CHAPTER 4

SEXUAL HARASSMENT AND ABUSIVE CONDUCT PREVENTION

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CHAPTER 4

SEXUAL HARASSMENT AND ABUSIVE CONDUCT PREVENTION

1. INTRODUCTION.

a. Sexual harassment in the workplace is a form of sex discrimination that violates both Title VII of the Civil Rights Act of 1964 and California's Fair Employment and Housing Act.

Sexual harassment based on sex (including pregnancy, childbirth, breastfeeding, or related medical conditions), gender, gender identity, gender expression, or sexual orientation. Individuals of any gender can be the target of sexual harassment. It includes unwelcome sex-based conduct, such as unwelcomed or unsolicited sexual advances, requests for sexual favors, conversations regarding sexual activities, or other verbal or physical conduct of a sexual nature. Sexual harassment does not have to be of a sexual nature, and sexual harassment does not need to be motivated by sexual desire. Additionally, sexual harassment may include situations that begin as a consensual dating or sexual relationship but later becomes a relationship that is not welcomed by one of the people involved.

b. This policy emphasizes the Department's commitment to a work environment free from discrimination and harassment and encourages a culture of respect and trust. Sexual harassment or abusive conduct undermines the integrity of the employment relationship. The Department will act to stop the conduct, prevent its recurrence, and discipline and/or take other appropriate action against those individuals determined to be in violation of this policy.

2. POLICY.

a. The Department prohibits and does not tolerate sexual harassment by any departmental employee against another employee, applicant, paid or unpaid intern, volunteer, or nonemployee (e.g., an independent contractor or vendor) or vice versa.

b. This policy extends to conduct with a connection to an employee's work even when the conduct takes place away from California Highway Patrol (CHP) premises, such as a business trip, a business-related social function, or through social media.

c. All CHP employees are responsible for ensuring their conduct adheres to the Department's Equal Employment Opportunity (EEO) Program policies reflecting a

workplace in which all individuals are free from discrimination, harassment, including sexual harassment and abusive conduct, or retaliation.

d. California Highway Patrol employees, both supervisory and non-supervisory, may be personally liable for damages, as well as the Department, in legal actions filed for harassment or aiding and abetting harassment.

e. When the Department receives an allegation of sexual harassment, it will conduct a fair, timely, and thorough investigation that provides all parties appropriate due process and reaches reasonable conclusions based on the evidence collected.

f. No employee shall be subject to retaliation as a result of making a complaint or participating in an investigation.

g. Immediate and appropriate disciplinary action(s) will be taken against those individuals determined to be in violation of this policy, up to and including dismissal.

h. All CHP employees shall take the required online sexual harassment and abusive conduct prevention training developed by the California Civil Rights Department (CRD).

i. Commands shall display the most recent versions of the required equal employment opportunity workplace posters in their designated posting areas. The links are available on the Equal Opportunity & Access Section's (EOAS) SharePoint page under REQUIRED EEO POSTINGS.

j. Employees shall acknowledge they have reviewed and understand Chapter 1, Policy and Program Responsibilities; Chapter 4, Sexual Harassment and Abusive Conduct Prevention; Chapter 5, Discrimination, Harassment, and Retaliation Complaint Process; and Chapter 8, Disability Services Program, of this manual, upon initial hire and annually thereafter utilizing the CHP 237A, Annual Equal Employment Opportunity Policy Review.

3. LEGAL AUTHORITY.

a. Section 12900 through Section 12999 of the California Government Code (GC) are known and referred to as the Fair Employment and Housing Act (FEHA).

b. The FEHA prohibits discrimination, harassment, and retaliation on the basis of statutorily protected characteristics against employees, unpaid interns, job applicants, and independent contractors (Section 12940 GC). Title 2, Section 11023 of the California Code of Regulations (CCR) states that employers have an affirmative duty

to take reasonable steps to prevent and promptly correct discriminatory and harassing conduct; this is in accordance with Section 12940(k) GC.

c. Title VII of the Civil Rights Act of 1964 is a federal law that in part prohibits sexual harassment, which is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.

4. SEXUAL HARASSMENT.

a. Sexual harassment may include all the actions described as harassment in Chapter 3, Discrimination, Harassment, and Retaliation, of this manual, as well as other unwelcome sex-based conduct. This includes, but is not limited to, the following:

(1) Unwelcome or unsolicited sexual advances.

(2) Offering employment benefits in exchange for sexual favors, leering, or gestures.

(3) Displaying sexually suggestive objects, pictures, cartoons, or posters.

(4) Derogatory comments, epithets, slurs, or jokes.

(5) Graphic comments, sexually degrading words, or suggestive or obscene messages or invitations.

(6) Conversations regarding sexual activities.

(7) Other verbal or physical conduct of a sexual nature, including impeding or blocking movements.

NOTE: This may include situations that began as reciprocal relationships, but later cease to be reciprocal.

b. Individuals of any gender may be the subject of sexual harassment. Sexual harassment may involve harassment by a person of the same gender, regardless of either person's sexual orientation or gender identity. Unlawful sexual harassment does not have to be motivated by sexual desire.

5. TYPES OF SEXUAL HARASSMENT.

a. Quid Pro Quo Sexual Harassment.

(1) Quid pro quo means “this for that.” This occurs when an individual demands sexual favors in exchange for an employment benefit or demands sexual favors by threatening negative employment actions.

(2) Submission to sexual conduct (or other harassing conduct) is made explicitly or implicitly a term or condition of an individual’s employment. A term or condition of employment is defined as the entirety of the environment in which an employee works. The term encompasses all aspects of an employee’s relationship with their employer and co-workers, including compensation, fringe benefits, physical environment, work-related rules, work assignments, training and education, and opportunities to serve on committees and decision-making bodies.

b. Actual or threatened retaliation for rejecting sexual advances or complaining about the harassment is also unlawful. (Refer to Chapter 3 of this manual.)

c. Hostile Work Environment Sexual Harassment.

(1) A hostile work environment is defined as unwelcome conduct on the basis of sex, gender, gender identity, gender expression, or sexual orientation by a person in the workplace that unreasonably interferes with an employee’s work performance and/or creates an intimidating, hostile, abusive, or otherwise offensive work environment.

(a) Examples of sexual harassment creating a hostile work environment include, but are not limited to, the following: behavior which could include sexual advances, flirtation, teasing, sexually suggestive or obscene letters, invitations, notes, emails, voicemails, or gifts; comments, slurs, jokes, remarks, or epithets; leering, obscene or vulgar gestures; displaying disturbing or sexually suggestive or derogatory objects, pictures, graphics, cartoons, videos, images, or posters; impeding or blocking movement, touching, or assaulting others; reprisals or threats after a negative response to sexual advances; and conduct or comments consistently targeted at one gender, even if the content is not sexual.

(2) The harassment must be severe or pervasive to be unlawful for a violation of policy. That means that comments or conduct alter the conditions of employment and creates an abusive work environment. A single act of harassment may be sufficiently severe to be unlawful or a violation of policy. However, petty slights, annoyances, and isolated incidents (unless severe) will

not constitute a hostile work environment. It depends on the totality of the circumstances.

(3) Unwelcome means the person did not solicit or invite the unwanted or offensive conduct. It is also considered conduct that creates a hostile work environment. Conduct could initially be welcomed (e.g., consensual dating or sexual relationship) but turn to unwelcome conduct when one of the persons involved has indicated to the other that the conduct is no longer welcome.

(4) The harassment may be considered hostile even if the offensive conduct was not aimed directly at an affected individual.

6. REPORTING.

a. If the employee is comfortable, they are encouraged to speak directly to the person who is perpetrating the harassing or abusive conduct, explain the behavior is unacceptable, and ask them to stop.

b. Employees are encouraged to first seek informal assistance from their supervisor, another manager, or an EEO counselor. Through employees communicating with a supervisor, another manager, or an EEO counselor, the Department can take appropriate action to resolve an issue. (Refer to Chapter 5 of this manual.)

c. Reporting incidents of sexual harassment will not result in reprisal against employees alleging they are being harassed. Persons determined to have committed acts of reprisal may be subject to adverse action. (Refer to Chapter 3 of this manual.)

d. Individuals may also file concurrent complaints of discrimination, harassment, or retaliation with a state or federal compliance agency. (Refer to Chapter 5 of this manual.)

7. RESPONSIBILITIES.

a. Managers and Supervisors.

(1) Act professionally, courteously, and assume responsibility for assuring and maintaining a work environment that is free from discrimination and harassment (including sexual harassment), and an environment free from retaliation for participating in any protected activity.

(2) Lead by example with respectful actions, behaviors, and attitudes.

(3) Take reasonable steps to ensure employees receive the required sexual harassment and abusive conduct prevention training; and have access to the Department's discrimination, harassment, and retaliation prevention policy and CRD's required EEO postings.

(4) Take complaints seriously and do not condone, tolerate, or ignore any observations and/or reports of sexual harassment or inappropriate, abusive, or demeaning conduct.

(5) When an allegation of sexual harassment is made, take immediate and appropriate action to stop, correct, and prevent the conduct by:

(a) Immediately making notification through the chain of command to ensure timely investigation of the allegation.

(b) Protecting employees from any forms of reprisal or retaliation by reminding employees they may be subjected to disciplinary action if they retaliate against individuals who complain of sexual harassment.

(c) Notifying employees of their right to file a complaint with CRD and/or the Equal Employment Opportunity Commission.

(d) Recommending the State of California's Employee Assistance Program for additional support, resources, tools, and services.

(e) Consulting with EOAS, if needed.

(f) Continuing to monitor the workplace to ensure treatment of employees who file a sexual harassment complaint or who provide information related to a sexual harassment complaint are free from further harassment or other unlawful treatment.

b. Employees.

(1) Act in a professional, respectful, and courteous manner to ensure a work environment that is free from discrimination, harassment (including sexual harassment), and retaliation.

(2) Inform an individual when their behavior is unwelcome or inappropriate.

(3) Immediately report sexual harassment and inappropriate, abusive, and demeaning conduct to a supervisor, manager, or an EEO counselor without fear of reprisal or retaliation.

8. PREVENTION.

a. Create and maintain a workplace environment free from harassment and discrimination by promoting a culture of respect which includes:

(1) Valuing others, even when points of view are different.

(2) Giving and accepting constructive feedback in a positive way.

(3) Addressing sexual harassment and inappropriate, abusive, and demeaning conduct.

(4) Complying with relevant California and federal discrimination, harassment, and retaliation laws.

9. MANDATED AND INITIAL TRAINING REQUIREMENTS. Pursuant to Section 12950.1(a)(2) GC, the Department is mandated to provide sexual harassment training and education to each employee once every two years.

a. Pursuant to Section 12950.1(a)(2) GC and Title 2, Section 11024(c) CCR, the Department shall also include prevention of abusive conduct as a component of sexual harassment training. Abusive conduct is defined as conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests.

(1) Abusive conduct may include repeated infliction of verbal abuse (e.g., use of derogatory remarks, insults, epithets, yelling, or name-calling); verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating; or the gratuitous sabotage or undermining of a person's work performance.

(2) A single act shall not constitute abusive conduct, unless especially severe and egregious.

(3) Abusive conduct has negative effects not only on the person the conduct is directed toward, but also upon others in the workplace. As a result, abusive conduct can impact employees' productivity and workplace morale.

b. Pursuant to Section 12950.1(a)(3) GC, the Department shall also provide training inclusive of harassment based on gender identity, gender expression, and sexual orientation as a component of sexual harassment training. The training and education shall include practical examples inclusive of harassment based on gender identity, gender expression, and sexual orientation, and shall be presented by trainers and educators with knowledge and expertise in those areas.

c. The CRD's online training fulfills the legally mandated training requirements and satisfies the requirement for supervisory and nonsupervisory employees. The online training can be accessed through the CHP Intranet SharePoint site under Training.

d. All employees shall complete sexual harassment prevention and abusive conduct training as follows:

(1) All supervisory employees shall complete the two-hour training course within six months of assuming a supervisory position. Thereafter, supervisory employees shall complete the two-hour training course every two years.

(2) All new nonsupervisory employees shall complete the one-hour training course within six months of hire. Thereafter, nonsupervisory employees shall complete the one-hour training course every two years.

(3) Seasonal, temporary, or other employees hired to work for a period of less than six months, including retired annuitants, shall complete training and education within 30 calendar days after the appointment or reinstatement date, or within 100 hours worked, whichever occurs first.

10. DOCUMENTATION.

a. Training Completion Certificate. Sexual Harassment and Abusive Conduct Prevention Training completion certificates shall be entered into the Employee Training Records System.

b. CHP 237, Sexual Harassment and Abusive Conduct Prevention Training Log.

(1) Annually document the training on the employee's CHP 237, Sexual Harassment and Abusive Conduct Prevention Training Log, and obtain the signatures of the employee and supervisor.

(2) File the CHP 237 in the Field Personnel Folder.