

SEXUAL AND OTHER FORMS OF HARASSMENT OR DISCRIMINATION	POLICY	
	Document Number:	BSD-2120
	Version Number:	02

1.0 Purpose:

To communicate the Santa Clara Valley Transportation Authority's (hereafter referred to as the Agency) position on the subject of sexual and other forms of harassment or discrimination.

2.0 Scope:

This policy applies to Agency employees, as well as to non-employees who conduct business or interact with Agency employees, on duty or off. The policy applies while on Agency property, off-premises when performing work-related activities, and during events sponsored by the Agency.

2.1 Background:

The Agency's workforce reflects the diversity of the communities it serves. Each employee in the Agency deserves to be treated with respect by other employees. The Agency strives to assure employees that they will not face discrimination or harassment based on sex or any other protected characteristic, or retaliation for reporting or complaining about such conduct. The Agency expects employees to engage in professional working relationships based upon mutual respect with all employees. Sexual and other forms of harassment or discrimination deny that mutual respect and present obstacles to productive, professional working relationships. Inappropriate behavior based on sex or any other protected characteristic, which creates a hostile work environment, may violate the Agency's policy even if it does not rise to the level of a violation of the law, and will not be tolerated.

A. Legal Basis:

The primary legal basis for this policy on sexual and other forms of harassment or discrimination is Title VII of the 1964 Civil Rights Act, as amended, and the California Fair Employment and Housing Act which prohibits discrimination on the basis of race, color, religion, sex (including pregnancy, childbirth or medical condition related to such, as amended by the Pregnancy Discrimination Act of 1978, gender identity, and gender expression), or national origin in employment, and provides legal authority regarding sexual and other protected classes from harassment or discrimination in the workplace.

The guidelines impose absolute liability on the Agency for the acts of supervisors regardless of whether the conduct was known to, or authorized by, or forbidden by the Agency. Similarly, under the guidelines, the Agency may be liable for acts in the workplace committed by non-supervisory employees if the employer knew or should have known of the conduct and failed to take immediate and appropriate action. The Agency may also be responsible for the conduct of non-employees who harass or discriminate against employees in the workplace.

SEXUAL AND OTHER FORMS OF HARASSMENT OR DISCRIMINATION	POLICY	
	Document Number:	BSD-2120
	Version Number:	02

In addition to establishing standards for imposing liability, the guidelines make employers responsible for developing programs to prevent sexual misconduct in the workplace. Under the guidelines, the Agency must thoroughly investigate all complaints alleging sexual harassment and/or discrimination, and all instances potentially constituting harassment and/or discrimination based on a protected class that come to the employer's attention through means other than formal complaints. Following an investigation, an employer is required to take immediate and appropriate corrective action to stop the harassment, remedy any illegality or policy violation detected and institute efforts to prevent its recurrence. Failure to do so constitutes a violation of Title VII as interpreted by the Equal Employment Opportunity Commission (EEOC).

The guidelines also provide protection against retaliation, making it illegal to fire, demote, harass, or otherwise "retaliate" against people (applicants or employees) because they filed a charge of discrimination, complained to their employer or other covered entity about discrimination on the job, or participated in an employment discrimination proceeding (such as an investigation or lawsuit), regardless of the outcome of the original complaint.

B. VTA Board of Directors

The Agency values each employee and strives to provide a professional work environment based on respect and mutual support. To foster such an environment, no form of discrimination, sexual harassment, or harassment based on age, ancestry, color, marital status, mental or physical disability, national origin, race, religion, creed, sex, sexual orientation, genetic information, gender identity, gender expression, political beliefs, organizational affiliation, veteran status, or retaliation based on participation in an investigation or filing a harassment or discrimination complaint, regardless of outcome, will be tolerated. To ensure this, the VTA Board of Directors (Board) adopted a Policy on Equal Employment Opportunity which declares that no person shall be discriminated against with regard to recruitment, selection, appointment, training, promotion, retention, discipline, or other aspects of employment.

The Board further reaffirms that the Agency will maintain a discrimination-free work environment. Part of maintaining a discrimination-free work environment includes freedom from sexual or other forms of harassment. Therefore, it is important for all employees to know that sexual or other forms of harassment or discrimination will not be tolerated and those who commit acts of sexual or other forms of harassment or discrimination will be subject to discipline, up to and including termination of employment.

SEXUAL AND OTHER FORMS OF HARASSMENT OR DISCRIMINATION	POLICY	
	Document Number:	BSD-2120
	Version Number:	02

3.0 Policy:

It is VTA's policy to maintain a discrimination-free work environment for all employees. This includes a respectful working atmosphere free from sexual harassment as well as a workplace free from harassment based on age, ancestry, color, marital status, mental or physical disability, medical condition, national origin, race, religion, creed, sex, sexual orientation, or veteran status. In addition, discrimination or harassment based on genetic information, gender expression, gender identity, political beliefs, and organizational affiliation is prohibited. Retaliation based on participation in an investigation or filing harassment or discrimination complaint, regardless of outcome, is also prohibited. Any violation of this policy will receive prompt and appropriate action.

Any employee or prospective employee who experiences sexual or other harassment should immediately contact a supervisor/manager/superintendent, the Civil Rights office, or a union representative. The Department of Fair Employment and Housing (DFEH) and the Equal Employment Opportunity Commission (EEOC) may also be contacted.

Furthermore, with regard to this Policy:

- A. Sexual or other harassment will not be tolerated as a form of behavior associated with the work environment by any employee and should be reported by any employee witnessing or subject to the behavior without fear of retaliation.
- B. Such inappropriate practices should be dissuaded through communication, training, and other appropriate methods that will sensitize the employees to sexual or other harassment issues.
- C. All observed and reported instances will be investigated, and appropriate timely corrective action will be taken. When a clear infringement of the rights of others and policy violations is determined, appropriate discipline may range from and include one or more of the following: counseling, training, reprimand, pay reduction, demotion, and even dismissal in cases of gross misconduct or repeated offenses.
- D. Decisions pertaining to hiring, promotion, training, layoffs, and other personnel practices should be applied uniformly based on standards of ability, training, experience, past performance, and other job-related factors and to maintain such standards at a consistently high level.
- E. VTA recognizes the importance of confidentiality. Fact finders, advisers, and others responsible for implementing this policy are required to investigate any complaint or report of potential policy violations but will respect the confidentiality and privacy of individuals experiencing, witnessing, reporting, or accused of violations of the Sexual

SEXUAL AND OTHER FORMS OF HARASSMENT OR DISCRIMINATION	POLICY	
	Document Number:	BSD-2120
	Version Number:	02

or other forms of Harassment or Discrimination Policy to the extent reasonably possible. Retaliation and/or reprisals against an individual who in good faith reports or provides information about behavior that may violate this policy are against the law and will not be tolerated. This should encourage all employees to report violations without fear of reprisal. Examples of situations where confidentiality cannot be maintained include circumstances when the law requires disclosure of information and when disclosure required by the Agency outweighs protecting the rights of others.

- F. Relationships between employees are not restricted or discouraged. VTA welcomes and encourages teamwork and mutual respect amongst all employees. However, VTA prohibits and will investigate romantic or sexual relationships within “the chain of command.” Where such a relationship exists, the person in the position of greater authority or power will bear the primary burden of accountability, and will be subjected to corrective actions including but not restricted to transfer outside the chain of command so he/she does not directly or indirectly exercise any supervisory or evaluative function over the other person in the relationship. Employees engaging in romantic or sexual relationships in the workplace do so at their own risk. They are subjected to the same policies as other employees and are expected to follow rules of decorum and adhere to the Standards of Conduct (Policy 410). Granting consent to a romantic or sexual relationship in the past or present does not preclude involvement in current or future investigations due to claims of sexual or other harassment or discrimination violations.
- G. This policy prohibits discrimination for or against an employee on the basis of conduct not related to work performance. This includes taking or refusal to take a personnel action, including but not limited to promotion or dismissal of employees who submit to or resist/protest sexual advances or sexual overtures.
- H. In compliance with California legislation, Assembly Bill 1825, all supervisors/managers employed by VTA are required to participate in a minimum of two-hour sexual harassment training at least every two years. All new supervisors/managers will be required to take this training within six months of their hire date.

Any violation of this policy will receive prompt and appropriate action. Any employee or prospective employee who experiences harassment or discrimination should immediately contact a supervisor/manager/superintendent, the Office of Civil Rights (408-321-5571), a union representative, the Department of Fair Employment and Housing (DFEH), the Equal Employment Opportunity Commission (EEOC), or a private attorney. The complaint form can be found on VTA net under Administrative Services.

SEXUAL AND OTHER FORMS OF HARASSMENT OR DISCRIMINATION	POLICY	
	Document Number:	BSD-2120
	Version Number:	02

Indemnification and Costs:

The question sometimes arises as to whether the Agency will defend and indemnify an employee accused of sexual or other forms of harassment and discrimination. California law provides, in part, “An employer shall indemnify [its] employee for all that the employee necessarily expends or loses in direct consequence of the discharge of his/her duties as such...” The issue of indemnification depends on the facts and circumstances of each situation. Individuals who violate this policy, however, should be aware that they may be required to pay or contribute to any judgments, costs, and expenses incurred as a result of behavior that is wrongful and/or contrary to this policy, including but not limited to fact finding and investigation, litigation costs, and costs to the agency resulting from disruptions to the workplace.

It is important to note that supervisors and managers may be held personally and individually liable for engaging in harassment in the workplace. In this regard, the organization’s general liability insurance coverage may not cover the defense or judgment in cases where supervisors or managers have committed harassment and/or acted outside their scope of employment. Thus, supervisors and managers should always monitor their own conduct to prevent being exposed to such personal risk.

4.0 Definitions:

4.1 Harassment in General

Verbal, physical, or visual conduct of a racial, ethnic, or other prohibited type, which, in the recipient’s opinion is unwelcome, disruptive, interferes with his/her ability to perform his/her job, and/or which creates an intimidating or hostile work environment.

4.2 Sexual Harassment

Unwelcome sexual advances, requests for sexual favors, and other verbal, physical, or visual conduct of a sexual nature, when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment;
2. Submission to or rejection of such conduct by an individual is used or threatened to be used as the basis for employment decisions affecting such individual; or

SEXUAL AND OTHER FORMS OF HARASSMENT OR DISCRIMINATION	POLICY	
	Document Number:	BSD-2120
	Version Number:	02

3. Such conduct has the purpose or effect of interfering with the individual's ability to perform his/her job, and/or which creates an intimidating, hostile, or offensive work environment.

All employees must be allowed to work in an environment free from unsolicited and unwelcome sexual overtures. Sexual harassment is a form of employee misconduct which is demeaning to another person and undermines the integrity of the employment relationship.

Sexual harassment may occur between employees regardless of their relationship. It is not limited to supervisor/subordinate relationships. The initiator (harasser) and the recipient (victim) may be a woman or a man. The recipient does not have to be of the opposite sex. The recipient does not have to be the person harassed, but could be anyone affected by the offensive conduct (third party harassment). The conduct need not be motivated by sexual desire to constitute sexual harassment.

Sexual harassment does not refer to occasional compliments. Sexual harassment may include, but is not limited to, actions such as:

- Displaying sexually suggestive materials or objects (such as magazines, photographs, calendars, screen saver images, tattoos, etc.);
- Electronically sending sexually suggestive email messages, cell phone texts, photographs, or videos;
- Leering, or staring up and down a person's body;
- Making sexual gestures;
- Sex-oriented verbal "kidding" or abuse, sexual jokes, or comments about a person's body;
- Subtle or overt pressure for sexual activity, repeated flirtation or propositions;
- Physical contact such as grabbing, patting, pinching, touching, or brushing against another's body;
- Demands for sexual favors, accompanied by implied or overt promises of preferential treatment or threats concerning an individual's employment status.

4.3 Quid Pro Quo:

Original Date:	Revision Date:	Page 6 of 12
7/17/1995	06/09/2016	

SEXUAL AND OTHER FORMS OF HARASSMENT OR DISCRIMINATION	POLICY	
	Document Number:	BSD-2120
	Version Number:	02

“Quid Pro Quo,” a Latin term meaning “this for that,” refers to a type of sexual harassment that occurs between a person in a position of authority (such as a manager or supervisor) and a subordinate employee. Quid pro quo harassment occurs when a manager or supervisor demands sex or sexual favors from a subordinate employee in exchange for the granting of job benefits (e.g., promotion or a raise), or threatens to take such job benefits away (e.g., demotion or termination) if the subordinate employee does not submit to such demands.

Generally, only conduct or behavior by a manager, supervisor or superior can be considered “quid pro quo” harassment. Such relationships are inappropriate since the subordinate does not have clear freedom of choice in the relationship, and therefore mutuality is undermined.

While in general, dating is not prohibited in the workplace, dating within the “chain of command” is prohibited due to inherent quid pro quo issues, and dating between supervisors and subordinates who are not within the same chain of command is strongly discouraged, as there is still the potential for quid pro quo issues due to the imbalance of power in the relationship.

4.4 Hostile Work Environment:

The term “Hostile Work Environment” refers not only to sexual harassment, but to all other forms of harassment prohibited under the Agency’s policy. Hostile-work-environment harassment is unwelcome sexual conduct or other inappropriate, demeaning, or derogatory behavior based on a protected characteristic that has the purpose or effect of unreasonably interfering with a person’s work performance or creating an intimidating, hostile, or offensive work environment. According to the EEOC, a hostile work environment claim can be based not only upon sex, but also on race, national origin, religion, color, age, or disability. As the EEOC notes, “Federal law does not prohibit simple teasing, offhand comments, or isolated incidents that are not extremely serious.” The conduct must be sufficiently frequent or severe to create a hostile work environment or result in a “tangible employment action,” such as disciplinary action, demotion, or termination.

4.5 Unwelcome Behavior:

Inappropriate behavior that is “unwelcome” is prohibited under the policy. A behavior is deemed unwelcome when the recipient did not solicit or invite the behavior, or when the behavior is regarded as undesirable by the recipient. In addition, there may be times when conduct that is welcome by another person may still violate the Agency’s harassment policy. For example, even if one employee asked to hear a sexual joke and engaged in sexual banter with another employee, the behavior may still be deemed

SEXUAL AND OTHER FORMS OF HARASSMENT OR DISCRIMINATION	POLICY	
	Document Number:	BSD-2120
	Version Number:	02

inappropriate in the workplace because the Agency's policy prohibits such behavior, and because of the impact it may have on third parties. Thus, such behavior may elicit disciplinary consequences even if the immediate recipients do not object to it. The same applies to behavior that was previously overlooked or tolerated but no longer is condoned.

4.6 Retaliation:

Retaliation is an illegal practice of harassing, treating someone differently, or taking an adverse employment action against an employee, because of his/her participation in a protected activity such as filing a complaint or grievance, voicing opposition to discrimination in the workplace, or serving as a witness in a workplace investigation or lawsuit. Retaliation can be any behavior that is likely to deter a reasonable worker from engaging in the protected activity.

When an employer takes adverse action against an employee engaging in a protected activity, the employer's action could be deemed retaliatory. However, an employer's actions such as a supervisor assigning work to an employee, a supervisor rendering a business decision, or a supervisor rejecting an employee's request, do not equate to retaliation as long as the supervisor's decisions are based on work related reasons or factors.

5.0 Responsibilities:

A. All Employees:

All employees are responsible for ensuring that sexual or other harassment or discrimination does not occur in the Agency workforce. They will comport themselves in a manner that ensures compliance with the agency policy while at work, reporting for work, on Agency premises, or at any time when representing the Agency or dealing with another Agency employee.

Any employee who believes that she or he has been the recipient of sexual or other harassment or discrimination or who is aware of such an occurrence has an obligation and a duty to report the potential policy violation to a supervisor, manager, union representative, or the Office of Civil Rights so that appropriate corrective action may be taken. Such individuals are also encouraged to confront the person who allegedly is doing the violation and request that they stop the behavior, unless the individual feels such confrontation could lead to retaliation or greater harassment or discrimination.

B. Supervisors, Managers, Directors, and Division Heads:

Original Date:	Revision Date:	Page 8 of 12
7/17/1995	06/09/2016	

SEXUAL AND OTHER FORMS OF HARASSMENT OR DISCRIMINATION	POLICY	
	Document Number:	BSD-2120
	Version Number:	02

1. Directors and division heads are accountable for and supervisors and managers are responsible for taking all steps necessary for the prevention and correction of sexual or other forms of harassment and discrimination in their areas of responsibility and within the organization.
2. Supervisors and managers at all levels are responsible for:
 - a. Ensuring employees under their areas of responsibility are aware of, understand, and abide by this policy. This includes discussion of the subject and providing training to employees, visitors, vendors, and consultants regarding each one's responsibility in preventing and reporting sexual or other forms of harassment and discrimination in the workplace.
 - b. Ensuring all personnel decisions in their areas of responsibility are made in accordance with this policy.
 - c. Expressing strong disapproval and zero tolerance of sexual or other forms of harassment or discrimination by informing employees, visitors, vendors, and consultants of possible penalties for violations of the policy and ensuring its implementation.
 - d. Ensuring procedures for submission of complaints of sexual or other forms of harassment and discrimination are provided to employees, vendors, and consultants. These procedures will include Agency-wide and Departmental procedures, alternative avenues for complaints should the complainant be dissatisfied with the departmental response, and a listing of appropriate disciplinary actions which may include termination when acts of sexual or other forms of harassment or discrimination occur.
 - e. Performing preliminary information gathering and fact finding for policy violations when suspected, witnessed, or brought to their attention, whether the affected individuals are under their area of responsibility or not, and/or reporting the potential violations to their supervisor, and the Office of Civil Rights for further investigation.
 - f. Initiating and following-up on corrective action with the assistance of the Office of Civil Rights when offenses merit so.

C. Visitors, Vendors, and Consultants:

All visitors, vendors, and consultants must abide by Agency rules, policies, procedures, and guidelines while on Agency property or while conducting, supporting, or utilizing Agency services or business.

Original Date:	Revision Date:	Page 9 of 12
7/17/1995	06/09/2016	

SEXUAL AND OTHER FORMS OF HARASSMENT OR DISCRIMINATION	POLICY	
	Document Number:	BSD-2120
	Version Number:	02

D. Office of Civil Rights:

1. The Office of Civil Rights is responsible for the following:
 - a. Referring outside agency charges and complaints to General Counsel.
 - b. Consulting with General Counsel in cases indicating the potential for legal proceedings against the Agency.
 - c. Conducting investigations of alleged or potential violations and advising management on abatement and corrective actions when violations merit such.
 - d. Educating management and employees and informing them of their rights and responsibilities under this policy.
 - e. Informing each employee of her/his responsibility to report violations or conduct inconsistent with proper workplace conduct under this policy.
 - f. Counseling employees and providing assistance in addressing real or perceived violations of the Sexual and Other Forms of Harassment or Discrimination Policy when warranted.
 - g. Providing Sexual Harassment Prevention Training (AB1825)

The Agency complies with California legislation, Assembly Bill 1825 that requires employers with 50 or more employees to train supervisors every two years on sexual harassment prevention. Such training must be conducted via “classroom or other effective interactive training,” by “trainers or educators with knowledge and expertise” in preventing harassment, discrimination, and retaliation, and must include the following topics:

- Information and practical guidance regarding the federal and state statutory provisions concerning the prohibition against and the prevention of sexual harassment;
- Information about the correction of sexual harassment and the remedies available to the victims of sexual harassment in employment; and
- Practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation.

SEXUAL AND OTHER FORMS OF HARASSMENT OR DISCRIMINATION	POLICY	
	Document Number:	BSD-2120
	Version Number:	02

2. In all cases where sexual harassment or discrimination has been determined, the Office of Civil Rights will monitor the application of corrective action until such action is completed.
3. In cases where sexual harassment or discrimination has been determined, the Office of Civil Rights will maintain all records. These records will be considered confidential and may be used for report, statistical, and training purposes such as identifying and prioritizing individuals or departments likely to benefit from additional training. Records of all other cases of harassment or discrimination will be kept in the relevant Human Resources, Legal, or Administrative Services department for report and statistical purposes and to ensure confidentiality of records as appropriate or permitted by law.
4. The Office of Civil Rights will be available for consultation with supervisors, managers, union representatives, and other employees regarding the Sexual and Other Forms of Harassment or Discrimination Policy.

E. General Manager:

The General Manager will ensure that the Board's policy prohibiting harassment and discrimination is made known to all Agency employees and that procedures necessary to assure compliance are implemented. This includes communication of the following:

That no person shall be discriminated against with regard to recruitment, selection, appointment, training, promotion, retention, discipline, or other aspects of employment. This includes a respectful working atmosphere free from sexual harassment as well as a workplace free from harassment based on age, ancestry, color, marital status, mental or physical disability, national origin, race, religion, creed, sex, sexual orientation, or veteran status. In addition, discrimination or harassment based on genetic information, gender identity, gender expression, political beliefs, and organizational affiliation is prohibited. Retaliation based on participation in an investigation or filing harassment or discrimination complaint, regardless of outcome, is also prohibited. Any violation of this policy, Federal Law, or other conditions governed by local ordinance will receive prompt and appropriate action and will result in immediate disciplinary action up to and including dismissal.

It is the Agency's policy that any form of abusive, sexist, or racist language by any employee of this agency, by any visitors, vendors, or consultants conducting business with this agency, or by any person(s) appearing on Agency property seeking information or assistance from this Agency or utilizing Agency facilities in the conduct of public meetings will not be tolerated.

SEXUAL AND OTHER FORMS OF HARASSMENT OR DISCRIMINATION	POLICY	
	Document Number:	BSD-2120
	Version Number:	02

Employees are advised that any violation of this policy by Agency employees while at work, reporting for work, on Agency premises, or representing the Agency will result in immediate and appropriate discipline up to and including dismissal.

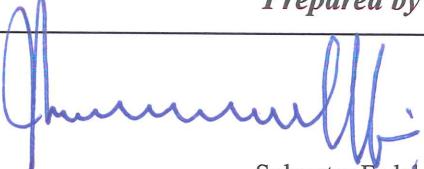
6.0 Summary of Changes:

This policy was updated to the new format on April 18, 2011 and it replaces Policy 417-Sexual and Other Forms of Harassment and Policy 541-Description of Discrimination/Harassment Appeals Process. It addresses updated State and Federal regulations and is subject to periodic review.

This policy was further updated on June 9th, 2016 to be consistent with the amendments to the Fair Employment and Housing Act regulations that took effect in 2016.

This policy, BSD-2120, replaces policy AS-HR-PL-2120.

7.0 Approval Information:

<i>Prepared by</i>	<i>Reviewed by</i>	<i>Approved by</i>
 Sylvester Fadal Deputy Director HR and Diversity Programs	 Alberto Lara Director, Business Services	 Nuria Fernandez General Manager/CEO