

CITY OF LOS ANGELES

HIV AND AIDS DISCRIMINATION IN CITY EMPLOYMENT POLICY

INTRODUCTION

This City HIV and AIDS Discrimination in City Employment Policy (“this Policy”) supplements the City AIDS Policy adopted by the Los Angeles City Council October 16, 1990 (Council File No. 85-0869-S19) (“1990 City AIDS Policy”) to address the serious issue of HIV or AIDS discrimination in City employment. This Policy reaffirms the City’s commitment to take seriously complaints made regarding HIV or AIDS discrimination in City employment, to investigate those complaints promptly and thoroughly, to prohibit retaliation against anyone filing such a complaint or cooperating in its investigation, and to deter, punish and remedy HIV and AIDS discrimination in City employment. This Policy begins with a brief discussion of medical information regarding HIV and AIDS to provide a context for the City’s policies, followed by a reaffirmation of existing City AIDS policy. This Policy then discusses what HIV or AIDS discrimination is, the reasons why it is prohibited, and what this prohibition means for City applicants and employees. This Policy then discusses the City’s policy on testing, its policy on the handling of discrimination complaints, its policy prohibiting retaliation, and its commitment to confidentiality. This Policy concludes with information on where to file a complaint.

MEDICAL INFORMATION REGARDING HIV AND AIDS

AIDS (“Acquired Immune Deficiency Syndrome”) is the end stage of HIV (“Human Immunodeficiency Virus”) infection. A person can become infected with HIV (and, as a result, potentially later develop AIDS) only as a result of exposure to HIV-infected blood, semen, vaginal fluids or breast milk through an entryway such as a fresh break in the skin or a mucous membrane (like the eyes). Since HIV is not casually transmitted, there is no medical basis to discriminate against those living with HIV or AIDS because of any concern that they might pose a risk to others. For those such as police, fire, and healthcare workers who are likely to encounter blood in the workplace, the proper response is universal precautions, NOT discrimination against people living with HIV or AIDS. Universal precautions require (a) that *all* blood and other potentially infectious body fluids, at *all* times, from *all* sources be treated *as if* they are infectious, (b) the use of barriers such as latex and splatter shields when medically appropriate, and (c) proper cleaning or disposal of all contaminated items.

HIV AND AIDS DISCRIMINATION IN CITY EMPLOYMENT

The City enacted the nation’s first AIDS discrimination law (Los Angeles Municipal Code Sections 45.80 – 45.93) in 1985. HIV and AIDS discrimination in City employment also is prohibited by state and federal law. The policy of the City of Los

Angeles has been and continues to be the promotion and maintenance of a work environment free from HIV and AIDS discrimination.

It is the policy of the City of Los Angeles that no applicant or employee, (1) living with, (2) suspected of having, or (3) associated with HIV or AIDS shall be discriminated against in any City employment practice, including hiring, promotion, referral for employment, job training, assignment, discipline, discharge, compensation, employment status or any other term or condition of employment by any department or agency of the City. Being “associated with HIV or AIDS” refers to the applicant’s or employee’s association with (a) another person living with HIV or AIDS, such as a family member or person with whom the applicant or employee lives, is friends with, or assists in caring for, (b) an HIV or AIDS organization, and/or (c) charitable, memorial, educational or political activities relating to HIV or AIDS, such as lobbying or participating in or supporting an AIDS walk, bicycle ride, training or forum.

It also is the policy of the City of Los Angeles that no applicant or employee shall be classified or treated differently than any other applicant or employee because of HIV or AIDS, except as otherwise described in this Policy, the 1990 City AIDS Policy or as required by controlling law.

Furthermore, it is the policy of the City of Los Angeles not to consider an applicant's or employee's known or suspected HIV or AIDS status, or the applicant’s or employee’s association with HIV or AIDS, in any pre-employment, employment, or post-employment action or decision, including but not limited to background checks, interviews or investigations, testing, hiring, classifying, assigning, training, transferring, upgrading, promoting, compensating, disciplining and discharging except as required to provide a reasonable accommodation or as otherwise required by controlling law.

For example, the City’s policy means that all City employees, officials, and entities are strictly prohibited from engaging in any of the following types of acts:

- Conducting an employment interview or investigation in a manner that is different than for other applicants because of the applicant’s known or suspected HIV or AIDS status.

Example: An employment interview cannot be recorded as a result of an applicant disclosing that he has HIV, when it otherwise would not be recorded.

- Failing or refusing to hire an applicant or disciplining or terminating an employee because he or she has, or is suspected of having, HIV or AIDS.

Example: A City hiring authority cannot decline to hire men believed to be gay or bisexual based on a belief that this would reduce insurance costs for coverage of HIV-related medical expenses.

Example: Even if a department has to engage in layoffs, an employee's HIV or AIDS status cannot be any part of the reason that a particular employee is terminated.

- Making assignments, relocating or physically segregating the workplace of an individual based on the employee's HIV or AIDS status, either unilaterally or at the request of co-workers;

Example: An employee cannot be assigned to a desk or office away from other employees because the employee is suspected of having HIV or AIDS, even if this is done to minimize fears expressed by other employees. Such conduct would violate the law and City policy and deprive the employee of the benefits of interacting with coworkers on work-related projects and the learning opportunities such experiences provide, and could stigmatize the employee by singling her or him out.

Example: A manager, charged with selecting employees to recruit college students, cannot exclude an employee from consideration on the grounds that he would represent the City poorly if it was thought that he had HIV or AIDS. Such conduct would be an inappropriate job assignment because it was based solely upon the employee's HIV or AIDS status, which is prohibited. The rationale for prohibiting such differential job assignments is: (1) this decision violates state and federal laws and City policy, (2) the employee would lose an opportunity to gain experiences that might enhance his career, (3) the discrimination could leave him feeling stigmatized, and (4) the exclusion of such employees diminishes the diversity of the City's workforce, which is detrimental to the City, its employees and members of the public, and (5) such discrimination undermines public health's efforts to halt the spread of HIV because the fear of stigma and discrimination is a major reason people are reluctant to be tested for HIV.

- Failing to provide training to an employee who has, or is suspected of having, HIV or AIDS;

Example: An employee who has HIV or AIDS cannot be denied training for a position that involves interacting with children based on a view that the employee's HIV or AIDS status makes the employee inappropriate for the position.

- Discriminating against any individual with respect to compensation, terms, conditions or privileges of employment because of HIV or AIDS;

Example: A manager cannot require more or different documentation for sick leave usage from an employee who is rumored to have AIDS than is required of other employees with similar attendance records. This is unacceptable because the employee rumored to have HIV or AIDS is being treated differently than employees thought to have other medical conditions.

Example: A supervisor cannot state, in an employee's evaluation, that she has difficulty getting along with others in the workplace if the reason for the disharmony is that her co-workers know her HIV status and they discriminate against her and treat her in a stigmatizing way. Such an evaluation would be unfair because it would be penalizing the employee for the bigotry of others.

HARASSMENT

Harassment is a form of discrimination and is also prohibited by City policy.

HIV or AIDS harassment includes the creation of, or contribution to, a hostile, intimidating, threatening, offensive or abusive work environment because of an employee's or applicant's known or suspected HIV or AIDS status, or the employee or applicant being associated with HIV or AIDS. Harassment includes written, spoken, graphic or other expression or communication of derogatory terms, slurs, comments, gestures, ridicule, threats, rumors or jokes related to HIV or AIDS. Examples of what is prohibited include:

- Using a sexually derogatory nickname for a co-worker or making fun of the co-worker's known or suspected HIV or AIDS status;
- An employee telling a co-worker that, unless the co-worker dates him or her, a rumor will be spread that the co-worker has HIV or AIDS;
- Writing messages on documents that are displayed in the workplace that are derogatory toward those living with HIV or AIDS;
- Selectively sending an "AIDS prevention kit" or a condom to a gay employee, or an employee known to have or suspected of having HIV or AIDS. (By contrast, sending HIV information or prevention supplies to an employee who requests them, or to a group of employees not selected because of their known or suspected sexual orientation, or HIV or AIDS status, is permissible.); and

- Wearing or telling employees that they should wear latex gloves, if doing so is based not on universal precautions but on the possibility of contact with people who are gay or who are suspected of having HIV or AIDS.

THE REASONS FOR THIS POLICY

HIV and AIDS discrimination is prohibited for many reasons.

Discrimination based on HIV or AIDS is illegal. It interferes with the City's ability to serve the public. It wrongly causes people serious harm. And, it perpetuates the further spread of the epidemic by discouraging people from agreeing to be tested because of their fear of stigma and discrimination. Discrimination based on HIV or AIDS can:

- Keep qualified individuals from applying for jobs with the City;
- Prevent employees from reaching their full potential, making the workforce less productive and effective;
- Cause talented employees to seek employment elsewhere;
- Lead members of the public to feel alienated and to have less confidence that they will be treated fairly by City agencies and employees;
- Deprive young people of valuable role models;
- Harm the City's reputation and cause other government bodies, businesses, and individuals not to want to deal with the City;
- Cause serious physical and emotional pain and illness to those discriminated against, their families, and those who witness the discrimination; and
- Lead to lawsuits and workers' compensation and pension cases, resulting in financial liability for the City, as well as personal liability for all employees (including supervisors and managers) who participate in or are responsible for it.

TESTING

It is the policy of the City of Los Angeles that an HIV antibody test, or any other test intended to assess directly or indirectly a person's infection with HIV, may not be used, under any circumstances, to screen employees or applicants in hiring, job placement, or promotion. Unless specifically required by controlling law, employees shall not be forced to take such a test.

PREVENTION, HANDLING OF COMPLAINTS, AND REMEDIAL MEASURES

It is the policy of the City of Los Angeles that prompt and appropriate action **shall** be taken to deter, punish, and otherwise appropriately respond to HIV or AIDS discrimination or harassment. Thus, it is the responsibility of all appointing authorities and department managers to take all reasonably necessary steps, including appropriate disciplinary action, to remedy violations and prevent further violations of this policy, and to maintain a work environment free from discrimination and harassment.

- The City strongly encourages the reporting of violations of this policy, and requires cooperation in the investigation of complaints by all who have relevant information.
- Complaints regarding HIV or AIDS discrimination may not be discouraged or refused to be taken for any reason.
- Complaints regarding HIV or AIDS discrimination must be reported to management in a manner consistent with the confidentiality provisions of this policy.
- All reported allegations of HIV or AIDS discrimination shall be fully documented and completely and promptly investigated in accordance with the City's discrimination complaint procedures.
- HIV and AIDS discrimination complaints must be evaluated from the perspective of a reasonable person in the complainant's position.

If discrimination is found to have occurred:

- Department managers shall take all steps necessary to address the needs of, and provide counseling to, applicants or employees who have experienced such discrimination;
- Those who are determined to be responsible for such discrimination must be disciplined in a manner that not only will help remedy their acts of discrimination but also will prevent similar violations in the future;
- All steps necessary shall be taken to ensure that there will be no recurrence of the discrimination and that no retaliation shall be directed against the applicant or employee who was discriminated against; and
- If such discrimination nonetheless recurs in a Department, all managers shall take steps beyond those taken in response to the earlier instances of discrimination in order to ensure that such violations do not recur again.

Employees (including supervisors and managers) will be held accountable for any failure to follow the requirements set forth above.

RETALIATION

It is the policy of the City of Los Angeles to prohibit retaliation by the City or any department or employee against any applicant or employee who has made a claim of HIV or AIDS discrimination, or against any employee who has provided information in conjunction with or otherwise supported the investigation of any such complaint. Such retaliation may violate the law and create liability for those who engage in it as well as for the City. No City employee may intimidate, penalize or take any action against an individual for filing an HIV or AIDS discrimination complaint, or for supporting such a complaint as a witness or otherwise, or for opposing such discrimination.

Retaliation can take many forms. Some retaliatory acts are direct and open; others are more indirect. Although the following is not a comprehensive list, all managers, supervisors and employees are prohibited from taking any of the following actions against an applicant or employee because he or she has reported an HIV or AIDS discrimination complaint, or is cooperating in an investigation of one:

- Excluding the employee from work-related activities;
- Refusing to work with or provide normal assistance, cooperation or backup to the employee;
- "Warning" others that the employee is "a troublemaker;"
- Assigning the employee to a work site far from his or her home;
- Giving the employee less desirable shifts or work assignments;
- Evaluating an employee using different standards than those used to evaluate his or her peers;
- Initiating meritless complaints against the employee;
- Withholding raises, promotional opportunities, desirable assignments, or the ability to earn overtime pay;
- Vandalizing the employee's property; and
- Giving the employee "the silent treatment."

The City has zero tolerance for discrimination based on HIV or AIDS and will treat such discrimination as serious misconduct. Retaliation against an applicant or

employee for filing a complaint about such discrimination, for supporting such a complaint, or for opposing this form of discrimination is also considered serious misconduct. Employees who engage in any of these acts will be disciplined, up to and including termination. In addition, supervisors and managers have a responsibility to prevent these forms of misconduct and will be held accountable if they permit such misconduct to continue or to go unremedied.

CONFIDENTIALITY

It is the policy of the City of Los Angeles to provide the maximum confidentiality permitted by law and departmental disciplinary regulations regarding the filing and investigation of HIV or AIDS discrimination complaints. No one other than the complaining applicant or employee may discuss the following matters with anyone other than those investigating the complaint: (1) the fact that a complaint has been filed and that an investigation is underway, (2) the identities of the parties and witnesses involved, (3) what is being investigated and the results of the investigation. This duty to maintain confidentiality shall not diminish the duty to conduct a thorough investigation, and supervisors and managers shall ensure that the complaining applicant or employee is kept informed of the progress of the investigation. When the investigation is concluded, the applicant or employee shall to the extent permitted by law receive written notice of all remedial and disciplinary actions to be taken, and subsequent written notice confirming that such actions have occurred.

CITY RESOURCES FOR FILING A COMPLAINT

Applicants or employees who believe that their rights have been violated are encouraged to contact the EEO Coordinator or Disability Coordinator of his/her Department, the Disability Department's Office of the City AIDS Coordinator, or the Personnel Department's Office of Discrimination Complaint Resolution (ODCR). The ODCR may be contacted for information or to file a complaint. Investigations will be conducted in accordance with the Citywide Discrimination Complaint Procedure.

**Office of Discrimination Complaint Resolution
700 E. Temple Street, Room 380
Los Angeles, CA 90012
(213) 473-9123**

STATE AND FEDERAL RIGHTS

Applicants or employees who believe they have been discriminated against because of HIV or AIDS, or who believe they were retaliated against for making or supporting such

a claim have the right to file a complaint under both state and federal law in addition to filing a complaint with the City:

Under the California Fair Employment and Housing Act, an applicant or employee may file a complaint with the California Department of Fair Employment and Housing, and under the Americans with Disabilities Act, an applicant or employee may file a complaint with the U.S. Equal Employment Opportunities Commission:

STATE	FEDERAL
Department of Fair Employment and Housing 1055 W. Seventh St., Suite 1400 Los Angeles, CA 90017 1-800-884-1684 TTY (800) 700-2320	Equal Employment Opportunity Commission 255 East Temple Street, Fourth Floor Los Angeles, CA 90012 (213) 894-1000 or (213) 894-1111

Rev. 03/2010