

**DEPARTMENT OF CALIFORNIA
VETERANS OF FOREIGN WARS
OF THE UNITED STATES**

DISCRIMINATION/HARASSMENT POLICY



2022-2023

AS APPROVED BY THE VFW, DEPARTMENT OF CALIFORNIA COUNCIL OF ADMINISTRATION

VFW, DEPARTMENT OF CALIFORNIA DISCRIMINATION AND HARASSMENT POLICY – 2022-2023

POLICY

The Veterans of Foreign Wars, Department of California (Organization) is committed to providing and creating an environment in which all individuals are treated with respect and professionalism. Consistent with this commitment, it is the policy of the Organization to provide a work, meeting, and social place free from discrimination, harassment, and retaliation for all members, applicants, employees, contractors, guests, and volunteers. The Organization Discrimination and Harassment policy is a zero-tolerance policy which applies to all aspects within the Organization including recruitment, hiring, promotion, transfer, training, corrective adverse action, and other terms, conditions, and benefits of employment and membership. Zero tolerance means that violations of this policy will not be tolerated. When policy violations are found to have occurred, appropriate corrective action and/or adverse action, up to and including dismissal or loss of membership, depending on the severity of the violation, will be taken.

All employees and members are prohibited from discriminating against or harassing anyone on the basis of their protected status. The bases for filing a complaint are:

- Age (40 or older)
- Ancestry
- Color
- Disability (physical or mental)
- Genetic Information
- Marital Status
- Medical Condition (cancer or genetic characteristics)
- National Origin
- Political Affiliation (includes opinion or activities)
- Race
- Religion/Religious Creed
- Sex/Gender (including sexual harassment, pregnancy, gender identity, and gender expression)
- Sexual Orientation
- Veteran Status/Military Service
- Usage of leave rights permissible under the Family and Medical Leave Act (FMLA), California Family Rights Act (CFRA), and/or Pregnancy
- Disability Leave Act.
- EEO Retaliation

All employees and members are prohibited from retaliating against any person because the person has opposed any practices forbidden under this policy or because the person has filed a complaint, testified, or assisted in any proceeding related to this policy.

All employees and members are prohibited from aiding or coercing any acts forbidden under this policy.

All employees and members are prohibited from engaging in behavior that rises to the level of discrimination, harassment, or retaliation in violation of:

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- Title VII of the Civil Rights Act of 1964 (including amendments)
- California Fair Employment and Housing Act (FEHA) of 1959 (including amendments)
- California Code of Regulations (Titles 2 and 15)
- Departmental discrimination and harassment policies and procedures
- Other California and federal EEO laws

This policy applies to conduct that occurs in any location of the Organization and subordinate units or is considered a workplace, meeting place, or social place by the Organization, as well as any location that can reasonably be regarded as an extension of the workplace, such as an off-site business or social function, or other non-Organization facility where the Organization and its subordinate unit's business is being conducted. This policy applies to conduct that occurs off-duty and is brought back to the workplace, when such conduct adversely affects the individual in a manner otherwise prohibited by this policy.

PURPOSE

The purpose of this policy is to prevent misconduct, define the roles and responsibilities of the Organization's leadership, employees, and members relative to the discrimination and harassment policy, and to identify the complaint process.

DEFINITIONS OF DISCRIMINATION BASIS

Age - Refers to the chronological age of any individual who has reached his or her 40th birthday.

Ancestry - The national or cultural origin of a line of familial descent.

Color - The color of skin of an individual, including shades of skin within a racial group.

Disability - A physical or mental impairment affecting one or more body systems which limits a major life activity, including work; a record of such an impairment; or being regarded as having such an impairment. This includes Human Immunodeficiency Virus and Acquired Immunodeficiency Syndrome.

Genetic Information - With respect to any individual, information about the individual's genetic tests, genetic tests of family members of the individual, and the manifestation of a disease or disorder in family members of the individual.

Marital Status - The legal status in a relationship such as married, never married, single, separated, divorced, or widowed.

Medical Condition - A person's genetic characteristics or a person who has or had cancer.

National Origin - The country where a person was born, or more broadly, the country from which his or her ancestors came, which includes the individual's common language, culture, ancestry, and other similar social characteristics.

Political Affiliation - Membership or association in a political party or special interest group.

Race - Classes of persons identifiable because of their ancestry or ethnic characteristics.

Religion - All aspects of religious belief, observance, and practice.

Retaliation - An adverse employment or membership action taken against an individual due to his/her protected activity (including one's opposition to a discriminatory practice or participation in the discrimination complaint process).

Sex - Sex includes, but is not limited to, a person's gender. Gender includes a person's gender identity and gender expression. Gender expression means a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth. Gender identity refers to a person's identification as male, female, a gender different from the person's sex at birth, or transgender. Sex also includes but is not limited to pregnancy or medical conditions related to pregnancy; childbirth or medical conditions related to childbirth; and breastfeeding or medical conditions related to breastfeeding.

Sexual Orientation - "Sexual orientation" means heterosexuality, homosexuality, and bisexuality.

Military and Veteran Status - Any person entitled to the rights and benefits under the Uniformed Services Employment and Reemployment Rights Act.

DEFINITIONS OF OTHER TERMS

Association - An individual's involvement with a member of a protected group or membership in an advocacy organization representing a protected group.

Complainant - Any individual or group of individuals who allege discrimination in violation of a State or federal EEO law or regulation or Organization policy.

External Discrimination Complaint - A complaint alleging discrimination, harassment, and/or discrimination filed with a State or federal compliance agency against the Organization by a charging party.

Family and Medical Leave Acts/California Family Rights Act - Provisions in State and federal statutes that allow for up to 12 weeks of unpaid leave for the birth of a child for purposes of bonding, placement of a child in the employee's family for adoption or foster care, and the qualified serious health condition of the employee or the qualified serious health condition of a parent, spouse or child. California law provides the same protection for registered domestic partners. Federal law also provides for up to 12 weeks unpaid leave for leave to assist family members in the military who are being called to active duty in support of contingency military operations or are regular military and being stationed overseas; and up to 26 weeks to care for ill or injured family members in the military.

Hiring Authority – The State Adjutant or any other person authorized by the State Adjutant to hire, discipline, and dismiss employees under his/her authority.

Internal Discrimination Complaint - A complaint alleging discrimination or harassment filed with the Organization or subordinate unit.

Respondent - The person(s) who is alleged to have committed an unlawful practice or engaged in conduct that violates this policy.

COMPLAINANT'S RIGHTS

Every person covered by this policy has the following rights:

1. The right to a discrimination and harassment-free work, meeting, and social environment.
2. The right to an environment free from bullying or abusive conduct.
3. The right to file a discrimination complaint, freedom from influence to refrain from filing a complaint, and freedom from retaliation after filing a complaint, (see "Filing a Complaint" below). Employees and applicants must immediately report the discriminatory action or conduct.

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4. The right to have their complaint promptly reported, objectively reviewed, and investigated when appropriate.
5. The right to be informed of the disposition of the complaint.
6. The right to be represented by a person of the complainant's choosing at each and all steps of the process.
7. The right to file a complaint with the California Department of Fair Employment and Housing (DFEH), Equal Employment Opportunity Commission (EEOC), and other appropriate State and federal compliance agencies.

CONDUCT VIOLATIONS

The type of prohibited discriminatory, harassing, or retaliatory behavior which may be found to constitute a violation of the Organization's policy includes, but is not limited to:

- Making employment or membership decisions based on an individual's protected characteristics.
- Changing the terms, conditions, or privileges of employment of an employee in retaliation for filing a discrimination complaint or participating in the discrimination complaint process.
- Failing to consider reasonable accommodation request for a disability or for religious reasons.
- Denying a leave request for which an employee is eligible under FMLA, CFRA, or because of pregnancy and pregnancy-related conditions.
- Using discriminatory terms or telling discriminatory jokes that are based on an individual's protected status.
- Bullying or abusive conduct, including repeated infliction of verbal abuse and use of derogatory remarks, insults, and epithets.
- Verbal and physical conduct that a reasonable person would find threatening, intimidating, or humiliating.
- Displaying objects, cartoons, pictures, or posters that are derogatory, sexual in nature, or discriminatory based on an individual's protected status.
- Posting, sending, uploading/downloading messages with discriminatory, retaliator, or sexual content in any form via electronic mail, the intranet/internet websites, cell phone, interoffice mail, or public or private mail.
- Discriminating against any employee or member in violation of this policy so as to create a hostile environment.
- Engaging in any unwanted physical contact or leering.
- Making harassing telephone calls to a coworker/member or sending harassing correspondence to an individual by any means including, but not limited to, public or private mail, interoffice mail, facsimile, electronic mail, or text messaging.
- Restricting or denying restroom access, in accordance with their gender identity/expression, to transitioning transgender employees; or repeatedly calling a transgender employee by the wrong pronouns or name, after the transgender employee has provided notice of his or her transition in accordance with his or her gender identity.

SEXUAL HARASSMENT VIOLATIONS

Sexual harassment is defined under State and federal laws and by this policy as unsolicited and unwelcome sexual advances, requests for sexual favors, and other verbal, physical, or visual conduct of a sexual nature that interferes with work performance or Organization business by creating an intimidating, hostile, or offensive environment. Such conduct constitutes sexual harassment in violation of this policy when:

- (1) Submission to the conduct or communication is made either explicitly or implicitly a term or condition of employment or membership.
- (2) Submission to or rejection of the conduct or communication is used as a basis for employment or service decisions affecting the individual.
- (3) Such conduct or communication has the potential to negatively affect an individual's work performance or membership participation and/or create an intimidating, hostile, or offensive environment.

The type of prohibited discriminatory or harassing behavior which may be found to constitute a violation of the Organization's policy includes, but is not limited to:

- Demanding sexual favors in exchange for employment or membership benefits, or as a term or condition of employment or membership, whether explicitly or implicitly.
- Engaging in any unwanted physical contact, including touching, leering, making sexual gestures, impeding, or blocking movements, pinching, grabbing, patting, intentionally brushing up against another individual in a sexual manner, rape, or sexual assault.
- Engaging in retaliation after a negative response to sexual advances.
- Using sexually derogatory terms or telling sexual jokes and/or stories.
- Displaying objects, cartoons, pictures, or posters of a derogatory or sexual nature.
- Posting, sending, or uploading/downloading sexual or demeaning materials in any form via electronic mail, the intranet/internet websites, cell phone, interoffice mail, or public or private mail.
- Following or stalking an employee or member.
- Making harassing telephone calls of a sexual nature to a coworker, or sending sexually harassing correspondence to an individual by any means including, but not limited to, the use of public or private mail, interoffice mail, facsimile, electronic mail, or text messaging.

RESPONSIBILITIES

Council of Administration

The Council of Administration will review and approve the Organization's policy to meet the Organization's obligation to ensure an environment free of discrimination, harassment, and retaliation.

Bylaws/SOP/Policies Committee

The Bylaws/SOP/Policies Committee shall review, recommend changes, and refer the Organization's Discrimination and Harassment Policy to the Council of Administration for adoption.

State Adjutant

- Develop discrimination and harassment policies and procedures.
- Provide statewide direction in the implementation of the Organization's discrimination and harassment policy and procedures in compliance with state and federal laws and departmental policies to ensure a work environment free of discrimination, harassment, and retaliation.
- Provide technical assistance to subordinate units.
- Ensure the Organization follows requirements mandated by external state and federal agencies, including Department of Fair Employment and Housing (DFEH), and the Equal Employment Opportunity Commission (EEOC).
- Ensure employees under his/her supervision and subordinate units have a copy of the Organization's policy.

Post and District Leadership

The Post and District shall:

- Maintain and promote an environment free from discrimination, harassment, retaliation, and unprofessional or disrespectful conduct related to this policy.
- Take immediate and appropriate action to stop conduct that violates this policy.
- Review discrimination complaints received.
- Provide analysis and investigation of discrimination complaints alleging a violation of the Organization's discrimination and harassment policy.
- After initial review, provide respondent in writing an order to stop/cease the alleged conduct or retaliation.
- Provide the State Adjutant with a final disposition of the complaint.
- Adopt the Organization's policy at the subordinate unit level.
- Ensure compliance with applicable state and federal laws, Bylaws, Manual of Procedure and the Organization's policy by all employees, members, and volunteers under their management or supervision.

All Organization employees, members, and volunteers shall:

- Adhere to the Organization's discrimination and harassment policy and procedures, applicable state and federal laws, National Bylaws and Manual of Procedure, and the discrimination complaint process.
- Not engage in, condone, tolerate, or leave uncorrected conduct that violates this policy.
- Report any discrimination or harassment policy violations to any supervisor, manager, or Organization leadership.
- Cooperate with any investigation.

Failure by an employee, member, or volunteer to adhere to the above responsibilities may result in corrective and/or adverse action, up to and including dismissal from the Department or loss of membership and its privileges, regardless of rank, level, or classification.

COMPLAINT PROCESS

It is the Organization's policy to resolve a complaint of discrimination, harassment, or retaliation at the lowest level. The following provides the basic steps that should be taken in the event of a complaint of discrimination or harassment:

- Complaint is filed by a member/employee/volunteer/guest via:
 - Letter
 - VFWCA Form DH-1, Incident Report
 - Email
 - Phone call or in person
 - Provide assurance of confidentiality during the investigation.
 - Request the complainant to file a signed Incident Report.
 - If no written report is provided, determine as many facts as possible.
 - If the complaint is received at the Post, the Post Commander shall notify the State Adjutant and carbon copy the District Commander as soon as possible, preferably within 24 hours of receiving the complaint.
 - If the complaint is received at the Department
 - The State Adjutant will notify the Post Commander and carbon copy the District Commander as soon as possible, preferably within 24 hours of receiving the complaint.
 - If the complaint involves the Post Commander, the State Adjutant shall notify the District Commander as soon as possible, preferably within 24 hours.
- Determine the action the complainant is seeking and provide options for remedial actions and resolutions.
- If the Post Commander receives the complaint, he or she will immediately:
 - Assign qualified personnel to complete a fair, timely, thorough, and objective investigation into the allegation(s).
 - Will maintain confidentiality to the maximum extent possible.
 - Will advise the respondent to cease and desist the action and order that no retaliation against the complainant shall be taken.
 - Will complete the investigation promptly, with a goal of within 30 days, and report the findings to the State Adjutant.
 - Reach a reasonable, good faith conclusion as to the merits of the case based on all relevant facts and circumstances.
- Investigation Conclusion, Post Commander shall:
 - Utilize Article IX of the Bylaws to determine course of action.
 - Submit a copy of the Investigative Report, and other relevant documentation, to the State Adjutant.
 - Provide an update to the State Adjutant as to the status of the investigation/disciplinary action/non-disciplinary action.

The above steps are guidelines to be followed. These steps in no way supersede the obligations in the National Bylaws and Manual of Procedure, Section 709 or any other provision in the National Bylaws with respect to the responsibilities of any Post.

EXTERNAL COMPLAINT

All persons covered by this policy may elect to file a discrimination complaint with the following external compliance agencies:

1. California Department of Fair Employment and Housing (DFEH) – A complainant may file with DFEH within 365 days from the last incident, date of notification of alleged discriminatory act(s), or date of actual harm.
2. United States (U.S.) Equal Employment Opportunity Commission (EEOC) – A complainant may file a discrimination complaint with EEOC within 300 days from the last incident or notification of the alleged discriminatory act(s).
3. U.S. Department of Labor – A complaint filed with the U.S. Department of Labor should be filed within a reasonable time of when the employee discovers that his or her FMLA rights have been violated. In no event may a complaint be filed more than two years after the action which is alleged to be a violation of FMLA occurred, or three years in the case of a willful violation.

When a charge of discrimination is received from external compliance agencies, the Organization shall review the charge to determine the appropriate course of action and take suitable corrective action where appropriate. On behalf of the Organization, the State Adjutant will submit a position statement, including a response to the requested supplemental information to the external compliance agencies.

REFERENCES

Federal

Title VII of the Civil Rights Act of 1964 (including amendments).
Family and Medical Leave Act.
Age Discrimination in Employment Act of 1967.
Americans with Disabilities Act of 1990.
Uniformed Services Employment and Reemployment Rights Act.
Title II of the Genetic Information Nondiscrimination Act of 2008.

National

Veterans of Foreign Wars of the United States Congressional Charter, Bylaws, Manual of Procedure and Ritual.

State

California Fair Employment and Housing Act of 1959 (including amendments).
California Family Rights Act.
California Government Code Sections 12920 - 12922; 12925 - 12928; 19230 – 19237; 19400 – 19406; 12940 - 12951; 12960 – 12976.

DISCRIMINATION/HARASSMENT POLICY ACKNOWLEDGMENT FORM

I acknowledge that I have received and read the Veterans of Foreign Wars, Department of California, Discrimination/Harassment Policy. I understand that I am responsible for adhering to the principles and standards of this Policy, including, specifically, not engaging in, condoning, tolerating, or leaving uncorrected conduct that violates this Policy.

Signature: _____

Printed Name: _____

Title: _____

Post: _____

Date: _____

RATIFICATION

Except as modified and amended by subsequent action of the Veterans of Foreign Wars, Department of California Council of Administration, the Discrimination/Harassment Policy is hereby ratified by majority vote and confirmed in full force and effect in accordance with its terms by the 2022-2023 Council of Administration on June 12, 2022.

Martin Yingling
State Commander

OFFICIAL:



Rodger W. Meier
State Adjutant