

City and County of San Francisco
Micki Callahan
Human Resources Director



Department of Human Resources
Connecting People with Purpose
www.sfdhr.org

MEMORANDUM

DATE: October 15, 2019

TO: The Honorable Mayor London Breed
Honorable Members of the Board of Supervisors
Sheryl Davis, Executive Director, Human Rights Commission
Emily Murase, Executive Director, Department on the Status of Women

FROM: Micki Callahan, Human Resources Director 

SUBJECT: Annual Report on Sexual Harassment Complaints filed in Fiscal Year 2018/2019

The Department of Human Resources (DHR) is expanding its annual report on sexual harassment complaints under Administrative Code Section 16.9-25(e)(2), as it has done with its last two annual reports. This expanded report provides additional data on the City's response to sexual harassment complaints and adds information on the City's policies prohibiting harassment, the City's training and education of supervisors regarding their responsibility to stop and report harassment, the avenues available for employees to report complaints, and recommendations to ensure the City continues to be proactive in reducing the incidence of workplace harassment.

San Francisco is a long-standing leader in protecting employees' civil rights. City policies prohibiting harassment are comprehensive; written in simple, understandable terms; and available in multiple languages. DHR's Equal Employment Opportunity (EEO) Division continues to review and update City policies and procedures regularly, so they remain best practices. We train and educate executives, managers, and supervisors on their responsibilities under those policies to model appropriate behavior and to respond promptly and appropriately to employee concerns and complaints. We provide employees a variety of avenues to file complaints in the event they experience or witness harassment. On a quarterly basis, we notify all City employees of their right to a workplace free from sexual harassment, and their options for reporting complaints.

The City is strongly committed to ensuring a work environment that is free from sexual harassment, not only because it is a legal obligation, but because it is the right thing to do. The City does not tolerate sexual harassment. City employees found to have engaged in such conduct may be subject to discipline, up to and including termination. In addition, the City may take other appropriate preventative action to protect complainants, such as issuing the accused employee a Cease & Desist/Stay Away Order, reporting any allegations of sexual assault to the San Francisco Police Department, referring the complainant to the Employee Assistance Program, retraining the accused employee (including one-on-one training with a DHR Senior EEO investigator), counseling the accused employee, reassigning the accused employee, changing the reporting structure, or at the request of the complainant, reassigning the complainant.

We are committed to a workplace where employees are treated with respect, courtesy, and dignity, and take all appropriate measures to prevent and respond to sexual harassment complaints.

2018/2019 Data on Sexual Harassment Complaints

Pursuant to San Francisco Administrative Code, Section 16.9-25(e)(2):

The Human Resources Director shall provide annually to the Mayor, the Board of Supervisors, the Human Rights Commission, and the Commission on the Status of Women a written report on the number of claims of sexual harassment filed, including information on the number of claims pending and the departments in which claims have been filed. The reports shall not include names or other identifying information regarding the parties or the alleged harassers.

In accordance with Section 16.9-25(e)(2), this report includes the “Annual Report on Sexual Harassment Complaints” (Attachments A and B). Sexual harassment is defined as:

- Any unwelcome sexual advance, request for sexual favors, and other physical, verbal, or visual conduct of a sexual nature; or
- Conditioning an employment benefit on the acceptance of sexual or romantic favors; or
- Making or threatening reprisals after a negative response to a sexual or romantic advance.

Sexual harassment is distinguished from harassment based on sex or gender, as the latter is defined as physical, verbal, or visual conduct based on sex or gender, but is not of a sexual nature. For example, complaint alleging that a colleague stated that females are not qualified to be firefighters would be categorized as a complaint of harassment based on sex or gender.

Attachment A identifies the number of “internal” complaints filed with individual City departments and DHR EEO, as well as the number of “external” complaints filed with the California Department of Fair Employment and Housing (DFEH) and the U.S. Equal Employment Opportunity Commission (EEOC). In Fiscal Year 2018/2019, **87** internal complaints and **1** external complaint alleging sexual harassment were filed. Attachments B-1 and B-2 provide information on the status and disposition of the internal and external sexual harassment complaints, respectively.

DHR EEO received 17% fewer sexual harassment complaints during FY 2018/2019 as compared to FY 2017/2018. This decrease is the first time in the last five years that the number of sexual harassment complaints decreased from the prior fiscal year. See Attachment C. DHR EEO hopes that the decrease in complaints continues as a result of all employees being trained on appropriate workplace conduct, and how to address any inappropriate conduct before it escalates.

2018/2019 Data on the City’s Response to Sexual Harassment Complaints

After receiving and investigating a sexual harassment complaint, the City takes preventative or corrective actions to ensure that any sexually harassing conduct stops and to protect the complainant, as well as other employees who may have been subjected to the sexual harassment, from future misconduct. In the past fiscal year, these actions have included reviewing the City’s EEO Policy with the accused employee, providing one-on-one training for the accused employee, retraining entire work units, and taking disciplinary action against the accused employee, including separation from City employment. Additionally, restrictions on future City employment, including a permanent ban, can and have been placed on employees found to have engaged in sexual harassment.

To date, DHR EEO has completed investigations of 62 of the 87 internal sexual harassment complaints received during FY 2018/2019. See Table A. DHR EEO’s investigations have sustained the sexual harassment allegations in three complaints. In these cases, the City disciplined the accused employee. In

one case, due to the egregiousness of their misconduct, the accused employee is no longer employed by the City and has a permanent ban on their future employability with the City.

Moreover, the City does not wait until misconduct becomes an ongoing pattern before it takes action to address the misconduct. In FY 2018/2019, DHR EEO instructed departments to take preventative or corrective actions in 33, or 53%, of the 62 sexual harassment complaints it has closed. *See Table D.* In cases where the alleged conduct is isolated or sporadic in nature, as well as in cases where the alleged conduct stopped months prior to the complaint being filed, the City still takes immediate preventative or corrective action to correct the accused employee's behavior and to make sure that the conduct does not repeat or start again.

Additionally, DHR EEO has already taken preventative actions in nine of the 15 pending sexual harassment complaints. *See Attachment D.* Preventative actions such as issuing a Cease & Desist Order or reassigning the accused employee pending completion of the investigation may be warranted where the alleged conduct is serious or recent and ongoing. These actions are taken in addition to reviewing the City's EEO Policy with the accused to impress upon them the seriousness of the allegations and the consequences of violating the EEO Policy. Additional corrective actions may be taken depending on the outcome of those investigations.

To promote an environment that encourages reporting of inappropriate behavior, the City has a variety of policies, procedures, training and avenues to report complaints. They are described in more detail below.

Policies and Procedures

The City regularly educates employees on the City's EEO Policy and harassment prevention and provides regular updates to City EEO investigators on investigation best practices by:

- Quarterly EEO Policy Distribution
 - Provides a link to the EEO Policy webpage (<http://sfdhr.org/equal-employment-opportunity-policy>), which contains quick links to the EEO Policy in Chinese and Spanish
- How to File A Discrimination Complaint Flyer (publicly available at DHR and online) (<http://sfdhr.org/how-file-discrimination-harassment-or-retaliation-complaint>), and posted in departments
- Monthly Citywide EEO Staff Meeting Led by DHR EEO Division
 - Provides an opportunity for DHR EEO staff to meet with citywide EEO staff and share information on recent court cases, EEO trends, and information learned at conferences
 - Allows EEO staff to discuss strategies and best practices for handling EEO cases, which provides opportunities for new EEO investigators to learn from and connect with experienced EEO investigators

Training and Education

Beginning this fiscal year, per Mayor Breed's Executive Directive on Ensuring a Diverse, Fair, and Inclusive City Workplace, all employees, not just supervisors and managers, will be required to complete the online Harassment Prevention Training and will be required to complete the training biennially. Expanding the online Harassment Prevention Training to all 34,000+ City employees will enhance the

training's impact considerably and ensure that all employees understand the role they play in maintaining a workplace free of harassment.

The City's online Supervisor's Harassment Prevention Training uses practical scenarios based on actual complaints to train supervisors and managers on their role in maintaining a workplace free of harassment and their responsibility to immediately report any allegations they receive. Completion of the online Harassment Prevention Training is required of all supervisors and managers, including board and commission members, as well as employees in acting supervisors and those serving as "lead" employees.

All employees will be required to take a condensed version of the training provided to supervisors and managers. This condensed training will outline the role that all City employees have in building a workplace that is free of harassment.

The online Harassment Prevention Training is updated every two years with new content that reflect current issues in the workplace. DHR EEO is currently working with a vendor on these updates and will launch the 2019 online Supervisor's Harassment Prevention Training in December 2019 and the Employee Harassment Prevention Training in the third quarter of FY 2019/2020.

Additionally, during the third and fourth quarters of FY 2019/2020, DHR EEO will work with its vendor to develop Bystander Training. The Bystander Training will be launched in the third quarter of FY 2020/2021. This training will be designed to encourage employees to speak out when they observe inappropriate conduct and teach them how to intervene and address such conduct in an appropriate manner without escalating conflict.

Avenues to Report a Complaint

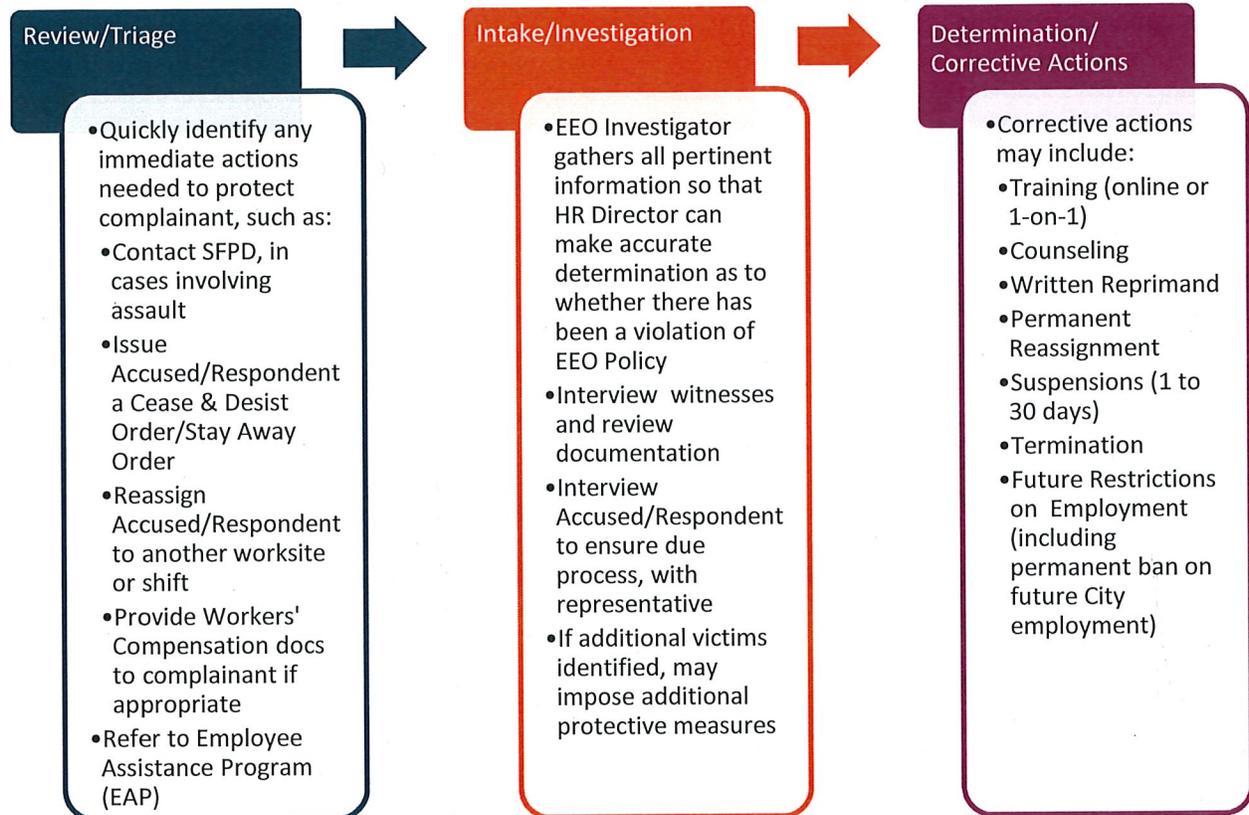
The City offers City employees and applicants (as well as volunteers and interns) several avenues by which they can report allegations of harassment, including sexual harassment. Whether the allegations are against a co-worker, supervisor, vendor, or member of the public, individuals can report their complaints to:

- Their supervisor or manager
- Any City supervisor or manager
- A departmental Human Resources (Personnel) Officer
- DHR's EEO Division, through multiple channels:
 - EEO Helpline (415-557-4900)
 - Walk-in or by appointment
 - Email/Phone to any DHR EEO employee (contact info at <http://sfdhr.org/employees-phone-directory>)
 - U.S. Mail or Interoffice Mail (to DHR EEO, 1 South Van Ness Ave., 4th Floor, SF, CA 94103)
 - Fax to DHR EEO (415-557-4803)

The City also provides information on how complainants may contact the California Department of Fair Employment and Housing and the U.S. Equal Employment Opportunity Commission.

EEO Complaint Process

If an employee complains to someone at their department, the department is required to refer the complaint to DHR EEO Division. An employee may also complain directly to DHR EEO. When DHR EEO receives a complaint, it initiates the complaint process. Key steps of the complaint process are as follows:



Throughout the complaint process, the EEO investigator reminds all persons involved in the investigative process (e.g., complainant, accused, witnesses) that retaliation is prohibited by law and by the City's EEO Policy.

City's Current Efforts to Reduce Sexual Harassment in the Workplace

The City continues to be proactive in its efforts to reduce the incidence of workplace sexual harassment. These efforts include:

1. Identify "Hotspots" to Focus Prevention Efforts

DHR EEO will continue to use data and analytic approaches to identify specific departments and work units within departments that may need additional resources to prevent harassment. While sexual harassment complaints come from a variety of departments, there are some departments and work units that appear to have a relatively higher incidence of sexual harassment complaints. While these departments tend to be the City's largest departments, size alone may not account for the frequency of sexual harassment complaints in some areas.

2. Annual Reports by Department on EEO Complaints

Beginning with the third quarter of Fiscal Year 2018/2019, DHR EEO has also published quarterly and annual reports on all harassment complaints received by department and by protected category. These reports are currently available on the SFDHR website.

If you have any questions, please contact Linda C. Simon, Director, EEO and Leave Programs, at (415) 557-4837.

Attachment A
Sexual Harassment Complaints by Department
Fiscal Year 2018/2019
(July 1, 2018 through June 30, 2019)

Department	Internals¹	Externals²
Administrative Services	4	
Airport Commission	1	
Building Inspection	3	
Community College District	1	
District Attorney's Office	2	
Fine Arts Museum	3	
Fire Department	1	
Homelessness & Supportive Housing	1	
Human Resources	1	
Human Services	17	
Municipal Transportation Agency	4	
Police Accountability	1	
Police Department	2	
Public Health	22	
Public Library	3	
Public Utilities Commission	2	
Public Works	11	1
Recreation and Park	4	
Sheriff's Department	1	
Technology	3	
Total	87	1

¹ Complaints filed with individual departments and the Department of Human Resources, Equal Employment Opportunity Division (DHR EEO).

² Complaints filed externally with the California Department of Fair Employment and Housing (DFEH) or the U.S. Equal Employment Opportunity Commission (EEOC).

Attachment B-1
Status and Disposition of Internal Complaints³
Fiscal Year 2018/2019
(July 1, 2018 through June 30, 2019)

Department	Closed				Insufficient Allegations/ Immediate Preventative Actions Taken	No EEO Jurisdiction or Withdrawn	Open
	Settled	Insufficient Evidence	Sustained	1			
Administrative Services				1	2	1	
Airport Commission				1			
Building Inspection				1	1	2	
Community College District				1			
District Attorney's Office				2			
Fine Arts Museum					2	1	
Fire Department				1			
Homelessness & Supportive Housing					1		
Human Resources						1	
Human Services Agency			1	11	1	4	
Municipal Transportation Agency					3	1	
Police Accountability				1			
Police Department				1		1	
Public Health			1	6	3	12	
Public Library				2		1	
Public Utilities Commission				1	1		
Public Works	1	1		6	2	1	
Recreation and Park			1	2	1		

Department	Closed					Open
	Settled	Insufficient Evidence	Sustained	Insufficient Allegations/ Immediate Preventative Actions Taken	No EEO Jurisdiction or Withdrawn	
Sheriff's Department					1	
Technology					3	
Total	1	1	3	34	23	25

³ Definitions

Settled: Complaint was resolved, without any admission or acknowledgement of liability.

Insufficient Evidence: A full investigation was conducted, and there was insufficient evidence to establish that sexually harassing conduct occurred in violation of City's or SFMTA's EEO Policy.

Sustained: A full investigation was conducted, and there was sufficient evidence to establish that sexually harassing conduct occurred in violation of City's or SFMTA's EEO Policy.

Insufficient Allegations/ Immediate Preventative Actions Taken: Complaint was resolved through immediate preventative and/or corrective actions; where the alleged conduct may have violated the City's or SFMTA's EEO policy, DHR instructs departments to take immediate preventative or corrective action (i.e. issue City's or SFMTA's EEO Policy and/or Policy Regarding Treatment of Co-Workers and Members of the Public; obtain signed acknowledgement of receipt of policy; direct to take online Harassment Prevention Training/implicit bias training; direct to conduct mediation; etc.). These actions are the same actions that DHR would recommend a department take if the allegation were sustained.

No EEO Jurisdiction or Withdrawn: Complaint did not allege that a supervisor requested sexual or romantic favors or that complainant was subjected to unwelcome sexual or romantic advances or other conduct of a sexual nature; complainant was not a City employee, applicant, volunteer, unpaid intern, or contractor; complaint was not against a City department; the complaint was untimely; complainant's MOU prevents employees from filing both a grievance and an internal EEO complaint regarding the same issue, and complainant elected to pursue complaint as a grievance; or complainant declined to participate or withdrew complaint, and based on the information provided, DHR EEO was without sufficient detail to conduct a full investigation.

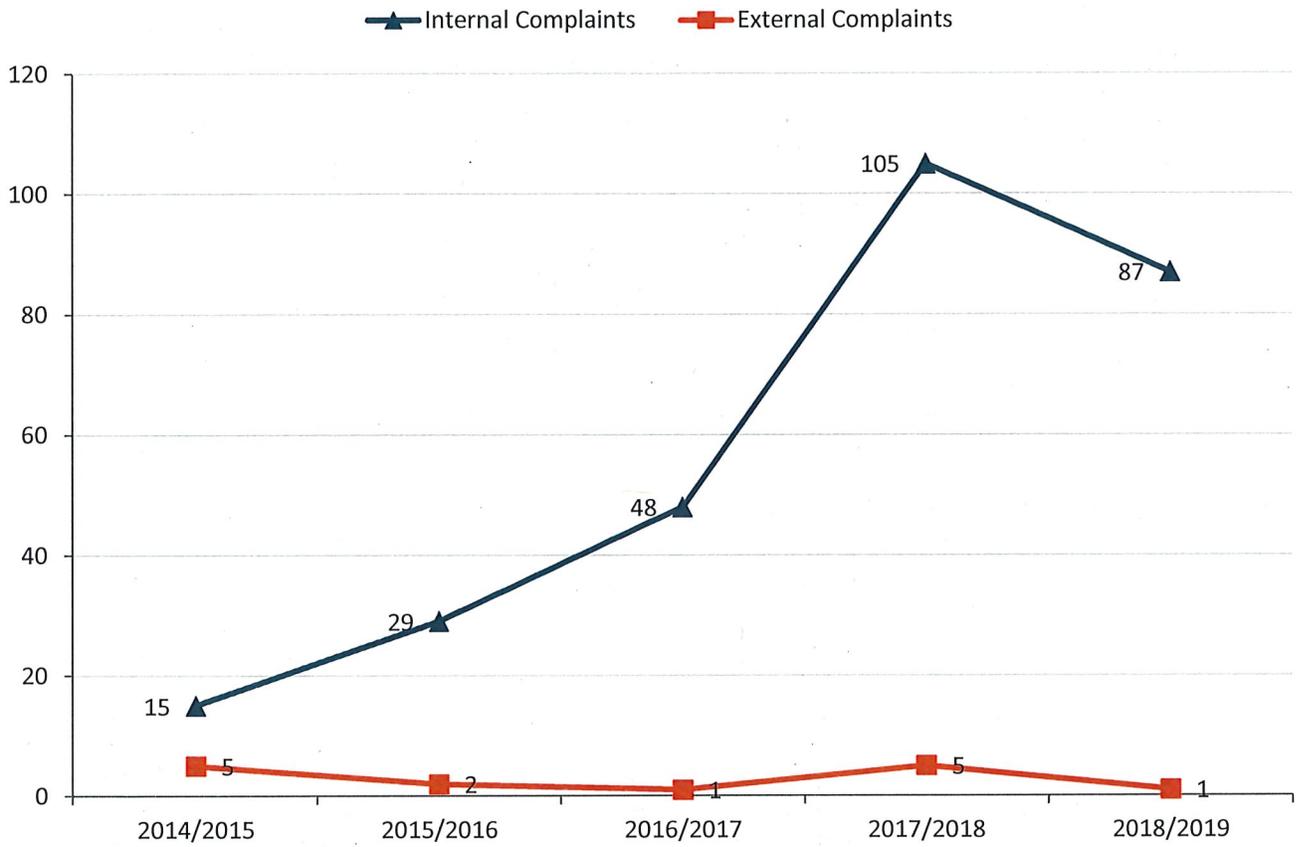
Attachment B-2
Status and Disposition of External Complaints⁴
Fiscal Year 2018/2019
(July 1, 2018 through June 30, 2019)

Department	Closed				Open
	Settled	Insufficient Evidence	Sustained	Not Investigated	
Public Works	0	0	0	0	1
Total	0	0	0	0	1

⁴ Definitions:

- Settled:** Complaint was resolved, without any admission or acknowledgement of liability.
- Insufficient Evidence:** Complaint was investigated and there was insufficient evidence to establish sexual harassment.
- Finding of Discrimination:** Complaint was investigated and there was sufficient evidence that sexual harassment occurred.
- Elected Right to Sue:** Complaint was not investigated because the EEOC/DFEH issued notice of right to sue at the request of the complainant.

Attachment C
Sexual Harassment Complaints Received During
Fiscal Years 2014/2015 through 2018/2019



Attachment D
City Response to Sexual Harassment Complaints
Fiscal Year 2018/2019
(July 1, 2018 through June 30, 2019)

Table D-1⁵
Sexual Harassment Complaints Resulting in Preventative and/or Corrective Action

	Closed	Open	Total
Preventative/Corrective Action Taken	33	9	42
None Required	29		29

Table D-2⁶
Total Number of Preventative and/or Corrective Actions
By Type of Action

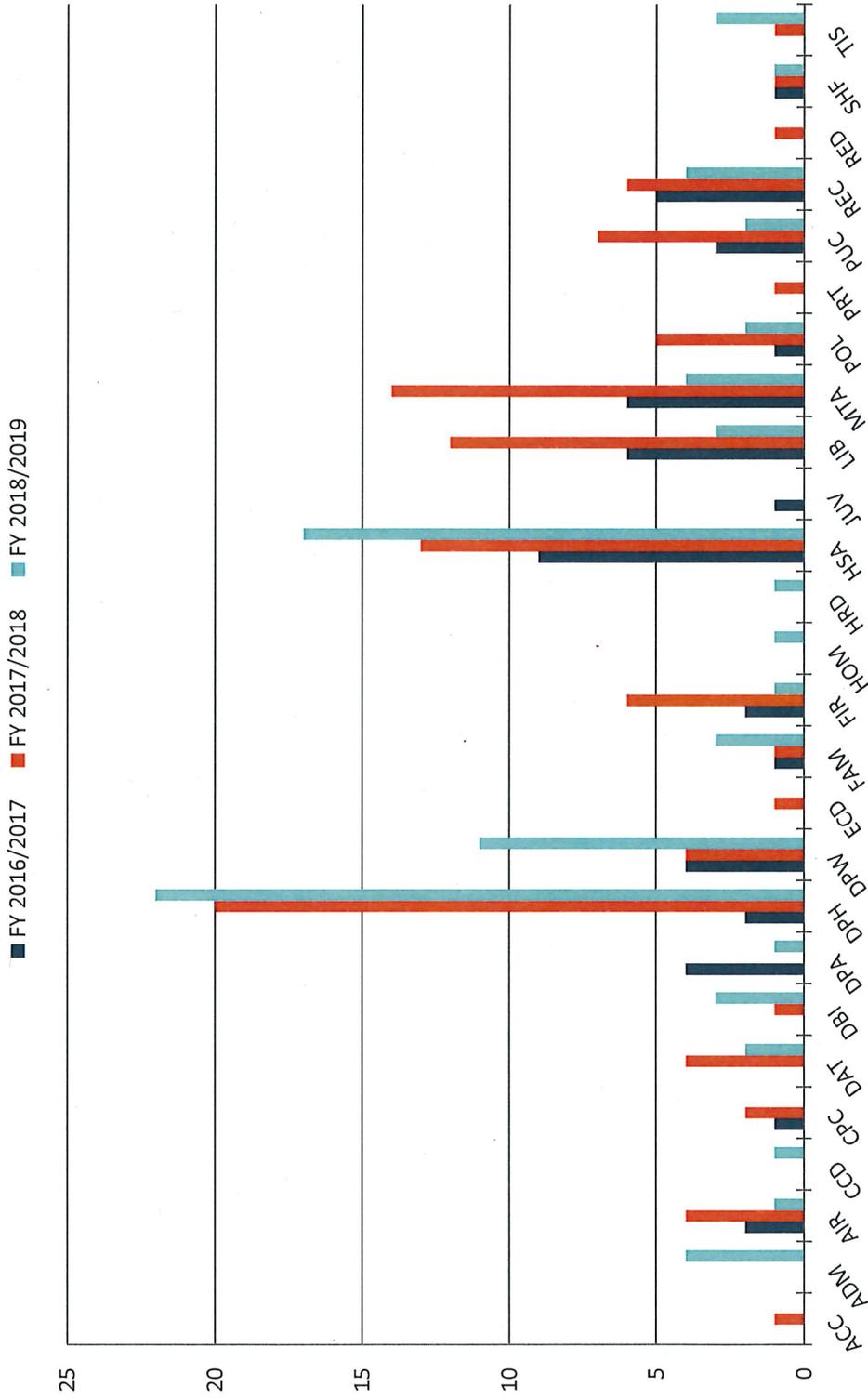
Preventative/Corrective Action	Actions
Discipline	7
Issue EEO Policy	38
Issue Respect Policy	26
Take Harassment Prevention Training	16
Other ⁷	4
Total	90

⁵ The annual report reflects only the preventative and/or corrective actions taken to date. When appropriate, the City takes immediate preventative and/or corrective actions to protect the complainant and other employees while the investigation is ongoing. Additional corrective actions may be required at the conclusion of the investigation to prevent reoccurrence of any misconduct.

⁶ Table D-2 shows the number of individual preventative and/or corrective actions carried out to prevent reoccurrence of misconduct or to make a complainant whole. For example, to date, 7 employees were disciplined as a result of a sexual harassment complaint filed with DHR.

⁷ "Other" includes, but is not limited to, actions such as reassignment to another work site, requirement to take management training, restoration of leave balances, and compensation for lost wages.

Attachment E
Sexual Harassment Complaints by Department⁸
Fiscal Years 2016/2017, 2017/2018, and FY 2018/2019



⁸ These complaints were filed pursuant to the City's internal process. Complaints filed externally with the California Department of Fair Employment and Housing (DFEH) or the U.S. Equal Employment Opportunity Commission (EEOC) are not included. Of the 58 City departments, only the 26 departments in which a sexual harassment complaint was filed during FY 2016/2017, FY 2017/2018, or FY 2018/2019 are included in this chart.

