

Discrimination, Harassment and Retaliation Prevention Policy

Purpose 1
Policy Statement 1
Departments Affected 1
Definitions 1
Regulations 3
Forms 6

Purpose

The Forty-Niner Shops is committed to maintaining an inclusive community that values diversity and fosters tolerance and mutual respect. We embrace and encourage our community differences in Ancestry, Age, Color, Disability, Race or Ethnicity, Gender, Gender Identity or Gender Expression, Marital Status, Medical Condition, Nationality, Religion, Sex, Sexual Orientation, Genetic Information, Veteran or Military Status, other characteristics that make our community unique, and any other protected classes under state or federal law.

Policy Statement

The Discrimination, Harassment and Retaliation Prevention Policy is established in compliance with the California Fair Employment and Housing Act (FEHA) and federal antidiscrimination laws. The Forty-Niner Shops prohibits any form of discrimination, harassment and retaliation of any kind. This policy defines types of discrimination and harassment, the employee complaint and investigation process, prohibition of retaliation for complaining or participating in an investigation, remedial action required if misconduct is found, as well as regulations required by the state and federal law.

Departments Affected

All Forty-Niner Shops employees.

Definitions

Gender Expression- means a person’s gender-related appearance or behavior, whether or not stereotypically associated with the person’s sex at birth.

Gender Identity- means a person’s identification as male, female, a gender different from the person’s sex at birth, or transgender.

Sex- includes, but is not limited to, pregnancy, childbirth, breastfeeding, and any related medical conditions, and gender identity and expression.

Sex Stereotype- means an assumption about a person's appearance or behavior, or about an individual's ability or inability to perform certain kinds of work based on a myth, social expectation, or generalization about the individual's sex.

Transgender- refers to a person whose gender identity differs from the person's sex at birth. A transgender person may or may not have a gender expression that is different from the social expectations of the sex assigned at birth. A transgender person may or may not identify as "transsexual".

Sex Discrimination- discrimination on the basis of sex. Protects all individuals from sex discrimination- not just females. Gender identity, gender expression and transgender status are expressly protected.

Sexual Harassment- includes unwanted sexual advances, requests for sexual favors or visual, verbal or physical conduct of a sexual nature when: submission to such conduct is made a term or condition of employment, or submission to, or rejection of, such conduct is used as a basis for employment decisions affecting the individual, or such conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile or offensive work environment.

Such harassment also includes various forms of offensive behavior based on sex and includes gender-based harassment of a person of the same sex as the harasser. Including: unwelcome or unwanted physical advances of a sexual nature, requests or demands for sexual favors, making or threatening reprisals after a negative response to sexual advances, visual conduct- including leering; making sexual gestures, displaying sexually suggestive objects or pictures on any medium, verbal abuse or joking (sexually oriented comments, innuendos, or "dirty jokes" that are sexually oriented and unacceptable/offensive to others), physical conduct- touching, assault, impeding or blocking movements, retaliation for reporting harassment or threatening to report sexual harassment, and any type of sexually oriented conduct that is made either explicitly or implicitly to any individual, regardless of gender.

Reasonable Accommodations- the interactive process requires an individual assessment of 1) job requirements and 2) the specific limitations of the individual that are directly related to the need for accommodation. It is unlawful to discriminate against or retaliate against a person for requesting reasonable accommodation based on mental or physical disability.

Human Trafficking- an applicant or employee who is a victim of human trafficking may have a separate cause of action under FEHA if he or she alleges discrimination on a protected ground.

Unpaid Interns and Volunteers- any individual that works without pay for an employer or covered entity in an internship or other program providing unpaid work experience, or as a volunteer. For harassment claims, interns and volunteers are considered "employees".

Pregnancy Discrimination- it is unlawful employment practice to harass or discriminate against an employee or applicant because of pregnancy or perceived pregnancy, childbirth, breastfeeding, or any related medical condition. An employee (regardless of classification) is eligible up to four months of leave per pregnancy. The leave does not need to be taken in one continuous period. Employees are required to give advance notice of a pregnancy leave whenever possible. For more information regarding pregnancy leaves and other applicable leaves that may be available to you, please contact the Human Resources Department directly.

Religion Discrimination- it is unlawful discrimination to fail to hire or terminate an employee in order to avoid accommodating religion. It is unlawful to discriminate or retaliate against a person for requesting reasonable accommodation based on religion. An accommodation is not reasonable if it requires segregation of an employee from customers of the public, unless expressly requested by the employee.

Supportive Animals- are “assistive animals” that are necessary as a reasonable accommodation. These include support dogs, and support animals that provide emotional, cognitive, or other similar support to person with a disability, including, but not limited to, traumatic brain injuries or mental disabilities. A request for an assistive animal as a reasonable accommodation requires individualize analysis reached through the interactive process.

National-Origin Discrimination- the regulations prohibit discrimination against an applicant or employee do to national-origin. This also prohibits employers from limiting or prohibiting the use of any language in any workplace unless justified by business necessity. The employer must notify employees of the language restriction and consequences for violation.

Regulations

1.0 California Fair Employment and Housing Act (FEHA) Protected Groups

California employers with five or more employees have an affirmative duty to take “reasonable” steps to prevent and correct discrimination and harassment based on your actual or perceived: Ancestry, Age (40 and above), Color, Disability (physical and mental, including HIV and AIDS), Genetic Information, Gender, Gender Identity, or Gender Expression, Marital Status, Medical Condition (genetic characteristics, cancer or a record or history of cancer), Military or Veteran Status, National Origin (includes language use and possession of a driver’s license issued to persons unable to prove their presence in the United States as authorized under Federal Law), Race, Religion (includes religious dress and grooming practices), Sex (includes pregnancy, childbirth, breastfeeding and/or related medical conditions), and Sexual Orientation.

2.0 Prohibited Conduct

The Forty-Niner Shops have established a policy to comply with the FEHA Standards, State and Federal laws relating to harassment, discrimination in the workplace. This policy also includes internal procedures by which allegations of harassment can be filed, investigated in a timely manner, and fairly resolved. The Shops are committed to providing a work environment that is free of all forms of harassment and discrimination.

- 2.1 The Corporation does not tolerate discrimination or harassment based on: Ancestry, Age, Color, Disability, Race or Ethnicity, Gender, Gender Identity or Gender Expression, Marital Status, Medical Condition, Nationality, Religion, Sex, Sexual Orientation, Genetic Information, Veteran or Military Status, or any other status protected under state or federal law.
- 2.2 Discrimination, including harassment, is prohibited by or against any Shops employee, vendor/business partner, customer, job applicant, intern (paid or unpaid), volunteer, independent contractor or any other individual that a 49er Shops employee interacts with in the course of business.
- 2.3 Other Types of Harassment may include: verbal conduct including threats, epithets, derogatory comments or slurs based on an individual's protected characteristic, visual conduct, including derogatory posters, photographs, cartoons, drawings or gestures based on protected characteristic, and physical conduct, including assault, unwanted touching or blocking normal movement because of an individual's protected characteristic.
- 2.4 There are different forms and types of discrimination and harassment, many which have been highlighted in the Definition section of this policy (page 1 through 3). It is critical that all Shops employees review this policy, sign and acknowledge that they are committed to following this policy as it relates to job expectations and standards for conduct in the workplace.

3.0 Abusive Conduct Prevention

- 3.1 It is expected that the Forty-Niner Shops and persons in the workplace perform their jobs productively as assigned, and in a manner that meets all of managements' expectations, during working times, and that they refrain from any malicious, patently offensive or abusive conduct including, but not limited to conduct that a reasonable person would find offensive based on any of the protected characteristics described above. Examples of abusive conduct include repeated infliction of verbal abuse, such as the use of malicious, derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the intention sabotage of undermining of a person's work performance.

4.0 Protection Against Retaliation

Retaliation is prohibited against any person by another employee or by the Forty-Niner Shops for using the Forty-Niner Shops' complaint procedure, reporting proscribed discrimination or harassment or filing, testifying, assisting or participating in any manner in any investigation, proceeding or hearing conducted by a government enforcement agency. Prohibited retaliation includes, but is not limited to, termination, demotion, suspension, failure to hire or consider for hire, failure to give equal recommendations impartially, adversely affecting working conditions or otherwise denying any employment benefit.

5.0 Complaints of Discrimination, Harassment, or Retaliation based on Protected Status

- 5.1 It is the policy of the Forty-Niner Shops to provide programs, services, and benefits, including employment, without regard to protected status (race, religion, color, ancestry, ethnicity, gender/gender identity, marital status, pregnancy, national origin, age, mental or physical disability, sexual orientation, and protected veteran status). This policy shall apply to all employment actions, including, but not limited to, recruitment, hiring, education, upgrading, promotion, transfer, demotion, layoff, termination, rates of pay or other forms of compensation, and selection for training. Any employee who believes they are experiencing discrimination, harassment, or retaliation is strongly encouraged to report concerns of this nature to their respective supervisor or manager, director, Human Resources, or the General Manager/CEO. Employees are not required to make a complaint directly to their immediate supervisor. Supervisors and managers who receive complaints of misconduct must immediately report such complaints to Human Resources or the appropriate administrator.
- 5.2 Complaints involving the Director of Human Resources may be made to the GM/CEO of the Forty-Niner Shops. Complaints involving the GM/CEO of the Forty-Niner Shops may be made to the CSULB Office of Equity & Diversity.
- 5.3 Complaints should include a summary of the facts, relevant dates, named witnesses, relevant contact information, specific allegations of discrimination, harassment, and/or retaliation and how it pertains to protected status, and a description of the resulting adverse impact on employment. Complaints should be made within 180 calendar days from when the incident(s) occurred. Confidentiality is on a need-to-know basis and sensitivity to reviewing this matter will be upheld. Forty-Niner employees are expected to cooperate with investigations in a timely manner and in good faith.
- 5.4 Upon receipt of said complaint, the Forty-Niner Shops will immediately transfer the complaint to the appropriate administrative office for review and response. A written response from the investigator will be provided to the Complainant whether or not the matter will be accepted for investigation, and if so, the scope of the investigation. Minor or trivial actions or conduct, not reasonably likely to do more than anger or upset a Complainant(s), does not constitute adverse impact and may not rise to a full investigation.
- 5.5 When deemed appropriate by the investigator, a formal resolution may be utilized to address concerns that do not rise to a full investigation. Where an investigation is determined appropriate, a fair, complete, impartial, and timely investigation will be conducted. The investigation shall be completed within a reasonable amount of time. Extensions beyond 90 working days may be noted and explained in a final report. Following the conclusion of the investigation, the administrator shall determine if this policy has been violated and whether remedies are necessary or appropriate.
- 5.6 Employees are protected from unlawful retaliation, leading to adverse employment action, for filing a complaint or participating in an investigation.

Forms

The Discrimination, Harassment and Retaliation Prevention Policy- Agreement Form must be signed and submitted to Human Resources as an acknowledgement and understanding of this policy.

Last Revised					
Policy Version	Date	Author	Description (If applicable)	Approved	Distribution
2.0	5/17/2016	Rosa Hernandez	Revised Policy- to include CA FEHA guidelines	5/17/16	At new employee orientation, and directly to all current employees.
3.0	1/23/2018	Rosa Hernandez	Revised Policy- to align with CSULB Discrimination, Harassment and Retaliation Prevention Policy	1/23/2018	At new employee orientation and directly to all current employees.
4.0	2/6/2019	Rosa Hernandez	Revised Policy- to include CSULB Complaint Process	2/15/2019	At new employee orientation, directly to employees and via handbook.