS, it has long been the policy of the City, to recruit, select, promote, assign, train, compensate, discipline, and terminate people in all positions of City employment on the basis of merit without regard to race, color, religion, national origin, sex, age, handicap, marital status, or sexual preference; and

WHEREAS, such purpose and policy are consistent with the merit system of the City; and

WHEREAS, certain actions have already been undertaken by the City to ensure the job relatedness of personnel policies and equal employment opportunities for all qualified persons, including minorities, women and the handicapped; and

WHEREAS, the City recognizes the need to provide additional employment opportunities for minorities, women, and the handicapped throughout the City's work force; and

WHEREAS, it is necessary and in the City's interest that all activities relating to equal opportunity in City employment be undertaken as a coordinated effort under the direction of the office of the Mayor and City Council; and

WHEREAS, the City recognizes the need to institute a vigorous Affirmative Action Program which aims to improve the job-relatedness of personnel practices and to improve the utilization of certain ethnic groups, women, and the handicapped at various levels within the City's work force through the implementation of results-oriented procedures and programs.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. Responsibility for equal employment opportunity-Affirmative action programs of the City of Los Angeles, under the present Charter, shall be assigned as follows:

Policy: Mayor, city council, Civil Service Commission

Administration: Personnel Department with support of each department head.

Monitoring and Recommendation: Personnel Department

Evaluation: Affirmative Action Task Force

Enforcement: Mayor, City Council, Civil Service Commission

2. It shall be the responsibility of the Personnel Department, under the direction of the Mayor and with the review of the Affirmative Action Task Force, to prepare and submit to the City Council for approval, guidelines setting forth standards and procedures for a City Affirmative Action Program. The guidelines shall comply with applicable federal, state and local laws, regulations and guidelines relating to discrimination in employment, and will take into account problems and progress in the City's efforts to date to provide equal employment opportunity.
3. It shall be the responsibility of each City agency to review and analyze (a) the composition of its work force as required by equal employment opportunity laws and regulations and (b) its personnel policies, practices and procedures. The review and analysis made under (a) and (b) shall be based upon the standards and procedures contained in the approved City Affirmative Action Program guidelines.
4. It shall be the responsibility of each department to prepare, for the approval of the Personnel Department a departmental Affirmative Action Program in accordance with the standards and procedures contained in the Affirmative Action Program guidelines.
5. It shall be the responsibility of each department to adopt and strongly enforce a discipline policy which prohibits employee misconduct with regard to remarks, gestures, terms of address, jokes or any other type of verbal or physical behavior which has the clear effect of demonstrating insensitivity or condescension regarding sexual, racial, ethnic, cultural, religious, age, physical or mental differences.
6. It shall be the responsibility of the Personnel Department to prepare and submit for the approval of the Mayor and the City Council a City-wide Affirmative Action Program. The Affirmative Action Task Force shall review the program and make recommendations for appropriate changes.

7. In support of the Affirmative Action Program, the City Council and the Mayor will insure that adequate City resources are assigned to implement the Program and shall closely review and hold City managers accountable for the Program's progress within their respective departments.
8. All City departments shall work closely with the Personnel Department to develop and implement effective Affirmative Action Programs, and all City employees will give their department Programs full cooperation and support.
9. The Affirmative Action Task Force will evaluate and report to the Mayor and City Council on a quarterly basis its findings and recommendations regarding progress under the City's Affirmative Action Program.

Adopted by the City Council on November 26, 1975.

Amended by the City Council on May 10, 1976.

Amended by the City Council on October 8, 1980.

October 15, 1980  
EXECUTIVE DIRECTIVE NO. I

TO: THE HEADS OF ALL DEPARTMENTS OF CITY GOVERNMENT  
SUBJECT: Affirmative Action Program

It is the City's Policy that the recruitment, selection, promotion, assignment, compensation, benefits, training and termination of all employees of the City of Los Angeles shall be conducted without regard to their race, religion, national origin, sex, age, handicap or sexual preference.

To ensure that equal employment opportunity is truly present, and to promote better representation of all qualified members of our community at all levels of City service, each City department shall engage in a vigorous affirmative action program.

It shall be the responsibility of the Personnel Department, under the direction of the Mayor and with the review of the Affirmative Action Task Force, to prepare standards and procedures for the City Affirmative Action Program. These standards shall comply with applicable federal, state, and local laws, regulations and guidelines relating to discrimination in employment, and shall take into account problems and progress in the City's efforts to date to provide equal employment opportunity.

With the approval of the General Manager Personnel Department, each department manager shall continue to develop and administer a departmental Affirmative Action Program designed to correct underrepresentation of minorities and women and provide greater opportunities for the handicapped. To achieve this objective, each manager shall secure the support of employees and formulate new programs for locating and developing human potential.

## EXECUTIVE DIRECTIVE NO. 1

Each department program shall be developed in accordance with the City Affirmative Action Program Standards and shall include the formation of a departmental Advisory Affirmative Action Committee. Each manager shall appoint a departmental Equal Employment Opportunity Coordinator who shall report directly to the manager on affirmative action matters. It shall be the responsibility of each manager to keep the department's Board of Commissioners directly involved in departmental affirmative action activities of the department. Formal semi-annual progress reports shall be submitted by each department to the Personnel Department, for review and transmittal to my Office, each January 25 and July 25.

Each department manager shall be held accountable for his or her department's progress in achieving ambitious numerical and action program goals and in improving personnel practices which are called to the department's attention by the Personnel Department or Board of Civil Service Commissioners. Because of the importance of affirmative action goal attainment to the successful management of the City, each manager shall be evaluated an affirmative action performance effectiveness.

To further the goals of Affirmative Action, I have formed an Affirmative Action Task Force composed of members of my Office, City Council members and representatives of the Personnel Department, City Attorney and the affirmative action associations of City employees. It shall be the responsibility of the Task Force to review and evaluate the City's affirmative action activities and progress and recommend to me methods by which the City's affirmative action goals may be more effectively achieved.

Our sincere commitment to the City's Affirmative Action Program will serve as a means of achieving one of the basic principles of the City's merit system, that of equal employment opportunity. The Program has my wholehearted endorsement and I call on all departments to make every effort for its effective implementation. Further, I ask all City employees to support fully and contribute to the City's Affirmative Action Program so that equal employment opportunity will become a reality in the City of Los Angeles.

TOM BRADLEY Mayor

Previously issued as No. 1-New Series, February 20, 1976

CIVIL SERVICE COMMISSION  
DISCRIMINATION COMPLAINT PROCEDURE

According to the Discrimination Complaint Procedure of the City, of Los Angeles, employees of the City and applicants for City employment have the right to file a written discrimination complaint with the Civil Service Commission within one year of an alleged act of discrimination. The complaint may be filed on any employment action procedures or practice specifically affecting the individual, which is believed to be discriminatory on one or more of the following bases:

- |                    |  |
|--------------------|--|
| 1. Race            | 9. Marital Status  |
| 2. Sex             | 10. Ancestry   |
| 3. Age             | 11. Medical Condition (Cancer)   |
| 4. Creed           | 12. Sexual Preference  |
| 5. National Origin | 13. Acquired Immune Deficiency<br>Syndrome (AIDS -afflicted<br>or perceived) |
| 6. Handicap        | 14. Retaliation  |
| 7. Religion        |  |
| 8. Color           |  |

The City's Discrimination Complaint Procedure is available to all individuals except those who have filed a grievance or have used another appeal procedure to address the same or similar matters. If a complainant files a grievance, or appeals a personnel or employment action through another City appeal procedure on the same or similar issues, the discrimination complaint will be administratively closed. For example, individuals who appeal any portion of an examination or the rejection of their application, can not also file a discrimination complaint with the Civil Service Commission on the same or similar issues.

City employees who believe they have experienced discrimination within their departments are encouraged to first contact their department's Equal Employment Opportunity Coordinator in an effort to provide the department with the opportunity to resolve the situation. If the employee is not satisfied with the department's efforts to resolve the situation, or the employee does not believe the situation can be satisfactorily handled at the department level, the employee may submit the complaint in writing to the:

Personnel Department  
Human Resources and Benefits Division/EEOS  
Room 1474, City Hall East  
200 N. Main Street Los Angeles, CA 90012 or

Civil Service Commission  
Room 206, City Hall South  
111 East First Street Los Angeles, CA 90012

A written complaint should include the following information:

1. Name, address, and telephone number of the complainant;
2. Basis of the discrimination (eg. race, sex, age, etc.)
3. Discriminatory practice(s) and when it occurred (eg. hiring, discharge, discipline, etc.);
4. Names of any persons thought to be responsible for the discriminatory action(s);

5. Statement of the remedy sought by the complainant; and
6. Name, address, and telephone number of the complainant's representative, if any.

Departments normally require employees to prepare their discrimination complaints and meet with Personnel Department staff to discuss their complaints on their own time, unless the meeting is requested by Personnel Department staff.

The Equal Employment Opportunity Section (EEO) staff of the Personnel Department will schedule a meeting with the complainant to clarify the allegations. Staff then will attempt to resolve the issues informally through discussions with the concerned department(s). If the complaint can not be resolved at the informal stage, a thorough investigation will be conducted to determine the facts. Sufficient time will be taken to completely research the relevant concerns and prepare a thorough report that addresses all of the agreed upon allegations. A draft report of the findings to each allegation including recommendations if appropriate shall be prepared and submitted to the complainant, any representative (if applicable) and to the department(s). If recommendations are necessary, they will be tailored to address specific problems or improve practices and procedures that were identified during the complaint investigation. Upon receipt of the draft report, the parties have the opportunity to provide any additional information relevant to the complaint. After these concerns have been investigated and addressed, each of the parties will receive a copy of the final report and will be notified of the date when the Civil Service Commission will hear the matter.

At the Civil Service Commission hearing all of the parties will be given an opportunity to present their side of the issues. During the hearing the Commission will review the report and recommendations and may request additional information from any of the parties. The Commission will make a finding that discrimination did, or did not, occur. If the Commission finds discrimination, it will request the concerned department(s) to remedy the situation. If the concerned department refuses to act on the Commission's request, the complainant may take the Commission's finding to an outside agency in an effort to obtain the remedy being sought; however, the complainant must have filed a complaint with the outside agency in a timely manner. Complainants may contact the Federal Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing for information on filing with those agencies. Whether or not the Civil Service Commission finds discrimination, the Commission may request the concerned department(s) to take specific actions to correct or develop practices, policies and/or procedures which were identified by staff.

The Chief of the Human Resources and Benefits Division of the Personnel Department has the authority under the City's Discrimination Complaint Procedure to administratively close a discrimination complaint for any of the following reasons:

1. failure by the complainant to cooperate with the EEO staff who is conducting the investigation;
2. inability to reach the complainant after repeated efforts by the EEO staff ;

3. there is no assertion that the alleged acts occurred based on one or more of the fourteen discriminatory bases;
4. failure by the complainant to respond within 15 calendar days to a written offer by the concerned department which would afford relief for the harm alleged by the complainant;
5. the Board of Civil Service Commissioners has no jurisdiction over the complaint; or
6. the complainant has filed a grievance or appeal under another City procedure regarding the same or similar issues.

A decision by the Chief of the Human Resources and Benefits Division to administratively close a complaint may be appealed to the Civil Service Commission only when the complainant can provide clear evidence indicating that the reasons for the closure were incorrect.

February 4, 1988

EXECUTIVE DIRECTIVE NO. 1-A (Revised)

TO: THE HEADS OF ALL DEPARTMENTS OF CITY GOVERNMENT

SUBJECT: SEXUAL HARRASSMENT

The City of Los Angeles, in accord with official City policy established in Mayor's Executive Directive No. 1-A dated January 23, 1981, remains committed to providing its employees a working environment free of sexual harassment, intimidation, and coercion.

Sexual harassment is a form of sex discrimination and is a violation of official City policy and Federal and State law.

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- (1) submission to such conduct is either explicitly or implicitly made a term or condition of an individual's employment.
- (2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or,
- (3) Such conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Consistent with this definition, it is sexual harassment for any supervisor to use implicit or explicit sexual behavior to affect the work environment, job or performance of any employees. Further, it is sexual harassment for any employee to make verbal comments, gestures or physical contact of a sexual nature which interfere with another employee's work.

The policy of the City of Los Angeles is that sexual harassment in the workplace is unacceptable and will not be condoned or tolerated. Department managers have the duty and responsibility to take all necessary steps, including appropriate disciplinary action, to promote and maintain a working environment free of sexual harassment, intimidation, and coercion.

EXECUTIVE DIRECTIVE NO. 1-A (Revised)

February 4, 1988

Page 2.

Each City Department manager must continue to ensure that a Sexual Harassment Counselor has been designated and that all Department employees are made aware of the name and phone number of the designated Counselor.

Department managers shall advise employees that complaints of sexual harassment should be reported to the employee's immediate supervisor, to the designated Department Sexual Harassment Counselor, or to the Personnel Department's Sexual Harassment Counselor, (213) 485-4388. In all cases, complaints of sexual harassment will be fully and completely investigated. Where violations of the City's anti-harassment policy are found to have occurred, Department managers are required to take appropriate remedial action in accord with City procedures for administrative discipline.

It has been and shall continue to be the policy and practice of the City of Los Angeles to make every effort to prevent discriminatory practices. Toward this end, the attached Sexual Harassment Complaint Procedure is available immediately to all City employees. I direct each Department manager to disseminate to all employees this Executive Directive and the Complaint Procedure, together with the names and telephone numbers of the Department Sexual Harassment Counselor and the Personnel Department's Sexual Harassment Counselor. I also direct each Department manager to maintain accurate and current records of each report of sexual harassment made to the Department, along with any supporting documentation of other investigative materials, and further, records of the resolution of each matter. Finally, I direct all Department managers to encourage the cooperation of all City employees in taking appropriate steps to eliminate sexual harassment in City government.

TOM BRADLEY

Mayor

Attachment – Sexual Harassment Complaint Procedure

Previously issued as

No. 1-A, January 23, 1981

February 4, 1988

TO: All City Employees  
SUBJECT: SEXUAL HARASSMENT COMPLAINT PROCEDURE

As established in my Executive Directive 1-A (Revised), dated February 4, 1988, the policy of the City of Los Angeles is to promote and maintain a working environment free of sexual harassment, intimidation, and coercion. Sexual harassment is a form of sex discrimination and is a violation of official City policy and Federal and State law.

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- (1) submission to such conduct is either explicitly or implicitly made a term or condition of an individual's employment;
- (2) submission to or rejection of -such conduct by an individual is used as the basis for employment decisions affecting such individual; or,
- (3) such conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Consistent with this definition, it is sexual harassment for any supervisor to use implicit or explicit sexual behavior to affect the work environment, job or performance of any employee. Further, it is sexual harassment for any employee to make verbal comments, gestures or physical contact of a sexual nature which interfere with another employee's work.

City policy and State and Federal law require that prompt and appropriate action be taken to deter and punish sexual harassment. Department managers have been instructed to take all necessary steps, including appropriate disciplinary action, to ensure and maintain a working environment free of sexual harassment, intimidation, and coercion.

Each Department manager has designated a Sexual Harassment Counselor for his or her Department and will disseminate the name and phone number of the designated Counselor to all employees.

In all cases, allegations of sexual harassment will be fully and completely investigated. The employee making a sexual harassment complaint can choose whether the complaint will be investigated by the employee's Department Sexual Harassment Counselor or by the Personnel Department's Sexual Harassment Counselor. Violations of the City's policy against sexual harassment will be treated appropriately in accord with existing City procedures for administrative discipline.

The following Sexual Harassment Complaint Procedure has been developed specifically for use by employees who believe that they have been sexually harassed.

## SEXUAL HARASSMENT COMPLAINT PROCEDURE

February 4, 1988

Page 2

### Employee Rights and Responsibilities

Every employee is entitled to work in an environment free from sexual harassment or coercion. An employee who perceives comments, gestures or actions of a sexual nature by another employee or supervisor to be offensive should immediately and clearly communicate to that person that such sexual behavior is unwelcome. (Acts constituting sexual harassment are not necessarily limited to acts by a male toward a female, but can be committed by and against persons of both sexes.)

Any employee who believes he or she has been sexually harassed should take the following steps:

1) The employee should immediately report the sexual harassment complaint to her or his supervisor, to the Department's sexual harassment Counselor, the Personnel Department's Sexual Harassment Counselor or may seek assistance from the Mayor's Office. ALL EMPLOYEES ARE ASSURED THAT THEY MAY MAKE SUCH REPORTS WITHOUT FEAR OF RETALIATION BY THE CITY, DEPARTMENT MANAGEMENT OR THEIR IMMEDIATE SUPERVISOR.

2) The employee has the right to a confidential conference with the person to whom the sexual harassment complaint is made.

3) Each complaint of sexual harassment will be fully and completely investigated by the Department's Sexual Harassment Counselor or by the Personnel Department's Sexual Harassment Counselor.

4) All investigations will be handled with discretion, sensitivity and due concern for the dignity of those involved.

5) All investigations will be as thorough as necessary. All persons named as potential witnesses by the employee will be contacted as required during the course of the investigation. Anyone who is alleged to have committed acts of sexual harassment will be contacted during the investigation and permitted to make a statement.

6) Any employee who observes an incident of sexual harassment should cooperate in any investigation. ALL EMPLOYEES ARE ASSURED THAT THEY MAY COOPERATE IN SUCH INVESTIGATION WITHOUT FEAR OF RETALIATION OR REPRISAL BY THE CITY, DEPARTMENT MANAGEMENT OR THEIR IMMEDIATE SUPERVISOR.

7) Employees may expect a timely resolution of all complaints.

### Responsibilities of the Department Sexual Harassment Counselor

Each City Department manager must designate a Sexual Harassment Counselor and ensure that all Department employees are made aware of the name and phone number of the designated Counselor. An employee who has been sexually harassed may choose to file a complaint with the Department Sexual Harassment Counselor. Each Department Sexual Harassment Counselor has the following responsibilities:

## SEXUAL HARASSMENT COMPLAINT PROCEDURE

February 4, 1988

Page 3

1. Upon receipt of a sexual harassment complaint, the Counselor shall meet with the complaining employee at the employee's earliest convenience. The Counselor shall fully inform the employee about the City's sexual harassment policies and grievance procedures and shall answer any questions that the employee may have regarding the City's policy.
2. The Counselor shall listen to the employee's complaint and discuss the complaint with discretion, sensitivity and due concern for the dignity of those people involved.
3. The Counselor shall fully record and document the complaint.
4. The Counselor shall conduct a complete and timely investigation into the complaint, including conducting interviews as appropriate with witnesses and others who may be involved.
5. Upon completion of the investigation, the Counselor shall draft a report on the investigation. Copies of the report shall be provided to the Department manager and the employee.
6. If the employee is not satisfied with the way the sexual harassment complaint has been resolved, the Counselor shall fully inform the employee of his or her additional rights under the law. These rights include utilizing the City's Discrimination Complaint Procedure and filing complaints with state or federal regulatory agencies or courts.

### Responsibilities of the Personnel Department's Sexual Harassment Counselor

An employee who has been sexually harassed may choose to file a complaint with the Personnel Department's Sexual Harassment Counselor. The Personnel Department's Sexual Counselor has the following responsibilities:

1. The Counselor will be available at (213) 485-4388 to discuss sexual harassment complaints with employees and fully inform employees about the City's sexual policies and complaint procedures and shall answer any questions that the employee may have regarding the City's policy.
2. The Counselor shall listen to the employee's complaint and discuss the complaint with discretion, sensitivity and due concern for the dignity of the people involved.
3. The Counselor shall make preliminary efforts to resolve the complaint.
4. If the employee is not satisfied with the results of the efforts, he or she may file a formal complaint utilizing the City's Discrimination Complaint Procedure.

## SEXUAL HARASSMENT COMPLAINT PROCEDURE

February 4, 1988

Page 4

### The City's Discrimination Complaint Procedure

The City's Discrimination Complaint Procedure gives City employees and for City employment the right to file a written complaint with the City's Civil Service Commission. The complaint must deal with a City action, procedure or practice in hiring or employment which the employee or prospective employee believes to be discriminatory. Sexual harassment is a type of discrimination. Complaints under the City's Discrimination Complaint Procedure must be filed within one year of the alleged act of discrimination.

### Federal and State Regulatory or Judicial Action

Employees who have been sexually harassed may have the right to file complaints with state and/or federal regulatory agencies and/or in state or federal court. Time limits for filing complaints with regulatory vary and employees should check directly with those agencies for specific directions.

The federal and state regulatory agencies may be contacted at the following address:

Equal Employment Opportunity Commission (Federal)  
3660 Wilshire Boulevard, Fifth Floor  
Los Angeles, CA, 90010  
(213) 251-7278

Department of Fair Employment and Housing (State)  
322 West 1st Street, Room 2126  
Los Angeles, CA 90012  
(213) 620-2610

### Conclusion

Employees who have questions about the right and obligations set forth here should contact their Department Sexual Counselor or the Personnel Department Sexual Harassment Counselor. All employees should be familiar with the rights and obligations set forth here and should conduct themselves in a manner consistent with this policy.

April 25, 1983

EXECUTIVE DIRECTIVE NO. 5 (Revised)

TO: THE HEADS OF ALL DEPARTMENTS OF CITY GOVERNMENT

SUBJECT: The Rule of Three Whole Scores and the Employee Selection Process

As a result of the recent election, City departments are now required to apply the Rule of Three Whole Scores to the employee selection process. Departments now have greater discretion and greater accountability in choosing from a wider field of eligible candidates than in the past and are expected to prepare fully for the certification and selection process following sound personnel management practices.

Since departments have set affirmative action goals aimed at appropriate representation in the various occupational categories, through the appointment of qualified women, minorities and handicapped, it is reasonable to expect that departments may more readily reach those goals under the Rule of Three Whole Scores.

In this process we remain dedicated to the merit system and must make sure all job applicants are judged according to their ability and are granted an equal opportunity to compete for jobs. I have asked the Personnel Department on an ongoing basis to monitor and report to me on departmental progress toward goal achievement and on the use of job-related selection procedures to insure their adherence to sound personnel management practices.

EXECUTIVE DIRECTIVE NO. 5 (Revised)

In light of these issues, each department shall:

1. Set realistic affirmative action goals for increasing employment of underrepresented groups in their department, with the assistance and approval of the Personnel Department.
2. Grant interviews or participation in alternate job related selection procedures to all persons appearing on the certification, and reserve judgment in making a selection until all those certified and reporting have been interviewed or evaluated. If eligibles are re-certified to the same departments, they may be told that, while an interview or evaluation will be granted, it is not necessary for them to come in again unless they wish to be interviewed a second time.
3. Record on the certification the apparent race or ethnic sex, and handicap, if applicable, of persons appointed and not appointed, and send to the Personnel Department.
4. Prepare and retain proper documentation for all selection decisions to appoint or not appoint. Such recorded information shall relate to the persons expected job performance or to a comparison of the expected performance of one person with that of another. In any instance where the appointing authority determines two or more persons are equally qualified for appointment, the authority shall consider affirmative action goal attainment in filling a position.
5. Upon the request of an eligible who is not appointed on a certification, the department which did not appoint the eligible shall discuss the reasons for non-appointment with the eligible. Provisions of the State of California Public Records Act concerned with the right of privacy prohibit the divulgence of specific information regarding other individuals on the certification. If a department has questions regarding the type of information which may or may not be discussed with an individual not appointed, then the Personnel Department Counselor should be contacted at 485-2447 for advice.

EXECUTIVE DIRECTIVE- NO. 5

6. Cooperate with the Personnel Department in its monitoring of departmental personnel transactions as part of its annual and special audit activities. The Personnel Department will report progress on an ongoing basis to the Mayor's Office.

I will personally review the Personnel Department's monitoring reports on each department's personnel transactions. If affirmative action goals are not being met and there have been adequate opportunities to do so from certifications received, I shall require department heads to explain to me, in person, the reasons for failure to achieve such goals.

Eligibles who have not been appointed on a certification and who believe this may have been because of discrimination should be instructed to call the Equal Employment Opportunities Division of the Personnel Department at 485-4388 to discuss the matter. If the case warrants it, an investigation may be made in accordance with the City's Discrimination Complaint Procedure.

The merit system is grounded on a philosophy of equality of opportunity. This directive is an effort to assure that such equality is a reality as well as a right in City service.

Supersedes No. 5 of October 15, 1980

Previously issued as No. 5-New Series, August 1, 1977

TOM BRADLEY Mayor

OFFICE OF THE MAYOR  
TOM BRADLEY  
October 15, 1980

EXECUTIVE DIRECTIVE NO. 27

TO: THE HEADS OF ALL DEPARTMENTS OF CITY GOVERNMENT  
SUBJECT: Contact with State and Federal Compliance Agencies Regarding Discrimination Complaints

City departments are occasionally contacted by state and Federal agencies responsible for investigating the City's compliance with anti-discrimination legislation and regulations. These agencies include the California Fair Employment Practice Commission, the U.S. Department of Labor, the General Services administration, and the Office of Revenue Sharing. The investigations or audits conducted by these and other similar agencies can have very serious consequences for the City, as their findings could have an impact on whether the City will continue to receive various forms of financial assistance from the State and Federal governments. For this reason, it is very important for the City to respond in a timely manner with accurate and complete information.

Therefore, I hereby direct any City department which is contacted by a State or Federal agency responsible for the investigation of compliance with anti-discrimination legislation, to notify immediately both the Office of the City Attorney and the General Manager of the Personnel Department of that contact. Representatives of the City Attorney's Office and the Personnel Department shall be requested to attend any meetings with such agencies. The affected department, the Personnel Department, and the City Attorney's office will jointly determine the data needs of the compliance agency as well as the most efficient methods for collecting up-to-date information. The Personnel Department

EXECUTIVE DIRECTIVE NO. 27

and the City Attorney shall keep the City Administrative Officer fully informed about any cases which may result in litigation.

Additionally, all notices of discrimination complaints received from such agencies shall be forwarded immediately to the Personnel Department.

TOM BRADLEY Mayor

Previously issued as No. 27-New Series, July 14, 1978

## The City's Pregnancy Leave Policy

Both the Pregnancy Discrimination Act (which amended the Civil Rights Act of 1964) and similar legislation amending the California Fair Employment and Housing Act prohibit employment discrimination against women because of pregnancy or related conditions. The two basic principles these amendments added to discrimination law include the following:

1. Women who are affected by pregnancy or related conditions must be treated the same as other applicants or employees on the basis of their ability or inability to do their work;
2. Such women are entitled to sick leave on the same basis as other employees who are unable to work because of a non - job-related injury, illness, or medical condition.

As a result of these principles, City employees should be aware of the following pregnancy benefits offered by the City:

1. Under certain conditions (see question and answer section following), the City must permit a female employee to use accumulated sick leave benefits for that time when she is physically unable to work because of pregnancy, childbirth, or related medical condition. The City does not grant employees any additional sick leave for maternity purposes and will not automatically entitle employees to paid sick leave for the entire term of their maternity leave. They may only use that sick leave which they normally accumulate.
2. Departments may not refuse to hire, promote, transfer, reassign or to assign a woman to training simply because she is pregnant. Job-related considerations should be the only factors involved in making such a decision. Such considerations may include whether the woman is physically able to do the work in question, and in the case of training, whether or not she may reasonably be expected to complete the training before her pregnancy becomes a temporarily disabling condition.
3. Departments should allow a woman to use accumulated vacation time in-lieu of any portion of unpaid leave when the employee is unable to work because of her pregnancy related condition.

The following questions and answers are given to further clarify the City's pregnancy leave policy.

1. May I use all of my sick leave for my pregnancy?

Answer:

For any dates that you are physically unable to work because of your pregnancy, childbirth, or related medical condition, you may use whatever sick leave you have accumulated.

However, the City can only pay you for the sick days which you have accumulated. The rest of your leave must be without pay, although you may use any accumulated vacation instead of unpaid leave.

2. If I am still off work after delivery, and my doctor says that I can return to work, is the City required to give me additional, unpaid leave if I request to take more time off?

Answer:

No. The City is not required to grant leave to women who are physically able to work during pregnancy or following delivery. The employee may request leave, however, and the department should treat the request as it would treat any other request for personal leave.

3. May a department require that an employee take a minimum amount of leave for maternity?

Answer:

A department may require an employee to be absent from work only for that period during which a physician has determined that she is physically unable to work because of her pregnancy or childbirth.

4. Can my department require me to take a medical examination to determine whether I may collect sick leave benefits?

Answer:

Yes. According to Section 4.126 of the Administrative Code, a City medical examination may be required to authorize payment of sick leave. Also, under Section 13.9 of the Civil Service Commission Rules, a department may require a medical examination of an employee. In requesting such examination or other "satisfactory proof of illness," the department should follow the same procedures as it would follow in any other case of sick leave.

5. Can my department require me to submit a request for maternity leave prior to the time that I become physically unable to work?

Answer:

Yes. Whenever a department grants a vacation or personal leave, it may require reasonable advance notice or request for leave from the employee. Also, whenever an employee can anticipate a disability or need to take sick leave, as in the case of surgery or use of preventive medicine the employee is currently required to provide prior notice to the department. Similar conditions would apply in the case of someone who could anticipate that she will be disabled because of her pregnancy. A department may, thus, require a written request for leave, including a doctor's written estimate of the day on which the employee is likely to become

disabled, and an estimated date that the employee will be able to return to work. Obviously, in some circumstances, a woman's condition may be such that she becomes physically unable to work before it is anticipated that she will, and in such cases, prior notice is unnecessary.

## RESPONSIBILITY FOR AFFIRMATIVE ACTION IN THE CITY OF LOS ANGELES

Following are listed important responsibilities of the Mayor, City Council, Board of Civil Service Commissioners, Affirmative Action Task Force, General Manager Personnel Department, Supervisors, and Employees, with respect to the City's Affirmative Action Program.

A. Mayor, City Council, and Board of Civil Service Commissioners' Responsibilities Include:

1. Developing and enforcing the City's policy on equal employment opportunity and affirmative action, and considering and adopting the City's Affirmative Action Program.
2. Considering and adopting standards which outline requirements for all departmental affirmative action programs.
3. Taking steps to ensure the immediate cessation of any discriminatory practice.

B. Affirmative Action Task Force Responsibilities

The Affirmative Action Task Force includes representatives of the Mayor's Office, office of the Chief Legislative Analyst, Office of the City Attorney, Office of the City Administrative Officer, Personnel Department, Commission on the Status of Women, and Citywide Advisory Affirmative Action Committee. The Task Force was formed as an advisory body to the Mayor, and its responsibilities include:

1. Reviewing the City's affirmative action efforts on a semi-annual basis and reporting to the Mayor, as necessary, on the results of these efforts.
2. Reviewing the City's Affirmative Action Program, and formulating recommendations for appropriate changes.
3. Formulating and transmitting to the Mayor recommendations for programs to strengthen the City's affirmative action achievements.

C. Advisory Affirmative Action Committee Responsibilities

The Citywide Advisory Affirmative Action Committee consists of representatives of minority and women's employee associations, and its responsibilities include:

1. Reviewing City policies, procedures, and practices which may operate to the disadvantage of City employees in sub-parity groups, and informing the Personnel Department of matters which may adversely affect City employees in the sub-parity groups.
2. Recommending to the Personnel Department such actions as may be necessary to assure that qualified employees from sub-parity groups are adequately represented at all levels within each City department.

D. General Manager Personnel Department Responsibilities Include:

1. Ensuring the job-relatedness of the City's personnel practices and its selection requirements and procedures.
2. Setting specific Citywide goals annually for improved representation of sub-parity groups.
3. Initiating affirmative action programs to achieve these goals; recommending changes in procedures and policies to help improve the employment of qualified sub-parity groups; and developing standard personnel practices for all City departments.
4. Investigating and solving charges of discrimination filed with the Board of Civil Service Commissioners and/or compliance agencies against the City.
5. Monitoring and evaluating the City's progress toward the attainment of goals and reporting the progress to the City Council, the Mayor, and the heads of City departments and bureaus.

E. Department Manager's Responsibilities Include:

1. Developing and administering a departmental affirmative action program.
2. Appointing a departmental Equal Employment Opportunity (EEO) Coordinator who shall have direct access to the manager on affirmative action matters.
3. Obtaining support from the department's employees for affirmative action goals and programs; and stating in writing and reaffirming at least annually a clear commitment to the department's and City's employment opportunity and affirmative action programs.
4. Including as one factor in the performance evaluations of mid-managers and supervisors, an assessment of their efforts in resolving discrimination complaints, and their success in implementing affirmative action programs, ensuring the job-relatedness of personnel decisions, and attaining program goals.

F. EEO Coordinators' Responsibilities

See Appendix A

A. Supervisors' Responsibilities Include:

1. Communicating Department Affirmative Action Policy by:
  - a. Conducting periodic meetings to discuss the department's affirmative action program and goals with all employees under their supervision; inviting questions, comments, and suggestions for the program; and outlining each employee's responsibilities under the program.
  - b. Being sure that information on the department's affirmative action program is readily available in the work unit.
  - c. Reviewing affirmative action directives and regulations and informing employees under their supervision regarding these directives.
  - d. Requiring all employees to demonstrate in their work behavior an awareness of and respect for individual differences when working with other employees and the public; and including in performance evaluation reports an evaluation of each employee's ability to demonstrate this awareness and respect.
  - e. Requiring all employees to maintain a work environment that is free from harassment of any kind, including sexual harassment, and taking corrective action when necessary.
  - f. Informing employees of their rights to file complaints of discrimination based on race, color, religion, national origin, sex, age, handicap, medical condition (cancer), AIDS, retaliation, marital status, or sexual preference; and resolving discrimination complaints in the unit as quickly as possible, with the assistance of the department's EEO Coordinator.
  - g. Informing employees of their rights to file sexual harassment complaints under the provisions of the department's sexual harassment complaint procedure.
  - h. Interviewing employees who are leaving the unit to obtain information on the supervisory practices and possible discrimination within the unit and considering such information in improving personnel practices within the unit.

2. Justifying Personnel Actions by:

- a. Analyzing the duties, skills, knowledges, and abilities required in subordinate positions; developing job-related criteria for use in employee selection and performance evaluations.
- b. Asking similar questions of all candidates whom they interview for jobs; asking questions which will measure their abilities to perform the jobs being filled; and avoiding questions which are not job-related.
- c. Recording information on the qualifications of all persons interviewed for civil service positions, pay grade or bid advancements, and emergency and exempt appointments, and considering in making an appointment only job-related information which relates to the individual's ability to perform the duties of the position.
- d. Being sure the disciplinary actions are documented in writing and are based on specific job-related reasons.

2. Assisting Employees in Preparing for Promotion by:

- a. Informing employees of their job responsibilities and the basis on which their performance will be evaluated.
- b. Advising employees on their lines of promotion within and outside the department.
- c. Making information on upcoming examinations and training opportunities available to all employees and encouraging them to review this information.
- d. Encouraging all employees to aspire to and prepare for jobs for which they might qualify outside their normal line of promotion.
- e. Assisting employees who are preparing for examinations by answering their questions and giving them mock oral interviews.
- f. Providing for participation of women, minorities, and disabled persons on certification interview panels.
- g. Directing employees to relevant materials.

4. Providing Employee Development and Training by:

- a. Giving employees on-the-job training when practical.
- b. Giving employees an opportunity, when practical, to rotate to different positions within their classification to prepare them for advancement.
- c. Encouraging employees to take courses during their off-duty hours and reminding them of tuition reimbursement benefits.
- d. Assisting employees in determining their rights when faced with possible layoffs.

H. Employees' Responsibilities Include:

1. Demonstrating sensitivity to and respect for individual and personal differences when working with other employees and with the public.
2. Submitting suggestions for strengthening their department's affirmative action programs and for improving personnel practices.
3. Displaying job performance which meets position requirements and which demonstrates commitment to the City's equal employment opportunity and affirmative action objectives. Because of the importance of these objectives, appropriate corrective action shall be taken with any employee whose actions are incompatible with these objectives.
4. Contributing to the maintenance of a work environment which is free from any form of harassment, including sexual harassment, by refraining from remarks, jokes, and behavior which have been identified as unacceptable or harassing by either employees or the public.
5. Identifying behavior which is perceived as offensive or harassing to the individual involved or the supervisor at the outset and requesting corrective action.

#### IV. EQUAL EMPLOYMENT OPPORTUNITY LEGISLATION AND POLICY

There are a number of laws, legal decisions, and guidelines which have a profound impact on all employment and personnel practices and policies. Some of these are summarized on the following pages. Supervisors must be aware of the implications of these laws in order to provide top-notch supervision free from discrimination, and to prevent costly liability to the City.

## FEDERAL LEGISLATION

1963 -- Equal Pay Act - Requires EQUAL PAY for EQUAL WORK in the same establishment for both sexes. Prohibits employers from paying employees of one sex less than employees of the opposite sex for equal work on jobs, the performance of which requires "equal skill, effort, and responsibility, and which are performed under similar working conditions."

1964 -- Title VII of the Civil Rights Act of 1964 - Prohibits discrimination in all employment practices because of RACE, COLOR, SEX, RELIGION or NATIONAL ORIGIN. This Act established the Equal Employment Opportunity Commission, an agency which advises and assists persons and other agencies with alleged violations of Title VII. Title VII prohibits not only overt discrimination, but also practices that are fair in form but discriminatory in operation.

1967 -- The Age Discrimination in Employment Act - Prohibits discrimination against candidates and employees age 40 and above, in terms of hiring, compensation, discharge, and other major aspects of employment.

1972 -- Equal Employment Opportunity Act - This Act amended the 1964 Civil Rights Act and expanded the investigative power of the Equal Employment Opportunity Commission to cover STATE and LOCAL governments. The 1972 Amendments gave the EEOC the power to go directly to court to enforce the law. This Act specifies that an employer may not, because of a person's RACE, COLOR, NATIONAL ORIGIN, RELIGION, or SEX:

- a. Refuse to hire
- b. Discharge
- c. Harass
- d. Otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment.
- e. Limit, segregate, or classify his/her employees in a discriminatory manner.
- f. Retaliate against an employee because he/she has filed a complaint, testified under the Act, or opposed any practices forbidden under the Act.

1973 -- The Rehabilitation Act - Prohibits employment discrimination against otherwise qualified physically or mentally handicapped persons. Federal government contractors and subcontractors are required to take affirmative action to employ and advance qualified handicapped individuals.

1978 -- Pregnancy Discrimination Act - This Act prohibits employment discrimination against women on the bases of pregnancy or pregnancy- related medical conditions. Such discrimination is considered one aspect of sex discrimination.

#### STATE OF CALIFORNIA LEGISLATION

1959 -- Fair Employment and Housing Act - The California Fair Employment and Housing Act (changed from Fair Employment Practice Act in 1980) prohibits all forms of employment discrimination based on SEX, RACE, RELIGIOUS CREED, COLOR, NATIONAL ORIGIN, ANCESTRY, DISABILITY, MEDICAL CONDITION (CANCER), AGE, OR MARITAL STATUS. Establishes the Fair Employment and Housing Commission (FEHC) to adjudicate complaints of discrimination. AIDS is considered a handicap for purposes of this statute.

## V. DISCRIMINATION COMPLAINT INVESTIGATION PROCEDURES

The following information describes the City of Los Angeles' procedures for the handling of discrimination complaints, including a separate section on the processing of sexual harassment complaints.

## GUIDELINE ON INVESTIGATING DISCRIMINATION COMPLAINTS

### 1. Introduction

The purpose of this Guideline is to provide supervisors and Departmental EEO Coordinators with information on how to handle discrimination complaints. This Guideline will show where discrimination can occur, what information needs to be gathered, how to gather the information, how to evaluate that information, and what to do with the findings of the investigation. Not only should this information be helpful in handling delicate discrimination complaints in an effective manner, but should also serve as a guide on what types of personnel practices can lead to findings of discrimination. With the information in this Guideline, steps can be taken to ensure that discrimination does not occur, and therefore provide true equal employment opportunity. Furthermore, following this Guideline in investigating discrimination complaints should make it easier to deal with outside (State and Federal) investigative agencies in their investigations of the same complaints.

This Guideline does not give a magic formula that can be used in each and every discrimination complaint. Rather, each discrimination complaint has its own needs for an investigation. The person who investigates a discrimination complaint should have an analytical ability and be fair, sensitive, and impartial. Though this Guideline can offer some information, tools, and steps to be followed in conducting the investigation, it cannot provide the investigator with the required sensitivity and impartiality.

There are several reasons why the City has, and each department should also have, established procedures for "internally" handling discrimination complaints. For one, it is important that there be a forum for hearing complaints at the level that is closest to the employee. In this way supervisors and managers create a channel of communication to allow them to be informed of potential problems (even if they do not end up as employment discrimination problems) and to take steps to correct those problems - which may often simply be a need to "communicate" and clarify department policy and/or procedures.

Similarly, internal complaint procedures that provide for a fair and impartial review of complaints can serve to identify personnel practices or individual biases that should be dealt with quickly before they lead to further employee morale problems and considerable legal liability under anti-discrimination laws. Internal investigations into complaints, following established procedures, also help by providing management with an opportunity to evaluate the

strengths and weaknesses of each case in anticipation of an investigation by an outside (State or Federal) agency, and to discuss strategies for reports to those agencies with the City Attorney and the Equal Employment Opportunities Section of the Personnel Department. Finally, outside agencies tend to defer to established internal complaint investigation procedures before initiating their own investigation, as long as their procedures and time requirements permit them to hold off on their investigations. Often, the findings of those internal investigations, especially findings by impartial bodies such as department Commissions, are persuasive in the investigations by outside agencies.

## 2. Background

There are three primary types of unlawful discrimination with which a supervisor should be familiar. They are differential or disparate treatment, disparate or adverse impact, and failure to provide reasonable accommodation.

Differential or Disparate Treatment is where an individual is treated differently in her or his employment; that differential treatment stemming from the person's race, sex, age, national origin, retaliation, religion, etc. For example, an employee who filed a discrimination complaint with the Federal Equal Employment Opportunity Commission is reassigned to an undesirable work location much further from the employee's residence shortly after the employee's department is notified that the employee has filed the discrimination charge against the department. Unless there is job-related evidence to the contrary, it appears that the employee was reassigned in an attempt to retaliate against the employee, thereby subjecting the employee to differential treatment because the employee had filed a discrimination complaint.

Disparate or Adverse Impact is where a personnel system or practice that appears neutral, has the effect of discriminating against race, sex, national origin, age, etc. For example, a high school diploma requirement for assignment to a preferred work unit, where the diploma is not job-related and where the diploma requirement tends to "screen" out proportionately more of one group than another group, could constitute unlawful discrimination on the basis of the disparate impact. It is in this category where we use statistics in order to show whether or not there has been adverse impact against a particular group.

Reasonable Accommodation arises as a category of discrimination in cases where the charges stem from discrimination on the bases of religion or disability. Law, regulations, and court decisions indicate what employers are required to

consider when making reasonable changes (accommodations) in some aspect of the work in order to allow for equal employment opportunity of the disabled and those with religious beliefs that might conflict with normal working hours, locations, or duties.

Discrimination complaints may be filed on a wide range of bases. The bases on which complaints can be filed include race, sex (includes sexual harassment and pregnancy- related discrimination), age, religion, handicap/disability (mental or physical), national origin, medical condition (history of cancer), ancestry, sexual preference, marital status, creed, color, acquired immune deficiency syndrome (AIDS-afflicted or perceived), and retaliation or reprisal.

The personnel or employment practices that may be made the issue in a complaint include hiring, promotion, assignment, transfer/reassignment, termination, discharge, discipline, training, performance appraisal, pay, harassment, seniority, benefits, and others. The foregoing practices are the major practices which lead to discrimination complaints. However, there may be many other employment or personnel practices giving rise to charges of discrimination. For example, a complaint alleging sexual harassment may lead to careful consideration of the general working conditions or the work environment.

Outside the City, the State of California Department of Fair Employment and Housing (DFEH) and the Federal Equal Employment Opportunity Commission (EEOC) are the primary agencies empowered to investigate discrimination complaints filed under numerous civil rights laws such as:

- Fair Employment and Housing Act (California)
- Civil Rights Act of 1964 and Title VII as amended in 1972 (U.S. )
- Age Discrimination in Employment Act (U.S.)
- Equal Pay Act (U.S., pay and sex)
- Rehabilitation Act (U.S.)
- Pregnancy Discrimination Act

Under the City's Discrimination Complaint Procedure (Appendix D of the Citywide Affirmative Action Program, June, 1981), the City's Civil Service Commission can require investigations into complaints filed by City employees or candidates for employment, and to make decisions on those complaints.

### 3. Handling Complaints At An Informal Level

It is well worth the time for supervisors or EEO personnel to listen to employees who wish to discuss their problems on an informal level. Employees should be allowed to express in their own words the nature of the problem, and why they believe it is caused by discrimination. Sometimes complaints result from a lack of information, a misinterpretation of rules or misunderstanding, and some fast research and a quick response to the complainant may head off a formal complaint. If the complainant believes that she or he is being discriminated against because of one of the discriminatory bases, then the complainant should be asked if others of the same group (race, sex, handicap, etc.) as the complainant have been treated in the same way or whether others of a different group have been treated in a different way. Finally, the complainant should be asked how he or she thinks that the problem should be resolved.

Experience has shown that many complaints dealt with at the informal level arise as a result of a practice that affects everybody, not just one individual or one group of employees. The practice causing the problem may be a new department policy or procedure or, more likely, stems from the most common personnel problem of all - misunderstandings resulting from miscommunication or no communication. Once the problem is identified, it should be corrected by changing the procedure or policy, or by providing clarification to all employees through adequate communication channels.

If efforts to resolve the complaint on an informal level are unsuccessful (after taking corrective action to eliminate a discriminatory practice or conveying the facts of the situation to the complainant), the complainant should be advised of his or her rights to file a formal discrimination complaint. Those rights would include having a formal investigation conducted within the department, filing a complaint with the Board of Civil Service Commissioners, and/or filing a complaint with one of the State or Federal investigative agencies. The employee should be informed of the department's Discrimination Complaint Procedure as well as the City's Discrimination Complaint Procedure. Copies of the City's procedure are available in the Equal Employment Opportunities Section of the Personnel Department.

### 4. Investigating Formal Complaints.

The first step in investigating a formal discrimination complaint filed within the department would be to determine who will conduct the investigation and to ensure that it is done in compliance with the Department's Discrimination Complaint Procedure. The special circumstances of discrimination complaints call for a high level of sensitivity, fairness, objectivity, and analytical ability on the part of

the person assigned to conduct the investigation. Whoever is assigned to conduct the formal investigation should initially attempt to obtain as much basic information as possible from the complainant. At a minimum, the investigator should attempt to obtain the following:

- complainant's full name;
- the complainant's business or home telephone number and address;
- the date that the complaint had been filed;
- anywhere else that the same complaint or similar complaint has been filed (such as under the grievance procedure or with a State or Federal agency or previously on an informal basis);
- the basis for the complaint (race, sex, national origin, religion, etc.);
- the practice or employment activity involved (hire, discharge, assignment, training, etc.);
- who the complaint is filed against, including names, class titles, and telephone numbers;
- a full description of the allegation or allegations being made by the complainant;
- what remedy the complainant is seeking (what it will take to resolve the complaint); and
- witnesses (the names, class titles, and phone numbers of individuals who may have witnessed any act of discrimination).

Next, the investigator will need to establish the scope of the investigation, such as the "pattern or practice" within a certain part of the department (generally that part under the supervision of the person charged with discrimination), and the time reference for considering comparative data (usually compare data for about one year surrounding the point at which the alleged discriminatory action took place). Also, determining the scope of the investigation will clarify for the investigator what kinds of comparisons he or she will have to make, what practices are at issue in the allegations, who the investigator will want to talk to, what statistics will be relevant for making comparisons, and whether the complaint is one of disparate or adverse impact, differential treatment, or reasonable accommodation. At this point the investigator may also be able to assess what

kind of information and evidence he or she believes would be necessary to prove whether or not there was unlawful discrimination.

After determining the scope of the complaint, the investigator should identify specifics, such as the order in which individuals should be interviewed (including the complainant, if a follow-up interview is necessary), what questions should be asked of each of those to be interviewed, and which specific documents and records the investigator will have to obtain. Again, it is very important that the investigator take the complaint very seriously, map out a thorough and impartial investigation, and reach conclusions about relevant issues, such as:

- Is there any indication that the person alleging discrimination would have been treated differently if he/she was of a different group (race, religion, sex, etc.)?
- If the person was not discriminated against, what was the basis for the personnel action (practice) that is at issue? Is the personnel action job-related? If there are any weaknesses, flaws, or doubts regarding the job-relatedness or the reason for the personnel action or decision, then the investigator must search further to determine whether or not the basis of the complaint (race, sex, age, etc.) influenced the personnel decision in any way (looking for evidence that the reason given for the personnel decision is a pretext for discrimination).

The investigator should approach complaint investigations from an objective viewpoint so as not to bias the investigation in one direction or the other. Should there be a need to research a court case on a particular issue, it would be advisable to contact staff of the City Attorney's Employee Relations Division or staff of the Personnel Department's Equal Employment Opportunities Section.

In the course of the investigation, the investigator should review all relevant records and documents very carefully and make sure that any personnel action can be supported by the various records and/or documents. In conducting the interviews, the investigator should begin with a list of questions and then, based on responses to those questions branch out into follow-up questions or other areas of concern that can be best answered by the person being interviewed.

Questions should be open-ended; that is, questions that cannot be answered by a "yes" or "no", questions that are worded as briefly as possible, and which allow the interviewees to do most of the talking and to expand upon their

answers. The investigator should make every effort to make sure that each interviewee knows who he or she (the investigator) is and what they are doing. The investigator should advise the interviewees that there is no guarantee that the comments made during the interview will be kept confidential, but that confidentiality will be protected as much as possible. Generally, interviews should be conducted in person, but on some occasions it is necessary or more appropriate to conduct the interviews over the telephone. The interviews should be conducted as much as possible above board (as opposed to conducting them in secrecy, without the knowledge of supervisors). However, if problems arise in getting an interviewee to cooperate or to give candid responses, the investigator should check with his or her management to get permission to contact the interviewee at home or away from work so as to obtain pertinent, candid information without jeopardizing anyone's position or employment.

It should be noted that in some investigations, particularly those where the allegations deal with a discriminatory or biased work environment, it is essential for the investigator to interview coworkers as well as other supervisors. If all of the employees in the appropriate work unit cannot be interviewed, some should be selected for interviews on a random basis. The purpose of the interviews with coworkers is to obtain their perceptions regarding the charge of discrimination and the work environment. The investigator should consider where would be the best location to conduct interviews of coworkers so as to maximize their willingness to be candid in responding to questions.

In evaluating the information obtained in reviewing records and in interviewing employees and supervisors, the investigator should look for consistency or patterns in the information. For example, disciplinary actions over a period of time may reveal a disproportionate number or more severe disciplinary measures taken against a particular group. Or, interviews with coworkers and other supervisors may reveal, on a fairly consistent basis, that there is some uneasiness or perhaps some bias directed against one particular group in that work environment. The investigator should realize that it is nearly impossible to find absolute, hard evidence of discrimination or bias against a particular group or member of a group. This is particularly true in conducting the kinds of in-house investigations that supervisors and EEOS staff members would be conducting in the departments where we do not have subpoena privileges or authority to require people to testify under oath. Investigators often have to react to a preponderance of evidence in making their determination as to whether or not there was improper or unlawful discrimination involved in an employment decision. It is recommended that investigators place a "heavy" burden

of proof (what it takes to prove a case) on both the complainant and the department, thereby ensuring thorough investigations. Since one of the primary reasons for our internal investigations of discrimination complaints is to uncover personnel practices which may be subject to charges of discrimination, and may in fact be discriminatory, it is advisable that investigators be very critical of the employer/department's actions, and thereby be able to recommend changes or improvements in those personnel practices even when there is not an overall finding of discrimination.

The final step for the investigator is to prepare a report of his or her findings and (possibly) recommendations to the department's management. Subsequently, management and/or the investigator should notify the complainant and appropriate supervisors of the findings and any actions to be taken as a result of those findings.

#### 5. Maintaining Records

The investigator should keep a file on each discrimination complaint that he or she investigates, and retain in those files only relevant records, documents, and notes by the investigator. The files may also include a copy of the investigator's report to management and a follow-up memo to the file regarding any action that was taken as a result of the investigation. Retaining records of investigations into discrimination complaints can be very beneficial at such time that an outside agency, including the Civil Service Commission, the EEOC, or the DFEH, notifies the City that a charge has been filed and the investigator needs to prepare a response to those agencies concerning the allegations raised by the complainant. Similarly, any records that are obtained and retained by the investigator would be helpful should a lawsuit be filed.

It is important to keep in mind that the records and information gathered by the investigator can be "discovered" (forced disclosure) in a legal proceeding, and should therefore contain no surprises. It is also important to keep in mind the kind of information that an outside agency or a court would be interested in while investigating a discrimination complaint. That information, in general, is comparative data showing that the individual or members of a group were treated the same as members of other groups, the pattern of employment in the particular department, the specific criteria used in making the employment decision, the names of all persons involved in making the employment decision, and a copy of all of the documents in the complainant's personnel file.

## 6. Summary

It would be impossible to give detailed guidance on how to handle each and every discrimination complaint. Nonetheless, in an effort to provide some general guidance, department management and supervisors should make sure that:

- employment/personnel decisions are consistent for all groups of employees;
- employment decisions are based strictly on job related criteria;
- the work environment is free from any hint of bias against a person's sex, race, religion, age, etc.;
- personnel policies do not lead to treatment of different groups in different ways unless it can be clearly demonstrated that the policy or policies are absolutely necessary in order to allow the department to do its required job;
- the religious needs or physical/medical limitations of employees or candidates for employment are accommodated whenever possible; and
- every precaution is taken against treating complainants differently because they filed complaints.

Following are some guidelines regarding discrimination on some of the more common bases:

RACE/NATIONAL ORIGIN DISCRIMINATION. Differential treatment resulting in unlawful discrimination on the basis of race or national origin often results from personal biases and general stereotypes that are unfounded. Stereotypes are group generalizations such as "They are lazy," or "They are good with their hands," or "They are not aggressive enough." Often communication or language difficulties lead to assumptions that all individuals of a particular nationality are "less intelligent," or "abrasive." We still find unlawful discrimination against individuals because of their race or nationality (or ancestry) for such reasons as not fitting in with the company image, inability to interact with clients (particularly if the clients are predominantly a different race or nationality), attitude about work and supervision, and "inability to fit in" with other employees (of another group or groups). Biases are still very much at work in assignment practices assigning heavy, "dirty" work to employees of one group (race or national origin), and in assuming that any tension that arises among coworkers is caused by the minority group member(s).

Ethnic jokes promote the belief in stereotypes (leading to possible discrimination), provide for tensions in the work environment (as opposed to alleviating tensions as they may be intended to do), and serve as evidence of a discriminatory work environment, especially when the joking is tolerated by management.

When evaluating the effect that certain employment policies have on members of various races or nationalities (disparate treatment), the key criterion is to determine the job-relatedness of the policies. For example, it has been found that rules prohibiting beards tend to deny employment to Blacks more than other races, mostly because of a medical condition unique to Blacks that does not allow for close facial shaving. Similarly, height and English language requirements screen out a larger number of Hispanics and Asians than members of other groups. There are situations where such rules or requirements may be job-related, but this must be shown by the employer.

SEX DISCRIMINATION (INCLUDING SEXUAL HARASSMENT AND PREGNANCY-RELATED DISCRIMINATION). It would be discriminatory under any circumstance, to refuse to hire a woman because of assumptions regarding the comparative employment characteristics of women. For example, the assumption that the turnover rate among women is higher than among men would be an improper sex-based assumption, and refusing to hire a woman based on that assumption would be discriminatory. Also, the refusal to hire an individual based on stereotyped characterization of the sexes would be unlawful discrimination. Stereotypes, such as men are less capable typists or women are less capable equipment operators, are stereotypes that could lead to unlawful discrimination. The key consideration is whether or not the individual has the capacities and the abilities to perform the job. It would also be unlawful sex discrimination to refuse to hire an individual because of the preference of coworkers, the employer, clients, or customers (except in rare cases where it is necessary for the purpose of authenticity or genuineness, to hire an individual of a particular sex, such as in the case of hiring an actor or an actress). It should also be remembered that unsupported sex-based assumptions or biases are not exclusive to men. Many women share the same beliefs which can, in turn, lead to women discriminating against women or men.

Though it is nothing new in the work environment, a great deal of discussion in more recent years has focused on one particular area of sex discrimination - sexual harassment. According to EEOC Guidelines on Sex Discrimination,, sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- 1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- 2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- 3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile,, or offensive working environment.

Other forms of discrimination on the basis of sex would include restricting job opportunities to one sex unless there is a bona fide occupational qualification, restricting employment opportunities against married women when no similar restrictions would apply against married men, making preemployment inquiries as to sex or marital status (What does your husband think about your working? Who will take care of your children?), providing different salary and fringe benefits on the basis of sex, or denying disability or illness benefits for pregnancy-related conditions.

RETALIATION/REPRISAL. It is unlawful under both State and Federal law to retaliate against employees for exercising their right to file, discrimination complaints or to oppose practices prohibited by State and Federal anti-discrimination law. The employer cannot take adverse action (demote, suspend, reduce, fail to hire, or terminate) against an individual for:

- seeking advice of State or Federal EEO agencies;
- assisting or advising any person in seeking the advice of any State or Federal agency (whether or not a complaint is filed);
- opposing any employment practices which a person reasonably believes to exist and believes to be a violation of State or Federal law;
- contacting or communicating with any local human rights or civil rights agency regarding employment discrimination;

- assisting the State or Federal agency in its investigative proceedings; or
- being involved as a potential witness in any discrimination case.

The retaliation protection clauses of the State and Federal laws clearly do not shield an employee from appropriate reasonable discipline for any actions which are either disruptive or otherwise detrimental to the legitimate business interests of the employer.

RELIGION. It is required by State and Federal law that an employer make an accommodation for the religious beliefs or needs of an applicant or employee unless the employer can clearly demonstrate that to make such an accommodation would be unreasonable because it would impose an undue hardship on the employer. In a case brought before the United States Supreme Court in 1977, *Trans World Airline, Inc. versus Hardison*, the Court held that an undue hardship would be imposed on an employer, if by accommodating an employee's religious belief, the employer's costs would be greater than minimal ("de Minimis").

Most requests by employees for an accommodation of their religious beliefs take the form of requests for flexible or adjusted work schedules. There are a number of alternatives for reasonable accommodation in this area, such as allowing employees to adjust or revise work schedules including "swapping jobs," allowing the employee to work on different hours and on different days of the week, allowing the employee to forego lunch time in exchange for leaving early, and allowing the employee to make up time lost due to the need to observe religious practices. Potential conflicts with MOU provisions should be discussed with your management representatives.

DISABILITY. An employer must make every reasonable effort to accommodate an employee's mental or physical limitation in the work environment. The standard for reasonably accommodating a person with a disability is greater than that for accommodating a person's religious beliefs.

As with discrimination on the basis of sex, we still see the use of stereotypes and assumptions regarding the employment of the disabled that lead to unlawful discrimination against the disabled. For example, employers still make improper assumptions regarding the "nonemployability" of individuals in wheelchairs, individuals who are blind, or individuals who are required to take medication as a result of having diabetes or epilepsy. Assumptions based on stereotypes lead

to unlawful discrimination. It is also unlawful to take an adverse action against people because they have limitations that may disable them at some future date, or they have filed for or received a workers' compensation award.

The key regarding discrimination against the disabled is for employers to ensure that their personnel and selection practices consider each individual's limitations in connection with the job or position for which the person is being considered, and to make a very careful assessment of possible accommodations to allow that person to be employed in that position. Accommodations can take the form of restructuring jobs through the reassignment of nonessential duties making changes in the physical work environment, such as raising a desk a few inches to facilitate employment of a person in a wheelchair; and considering adaptive devices.

AGE. Under Federal and California State law, it is unlawful to discriminate against employees or applicants for employment of age 40 or above. As with the other forms of discrimination, it is possible to find strong biases resulting from stereotypes and assumptions which lead to discrimination against older workers. Concerns over how a 55 year old apprentice will "fit in" with younger apprentices, the belief that older workers are slow and less ambitious than "young bloods," and the belief that older workers present a greater liability under sick leave or disability benefit plans are examples of improper biases.

The EEOC has very broad investigative powers under the Age Discrimination in Employment Act (ADEA), and does not give much weight to "evidence" against discrimination showing that one employee who is terminated (and is 60 years of age) was replaced by another employee who is in the same group (who is 45 years of age). Also, the ADEA allows a complainant to file a lawsuit seeking "punitive damages and to have the case decided by a jury of peers. (Neither is permitted under the Civil Rights Act, Title VII.) This means that there are much greater costs involved in age cases where the employer is found to be guilty of discrimination. Not only is the employer liable for back pay and other costs incurred by the complainant as a result of the discrimination, but also for punitive costs imposed as punishment for the unlawful act.

This guideline gives some very general information regarding the area of employment discrimination. Supervisors and any other employees who may have questions regarding particular situations should be encouraged to contact their departmental EEO Coordinator for necessary guidance and explanations. In

addition, staff of the Personnel Department's Equal Employment opportunities Section will be available to assist employees and supervisors in dealing with questions regarding employment discrimination.

#### GUIDELINE ON PROCESSING SEXUAL HARASSMENT COMPLAINTS

Various surveys indicate that as many as 88% of all working women have encountered some form of sexual harassment, and employers have begun to take steps to combat the problem. Supervisors have a responsibility to maintain a workplace free from discrimination and to take appropriate action to resolve any problems immediately.

Sexual harassment is a prohibited personnel practice when it results in discrimination for or against an employee on the basis of conduct not related to performance, such as taking or refusing to take a personnel action based on an employee's resistance to sexual overtures. It is a form of unlawful discrimination and a discriminatory employment practice, and is in violation of City policy (Mayor's Directive 1-A) and Federal equal opportunity laws. It presents a serious liability to the City, and undermines the employment relationship. Further, it has a potential for debilitating the morale and interfering with the work productivity of employees.

Supervisors who use implicit or explicit coercive sexual behavior to control, influence, or affect the career, work environment, job or performance of an employee are engaging in sexual harassment. Further, any employee who participates in deliberate or repeated unsolicited verbal comments, gestures, or physical contact of a sexual nature which is unwelcome and interferes in work productivity is also engaging in sexual harassment. It is the supervisor's responsibility to maintain a workplace free from this kind of behavior.

Supervisors should refer to their Department's Manual for a complaint/counseling procedure specifically designed to address sexual harassment issues. If your department has no guideline, the information below may be useful.

1. Inform all employees that sexual harassment is prohibited under Executive Directive No. 1-A.
2. Designate a department counselor to hear complaints of sexual harassment. This person should be sensitive to the problem, have interpersonal communication skills and problem solving ability, and be able to provide a bias-free, neutral and supportive environment for persons who may wish to make a complaint of this nature.

3. Encourage an open-door policy for all persons who feel they may be victims of sexual harassment. Seeking advice from the counselor is an initial step and not a formal complaint.
4. Inform employees that they may seek advice and counsel from the department counselor or from a Personnel Department counselor. Several staff members in the Personnel Department's Equal Employment Opportunities Section, on 485-4388, are available to provide that counseling. You may also want to assure employees that names and information will be kept confidential at this counseling stage.
5. Advise employees to confront a harasser directly in order to prevent further harassment, unless to do so would endanger them.
6. If the complaint proceeds to an investigation (the alleged problem is not resolved and the employee wishes to have the matter investigated), the counselor should thoroughly investigate the complaint immediately. At this stage, the counselor will try to keep names confidential but will have to discuss the incident with the alleged harasser and/or the supervisor. It may be necessary to talk to other employees who are similarly situated as the complainant, as well as previous supervisors.
7. Discuss with the complainant the results of the investigation and the action to be taken to resolve any problem(s) that may have been found. Also, discuss with the harasser the findings and the appropriate discipline that will be taken; it may be proper to indicate that this is the final warning. Follow up both meetings with a memo outlining the findings and actions to be taken. If disciplinary action appears warranted, we suggest that your proposed discipline conform with the discipline policy on sexual harassment that has been adopted by the Board of Civil Service Commissioners. (See Policy 33 of the Policies of the Personnel Department.)

As an alternative your procedure may call for a confidential report with findings and recommendations from the investigator to you or your assistants before notification of the parties. In any event, top management must be kept apprised of the status of such complaints and related investigations.

8. Consider the benefits of attending training about the ramifications of sexually harassing behavior, and providing training for employees on this subject.
9. Publicize the sexual harassment policy again by reissuing it to all employees.

This complaint process does not eliminate an employee's right to file a formal complaint with the Civil Service Commission or with State or Federal fair employment practice agencies.

## VI. SUPERVISING AND WORKING WITH THE DISABLED

The following information describes policies regarding the accommodation and supervision of employees with disabilities. Also included is information regarding the activities of the mayor's Office for the Disabled and the Commission on Disability.

As a supervisor, you will encounter disabled persons as candidates, as coworkers, and as members of your crews/staffs. Therefore, it is important for you to understand your responsibilities under City policies and relevant laws. Two of the areas in which supervisors frequently have questions relate to reasonable accommodation on the job, and the conduct of the certification interview. In this Section, you will get information to assist you in these areas.

## REASONABLE ACCOMMODATION OF THE DISABLED

One of the most misunderstood aspects of the employment of disabled persons is the term "reasonable accommodation." Questions such as: "What is considered 'reasonable'?" and "Isn't accommodation expensive?" are frequently asked by supervisors and managers. These are valid concerns which will hopefully be addressed in a satisfactory manner in the succeeding paragraphs. The purpose here is not to discuss in detail the Federal and State laws which require employers to make "reasonable accommodation" for disabled workers, but rather to set forth a common sense guide for supervisors and managers. Some practical examples of accommodations which have been made for employees with a variety of disabilities will be provided. By no means should these examples be thought of as a complete listing of the kinds of accommodations possible, but only as illustrative of what can be done with forethought, cooperation, and imagination.

To begin with, what does the term "reasonable accommodation" mean? Section 84.12, Reasonable Accommodation, Part (b) of the Regulations covering the Rehabilitation Act of 1973 (as amended) states the following: "Reasonable Accommodations may include (1) making facilities used by employees readily accessible to and usable by disabled persons; and (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions." More simply stated, reasonable accommodation may be defined as efforts made by the employer to remove artificial or real barriers which prevent or limit the employment and upward mobility of disabled persons. What makes this concept so difficult to understand is the fact that it can only be determined on a case by case basis, taking into account the worker, his/her specific disability, the particular job duties, the work environment, and the financial capabilities of the employer.

Frequently, an accommodation made for a disabled employee can also benefit others within the work place. Prior to the introduction of calculators with voice output, a blind employee used a "talking calculator" developed by a Northern California firm in order to perform routine budget work. This device

contained both a visual display and voice output thereby allowing the employee to do the same administrative work as other employees in the office. Several coworkers recognized the benefit of being able to continue writing without constantly having to glance at the display and began borrowing the calculator. This equipment proved to be useful not only to the blind employee but to others doing similar work.

A major area of concern in any discussion of reasonable accommodation centers on the issue of accessibility. Mostly, one thinks of access in relation to the physical environment; however the artificial barriers of policy and tradition often exceed physical barriers in keeping disabled persons from employment. For example, if a supervisor is attempting to fill a position which requires as an important duty that the incumbent travel between work locations, an epileptic or visually-impaired candidate should be considered along with the other candidates because if hired, these candidates could use buses for the necessary commuting.

The issue of physical accessibility is becoming less of a concern since an increasing number of City facilities are accessible. Ramps, modified rest rooms, designated parking spaces for the disabled, and Braille elevator and floor markings, have been installed in many buildings. However, many offices, as well as other City facilities, have over the years, developed a tradition of working in cluttered surroundings. This fact has led in many instances to work areas which are inaccessible to persons in wheelchairs or difficult for individuals using leg braces. Efforts should be made to arrange the work place in such a way as to facilitate easy accessibility. This kind of accommodation benefits all workers and lessens the chances of serious on-the-job injuries. In addition, such accommodation costs nothing except some imagination. Where tight quarters and clutter cannot be totally eliminated, keep an open mind when it comes to determining whether a disabled individual can get around in your office, shop, or other work area. Rely heavily on the judgment of the disabled: they have probably had more experience in dealing with mobility barriers than you have.

Some disabled persons may be accommodated by job site modification, such as raising desks on blocks so wheelchairs can fit under; altering workbenches; replacing small knobs and switches with larger, easier-to-grasp handles; and adding electrical outlets. Sometimes, rearrangement of furniture and/or equipment is all that is necessary to make your job site accessible. The City's Occupational Safety Office, located in the Personnel Department's Occupational Health and Safety Division, may in some cases offer advice in such matters as shifting hand controls to foot controls, and other more technical modifications.

Many disabled individuals may benefit from provision of auxiliary aids--assistive devices or equipment--in terms of facilitating more effective job performance. Such equipment may include: specially modified telephone equipment, Braille writers, one-handed typewriters, closed-circuit televisions, TTY (telephone) communication equipment, and other assistive devices. For example, several hearing-impaired employees use specially amplified telephones in order to understand callers. At least one legally blind individual has used a closed-circuit television screen to read various reports and written materials. Most of this equipment is not expensive and in many cases, the disabled individual already has the necessary auxiliary aid. Some equipment may be purchased off the shelf, while others are custom designed for the individual's particular needs. The disabled person who is a client of the California State Department of Rehabilitation may be able to have necessary equipment purchased once an offer of employment has been made.

Another type of accommodation is referred to as "support service." These include: readers for persons with visual impairments, interpreters for deaf individuals, and drivers for mobility impaired or blind individuals. In some instances, fellow workers can fill these roles. One blind employee has relied on coworkers for assistance when he needs to have something read while another blind employee utilizes a hired reader from two to six hours weekly. The question of how the reading is handled is one of convenience and reasonableness, depending on the work situation as well as other related factors. Again, the key to any satisfactory accommodation is good communication between the disabled person and the supervisor.

When ascertaining the extent to which support services are necessary, you as the supervisor should sit down with the employee and come to an agreement regarding the amount of time required and the means by which the accommodation will be paid. Some disabled individuals may prefer to pay for support service time from their own pocket, although the individual should not be pressured to do so. The cost of support services will vary, depending on the type and complexity of the service involved. Interpreters, for example, are more expensive than readers because of the amount of training necessary to become skilled in sign language. Nothing in either the State or Federal law requires you to provide full-time support services for a disabled individual, if such accommodation is not reasonable based on your particular work situation.

In many cases, job restructuring may be the only form of modification necessary to employ a qualified disabled worker. It should be pointed out that nothing in the law requires the essential functions of a job to be altered or requires the creation of new programs, activities, or services. One form of job restructuring involves the reassignment of incidental duties. For example, once a week an employee with a back

condition might normally have to unload heavy containers from a delivery truck. For this employee, job restructuring may involve exchanging this task for some of the duties of other employees who would perform his/her share of the unloading. By doing this, the employee's back condition is not exacerbated and coworkers are not made to feel that they are handling more than their share of the work.

Each City department is responsible for appointing a Coordinator for the Disabled (See Appendix A). Supervisors are encouraged to discuss with their departments' Coordinators how disabled individuals may be reasonably accommodated.

It is also important for supervisors to dispel myths regarding the disabled. For example, it is believed by many that the disabled are more accident-prone. However, according to the U.S. Department of Labor, statistics show just the opposite. Disabled employees actually have fewer accidents than nondisabled individuals. Following is information regarding different types of disabilities and what we all need to understand regarding the employment of persons with these disabilities.

### HEARING IMPAIRMENTS

The amount that a person's hearing is impaired can vary from hard of hearing (which refers to a partial loss) to deaf (which implies a total loss).

The most apparent problem would be that of communication although some hearing-impaired persons have functional speech. It is important to know that a hearing-impaired person is not necessarily able to lip-read (or speech read). Speech reading is very difficult because there are few distinct movements of lips and many letters require almost identical lip movement such as with letters, P, B, V, and F. A person's ability to speech read is not directly related to intelligence.

Here are some suggestions for working with an employee who has a hearing impairment:

1. To assist those who speech read:

- a. the speaker should face the person;
- b. the speaker's face should be well illuminated;
- c. speak in normal tone of voice;
- d. do not exaggerate lip movements.

2. Before placing a hearing impaired person in a noisy setting, investigate with a medical authority as to whether or not the noise can further impair the person's hearing.
3. Never use the term "deaf and dumb". Dumb means stupid.
4. Do not equate imperfect speech with lack of intelligence. Many deaf persons with superior intellectual abilities did not have the opportunity for speech therapy.

### PARAPLEGIA AND QUADRIPLÉGIA

The term paraplegia may be used to identify varying degrees of paralysis in the lower part of the body. A person with paraplegia has the ability to perform in any occupational area except in those which require the use of legs. Also keep in mind that structural barriers, where they would make movement difficult for the paraplegic, should be removed. Quadriplegia is a condition where all four extremities (arms and legs) are affected. The most common cause of quadriplegia is injury to the spine. Quadriplegia usually allows some use of the upper extremities; however, there is usually some impairment in the grasp function of the fingers and in the coordination of arm movements.

Here are some suggestions for working with paraplegic and quadriplegic employees:

1. Do not equate paraplegic with inability to do the job.
2. Consider modifying the workstation. Many jobs can be made possible through simple changes such as: low pile or no pile carpeting to aid wheel chair mobility; push button phones with speaker- receiver boxes; Lowered file cabinets and desks; and special typewriters.

### VISUAL IMPAIRMENTS

There are varying degrees of blindness (usually called visual impairment or legal blindness) such as the need for corrective lenses, color blindness, tunnel vision, and lack of visual acuity (or clarity). The amount and type of visual impairment and the tasks required of a particular job will indicate the amount of accommodation necessary. Accommodations can range from Braille equipment to a variety of devices that will allow a blind person to perform the duties of a particular position. Initially, the blind employee will require some orientation to his or her surroundings. Also, some arrangements of the surroundings may be necessary to remove dangerous obstacles.

Here are suggestions for working with a blind employee:

1. Do not raise your voice; the blind do not have difficulty hearing.
2. Speak directly to the blind person, not a third party.
3. When you enter a room where there is a blind person, announce your presence and identify yourself.
4. When you leave, announce your exit.
5. If discussing a form, or passing out materials, describe them for the benefit of the visually impaired.
6. When offering to act as a guide, ask the person to take your arm. Walk about half a step ahead. Never grab the person's cane or try to assist someone who does not want assistance.
7. When teaching or explaining something to a blind person, give a full explanation and let the sense of touch substitute for vision whenever possible. Remember, a blind person cannot watch what you are doing.
8. Be sure to inform the blind employee of the addition or movement of furniture or equipment within the work area.
9. Caution other employees not to add or move equipment or furniture without informing blind employees.

#### INTERVIEWING DISABLED CANDIDATES FOR EMPLOYMENT

Disabled candidates for employment should be considered for employment in the same manner as any other candidate. In fact, when interviewing for a position in a class for which a preemployment medical is a part of the process, we do not recommend that you initiate inquiries into this area. Should a job offer be made, that medical will provide explicit information concerning any limitation, and your personnel office as well as staff of the Personnel Department will work with you and the person to determine any appropriate, reasonable accommodations. If it comes out either on the application or during the candidate's presentation that the candidate has a disability, you can only make limited inquiries into this area. Specifically, you may ask if the condition would prevent the person from performing the essential duties of the position in a manner which would not endanger the health and safety of the person or others. If the answer is "No," then you should proceed with the rest of the interview. If the answer is "Yes," you may ask if there are reasonable accommodations the person believes will enable him/her to perform the duties in a

safe manner, and advise the candidate that if selected, the City does consider reasonable accommodations of disabilities. Unnecessarily dwelling on a person's disability can make the candidate uncomfortable, and should you decide that someone else is better qualified, the disabled candidate may be left with the impression that the real reason someone else was selected was due to discrimination. Sometimes you will encounter current employees who are moving from a sedentary job to one that requires a lot of physical effort. In this case, an offer of employment may be made subject to the results of a medical examination/accommodation evaluation, in accordance with Rule 13.8 of the Civil Service Rules.

#### SUMMARY OF GUIDELINES FOR CERTIFICATION INTERVIEWERS OF DISABLED CANDIDATES

Certification interviewers must:

1. Ensure that reasonable accommodations are provided as necessary, during the certification interview. An example of a reasonable accommodation would be a sign language interpreter for a deaf candidate.
2. Not initiate inquiries pertaining to a candidate's disability.
3. Ask questions and utilize selection criteria which are job-related for the position and are administered so that the results reflect the applicant's job skills, aptitude, or whatever factors the test purports to measure rather than reflecting the candidate's impaired sensory, manual, or speaking skills except where those skills are the factors that the test purports to measure.
4. Not make assumptions that a particular disability will automatically preclude a disabled candidate from performing a given task under certain specific work conditions. A candidate's ability to perform the duties of a specific position will be reviewed by the Personnel Department's Occupational Health and Safety Division and the Equal Employment Opportunities Section.

#### RESOURCES FOR INFORMATION ON EMPLOYMENT OF THE DISABLED

1. The Mayor's Office for the Disabled

On December 17, 1973, Mayor Bradley organized the Mayor's Task Force for the Handicapped to identify problems related to disabled persons, establish priorities, propose solutions, and recommend the structure for a permanent body.

As a result, the Mayor's Office for the Disabled was established. Among the objectives of the office are to:

- Provide a direct channel of communication between the disabled community, the Mayor's Office, the city Council, and City departments;
- Study and research the problems of individuals with disabilities and recommend solutions to the Mayor and other City officials;
- Obtain resources for defined areas of need;
- Provide information referral services and advocacy through the Computerized Information and Referral Center;
- Provide employment to qualified individuals by coordinating the City's Occupational Trainee Program;
- Raise the consciousness of the general public and potential employers to the abilities of persons with disabilities.

The Mayor's Office for the Disabled has encouraged planning and cooperation among City departments and public agencies in developing and implementing solutions to obstacles which affect disabled persons in employment, recreation, health, transportation, and architectural accessibility.

## 2. Los Angeles City Commission on Disability

In December of 1989, the Commission on Disability was activated to provide a forum for persons with disabilities to express concerns of the disabled community. The Commission is charged with the responsibility of:

- holding public hearings;
- making recommendations to the City Council and/or City departments;
- studying and researching the problems of the disabled community and recommending solutions to the Mayor and other City officials; and
- providing advocacy for the disabled community.

The Los Angeles Commission on Disability has encouraged planning and cooperation and implementation of solutions to obstacles which affect disabled persons in employment, recreation, health, transportation, architectural accessibility, housing, and legislation. Interested persons may call (213) 485-5129 or TDD (213) 485-6655 to obtain additional information on the activities of the Commission.

## APPENDICES

- A. Responsibilities of Departmental EEO Coordinator, Coordinator for the Disabled, and the Sexual Harassment Counselor
- B. Court Cases
- C. Glossary of Equal Employment Opportunity (EEO) Terms

## RESPONSIBILITIES OF DEPARTMENTAL EEO COORDINATOR, COORDINATOR FOR THE DISABLED, AND SEXUAL HARASSMENT COUNSELOR

Each City department should have an Equal Employment Opportunity (EEO) Coordinator, a Coordinator for the Disabled, and a Sexual Harassment Counselor. The responsibilities of each of these individuals is given below.

I. Departmental EEO Coordinator

- A. Inform department management of the department's affirmative action responsibilities and legal regulations, and report to management on success in meeting these responsibilities.
- B. Oversee and coordinate the preparation, implementation, revision, and monitoring of the department's affirmative action program.
- C. Work with department management to:
  - 1. Assess the department's progress in setting specific numerical and programmatic affirmative action goals and in meeting these goals.
  - 2. Revise goals and develop action programs which will maximize opportunities to improve representation of sub-parity groups.
  - 3. Set target dates for implementing action programs and monitor the quality and timeliness of the actions taken.
  - 4. Investigate and resolve discrimination complaints filed with the EEO Coordinator against the department and to assist the Personnel Department in investigating complaints of discrimination filed against the department with the Board of Civil Service Commissioners and/or compliance agencies.
- D. Attend Personnel Department meetings and training for EEO Coordinators.
- E. Review department progress periodically with the Personnel Department Affirmative Action Liaison Analyst and arrange the implementation of agreed-upon suggestions made by the Personnel Department to strengthen the department's program.
- F. Seek assistance and information from the Personnel Department's Equal Employment Opportunities Section and other EEO Coordinators.

## II. Departmental Coordinator for the Disabled

- A. Instruct certification interviewers to evaluate disabled candidates only on the basis of their job-related qualifications, and ensure that reasonable accommodations are provided as necessary during the interviews of disabled candidates.
- B. Provide special training arrangements for disabled employees, as necessary, to allow them to benefit more fully from, and participate in, training presentations.
- C. Conduct periodic surveys to determine the number of disabled persons employed in the department. Solicit input from these individuals in an effort to identify facilities in need of modification to accommodate disabled persons, learn of work-site adaptations needed to facilitate effective job performance, and determine attitudinal or other problems disabled employees may be experiencing on the job.
- D. Utilize temporary training positions to improve the representation of the disabled in the department's work-force.
- E. Inform department management of the department's responsibilities and legal regulations related to employment of the disabled.
- F. Work with department management in investigating and resolving discrimination complaints, based on disability, filed with the EEO Coordinator against the department and assist the Personnel Department in investigating discrimination complaints, based on disability, against the department with the Board of Civil Service Commissioners and/or compliance agencies.
- G. Attend Personnel Department meetings and training for Coordinators for the Disabled.
- H. Seek assistance and information from the Personnel Department's Equal Employment Opportunities Section and other Handicap Coordinators for the Disabled.
- I. Provide follow-up counseling to disabled candidates.
- J. Counsel disabled employees on training, promotional, and reassignment opportunities and rights under department and City discrimination complaint procedures on request.

### III. Departmental Sexual Harassment Counselor

- A. Upon receipt of a sexual harassment complaint, meet with the complaining employee at the employee's earliest convenience. Inform the employee about the City's sexual harassment policies and grievance procedures and answer any questions that the employee may have regarding the City's policy.
- B. Listen to the employee's complaint and discuss the complaint with discretion, sensitivity, and due concern for the dignity of those people involved.
- C. Fully record and document the complaint.
- D. Conduct a complete and timely investigation into the complaint, including conducting interviews as appropriate with witnesses and others who may be involved.
- E. Upon completion of the investigation, draft a report on the investigation. Provide copies of the report to the department manager and the employee.
- F. If the employee is not satisfied with the way the sexual harassment complaint has been resolved, fully inform the employee of his or her additional rights under the law. These rights include utilizing the City's Discrimination Complaint Procedure and filing complaints with State or Federal regulatory agencies or courts.

COURT CASES

On the following pages are summaries of several significant court decisions in the area of equal employment opportunity and employment discrimination.

U.S Supreme Court  
GRIGGS VERSUS DUKE POWER CO. (1971)  
SIGNIFICANT ISSUE: BUSINESS NECESSITY

FACTS:

- Employees brought this class action under Title VII of the Civil Rights Act of 1964, alleging that the employer's requirements of a high school diploma and passing intelligence tests as conditions of employment and promotion constituted discrimination.
- Prior to the effective date of Title VII, the employer openly discriminated against Black employees in the hiring and assigning of employees. Black employees were employed only in the Labor Department, where the highest paying jobs paid less than the lowest paying jobs in the other departments.
- In 1965, the employer permitted Black employees to transfer to other departments but at the same time required that an employee possess a high school diploma in order to transfer from the Labor Department to other areas of employment.
- The employer also instituted a requirement that employees desiring to transfer to other departments pass two aptitude tests - the Wonderlic Personnel Test, which purports to measure general intelligence, and the Bennett Mechanical Comprehension Test. The passing scores used by the company approximated the national median for high school graduates, thus effectively screening out half of the applicants who possessed high school diplomas.

Holding of the Supreme Court:

The Court held that the use of tests or other measuring procedures is a business necessity only when they are shown to be a reasonable measure of job performance. If the employees prove that the employment practice has a disproportionate adverse impact on Black employees, then the practice must be eliminated unless the employer can show that the practice is demanded by business necessity. The Court also concluded that the Equal Employment Opportunity Commission (EEOC) guidelines Congressional intent of what on test validation fit the a "reasonable measure of job performance requires. Based on the evidence, neither the high school requirement nor the general intelligence test was proven to have a clear relationship to successful performance of the job for which it was used. Therefore, even though the requirements are neutral in intent, they cannot be upheld.

U.S. Supreme Court  
WATSON VERSUS FORT WORTH BANK AND TRUST (1988)  
SIGNIFICANT ISSUE: LEGITIMATE BUSINESS JUSTIFICATION

FACTS:

- In 1980, Ms. Clara Watson, Black, was employed as a Commercial Teller with the Fort Worth Bank and Trust.
- During 1980 and 1981, Ms. Watson, along with other candidates, competed for four supervisory positions with the bank.
- The criteria upon which each candidate was evaluated for the positions included the candidate's background, ability to produce work, ambitiousness, and interpersonal skills as demonstrated between the candidate and the candidate's supervisor. The individual who evaluated the candidate's qualifications for a given position was the manager of the bank. The manager made the selection decisions and would be supervising the newly promoted supervisors.
- Ms. Watson was not selected for any of the positions. Instead, four Caucasian employees were selected.
- Ms. Watson subsequently sued the bank, alleging that she was nonselected for the positions due to discrimination on the basis of her race.

Holding of the Supreme Court:

The Court ruled against Ms. Watson. The Court ruled that, even if there appeared to be a discriminatory effect with respect to the selections of the (Caucasian) supervisors, the bank need only show that it had legitimate business justification for its selections. The case established that disparate impact analysis could be applied to subjective employment processes.

U.S. Supreme Court  
WARDS COVE PACKING CO., INC. VERSUS ATONIO (1989)  
SIGNIFICANT ISSUE: LEGITIMATE BUSINESS JUSTIFICATION

FACTS:

- An Alaskan salmon cannery's labor force consisted of mostly minority unskilled "cannery jobs" and mostly nonminority skilled "noncannery jobs."
- A group of minority cannery workers contended that the cannery hiring and promotion practices had the effect of dividing the cannery workforce on racial lines.

Holding of the Supreme Court:

In order to determine whether an apparent unequal treatment case exists, the proper comparison is between the racial composition of the at-issue jobs with the racial composition of the qualified population in the relevant labor market. In addition to an accurate evaluation of minority under representation, an apparent unequal treatment case requires a demonstration that each challenged practice be specifically identified, and that each such practice has caused a significant difference in employment opportunities along racial lines.

If an initial showing of unequal effect is made, the employer must produce evidence of a legitimate business justification for each challenged practice. However, the ultimate burden of proof still rests with the employees who complained.

Ninth U.S. Circuit Court of Appeals  
GUTIERREZ VERSUS MUNICIPAL COURT - COUNTY OF LOS ANGELES (1988)  
SIGNIFICANT ISSUE: BUSINESS NECESSITY

FACTS:

- A district of the Los Angeles Municipal Court established a rule that prohibited district employees from speaking any language except English, except during an employee's break or lunch, or when the employee served as a translator.
- Ms. Alva Gutierrez, an English and Spanish-speaking employee of this district, sued the Court, alleging that the English-only rule violated Title VII of the Civil Rights Act of 1964.

Holding of the Circuit Court:

The Ninth U.S. Circuit Court of Appeals ruled against the Municipal Court because an English-only rule could only be implemented if it were necessary for the effective functioning of the agency. The Court found that it was not necessary for employees to speak only English for this purpose. It further ruled that although not all of the Municipal Court employees spoke (or understood) Spanish, this could not justify the implementation of an English-only rule.

Ninth U.S. Circuit Court of Appeals  
FRAGANTE VERSUS CITY AND COUNTY OF HONOLULU (1989)  
SIGNIFICANT ISSUE: BUSINESS NECESSITY

FACTS:

- Mr. Fragante applied to be a Clerk with the division of Motor Vehicles in Honolulu. He took the Civil Service examination for Clerk and scored the highest of a large number of candidates.
- The essential tasks of the Clerk position included orally providing information to the public in English.
- When Mr. Fragante interviewed for the Clerk position, the interviewers were unable to understand his oral responses to the interview questions because of his Filipino accent.
- As effective oral communication skills was a necessity for the position, Mr. Fragante was not hired.
- Subsequently, he filed a complaint with the Ninth U.S. Circuit Court of Appeals alleging that he was being treated differently from other job candidates because of his Filipino accent.

Holding of the Court:

The Court ruled against Mr. Fragante. It determined that the ability to communicate orally, clearly, and effectively in English was necessary for effectively performing the duties of the clerk position for which Mr. Fragante applied. In ruling against Mr. Fragante, the Court found that mere possession of an accent was not the basis for his non-appointment rather Mr. Fragante's accent significantly impaired his ability to communicate effectively in English with the public, which was found to be a necessary skill. The U.S. Supreme Court subsequently has upheld this finding.

U.S. Supreme Court  
PRICE WATERHOUSE VERSUS HOPKINS (1989)  
SIGNIFICANT ISSUES: MIXED MOTIVES

FACTS:

- At Price Waterhouse, a senior manager is eligible to be considered for partnership when the partners in the office submit the manager's name for candidacy.
- In 1982, Ann Hopkins, a Senior Manager at Price Waterhouse was eligible for partnership. However, her name was not submitted for candidacy.
- Ms. Hopkins suggested that the reason for this was sex discrimination on the part of various Price Waterhouse partners. She indicated that various partners had made inappropriate statements to her based upon her sex, including comments by one partner who suggested that her likelihood of making partner would increase if she would walk and dress in a more feminine manner.
- Consequently, Ms. Hopkins sued Price Waterhouse, alleging that the fact that her name was not submitted for candidacy for partner was a result of sex discrimination, a basis protected by Title VII of the Civil Rights Act of 1964.
- Price Waterhouse indicated that Ms. Hopkins' sex did not play a part in her name not being submitted for candidacy. Instead, Price Waterhouse alleged that her name was not submitted for candidacy because of her poor interpersonal skills.

Holding of the Supreme Court:

Under Title VII of the Civil Rights Act of 1964, an individual's gender is not to be taken into consideration in decisions to select the individual, unless there is a business necessity which requires a particular gender. The Court stated that where an individual's gender played a part in a selection (nonselection) decision, the defendant may not be held liable if it can demonstrate by most of the evidence that the selection (nonselection) decision would have been made irrespective of the individual's gender.

U.S. Supreme Court  
TRANS WORLD AIRLINE INC. VERSUS HARDISON (1977)  
SIGNIFICANT ISSUE: ACCOMMODATION FOR RELIGIOUS BELIEFS

FACTS:

- Larry Hardison was employed at TWA in a department that operated on a 24-hour basis and needed a crew to work every shift.
- A seniority system was established by the Union and TWA, whereby most senior employees received their first choice for job shift assignments as they became available.
- Each Building at TWA had its own seniority list.
- Hardison worked the 11 p.m. to 7 a.m. shift in Building I, and with his seniority was able to get Saturdays off.
- He then transferred to Building II and the day shift, where he was second from the bottom in seniority.
- It was in Building II, because of his low seniority, that he was not able to get Saturdays off for observance of his sabbath.
- Hardison believes that TWA did not make reasonable accommodations to meet his religious needs, and he therefore refused to work on Saturdays and was thus terminated.

Holding of the Supreme Court:

The Supreme Court ruled that to require TWA to bear more than a minimal cost in order to give an employee Saturdays off would be undue hardship, to require them to bear additional costs when no such costs are incurred to give other employees the days off that they want would involve unequal treatment of employees based on their religion.

California State Supreme Court  
AMERICAN NATIONAL INSURANCE CO. VERSUS FAIR EMPLOYMENT AND HOUSING COMMISSION (1982)  
SIGNIFICANT ISSUE: PHYSICAL HANDICAP

FACTS:

- The California State Supreme Court ruled that elevated blood pressure constitutes a protected physical handicap within the definition of that term in the Fair Employment and Housing Act:  
  
"Physical Handicap includes impairment of sight, hearing, or speech, or impairment of physical ability because of amputation or loss of function or coordination, or any other health impairment which requires special education or related services."
- An employee who suffered from elevated blood pressure was hired by American National Insurance (ANI) as a sales and debit agent. After undergoing a medical examination, he was terminated because of his elevated blood pressure.
- The company regarded the work as stressful, and as a matter of policy, did not hire individuals with elevated blood pressure because of the potential harm and danger to the individual's health.

Holding of the Supreme Court:

In its decision, the Supreme Court concluded that employers may not disqualify job applicants because of physical conditions which might create a higher than normal risk of future disability. Based on this decision, an employer may only consider an individual's present ability to do the job.

The Court also addressed the narrow issue of whether elevated blood pressure is within the definition of physical handicap under the State Fair Employment and Housing Act. The Court concluded that it was, and as a result, "physical handicap" must now be interpreted broadly to consider all disabilities that are physical as being within the coverage of the Act.

U.S. Supreme Court  
WEBER VERSUS UNITED STATES STEELWORKERS OF AMERICAN AND KAISER ALUMINUM (1979)  
SIGNIFICANT ISSUE: VOLUNTARY AFFIRMATIVE ACTION PLAN

FACTS:

- In 1974, Kaiser Aluminum, because of a racial imbalance of craft workers at its various plants, voluntarily set a goal with respect to the hiring of Blacks. Kaiser sought to hire a sufficient number of Black "craft worker trainee" employees until the percentage of Black trainees was equal to the percentage of Blacks in the available labor pool in the community in which a given plant was located.
- The "craft worker trainees" were to be selected from among Kaiser's Production Workers. Selections were based strictly upon the workers' seniority.
- Kaiser prepared two seniority lists: one for Caucasian production workers and one for Black production workers.
- For each Caucasian employee Kaiser selected for a trainee position, Kaiser would select a Black employee for a trainee position. This would continue until the percentage of Black trainees was the same as the percentage of Blacks in the available labor pool.
- Based upon this voluntary affirmative action plan, it was determined that in some cases, Black production workers with less seniority than Caucasian production workers were being selected for the trainee positions.
- Brian Weber was one of the Caucasian workers who was not selected as a trainee and who had more seniority than some Black workers who were selected. Mr. Weber sued Kaiser Aluminum, essentially alleging race discrimination.

Holding of the Supreme Court:

The Supreme Court ruled against Mr. Weber. The Court held essentially that a company's voluntary efforts to remedy racial imbalances in its workforce was appropriate and did not conflict with Title VII of the Civil Rights Act of 1964. The Court found that the plan was legal because: (1) the objective of the plan must be to eliminate obvious imbalances in traditionally segregated job categories; (2) the plan must not unnecessarily hamper the interests of the majority, and thus innocent employees must not be required to give up their jobs to further the objective of the plan; (3) the plan must not create an absolute bar to the advancement of the majority; and (4) the plan must be a temporary measure not designed to maintain balance, but rather to eliminate a manifest imbalance.

U.S. Supreme Court  
JOHNSON VERSUS TRANSPORTATION AGENCY OF SANTA CLARA COUNTY (1987)  
SIGNIFICANT ISSUE: VOLUNTARY AFFIRMATIVE ACTION PLAN

FACTS:

- A County agency adopted a voluntary affirmative action plan providing that sex may be used as one factor in distinguishing between qualified applicants for promotions to job classifications in which women have historically been significantly underrepresented.
- Both the male (the plaintiff) and a female candidate were rated well-qualified for promotion to a classification in which none of 238 positions was then held by a female.
- Pursuant to the affirmative action plan, the agency promoted the female, and the male brought a Title VII action.

Holding of the Supreme Court:

The plan is consistent with Title VII of the Civil Rights of 1964, since it presents a moderate, flexible, case-by-case approach to gradually improving the representation of women in the agency's workforce consistent with the outline established by *Steelworkers v. Weber*, (1979).

U.S. Supreme Court  
CALIFORNIA FEDERAL SAVINGS AND LOAN ASSOCIATION VERSUS GUERRA (1987)  
SIGNIFICANT ISSUE: CALIFORNIA LAW NOT SUPERSEDED BY TITLE VII

FACTS:

- Under certain situations, California laws relating to pregnancy discrimination/pregnancy- related disabilities, as provided by the Fair Employment and Housing Act (FEHA) provide pregnant employees with preferential treatment over other individuals with disabilities.
- California Federal Savings reasoned that such laws are superseded by Federal laws (Title VII of the Civil Rights Act of 1964) which provide that all employees with temporary disabilities, be they pregnancy- related or otherwise, be treated the same. California Federal argued that the State laws result in a type of reverse discrimination against all individuals with temporary disabilities not related to pregnancy.

Holding of the Supreme Court:

California law related to pregnancy- related disabilities as provided by the FEHA, is not superseded by Federal law concerning pregnancy-related disabilities. The Court held that the State law did not result in reverse discrimination, as its objective is to advance equal opportunity.

GLOSSARY OF EQUAL EMPLOYMENT OPPORTUNITY (EEO) TERMS

ACCOMMODATION - See Page 24.

ADVERSE IMPACT (OR EFFECT) - See Page 24.

AFFIRMATIVE ACTION - The activities by an employer, usually as an outgrowth of the employer's Affirmative Action Program, to increase the representation of sub-parity groups (See Sub-Parity) at all levels in the employer's workforce. Affirmative action also calls for taking steps to review the employer's personnel practices and policies to eliminate those that pose artificial barriers against the employment of different groups. Affirmative action plans or programs are written documents describing the efforts and activities to be undertaken by the employer in order to achieve parity levels for all groups in the employer's workforce. Most, if not all, affirmative action programs include goals and timetables which serve the purpose of causing programs to be implemented to meet those goals, and to provide a measurement device to evaluate the effectiveness of the employer's programs designed to meet those goals.

APPLICANT FLOW - The number of applicants applying for a particular job over a given period of time, analyzed by sex and race/ national origin characteristics. Applicant flow data is used to assess whether or not the employment (recruitment) practices of the employer may be discriminating against particular groups, and to assist in developing relevant affirmative action goals.

ARTIFICIAL BARRIER - An employment policy, practice, or requirement that has the effect of denying or limiting employment opportunities for a particular group or groups, and which cannot be justified on the basis that it is job-related. For example, a requirement that one must be a citizen of the United States in order to work for the City of Los Angeles would be considered an artificial barrier for most City jobs, especially since it would have an adverse impact against groups such as Hispanics and Asians.

AVAILABILITY ANALYSIS - An analysis of census, labor force, and other employment data to determine the representation of various groups in the labor market that is available to the employer. Availability analyses are useful in establishing relevant numerical affirmative action goals.

**BFOQ** - Bonafide occupational qualification. A defense allowed employers to justify an employment practice or policy which would otherwise be unlawful because of its discriminatory impact. For example, the requirement that an actress play the part of a woman would be considered as a bonafide occupational qualification (BFOQ) even though it discriminates against men.

**BRIDGE CLASS** - A civil service job classification specifically designed to provide training or experience which will facilitate advancement of employees from one type of occupation to another.

**CIVILIAN LABOR FORCE PARITY** - A condition in which the sex/ethnic composition of an employer's workforce approximates the sex/ethnic composition of the working community from which the workforce is drawn.

**CIVIL RIGHTS ACT** - See Title VII of The Civil Rights Act of 1964.

**COMPLIANCE AGENCY** - Any local, State, or Federal government agency which administers EEO laws. Compliance agencies usually are responsible for reviewing and monitoring the affirmative action programs of employers as well as investigating discrimination complaints.

**CONSENT DECREE** - A settlement between the parties of lawsuit arising from charges of discrimination. The settlement must be approved by a State or Federal court and include language indicating that there is no admission of guilt or wrongdoing, but that special arrangements or modifications are made in the employer's employment practices.

**CONSTRUCT VALIDATION** - See VALIDATION

**CONTENT VALIDATION** - See VALIDATION

**CRITERION-RELATED VALIDATION** - See VALIDATION

**DFEH** - Department of Fair Employment and Housing. The California State agency responsible for administering the State Fair Employment Practice Act.

**DISCRIMINATION** - Any employment practice or decision which-intentionally or unintentionally results in the unequal treatment of an individual or group on a basis other than job-related reasons.

DISPARATE EFFECT - See ADVERSE IMPACT

DISPARATE (DIFFERENTIAL) TREATMENT - See Page 23.

EEOC - Equal Employment Opportunity Commission. The Federal agency responsible for enforcing the Civil Rights Act Of 1964, the Equal Pay Act, and the Age Discrimination in Employment Act.

EMPLOYMENT PRACTICE - A term used by compliance agencies usually in connection with discrimination complaints, to allow focus in the investigation on a particular area. Examples of practices that would be subject to a discrimination complaint investigation include hiring, promotion, assignment, transfer, reassignment, termination, discharge, discipline, training, performance appraisal, pay, harassment, seniority, benefits, and work environment. Care should be taken not to confuse the term with the use of the term "personnel practice" which connotes a policy or procedure in connection with one of the foregoing stated employment practices.

EQUAL EMPLOYMENT OPPORTUNITY - Opportunity to compete and to be hired, based on individual merit and ability to perform a job without regard to a person's race, color, religion, sex, national origin, age, handicap, marital status, sexual preference, creed, ancestry, medical condition (cancer), or affliction or perceived affliction with Acquired Immune Deficiency Syndrome (AIDS), or for a person formerly filing a discrimination complaint.

EQUAL PAY ACT - See Page 18.

GOALS AND TIMETABLES - Numerical and programmatic goals which are flexible and are to be achieved within the framework of the City's merit system. Numerical goals represent a commitment to achieve sex/ethnic balance at all levels in the workforce within a certain time period. Program goals represent a commitment to remove causes of sub-parity representation and eliminate all personnel policies, procedures, and practices which are not job-related and have an adverse impact on the employment and retention of sub-parity groups.

JOB CLASSIFICATION OR CLASS - A position or a group of positions sufficiently similar in duties and responsibilities that they are grouped under a common title. For example, Administrative Intern, Clerk Typist, and Maintenance Laborer.

**MERIT SYSTEM** - A system in which the selection, assignment, evaluation, training, promotion, discharge, and other personnel transactions are based on uniformly applied criteria of relative fitness to perform the duties of the position held or sought.

**OCCUPATIONAL CATEGORY** - This term applies to job classifications that have been grouped together according to criteria established by the EEOC, which standardize the City's method of determining and reporting the representation levels of employee groups within departments. The City's job classifications are placed within eight such categories:

1. **Officials/Administrators:** occupations in which employees set broad policies, exercise overall responsibility for execution of these policies, or direct individual departments or special phases of the agency's operations.
2. **Professionals:** occupations which require specialized and theoretical knowledge which is usually acquired through college training or through work experience and other training which provides comparable knowledge.
3. **Technicians:** Occupations which require a combination of basic scientific or technical knowledge and manual skill which can be obtained through specialized post-secondary school education or through equivalent on-the-job training.
4. **Protective Service:** Occupations in which employees are entrusted with public safety, security, and protection from destructive forces.
5. **Paraprofessionals:** Occupations in which employees perform some of the duties of a professional or technician in a supportive role, and which usually require less formal training and/or less experience than normally required for professional or technical status.
6. **Administrative Support:** Occupations in which employees are responsible for internal and external communication, recording and retrieval of data and/or information, and other paperwork required in an office.
7. **Skilled Craft:** Occupations in which employees perform jobs which require special manual skill and a thorough and comprehensive knowledge of the processes involved in the work which is acquired through on-the-job training and experience or through apprenticeship or other formal training programs.
8. **Service/Maintenance:** occupations in which employees perform duties which result in or contribute to the comfort, convenience, hygiene or safety of the general public or which contribute to the upkeep and care of buildings, facilities, or grounds of public property.

**OUTREACH RECRUITMENT** - A concerted effort by an employer to attract applicants in those groups which have sub-parity representation in a given class.

**POPULATION PARITY** - A condition in which the sex/ethnic composition of the City's workforce approximates the sex/ethnic composition of Los Angeles' total population within all occupational categories throughout all City departments.

**PROTECTED CLASSES** - This term is most often used improperly. Title VII of the Civil Rights Act of 1964 protects all individuals against discrimination because of their race, color, religion, sex or national origin. The term "protected classes," however, may only be properly used in connection with people over the age of 40, the disabled, and those with medical conditions (cancer-related). Each of these latter groups is protected by legislation against any form of discrimination on the basis of one's "membership" in that group.

**QUOTA** - A court ordered hiring and/or promotion scheme identifying the ratio of women and/or minorities that should be hired or promoted because of the Court's finding that the employer has practiced unlawful discrimination. Quotas are not the same as goals and timetables, which are voluntary employment targets or objectives established by the employer using nondiscriminatory employment practices to obtain those goals.

**RELEVANT LABOR FORCE** - The number of individuals who are available and interested in employment, who are members of an identified sub-parity group, and meet the minimum requirements for employment in a particular job in the City's workforce.

**STATISTICALLY SIGNIFICANT** - A term often used in connection with the analysis of adverse impact where statistics indicate the degree of confidence that can be placed in the results of the analysis. If the results of analysis are determined to be statistically significant, it is unlikely that the results are due to chance.

**SUB-PARITY** - A term used to indicate that a group's representation in a class or occupational category is below population parity.

**TEST** - Any well-defined instrument, process, or procedure that is formal, scored, or qualified, when used as a basis for any selection decision. The term "test" is not restricted to a paper and pencil test.

TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED - See Pages 18 and 19.

UNDERREPRESENTATION OR UNDERUTILIZATION - See SUB-PARITY

UNIFORM GUIDELINES ON EMPLOYEE SELECTION PROCEDURES - Federal guidelines prepared in concert by the Department of Labor, the Equal Employment Opportunity Commission, the Justice Department, the Civil Service Commission (now Office of Personnel Management), and the Office of Revenue Sharing (Treasury Department). The Guidelines provide a set of principles governing employee selection procedures to ensure compliance with legal standards and validation standards. The Guidelines establish a basis on which federal agencies will evaluate employers' selection procedures in compliance activities and discrimination complaint investigations.

UPWARD MOBILITY - The degree of advancement opportunities that exist for employees in different occupations. Affirmative Action Programs usually include program goals aimed at increasing advancement opportunities for all employees through, for example-, structured training, employee development (perhaps through rotation or reassignment procedures), job restructuring, broadening promotional requirements to eliminate "dead-end" occupations (no promotional opportunity for employees in a particular occupation), career counseling, and guidance in preparing for examinations.

VALIDATION - A process through which a test is evaluated to assure that it measures skills, knowledges, and/or abilities which are required to effectively perform the job. The Uniform Guidelines on Employee Selection Procedures recognize three types of validation in supporting the job-relatedness (or business necessity) of selection procedures. The three validation methods are:

- a. Content Validation - Data showing whether or not the "content" of a selection procedure is representative of important aspects of performance on the job for which applicants are being considered. For example, a typing test would be considered content valid for a Clerk Typist examination.
- b. Construct Validation - Data showing whether or not the selection procedure accurately measures the presence and degree of a psychological trait (the "construct") that is shown by the study to be necessary in order to successfully perform the job. An example of a construct would be "leadership ability."

- c. Criterion-Related Validation - Data showing whether or not the selection procedure can be justified by a statistical relationship between scores on the test and measures of actual job performance. If a selection procedure is criterion valid, it would have been determined that success in the selection procedure (test) would likely lead to success on the job.

WORKFORCE ANALYSIS (WFA) - A computer-generated report providing information on the sex, race, and ethnicity of employees. The WFA was initially prepared to meet the EEO-4 reporting requirements. However, the information contained in the WFA also aids in setting affirmative action goals (both numerical and program goals) and in evaluating employment practices challenged by discrimination complaints.