General Order

Houston Police Department

ISSUE DATE:	NO.
Novemver 4, 2019	300-11

REFERENCE: Supersedes all prior conflicting Circulars and Directives, and General Order 300-11, dated September 9, 2010

SUBJECT: DISCRIMINATION, HARASSMENT, AND OTHER PROHIBITED CONDUCT

POLICY

The Houston Police Department shall maintain a model workplace free from discrimination based on the *protected categories* listed in this General Order and free from sexual harassment, retaliation, and other prohibited conduct.

To achieve this model work environment the Houston Police Department prohibits unlawful discrimination specifically including, but not limited to, disparate treatment and workplace harassment including gender based harassment. The department also prohibits sexual harassment and retaliation among its employees and other workplace misconduct as described in this General Order. Such aforementioned behavior and/or employee behavior that otherwise impairs the maintenance of a professional and dignified work environment is expressly prohibited and shall not be tolerated.

Some requirements and prohibitions listed in this General Order exceed what is required by law. The department's policy is to prevent precursory conduct from occurring before it becomes *severe or pervasive* as to harm employees, interfere with effective management, or violate the law.

This General Order governs employee conduct during working hours or during an off-duty, work-related social or recreational activity. This General Order also governs employee conduct in all City workplaces and vehicles, during business travel, and in any other location where City business is conducted, regardless of whether the property is owned or leased by the City. Off-duty conduct may violate this General Order if the subject matter or purpose of the conduct is not work-related and adversely impacts working relationships or the work environment.

The department and its employees shall take immediate and appropriate action to address violations of this order.

This General Order applies to all employees.

DEFINITIONS

The following definitions apply to this General Order only.

Alternative Dispute Resolution (ADR) Unit. The departmental unit overseeing the Employee Relations Section (ERS) section.

CIO. The Central Intake Office of the Internal Affairs Division.

Class I Violations. Actions that are more than mere offensive utterances or displays of discriminatory or sexually suggestive materials. Class II violations involving aggravating factors (e.g., supervisory status of the *respondent* over the *complainant* or a previous sustained

disparate treatment, workplace harassment, sexual harassment, or retaliation complaint) shall be sent as Class I violations to Internal Affairs Division for formal investigation.

Class II Violations. Actions that are only offensive utterances or displays of discriminatory or sexually provocative material and are eligible for informal resolution.

Complainant. The person making a complaint of prohibited conduct as defined by this General Order. The complainant may also be a third party who witnesses such conduct. ADR refers to the complainant as the initiating party.

Employee Relations Section (ERS). The section of the ADR Unit that has the primary responsibility for immediately determining, initiating, and creating a shielding plan for employees reporting prohibited conduct.

Family or Family Member. Individuals who are related by blood or marriage, former spouses, or biological parents of the same child without regard to marriage. Family also includes foster children and foster parents regardless of residency. Family members may also include spouses, parents, grandparents, children, siblings, aunts, uncles, nephews, nieces, adopted children, cousins, and current in-laws.

Gender Based Harassment. Discrimination or workplace harassment that is not necessarily sexual in nature, but is based on the gender or the gender identity of the employee.

Gender Identity. An individual's innate identification as either male or female, although it may not correspond to the individual's body or gender as assigned at birth.

Genetic Information. Information about an individual's genetic tests or the genetic tests of an individual's family members, or information about any disease, disorder, or condition of an individual's family members (e.g., an individual's family medical history).

Prohibited Conduct. Disparate treatment, workplace harassment, sexual harassment, retaliation, and other prohibited workplace conduct as defined or described in this General Order.

Protected Categories. Specific categories listed in section 1 of this General Order. These categories are based on Title VII Civil Rights Act (1964), Age Discrimination in Employment Act (ADEA) (1967), Title I Americans with Disabilities Act (ADA) (1990), the Pregnancy Discrimination Act, the Genetic Information Nondiscrimination Act of 2008 (GINA), including applicable amendments to such acts, and department policy.

Respondent. The person or persons reported as the offender in a prohibited conduct complaint.

Severe or Pervasive Conduct. In assessing whether conduct is sufficiently severe or pervasive, the department shall take into consideration the totality of circumstances including, but not limited to:

a. The frequency of the conduct.

b. The severity of the conduct.

c. Whether the conduct is physically threatening, humiliating, or merely an offensive utterance.

d. Whether the conduct interferes with an employee's work performance.

Under the totality of circumstances, a single incident, if sufficiently severe, could be in violation of this General Order, as could a continuous or frequent pattern of much less severe incidents.

Subordinate. An employee who reports, directly or indirectly, to a supervisor.

1 PROTECTED CATEGORIES

For conduct to be considered discrimination (e.g., *disparate treatment*, *workplace harassment*), it must involve misconduct based on at least one of the following *protected categories*:

a. Race

b. Color

c. Gender and/or gender identity

d. National origin

e. Religion

f. Pregnancy

g. Age

h. Disability

i. Sexual orientation

j. Genetic information

2 DISCRIMINATION

Discrimination includes, but is not limited to, decisions regarding employment based on a *protected category* listed in section 1 and that adversely affects an employee's pay, status, position, or assignment, including opportunities for overtime pay and advancement, and includes decisions regarding recruitment, appointment, compensation, promotion, discipline, demotion, transfers, layoff, recall, termination, and training opportunities. Discrimination can manifest as disparate treatment and/or workplace harassment as described below based on a protected category.

Disparate Treatment

Disparate treatment is when an employee of a protected category is treated less favorably than others and such actions are motivated by a discriminatory intent or purpose for taking a job-related action. Disparate treatment takes place when *all* of the following occur:

a. The employee is a member of a protected category listed in section 1.

b. The employee is qualified for a position or other job benefit. For example, the employee applied for an open position for which he was qualified, or the employee held a position that he was performing adequately.

c. The employee is denied the position or other job benefit.

d. The benefit remains available or was given to someone who is not in the employee's protected category.

e. The employment action was motivated by a discriminatory intent or purpose.

Workplace Harassment

Workplace harassment is any demeaning, hostile, or offensive conduct. For conduct to be workplace harassment, *all* of the following must be true:

a. The conduct is based on a protected category.

b. The conduct is unwelcome.

c. The conduct is *severe or pervasive* enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

Workplace harassment may be in the form of words, images, deeds, or actions.

In cases alleging workplace harassment, all reasonable efforts shall be made to shield complainants, up to and including a voluntary transfer of assignments away from the *respondent*, if deemed necessary by Alternative Dispute Resolution's Employee Relations Section (ERS).

3 SEXUAL HARASSMENT

Sexual harassment includes, but is not limited to, unwelcome sexual advances, unwelcome requests for sexual favors, or other unwelcome verbal or physical conduct of a sexual nature, or unwelcome displays or distribution of sexually-oriented material. For conduct to be sexually harassing, at least one of the following must be true:

a. Submission to such conduct is either an explicit or implicit condition of employment.

b. Submission to or rejection of the conduct by an employee is used as the basis for an employment decision affecting the employee.

c. The conduct has the purpose or effect of unreasonably interfering with an employee's work performance.

d. The conduct is *severe or pervasive* enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

In cases alleging sexual harassment, all reasonable efforts shall be made to shield complainants, up to and including a voluntary transfer of assignments away from the respondent.

4 RETALIATION

The Houston Police Department forbids retaliation against anyone for reporting prohibited conduct, assisting in making a prohibited conduct complaint, cooperating in a prohibited conduct proceeding (e.g., investigation or lawsuit), or otherwise opposing conduct prohibited by this General Order.

5 OTHER PROHIBITED WORKPLACE CONDUCT

Other prohibited workplace conduct is conduct that does not rise to the level of discrimination (e.g., disparate treatment, workplace harassment), sexual harassment, or retaliation as defined above but may impair the maintenance of a professional and dignified work environment. The other prohibited workplace conduct outlined in this section does not require any employee to find the conduct unwelcome.

Workplace Misconduct

The following examples, if deemed not to rise to the level of discrimination, sexual harassment, or retaliation as defined above, may constitute prohibited workplace conduct:

a. Sexually based flirtations, advances, leering, whistling, or propositions.

b. Physical contact, including touching, grabbing, pinching, or massaging.

c. Sexually oriented communications regarding sexual history, sexual experience, or sexual desires.

d. Threatening, either directly or indirectly, to retaliate against an employee who refuses to comply with or submit to a request of a sexual nature.

e. Withholding employment opportunities from an employee because a supervisor has chosen to provide those opportunities to another employee with whom the supervisor is sexually involved.

f. Conduct of a sexual nature that is inappropriate in a professional work environment. This includes either of the following:

   1. Conduct of a sexual nature that is *objectively offensive* but does not meet the legal definition of sexual harassment.

   2. Conduct of a sexual nature that is consensual between two or more parties but is nonetheless inappropriate in a professional work environment.

g. Verbal conduct such as insults, jokes, names, epithets, statements, or stories that are lewd, demeaning, derogatory, or *objectively offensive*.

h. Nonverbal conduct of a sexual nature, including exposing oneself, touching oneself, or making sexual gestures.

i. Graphic verbal comments about an individual's body, bodily function, sexual prowess, sexual deficiencies, or sexual orientation.

j. Inappropriate conduct or comments consistently or frequently aimed at a person or group based on a protected category.

k. Displays in the workplace of written or graphic materials showing hostility or aversion towards or defamation of a protected category. Examples include, but are not limited to, computer generated or transmitted documents such as email depicting any message or image derogatory or demeaning toward a protected category. This includes jokes, pictures, screen savers, or other similar publications.

l. Use of electronic equipment including, but not limited to, computer networks, cellular telephones, or copy machines to transmit or display *objectively offensive* material of a sexual nature.

m. Deliberately sabotaging work areas or projects and/or deliberately withholding information or equipment necessary for an individual to perform his or her job.

n. Failure of an employee who witnesses disparate treatment, workplace harassment, sexual harassment, retaliation, or other prohibited workplace conduct to report the conduct.

The above is not an exhaustive listing of all types of other prohibited workplace conduct that may be in violation of this General Order.

Fraternization

This subsection does not apply to marital-type relationships, which are addressed in the following subsection "Working with Family Members."

All employees shall keep their relationships with one another on a professional level and shall not date or have intimate relationships with individuals to whom he or she reports, directly or indirectly, or to whom report, directly or indirectly, to him or her. For example:

a. An employee and supervisor who are assigned to the same division, office, or unit are prohibited from dating or having an intimate relationship.

b. Assistant chiefs, executive assistant chiefs, and directors are prohibited from dating or having an intimate relationship with any employee who works in their command.

Employees should not ride together on patrol or work as partners within a divisional investigational unit with persons with whom they are dating or have an intimate relationship.

In addition to the above prohibitions, the department may take remedial or disciplinary action any time a prior consensual relationship between employees, even if not prohibited by this subsection, becomes unwelcome, adversely affects an employee's work environment, or otherwise violates any other provision of this General Order.

Working with Family Members

This provision applies to all *family members* and those employees who share a residence. This subsection does not apply to employees who share a residence as roommates for financial reasons with no other relational ties. For purposes of this subsection, police officers and senior police officers shall be considered the same rank.

Employees who hold the *same* rank and have a marital-type or other familial relationship with each other or share a residence are allowed to work at the same division or worksite. However, such employees are prohibited from riding together on patrol or working together as partners in a divisional investigative unit.

Employees who hold *different* ranks and have a marital-type or other familial relationship with each other or share a residence are prohibited from working in the same division or in the same chain of command unless there is no direct supervision ***and*** one of the following conditions exists:

a. Separation by at least three ranks.

b. Separation by shift (i.e., days, evenings, or nights).

c. Separation by worksite (i.e., different HPD facilities).

Only the Chief of Police may approve an exception to this subsection, in writing.

6 GENERAL PROVISIONS

All cases of prohibited conduct shall be handled immediately and with sensitivity to protect the interests of all parties involved.

Confidentiality

Employees, regardless of rank, who have specific information related to prohibited conduct shall keep this information confidential except when indicated otherwise by the General Orders, related Circulars, management necessity, or applicable laws. Even when required to reveal information related to such issues, employees shall maintain the confidentiality of the allegations to the fullest extent possible.

However, employees should be aware that confidentiality does not mean that incidents of prohibited conduct discussed with supervisors will not be reported. If employees notify supervisors regarding such issues, the supervisors shall report the incidents as directed in this General Order. Confidentiality does not relieve supervisors of the duty to report prohibited conduct.

The Alternative Dispute Resolution (ADR) Unit, Employee Relations Section (ERS) facilitator may appropriately discuss limited aspects of ERS cases when it is a management necessity. For example, if the ERS facilitator knows of allegations of workplace harassment, he or she may need to consult with the supervisors or managers of that workplace to ensure that further misconduct is not allowed to occur. See section 9, subsection "Intervention," for further exceptions to confidentiality.

Cooperation

All employees, regardless of rank, shall fully cooperate with ADR, ERS, and Internal Affairs Division (IAD) in the investigation, handling, and shielding processes related to this General Order.

No employee, regardless of rank, assignment, or function, shall ask ADR personnel to divulge confidential information except as already provided for in this General Order. Questions regarding what information ADR should release shall be directed to the Employee Services Division.

Rights of the Accused

The department recognizes the rights of the accused and the duty to protect respondents against false accusations. Respondents have the right to the following:

a. A thorough investigation concerning the allegations.

b. Confidentiality regarding the allegations to the fullest extent possible and a workplace free of defamation.

c. When permitted by law, access to and review of any report compiled by an outside agency used adversely against the employee.

d. All legal protections afforded by laws, ordinances, and contracts as they relate to the investigation of employee misconduct.

Support Resources

When requested, psychological counseling shall be afforded to both the complainant and respondent through the Psychological Services Division.

Legal updates on current trends and issues relating to discrimination and harassment issues shall be available to employees through the Training Division.

7 REPORTING PROCEDURES

Employees who witness prohibited conduct or who believe they are the subject of prohibited conduct shall report the conduct immediately as described in this section.

Failure to report prohibited conduct is a violation of this General Order and shall not be tolerated.

An ERS facilitator is always available. In the event immediate assistance is needed after normal business hours, employees shall contact the Command Center. The Command Center shall immediately contact the on-call ERS facilitator. If the ERS facilitator cannot be located, the Command Center shall contact the on-call IAD supervisor.

Supervisor Reporting and Response

Supervisors who witness, are advised of, or otherwise become aware of prohibited conduct are required to report the prohibited conduct and cannot agree to do otherwise. Once a supervisor is aware of prohibited conduct, the supervisor shall do both of the following:

a. Take immediate and appropriate action to stop and/or prevent further misconduct. The supervisor shall implement interim shielding if necessary (see section 10).

b. Promptly report the prohibited conduct to the ERS facilitator (no later than 24 hours from discovery of the incident). If circumstances indicate that the ERS facilitator should be notified immediately (e.g., the misconduct is egregious or the victim needs additional support) the supervisor shall do so.

Employee Reporting

While employees may utilize any of the reporting methods listed below, the preferred method for employees to report prohibited conduct is through ADR's Employee Relations Section. This enables the department to take immediate action to:

a. Determine the nature of the complaint.

b. Ensure the complaint is properly assigned to the appropriate unit for handling.

c. Implement an immediate shielding plan for the complainant if necessary.

Employees who witness prohibited conduct or who believe they are the subject of prohibited conduct shall report the conduct immediately to one of the following:

d. Their immediate supervisor

e. ADR, Employee Relations Section

f. Internal Affairs Division

g. Equal Employment Opportunity Commission

h. Texas Workforce Commission, Civil Rights Division

8 SUPERVISOR RESPONSIBILITIES

The supervisory duties and responsibilities, and the standards of supervision discussed in this General Order apply to all supervisory level personnel (classified and civilian) regardless of rank.

All supervisors shall be very familiar with the department's harassment and discrimination policies. The job performance reviews for supervisors shall include documentation indicating they have read and understand the policy and their responsibilities under it.

Supervisors shall be held accountable for the manner in which they exercise the authority of their offices as outlined in this General Order and General Order 200-08, **Conduct and Authority**.

Prevention is the best tool available to maintain a model workplace free from discrimination, sexual harassment, retaliation, and other forms of prohibited conduct. Therefore, supervisors shall take proactive measures to prevent prohibited conduct.

Standards of Supervision

All supervisors are required to comply with the following standards of supervision. Supervisors shall:

a. Routinely inspect the workplace for inappropriate signs, posters, cartoons, screen savers, or other similar material, and shall order the removal of such material.

b. Ensure assignments are based on department needs and policies rather than being inappropriately based on a protected category or in retaliation for participation in the reporting or investigation of a prohibited conduct complaint or on other conduct prohibited by this General Order.

c. Be a positive example for coworkers and subordinates concerning this policy.

d. Upon learning of prohibited conduct, follow the reporting procedures listed in section 7, subsection "Supervisor Reporting and Response."

e. Continue to monitor any previously reported situations and report related acts or allegations to both ERS and IAD.

f. Ensure marital, cohabitating, or dating relationships are in compliance with this policy.

g. Not participate in, condone, or allow offensive jokes or conversations.

ERS provides posters or notices highlighting certain aspects of this General Order. Commanders and mid managers shall ensure that such materials are prominently displayed at all divisions and work areas.

Assistant chiefs and division commanders are required to make periodic on-site visits to the various work locations for which they are responsible to ensure compliance. All concerns shall be immediately forwarded to the Central Intake Office (CIO).

9 ERS RESPONSIBILITIES

ERS is the primary unit responsible for immediately determining, initiating, and creating a shielding plan for employees.

Intervention

ERS personnel shall take the following actions with regard to prohibited conduct:

a. Take immediate and appropriate action to stop and/or prevent further misconduct.

b. Interview the complainant to determine the need for shielding. If shielding is necessary, take appropriate action to shield the employee.

c. Forward the complaint to CIO for tracking purposes.

d. Determine if a Chief of Police Notification is needed.

e. If a Chief of Police Notification is required, review the issue with the Office of Legal Services.

Chief of Police Notification

When ERS determines a Chief of Police Notification is needed, ERS shall forward written notification of the incident to the Chief of Police via the ADR chain of command within 48 hours after receiving notice of the issue.

This notification shall follow the format indicated in the ERS standard operating procedures. The notice shall include, but not be limited to, the following information: nature of the conduct, supervisory status of the involved parties, complainant's preferences regarding informal resolution, and ERS's recommendations regarding shielding.

Prevention

ERS shall engage in various activities to raise employees' awareness regarding prohibited conduct. ERS shall provide posters or notices designed for prominent display at all work locations as described above in section 8, *Supervisor Responsibilities*.

The Training Division and the Office of Legal Services shall assist ERS in the development and scheduling of training related to this General Order.

10 SHIELDING

Shielding is preventative action taken to protect employees in cases involving allegations of prohibited conduct.

ERS in consultation with the Office of Legal Services has the responsibility of determining whether shielding is necessary. If shielding is warranted, ERS shall recommend a shielding plan to the Chief of Police to protect the parties during the prohibited conduct investigation.

The ERS facilitator shall notify the complainant's division commander (or the next higher rank if the division commander is the respondent) and the complainant's assistant chief (or the next higher rank if the assistant chief is the respondent) if ERS accepts an employee relations issue in which shielding is a consideration.

It is the responsibility of the division commander to consult with his or her assistant chief regarding shielding preferences so that such preferences may be included in the shielding plan recommendations if the assistant chief desires. If possible and not constrained by time, the ERS

facilitator shall be involved in the discussions between the division commander and assistant chief in formulating a shielding plan.

However, the Chief of Police Notification and shielding recommendation from ERS shall not be delayed waiting for recommendations from a division or command.

Shielding plans require approval by the Chief of Police.

Shielding may include:

a. A voluntary reassignment of complainants to other supervisors during the investigation should the issue occur between subordinates and their immediate supervisors.

b. A voluntary reassignment of complainants to other units, divisions, or commands including, but not limited to, any of ADR's predesignated shielding assignments.

c. A voluntary or involuntary reassignment of respondents to other locations during the investigation.

d. Relief of duty for either the complainant or respondent.

e. An Order of No Contact may be issued to the complainant, respondent, or both.

Interim Shielding

Interim shielding is a shielding action taken near the time the alleged violation was discovered. Interim shielding remains in place only until a final shielding plan is approved by the Chief of Police.

The complainant's supervisor may provide interim shielding of the complainant pending directions from an ERS facilitator concerning the issue.

With approval from the ADR lieutenant, ERS facilitators have the option of leaving the complainant in an interim shielding situation or moving the complainant to another interim shielding situation.

Predesignated Assignments

Commands shall assist ERS in identifying predesignated assignments throughout the department that will facilitate immediate shielding as needed.

11 IAD RESPONSIBILITIES

Central Intake Office

CIO is responsible for tracking prohibited conduct complaints. Upon receipt of a complaint alleging prohibited conduct, CIO shall do the following:

a. Take immediate and appropriate action to stop and/or prevent further misconduct.

b. Immediately contact ERS regarding the prohibited conduct complaint so appropriate action can be taken to shield the complainant from retaliation or continued acts of misconduct if necessary.

c. Generate an Issue Record Form (IRF) number for each complaint received.

IAD Investigations Section

Investigations into prohibited conduct allegations should be completed within 30 *calendar days* from the date of assignment to the investigator unless special circumstances exist. Under no circumstances shall the investigation take more than 60 *calendar days* unless an extension is approved by the Chief of Police.

In very limited circumstances in which the aforementioned time line is not met and an extension has been approved, investigations into prohibited conduct allegations shall be expedited and completed as soon as possible.

IAD personnel who witness or are advised of prohibited conduct shall do the following:

a. Take immediate and appropriate action to stop and/or prevent further misconduct.

b. Immediately contact ERS and ensure appropriate action is taken to provide interim shielding of the complainant if necessary.

12 RESOLUTION PROCESS

In an effort to encourage the reporting and successful resolution of complaints, the department has developed informal and formal mechanisms to resolve reported incidents.

Cases resolved through IAD or ADR shall be documented and retained in accordance with records retention policies of those divisions. Confidentiality of all records shall be maintained as required by law.

Informal resolutions

Class II complaints may be resolved by means other than an IAD investigation. This resolution process is referred to as informal resolution. The informal resolution process is designed to promote communication in an effort to resolve conflicts.

ERS in consultation with the Office of Legal Services has the responsibility of determining whether informal resolution is appropriate.

Informal resolutions require ERS to conduct an initial interview with the complainant.

If warranted, ERS shall recommend an informal resolution process to the Chief of Police. Informal resolutions require approval by the Chief of Police before implementation.

Informal resolutions may be accomplished through mediation, training, chain of command management plan, counseling, or any other process approved by the Chief of Police. Informal resolutions shall be administered through ADR.

Participation in the informal resolution process is voluntary and must be agreed to by all parties to the complaint. If anyone involved with the complaint declines to participate in the informal resolution process, the matter shall be referred to CIO.

Formal resolutions

Class I violations and certain Class II violations (see *Definitions* section of this General Order) require formal investigation by IAD.

Formal resolution requires a thorough investigation by IAD in conjunction with appropriate discipline for sustained violations of department policy.

13 DISCIPLINARY ACTION

Investigations resulting in a formal sustained finding of a violation of any provision of this General Order shall subject the employee to appropriate discipline that could include indefinite suspension.

Positive discipline shall not be available for sustained allegations involving disparate treatment, workplace harassment, sexual harassment, or retaliation.

14 REFERENCE MATERIAL

City of Houston Executive Order No. 1-50, Workplace Discrimination and Harassment

Art Acevedo
Chief of Police