



Report # 2015-05

September 9, 2015

Honorable Mayor and Members of the City Council,

On August 11, 2015, the City Council directed the City Auditor to conduct an assessment of the City's Sexual Harassment Policy. The focus of this review is the most recent reporting period of January 1, 2014 to December 31, 2015. To conduct this assessment, we reviewed the City's Sexual Harassment Policy, the sexual harassment policies of other cities, and analyzed data regarding the City's compliance with AB 1825 Sexual Harassment Awareness for Supervisors training (AB 1825 training). We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The Auditor' Office has reviewed the City's Sexual Harassment Policy and concluded that the policy currently does not adequately address all of the areas required by the Fair Employment and Housing Commission and could benefit from a comprehensive update. Furthermore, it appears there are gaps in the process used to identify and ensure that City Supervisors complete AB 1825 training requirements. The Auditor's Office strongly suggests that the City minimize potential future liability issues by expeditiously updating the City's Sexual Harassment Policy and by making changes to more accurately identify and train all City Supervisors.

City Policy Review

Specifically, the Auditor's Office identified the following:

- As of August 11, 2015, two separate Sexual Harassment Policies were posted on the City's website. One policy, signed by a former City Manager Robert P. Thomas is outdated. The other, signed by current City Manager John Shirey is not dated.

Based on the latter document's metadata, it appears the Sexual Harassment Policy was updated in 2011 and was effective in 2012.

- The primary difference between these two policies is that the more recent policy, signed by John Shirey, updated references to a department that was renamed from the "Equal Opportunity Office" to the "Office of Civil Rights."
- As of September 9, 2015, all known locations where an outdated Sexual Harassment policy had been previously located were updated to the current City policy.

The California Department of Fair Employment and Housing Sexual Harassment Guidelines state, "Employers must help ensure a workplace free from sexual harassment by distributing to employees information on sexual harassment. An employer may either distribute a brochure that may be obtained from the Department of Fair Employment and Housing or develop an equivalent document, which must meet the following requirements:

- The illegality of sexual harassment.
- The definition of sexual harassment under state and federal laws.
- A description of sexual harassment, utilizing examples.
- The internal complaint process of the employer available to the employee.
- The legal remedies and complaint process available through the Department and the Fair Employment and Housing Commission.
- Directions on how to contact the Department and the Fair Employment and Housing Commission.
- The protection against retaliation for opposing the practices prohibited by law or for filing a complaint with, or otherwise participating in investigative activities conducted by, the Department or the Commission."

Based on the guidance listed above, in our opinion, the City's Sexual Harassment Policy could benefit from clarifying the following areas:

- The policy should better disclose the illegality of Sexual Harassment.
- The policy should clarify that Sexual Harassment includes gender-based harassment of a person of the same sex as the harasser.
- The description of Sexual Harassment should include examples.
- The policy should include directions on how to contact the Fair Employment and Housing Commission.
- The City's Internal Discrimination Complaint Resolution Guide referenced in the City's Sexual Harassment Policy should incorporate a Sexual Harassment complaint process or clarify that the complaint process is the same for both discrimination and harassment. The document should also be updated to refer to the Office of Civil Rights instead of the defunct Equal Opportunity Office.

The City has been working on updating the Sexual Harassment Policy for several years. The most recent version of the City's Sexual Harassment policy was distributed to City Management and City Unions on September 9, 2015. Based on the City Auditor's Office review of the most recent draft, many of the areas noted above for improvement have been addressed in the current draft policy. The Auditor's Office will continue to work with City Management to ensure that all necessary changes are incorporated into the final policy.

City Policy Comparison

As part of this assessment, the Auditor's Office compared the City's current Sexual Harassment Policy to the policies of San Francisco, San Diego, San Jose, American Canyon and Fairfield. Some aspects of these policies that the City of Sacramento may want to consider incorporating into its Sexual Harassment Policy include:

- Detailing who the policy applies to: All City officers, employees, unpaid interns, volunteers, contractors, vendors, suppliers and others persons who participate in City programs and services.
- Defining some of the types of sexual harassment such as; Hostile Work Environment, Visual Harassment, Verbal Harassment, Physical Conduct, and Quid Pro Quo.
- Addressing concerns and risks associated with consensual sexual or romantic relationship in the workplace.
- Addressing confidentiality of the process. If possible, allowing for anonymous reporting.
- Noting how complaints involving Council Offices or Council Appointees should be handled.
- Addressing non-discrimination or harassment of Transgender people. The City of San Jose has a Transgender Policy. Its purpose is to provide guidance for all City employees in creating and maintaining an environment free of discrimination and/or harassment of employees who are transgendered, transsexual or who are in gender identity transition.

AB 1825 Training

AB 1825 established California's Sexual Harassment prevention training requirements. According to AB 1825, California employers with 50 or more employees must provide Sexual Harassment prevention training and education to each supervisory employee once every two years and to new supervisory employees within six months of their assumption of a supervisory position. Government Code section 12926 subdivision (s) defines a supervisor as:

“any individual having the authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend that action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.”

As such, the City should have adequate systems in place to ensure the City complies with all the requirements of the law. Based on our review of training information provided by the Human Resources Department, it appears:

- Approximately 1,085 of the 1,112 (98%) supervisors assigned AB 1825 training have completed the required training.
- Approximately 134 City supervisors were not identified for AB 1825 training and should complete the required training prior to the December 31, 2015 deadline.
- Approximately 45 City supervisors completed the training in 2014 and will need to be retrained prior to December 31, 2015 in order to avoid exceeding 2 years between trainings.
- On August 14, 2015, Mayor Johnson sent an email to all City Council Members encouraging Council Members to complete the training and requesting that the City Attorney evaluate how to make the AB 1825 training mandatory. Although Council Members are not required to complete AB 1825 training, as of September 9, 2015, 100% of City Council Members have completed AB 1825 Sexual Harassment prevention training.
- Based on the Auditor’s Office’s review, we noticed that some departments consider some job codes as supervisory while others do not. As a result, individuals may not be properly identified for training.
- Based on the Auditor’s Office’s review, we noticed that some job codes appear to be related to supervisory positions that are currently not designated as supervisory positions.
- Although not required by law, according to the Human Resources Department, over 1,700 non-supervisory City employees have completed Sexual Harassment prevention training within the last 2 years.

Recommendations

1. Update the City’s Sexual Harassment Policy to address the observations noted in the policy review section on page one.
2. Improve controls to better identify City Supervisors and track their compliance with training requirements.

3. The Human Resources Department should reevaluate all job codes and job descriptions to determine which job codes are most likely to result in positions that should receive AB 1825 training.
4. Update the Internal Discrimination Complaint Resolution Guide to specifically incorporate Sexual Harassment. The guide also needs to be updated to address complaints regarding appointed or elected officials.
5. Require the Fire Department to add employee identification numbers to the target solutions training data.
6. Establish a practice of reviewing and updating the Sexual Harassment Policy on an annual basis.
7. Encourage non-supervisory employees to complete Sexual Harassment prevention training.
8. Although Council members are not required to take AB 1825 training, the Council should self-impose the requirement to complete the training on the same schedule as City Supervisors and memorialize the requirement into the Council Rules and Procedures.
9. Departments that absorbed parts of the Department of General Services should re-evaluate employees that need to complete AB 1825 training.
10. The City should consider if supervisor training should be provided to individuals who temporarily or regularly assume a supervisory role.

Respectfully submitted,

Jorge Oseguera
City Auditor