
From: Francesconi, Mike@CDFA <mike.francesconi@cdfa.ca.gov>
Sent: Tuesday, February 25, 2020 8:10 AM
To: Francesconi, Mike@CDFA
Cc: Anater, Kenneth@CDFA; Ferrero, Gregory@CDFA; Quiroz, John@CDFA; Kume, Joji@CDFA; Mitchell, Kalia@CDFA; Pelle, Sarah@CDFA; Goss, Sofia@CDFA; Fick, Sue@CDFA
Subject: Sexual Harassment and Abusive Conduct Prevention Training
Attachments: F2020-01 SHP Training for DAAs Final ADA.pdf; 2.1.1
_Discrimination_and_Harassment_Prevention_Policy.pdf

Good Afternoon Fair CEOs,

Please find attached, Circular Letter F2020-01, the purpose of this letter is to provide the Network of Fairs, CEOs with information on required training for Sexual Harassment and Abusive Conduct Prevention Training (SHP) Requirements. This training is mandatory for permanent and temporary employees. The CDFA policy that covers Sexual Harassment Prevention has been attached.

The SHP Training Requirements is applicable to District Agricultural Associations and their respective Board of Directors. This notice provides general guidance to County and Citrus Fruit Fairs.

Please ensure that this information is shared with the fair board at the next regularly scheduled board meeting listed as an item of correspondence.

Note: The Fair Circular Letter F2020-01 is being released out of order as F-Letters for 2020-2 through 2020-4 have already be released and posted.

For future reference, you may view and download the F&E Circular Letters at
<https://www.cdfa.ca.gov/FairsAndExpositions/> which are located under the “Correspondence” tab.

Thank you,

Mike

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February 24, 2020

F2020-01

TO: All Fair CEOs

SUBJECT: New Sexual Harassment Prevention and Abusive Conduct Prevention Training Requirements – Applicability to District Agricultural Associations and Their Respective Boards of Directors. Notice to Provide General Guidance to, County, and Citrus Fruit Fairs

The purpose of this letter is to provide the Network of Fairs CEOs with information on required training for Sexual Harassment and Abusive Conduct Prevention Training Requirements. This training is mandatory for permanent and temporary employees.

As a result of recent changes to Sections [12950](#) and [12950.1](#) of the California Government Code, employers who have five or more permanent employees will need to provide interactive training and education regarding sexual harassment prevention (SHP) and abusive conduct prevention (ACP) to all their staff.

For District Agricultural Associations (DAAs) the training requirements extend to all employees as well as to board members, regardless of the number of staff the fair employs. Due to the complexity of the new requirement, County and Citrus Fruit Fairs are encouraged to consult with their respective Human Resources Department and/or legal counsel to determine to extent to which these new requirements apply to them.

The California Department of Food and Agriculture (CDFA) views these changes to the law as an opportunity for all state-designated fairs to review and update their respective SHP and ACP policies. DAAs and county and citrus fruit fairs are encouraged to update their SHP and ACP policies in consultation with their respective Human Resources Department and/or legal counsel.

CDFA is committed to providing a work environment that is free of harassment and discrimination; accordingly, it enforces a strict zero-tolerance policy for harassment and abusive behavior. A copy of CDFA's updated Discrimination and Harassment Prevention Policy (Policy) is attached. As with other policies, CDFA's SHP/ACP Policy applies to the DAAs that have not adopted a Discrimination and Harassment Prevention policy of their own and received CDFA's confirmation that the policy adopted meets at least the same parameters as CDFA's.



The highlights of CDFA's required training schedule for DAA's permanent and temporary employees, and for board members are as follows:

- Existing supervisors/managers (including the CEO) and board members: at least two hours of training, and once every two years thereafter.
- Existing non-supervisory staff: at least one hour of training, and once every two years thereafter.
- New hires/New appointments: within six months of hire or appointment, as applicable, and once every two years thereafter; the minimum duration of the training is the same as for existing employees.
- Temporary employees (i.e., 125-day employees) must receive the training within two weeks of hiring, regardless of the anticipated duration of service. All temporary employees must undergo the training.

The following online resources are available for DAAs for training and for compliance tracking:

For permanent employees, CEOs, Board of Directors and 125-day/part time employees:

- CDFA-Online University for DAAs can be accessed at <https://www.cdfaonlineuniversity.com/#/login>: This is the online resource for permanent employees, CEO, and board members. CDFA administers this site and uses it to track the compliance status of filers.
- Some-time in the next several weeks, the CDFA-Online University for Temporary Employees (i.e., 125-day employees) will become available. DAAs will be able to access this new resource using the following link: DAA125dayEEs.myabsorb.com.
- The DAAs, can also arrange for interactive training from a qualified professional, as defined by the [California Department Fair Employment and Housing](#), and approved by CDFA.
- The California Department of Fair Employment and Housing (CDFEH) will make available online training tools in early 2020. We will share that information as soon as it becomes available.
- We encourage County Fairs and Citrus Fruit Fairs to utilize the CDFEH online training tools or to arrange for interactive training from other sources; please consult with your respective Human Resources Department and/or legal counsel.
- For board members, obtaining copies of the certificates of completion issued by the board member's employer and uploading the certificate to the CDFA-Online University for DAAs.

Sexual Harassment and Abusive Conduct
Prevention Training Requirements for DAAs
February 24, 2020
Page 3

For those DAAs that utilize the CDFA Online University, the University will track completion of the required training. If a DAA chooses not to use the Online University, certificates of completion must be uploaded to the University so CDFA staff can ensure that the required training is being performed.

If your fair does not have access to the CDFA online University, you must adopt a tracking system capable of demonstrating ongoing compliance with the new SHP/ACP training requirements. Capturing this information can be very useful in the event of an Equal Employment Opportunity audit, a complaint related to sexual harassment, abusive behavior or discrimination, or an inquiry from CDFA. Please note that the law requires employers to keep documentation onsite for a minimum of two years, including but not limited to the names of the supervisory employees trained, the date of training, the sign in sheet, a copy of all certificates of attendance or completion issued, the type of training, a copy of all written or recorded materials that comprise the training, and the name of the training provider.

Additionally, employers are required to post signs regarding discrimination and harassment in a prominent and accessible location in the workplace. This discrimination and harassment information is also contained in the 2020 California and Federal Employment Notice Posters. If you need posters for discrimination and harassment they may be printed by accessing the following link: [Transgender Rights poster](#) , [Sexual Harrassment poster](#). A link to the California Department of Fair Employment and Housing FAQs is provided [here](#) for your reference.

If you have any questions, please contact the Fairs & Expositions Branch at 916 999-3000.

Sincerely,



John Quiroz, Chief
Fairs and Exposition

Enclosure

Policy

The California Department of Food and Agriculture, District Agricultural Associations, and related Boards, Councils, and Commissions (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 work place. Activities outside of the work place 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. The Department employees need not break the law in order to be disciplined for inappropriate and discourteous behavior.

Authority

- Title VII of the Civil Rights Act of 1964 (42 United States Code (U.S.C.) 2000e)
- 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 of the Civil Rights Act of 1991 (42 U.S.C. 2000(e)) section 1977A
- Rehabilitation Act of 1973 sections 501 and 505 (U.S.C.)

Discrimination and Harassment Prevention Policy

- 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
- The 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.
- Disabled Persons Act, California Civil Code section 54 et seq.
- California Labor Code, Division 2, Part 1, Chapter 1, Article 1, section 230
- 29 Code of Federal Regulations section 1604.11

Definitions

<i>Assault:</i>	A physical or sexual attack.
<i>Complainant:</i>	The employee or applicant who files a complaint whether for themselves or on behalf of someone else.
<i>Hostility:</i>	Acts characterized by aggression and maliciousness resulting in intimidation and an unpleasant work environment.
<i>Malice:</i>	Conduct which is intended to cause injury, or despicable conduct which is carried on with a willful and conscious disregard to 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

Discrimination and Harassment Prevention Policy

	or veteran status, childbirth, breastfeeding, and related medical conditions, protected medical leaves and domestic violence victim status.
<i>Respondent:</i>	The entity or person named in the complaint.
<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 inappropriate behavior by strict and uncompromising application of this Policy.

Responsibility

<i>Department:</i>	Ensures the work environment is free from all forms of discrimination and harassment as defined in this policy. 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.
<i>EEO Office:</i>	Ensures Department employment policies and practices are non-discriminatory and provides equal opportunity to all potential job applicants and employees. 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. Manages the Department's Harassment Prevention training program.
<i>Supervisors, Managers and CEO's:</i>	Set the tone for a discrimination-free and harassment-free work environment. This includes maintaining an environment free from harassment as well as discrimination, intimidation, retaliation, ridicule, and insult. Ensure all employees are informed of this policy at the time of hire, annually thereafter, and again when a complaint is

Discrimination and Harassment Prevention Policy

brought forward.

Respond immediately and objectively to all EEO related employee complaints. Protect complainants from any form of retaliation.

Inform the EEO Office immediately of any complaint of discrimination, harassment, or retaliation.

Investigate minor incidents as directed by the EEO Office and report back findings.

Provide attached Department of Fair Employment and Housing (DFEH) forms to all employees.

Employees: 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 EEO Office.

Any employee who perceives the comments, gestures, or 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 EEO Office or;
- File directly with the EEO Office using the process outlined in the “Internal Complaint Process” section or;
- Externally with the DFEH, or the Equal Employment Opportunity Commission (EEOC) as outlined in the “Complaints Filed Outside of the Department” section.

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 law¹; 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.

¹ For example, veteran preference as permitted under Government Code 18973.1

Discrimination and Harassment Prevention Policy

Such conduct may violate this policy, even if it is not unlawful.

The elements of unlawful discrimination are further explained in the DFEH'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" (Attachments 1, 2, 3, 4).

Harassment

For the purpose of this policy, harassment is unwelcome, disrespectful, or unprofessional conduct, including conduct based on any of the protected classes. 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 (physically threatening, blocking someone's path or physical conduct in an unwanted manner).

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 DFEH'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" (Attachments 1, 2, 3, 4).

Sexual Harassment

Sexual harassment is harassment based on sex or conduct of a sexual nature, and includes harassment based on sex (including pregnancy, childbirth, breastfeeding, or related medical conditions), 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 effecting the victim.
- Typically 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

Discrimination and Harassment Prevention Policy

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
- 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 DFEH's brochure, "Sexual Harassment" (Attachment 5).

Intent vs Impact for Harassment Cases

In cases of alleged harassment, 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. In addition, a witness to the conduct has the right to submit a complaint to the EEO Office.

Retaliation Prohibition

For the purpose of this policy, retaliation is an adverse employment action against an individual for engaging in a protected activity. 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 EEO 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 the employee, applicant, or other person involved in Department business the opportunity to raise allegations and to seek resolution of their complaint. Complaints

Discrimination and Harassment Prevention Policy

will be resolved at the lowest organizational level possible while assuring that the process provides for timely, thorough, and impartial review of the discrimination or harassment complaint without fear of reprisal or retaliation.

The following options are available to resolve a complaint:

Employee: Tell the individual engaging in the inappropriate conduct to stop.

Report conduct to immediate supervisor or any other supervisor if the employee's immediate supervisor is unavailable to resolve the complaint.

Complete a Discrimination and Harassment Complaint Form ([SO-201](#)) and submit to either a supervisor and/or manager, or directly to the EEO Office at:

- eeo@cdfa.ca.gov or
- EEO Office
1220 N Street, Suite 313
Sacramento, CA 95814

Include the following with the complaint:

- Sufficient information to show a connection between the basis of the complaint and how the employee has been impacted.
- Enough evidence to raise the inference that the allegations are true (*prima facie*). A *prima facie* case of discrimination, harassment, or retaliation must be established before an investigation is initiated.

If a complaint form is not immediately available, contact the EEO Office at:

- eeo@cdfa.ca.gov or
- (916) 654-1005

Supervisors, Managers, and CEO's: Anyone in a supervisory position is considered an obligated reporter for the purpose of this policy. Supervisors and managers must report any and all potential violations of this policy to the EEO office immediately. Failure to do so may result in disciplinary action against the supervisor or manager.

Maintain confidentiality to the extent possible.

Discrimination and Harassment Prevention Policy

EEO Office:

Determine if the complaint filed meets jurisdictional and procedural requirements and assign an investigator. The objective of the investigation is to determine if there is sufficient evidence to show a violation of the Department Discrimination and Harassment Prevention Policy.

If necessary, advise the CEO, Division Director and/or Branch Chief, and the Complainant that a complaint has been received, the intent to investigate the allegations, and inform them of the policy against retaliation.

Conduct the investigation. When the investigation is complete, the Division Director and/or Branch Chief, CEO, the Complainant, and the Respondent, will be informed of the findings. The investigation will be conducted with discretion and the information gathered during an investigation will be kept confidential to the extent possible.

Complaints Filed Outside of the Department

No one is required to file a complaint with the Department EEO Office. Anyone may file a complaint with the following agencies. The addresses listed are headquarters or district offices. Complainants may call the listed agencies for local offices in their area.

Department of Fair Employment and Housing

Complainants who believe they are the victim of illegal employment discrimination may file a Pre-Complaint Inquiry with the DFEH to initiate the complaint process using any of the options below:

- DFEH's online system, register at <http://www.dfeh.ca.gov/>
- Call the Communication Center: 800-884-1684.
- If you have a hearing impairment, please **Dial 7-1-1** or call one of the toll-free numbers below:
 - **English Voice/TTY:** 800-855-7100
 - **Spanish Voice/TTY:** 800-855-7200 (includes Spanish-to-Spanish and translation from English to Spanish)
 - **Speech-to-Speech (STS):** 800-855-7300
 - **Visually Assisted STS:** 800-855-7400
- Complete the [Pre-Complaint Inquiry](#) and submit it to contact.center@dfeh.ca.gov. Online filing is preferred however the

Discrimination and Harassment Prevention Policy

address for mailing is:

- California Department of Fair Employment and Housing
2218 Klausen Drive, Suite 100
Elk Grove, CA 95758.

Complaints must be filed with DFEH within 365 calendar days 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
San Francisco District Office
901 Market Street, Suite 500
San Francisco, CA 94103
Telephone: 800-669-4000
Website: <https://www.eeoc.gov>

The EEOC may defer the matter to its state equivalent, DFEH. If DFEH 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 to Departmental Decisions Only)

- Appeals regarding complaints of discrimination, harassment, or retaliation must be filed with SPB within 30 days from the date the appointing authority served its response. If the appointing authority has failed to provide a decision within 90 days of the complaint being filed, an appeal may be filed with SPB no later than 150 days from the date the original complaint was filed with the appointing authority.
- If the complainant is dissatisfied with the decision of SPB or the request for a hearing is denied, an appeal may be filed with the Superior Court.

Appeals may be filed online at www.spb.ca.gov or by email appeals@spb.ca.gov, but can also be mailed, personally delivered, or sent

Discrimination and Harassment Prevention Policy

by facsimile transmission (fax) to:

State Personnel Board Appeals Division
801 Capitol Mall
Sacramento, CA 95814-4806

Direct telephone inquiries regarding appeals to the SPB Appeals Division can be made at the following numbers:

- General Information/Status of Appeals: (916) 653-0544/653-0799
- Transcripts, Tapes, Documents and Record Requests (916) 651-3165
- FAX Line (916) 654-6055 or TDD (916) 654-2360

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>	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 EEO Office immediately. Failure to act can expose the managers and supervisors, personally, to financial liability for damages, as well as disciplinary action. Managers and supervisors who engage in Quid Pro Quo Harassment can be subject to disciplinary action and held financially liable for their conduct.
<i>Individual Harasser:</i>	An employee found guilty of unlawful discrimination or harassment may be sued separately from his/her employer and if found guilty, will be held financially liable for his/her 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.

Discrimination and Harassment Prevention Policy

Training

All Department employees, including newly appointed supervisors, managers, Board Members, and CEO's, are required to complete a sexual harassment prevention training class within six months after appointment or promotion, 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.

All seasonal employees must complete a sexual harassment prevention training class within two weeks of being hired.

All supervisors, managers and CEO's 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 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 Department's EEO Office at (916) 654-1005.