

Policy

The California Department of Food and Agriculture, District Agricultural Associations, and related applicable entities (herein collectively referred to as “the Department”) are committed to providing Equal Employment Opportunity (EEO) and the expectation that employees are entitled to a work environment free from any form of discrimination or harassment on the basis of a protected class. All complaints of discrimination and harassment will be given expeditious and impartial consideration.

The Department will investigate retaliation for objecting to discrimination and harassment or for participating in a protected activity.

All persons involved in Department activities, including, but not limited to, Department staff, board members, contracted, temporary, and voluntary employees, unpaid interns, members of the public, applicants for employment, or visitors on Department property who may come into contact with Department employees, are expected to adhere to a standard of conduct that is respectful of all persons. All persons are expected to take proactive steps to maintain a discrimination and harassment-free workplace. Activities outside of the workplace that are sponsored by the Department are considered part of the work environment and are subject to this policy.

The Department has a “Zero Tolerance” policy for all discrimination, harassment, and retaliation as defined by this policy. Any Department employee who is found to have violated this policy will be subject to corrective action, up to and including dismissal, based on the severity of the conduct.

The Department requires respectful and professional conduct from its employees. Even though some inappropriate behavior/conduct may not be found to be unlawful, the conduct may fall short of being the acceptable, courteous, respectful and professional behavior that is expected by the Department and may be a violation of this policy. Department employees need not break the law in order to be disciplined for inappropriate and discourteous behavior.

Authority

Federal Civil Rights Act of 1964, [Title VII](#)

Pregnancy Discrimination Act of 1978 ([42 U.S.C. 2000e\(k\)](#))

Title I, Americans with Disabilities Act of 1990 ([42 U.S.C. 12101-12213](#))

Age Discrimination in Employment Act of 1967 ([29 U.S.C. 621](#))

Equal Pay Act of 1963 ([29 U.S.C. 206 \(d\)](#))

Title I, Civil Rights Act of 1991 ([42 U.S.C. 2000\(e\)](#)) [section 1977A](#)

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Rehabilitation Act of 1973 [sections 501 and 505 \(U.S.C.\)](#)

Title II, Genetic Information Nondiscrimination Act of 2008, [U.S.C. sections 201-213](#)

Fair Employment and Housing Act, [California Government Code sections 12900-12996](#)

California Code of Regulations, [Title 2, Division 4.1, Sections 11000-11141](#)

California Family Rights Act, [California Government Code section 12945.2](#)

New Parent Leave Act, [California Government Code section 12945.6](#)

California Government Code sections [18500](#), [18671.1](#), [19700-19706](#), [19991.6](#)

Unruh Civil Rights Act, [California Civil Code section 51 et seq.](#)

Ralph Civil Rights Act, [California Civil Code section 51 et seq.](#)

California Trafficking Victims Protection Act, [California Civil Code Section 52.5](#)

Disabled Persons Act, [California Civil Code section 54 et seq.](#)

California Labor Code, [Division 2, Part 1, Chapter 1, Article 1, section 230](#)

Disabled Persons Act, [California Civil Code section 54, et seq](#)
Title 29, Code of Federal Regulations section [1604.11](#)

Definitions

<i>Assault</i>	A physical or sexual attack.
<i>Complainant</i>	The person who files a complaint whether for themselves or on behalf of someone else.
<i>Discrimination</i>	An employment decision, denial of services, or other action motivated by a person's protected class for which there is no legitimate business reason.
<i>Harassment</i>	Unwelcome, disrespectful, or unprofessional conduct, based on any of the protected classes ¹ . It may also be sexual in nature.
<i>Hostility</i>	Acts characterized by aggression and maliciousness resulting in intimidation and an unpleasant work environment.

¹ Harassment not based on protected classes is detailed in the [Workplace Violence, Threats and Bullying Prevention Policy](#).
Chapter 2
Section 1
Subsection 1

Discrimination and Harassment Prevention Policy

<i>Hostile Work Environment</i>	Conduct of a sexual nature or based on a protected class that unreasonably interferes with an employee's work performance and/or creates and intimidating, hostile, or otherwise offensive working environment.
<i>Malice</i>	Conduct which is intended to cause injury with a willful and conscious disregard for the rights or safety of others.
<i>Obligated Reporter</i>	A person who, because of their status as a "supervisor", is legally required to report any suspicion or actual complaints of discrimination, harassment, sexual harassment, or retaliation.
<i>Prima Facie</i>	Sufficient corroborating evidence accepted as correct until proven otherwise.
<i>Protected Class</i>	Groups of people that are protected from discrimination and harassment under California or federal law. Classes include race, religion or religious creed, color, age, sex including sexual harassment, sexual orientation, gender identity, gender expression, genetic information, national origin, marital status, medical condition, disability, military or veteran status, political affiliation, childbirth, breastfeeding and related medical conditions, protected medical leaves, and status as a victim of domestic violence, stalking, or human trafficking.
<i>Respondent</i>	The entity or person named in the complaint.
<i>Retaliation</i>	An adverse employment action against an individual for engaging in a protected activity.
<i>Supervisor</i>	Any person who, in the course of their work activities, has the discretion and authority to hire, transfer, promote, assign, reward, discipline, or terminate employees or can recommend these actions, act on employee grievances, recommend action on grievances, or has the authority to direct an employee's daily work, regardless of their Civil Service classification. This includes people in supervisory or managerial classifications, as well as board members, board chairs or presidents, and office or field leads.
<i>Zero Tolerance</i>	Refusal to accept potential violations of this policy by addressing any and all allegations with the appropriate response from Department management, the Office of Civil Rights (OCR), and the Human Resources Branch (HRB).

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Responsibility

<i>Department</i>	<p>Ensures the work environment is free from all forms of discrimination and harassment as defined in this policy.</p> <p>Responsible for the actions of supervisors, managers, Chief Executive Officers (CEO) and for acts of other employees if management knew, or should have known, of such acts and failed to take prompt and effective action.</p>
<i>OCR</i>	<p>Ensures Department employment policies and practices are non-discriminatory and provides equal opportunity to all potential job applicants and employees.</p> <p>Ensures that all discrimination and harassment complaint investigations are conducted in a fair, complete, and timely manner; holds complaints as confidential as possible; and protects employees from being retaliated against for complaining or participating in an investigation.</p> <p>Manages and administers the Department's Discrimination and Harassment Prevention training program.</p>
<i>Supervisors, Managers and CEO's</i>	<p>Set the tone for a discrimination-free and harassment-free work environment. This includes maintaining an environment free from harassment, discrimination, intimidation, retaliation, ridicule, and insult.</p> <p>Ensure all employees are informed of this policy at the time of hire, annually thereafter, and again when a complaint is brought forward.</p> <p>Respond immediately and objectively to all discrimination and harassment complaints. Protect complainants from any form of retaliation.</p> <p>Inform the OCR immediately of any complaint of discrimination, harassment, or retaliation.</p> <p>Investigate minor incidents as directed by the OCR and report back findings.</p>
<i>Employees</i>	<p>Employees who feel they are being discriminated against or harassed during the performance of their job duties should immediately convey their concerns to management or to the OCR.</p> <p>Any employee who perceives the comments, gestures, or</p>

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actions of another employee to be harassing or discriminatory should immediately and clearly communicate to that person that such behavior is unwelcome and inappropriate. Failure to express that a behavior is unwelcome does not prevent the employee from filing a complaint nor does it exonerate the harasser.

File a discrimination or harassment complaint:

- With any supervisor, manager, or CEO, who will forward all harassment complaints to the OCR or;
- Directly with the OCR using the process outlined in the “Internal Complaint Process” section or;
- Externally with the California Civil Rights Department ([CRD](#)), or the Equal Employment Opportunity Commission ([EEOC](#)) as outlined in the “Complaints Filed Outside of the Department” section of this policy.

Any employee who is a witness to, but not the victim of conduct that may violate this policy, may file a complaint on the victim’s behalf.

Discrimination

Discrimination may include but is not limited to: hostile or demeaning behavior toward people because of their protected class; allowing the protected class of an employee, applicant, or other person involved in Department business to be a factor in hiring, promoting, compensating, or other employment related decisions unless permitted by applicable law²; or providing unwarranted assistance or withholding work-related assistance, cooperation, and/or information to employees, applicants, or other persons involved in Department business because of their protected class. Such conduct may violate this policy, even if it is not unlawful.

The elements of unlawful discrimination are further explained in the CRD’s brochures; [“California Law Prohibits Workplace Discrimination and Harassment,”](#) [“Your Rights and Obligations as a Pregnant Employee,”](#) [“Transgender Rights in the Workplace,”](#) and [“Hate Violence and Civil Rights.”](#)

Harassment

For the purpose of this policy, harassment includes but is not limited to verbal (jokes, slurs, epithets, teasing), visual (posting of offensive or graphic material, symbols, computer displays), or physical conduct (crude gestures) due to an actual or perceived protected class. Such conduct that creates a hostile work environment

² For example, veteran preference as permitted under Government Code 18973.1

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is a violation of this policy.

All harassing conduct is unacceptable in the workplace and in any work-related settings, such as business trips and business-related social functions, regardless of who is engaging in the conduct. Such conduct, even if a single incident, may violate this policy even if it is not unlawful.

The elements of unlawful harassment are further explained in CRD's brochures; ["California Law Prohibits Workplace Discrimination and Harassment,"](#) ["Your Rights and Obligations as a Pregnant Employee,"](#) ["Transgender Rights in the Workplace,"](#) and ["Hate Violence and Civil Rights"](#).

Sexual Harassment

Sexual harassment is harassment based on sex or conduct of a sexual nature, and includes harassment based on pregnancy, childbirth, breastfeeding, or related medical conditions, sexual orientation, sex, gender, gender identity, or gender expression. Sexually harassing conduct does not need to be motivated by sexual desire.

Sexual harassment is categorized into two types:

Quid Pro Quo

- The demand of sexual favors in exchange for a job benefit or continued employment.
- Submission to or rejection of the demand is used as the basis for an employment decision affecting the victim.
- Typically, but not always committed by a supervisor, manager, or someone with authority over the victim.

Hostile Work Environment

- Conduct of a sexual nature that unreasonably interferes with an employee's work performance and/or creates an intimidating, hostile, or otherwise, offensive working environment. Examples include but are not limited to:
 - Unwelcome sexual advances, flirtation, teasing of a sexual nature
 - Sexually aggressive or obscene letters, invitations, notes, emails, voicemails, or gifts
 - Sex, gender, or sexual orientation-related comments, slurs, jokes, remarks, or epithets
 - Leering, obscene or vulgar gestures or sexual gestures
 - Displaying or distributing sexually suggestive or derogatory objects, pictures, cartoons, posters, or other such items
 - Impeding or blocking movement, unwelcome touching or assaulting others
 - Reprisals and threats after a negative response to a sexual advance

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- Conduct or comments consistently targeted at one gender, even if the conduct is not sexual.

All sexually harassing conduct is unacceptable in the workplace and in any work-related settings, such as business trips and business-related social functions, regardless of who is engaging in the conduct. Such conduct, even if a single incident, may violate this policy even if it is not unlawful.

The elements of unlawful harassment are further explained in CRD's brochure, "[Sexual Harassment.](#)"

Intent vs Impact for Harassment Cases

In cases of alleged harassment, whether based on sex or a protected class, the intent of the harasser is irrelevant. It is the impact of the behavior and how it is perceived by the recipient that determines if the conduct is harassment.

Retaliation Prohibition

Retaliation against any person who engages in a protected activity is strictly prohibited. To prove retaliation, there must be a causal link between the adverse employment action and the protected activity.

Protected activities include opposing discriminatory practices, filing a complaint, or testifying, assisting, or participating in any manner in an OCR investigation, proceeding, or hearing. These prohibitions apply to all employees, not only managers and supervisors or those against whom complaints are filed.

Internal Complaint Process

The Department's discrimination and harassment complaint process provides any person involved in Department business the opportunity to raise allegations related to discrimination, harassment based on sex or a protected class, or retaliation and to seek resolution of their complaint. Complaints will be resolved at the lowest organizational level possible while assuring that the process provides for timely, thorough, and impartial review of the allegations without fear of reprisal or retaliation.

The following options are available to resolve a complaint:

- Tell the individual engaging in the inappropriate conduct to stop.
- Report the conduct to the immediate supervisor or any other supervisor if the employee's immediate supervisor is unavailable to resolve the complaint.
- Complete an [SO-201](#), Discrimination and Harassment Complaint Form, and submit it to either a supervisor and/or manager, or directly to the OCR at:

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- Civil_rights@cdfa.ca.gov or
- Office of Civil Rights
1220 N Street, Suite 115
Sacramento, CA 95814
- Include enough evidence with the complaint to raise the inference that the allegations are true (*prima facie*). A prima facie case alleging actions that violate this policy must be established before an investigation is initiated.
- If a complaint form is not immediately available, contact the OCR at:
 - Civil_rights@cdfa.ca.gov or
 - (916) 654-1005

If a supervisor, as defined by this policy, receives a completed [SO-201](#), they must review and forward it to the OCR via email or in a sealed envelope marked “CONFIDENTIAL.” Anyone in a supervisory position, as defined by this policy, is considered an obligated reporter for the purposes of this policy. Failure to do so is a violation of this policy and may result in disciplinary action against the supervisor.

Should a complaint meet the prima facie standard to investigate, the OCR will proceed with an investigation. For complaints that do not meet the standard to investigate or that can be addressed without an investigation, the OCR will coordinate with the appropriate parties to determine policy findings or to find a resolution.

Investigations

Upon receipt of a complaint that requires an investigation, the OCR will take immediate action to conduct an investigation. Investigations typically consist of interviews with the Complainant, Respondent, and appropriate witnesses, review of relevant documents or other evidence, and the writing of an investigative analysis. This analysis is confidential and is only shared with decision makers who have a need to know. Complainants and Respondents will receive a letter detailing the findings of the allegations at the conclusion of the investigation.

Any Department employee who is identified in an investigation and is notified that the OCR wishes to interview them is expected to participate in that investigation and must do so in good faith. If an employee refuses to participate in the investigative process, they may be compelled to participate or be subject to disciplinary action.

OCR investigations and inquiries are confidential to the extent reasonable. If interviewed by the OCR, the interviewee(s) may be requested to not discuss the interview or information relative to the investigation with anyone other than the investigator or other individual authorized by the OCR, such as a union representative or personal attorney, while the investigation is on-going. If requested

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to maintain confidentiality, failure to do so may compromise the investigation and may result in disciplinary action.

Complaints Filed Outside of the Department

No one is required to file a complaint with the Department OCR. Anyone may file a complaint with the following agencies.

- **California Civil Rights Department**

Website: <http://www.cacivilrights.ca.gov>

English to Voice/TTY: 800-588-7100

Spanish Voice/TTY: 800-855-7200

Speech to Speech (STS): 800-855-7300

Visually Assisted STS: 800-855-7400

Complaints must be filed with the CRD within three years from the date upon which the alleged discriminatory act occurred. This period may be extended, not to exceed 90 days following the expiration of that year, if a person allegedly aggrieved by an unlawful practice first obtained knowledge of the facts after the expiration of one year from the date of its occurrence.

- **U.S. Equal Employment Opportunity Commission**

Any complaint of sexual harassment or of discrimination based on race, color, physical or mental disability, medical condition, marital status, religious creed, sex, national origin, ancestry, age, or retaliation for filing a formal complaint may be filed with:

U.S. Equal Employment Opportunity Commission

Telephone: 800-669-4000

Website: <https://www.eeoc.gov>

The EEOC may defer the matter to its state equivalent, the CRD. If the CRD has waived its right to process the charge or has no jurisdiction over the charges, the complaint must be filed with the EEOC within 180 days from the date of the violation. The 180-day period for filing a complaint does not begin until the claimant becomes aware of the discriminatory act.

- **State Personnel Board (SPB)**

Appeals regarding complaints of discrimination based on disability and medical or mental condition must be filed with SPB within 30 days from the date the event took place. The SPB Appeals Division contact information is:

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SPB Appeals Division
Telephone: (916) 653-0799
Fax: (916) 654-6055
Online: <https://appeals.spb.ca.gov/aos/appeal.html>
Email: appeals@spb.ca.gov

Liability for Unlawful Discrimination and Harassment

<i>Department:</i>	Responsible for the actions of their employees and as a result can be held financially liable for the employees' acts if the supervisor or management knew or should have known of the existence of discrimination or harassment and failed to take appropriate action.
<i>Supervisors, Managers, and CEO's:</i>	<p>Because supervisors and managers are responsible for ensuring a work environment free of discrimination, harassment, and retaliation, they must take immediate action if they learn of any alleged incident of discrimination, harassment, or retaliation. Actions always include notifying the OCR immediately. Failure to act can expose supervisors and managers, personally, to financial liability for damages, as well as disciplinary action.</p> <p>Supervisors and managers who engage in Quid Pro Quo Harassment can be subject to disciplinary action and held financially liable for their conduct.</p>
<i>Individual Harasser:</i>	<p>An employee found guilty of unlawful discrimination or harassment may be sued separately from their employer and if found guilty, will be held financially liable for their actions. Insurance generally does not indemnify for intentional conduct, and the employer may have no legal obligation to pay the cost of defense or judgment for an employee determined to have sexually harassed another. The employee may be responsible for paying part or all monetary damages if any are awarded. Monetary damages may include substantial compensatory and punitive damages and attorney fees.</p>

Training

All Department employees, including newly appointed supervisors, managers, Board Members, and CEOs are required to complete the OCR's discrimination and harassment prevention training class within six months after appointment and every two years thereafter. Newly hired employees shall be provided with a copy of the Department's Discrimination and Harassment Prevention Policy as part of the hiring package.

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All seasonal employees must complete the OCR's discrimination and harassment prevention training class within two weeks of their start date.

All supervisors, managers, and CEOs are required to discuss and review the Department's Discrimination and Harassment Prevention Policy with subordinate employees annually.

Distribution

Distribution of the above policy includes all executive, DAA and other appointees and employees.

Any supervisor, manager, CEO, Board Member, or employee seeking advice, guidance, or consultation regarding discrimination, harassment, sexual harassment, or retaliation may contact the OCR at (916) 654-1005.

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THIS SERVES AS NOTICE TO EMPLOYEES OF THE DEPARTMENT'S DISCRIMINATION AND HARASSMENT PREVENTION POLICY.

I hereby certify I have read and understand the Department's Discrimination and Harassment Prevention Policy. This policy is to be reviewed annually by all CDFA and DAA employees.

Employee Name Employee Signature Date

Supervisor's Name Supervisor's Signature Date

Division/Branch/DAA

Retain in the employee's drop file until superseded.

cc: Employee