

# The Goal of Equal Employment Opportunity: NO VICTIMS

## *FOREWORD*

The 2012-2013 Grand Jury was sworn in on July 2, 2012. Within two weeks, the Grand Jury learned of allegations of inappropriate behavior which resulted in employee victimization. Whether a spouse, parent, significant other, or friend, the Grand Jury believed strongly that “NO MORE VICTIMS” was the goal for 2012-2013. This concern has resulted in three related studies: *A Call for Ethical Standards: Corruption in Orange County*, *The Culture of Harassment: Change on the Horizon*, and this report comparing Equal Employment Opportunity (EEO) procedures in Orange County cities to County government.

## *SUMMARY*

Under (EEO) protections, sexual harassment is unlawful. Harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment.

Throughout 2011 and 2012, intrigue, rumors, and eventually the OC District Attorney filed criminal charges against a high-ranking County executive. News outlets reported that the senior employee sexually battered co-workers in the workplace. The Grand Jury was privy to information concerning the alleged behavior. Although details will not be nor can they be revealed in this study, suffice it to say that each Grand Jury Panel Member was appalled at the alleged behavior and alarmed by the ineptitude of County managers who investigated complaints of sexual misconduct. Clearly these events were traumatizing for the victims and an embarrassment to the County. Subsequently, County leaders made changes to ensure the swift and appropriate handling of future EEO complaints.

The Grand Jury is pleased to report that Orange County cities, as employers, appear to be on the cutting edge in their awareness of the potential tragedies and/or liabilities associated with sexual harassment and discrimination. We commend these municipalities for their vigilance, the seriousness with which they approach these very important topics and the training provided to all employees. Orange County municipalities not only adhere to Federal and State legislation, but honor it.

Since the revelations and the exit of the accused county executive, the County’s efforts are worthy of note as well. Recentralization of the Human Resources function, now called the Human Resource Services Department (HRSD), and a significant investment in a broad training initiative will enhance employee protections and reduce liability exposure. The County’s continued efforts are critical to achieving these goals.

Commendations, while satisfying to report, carry with them the obligation to continue the crusade against discrimination, harassment, and retaliation. Consistent attention to fine tuning these efforts will ensure strict adherence to the law.

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## REASON FOR STUDY

The Grand Jury's role as civil watchdog led the Grand Jury to further explore the matter of sexual harassment in public sector government.

How well are the EEO policies, procedures, and practices actually protecting City and County government employees? Realistically, policies and procedures merely define the rules. It is people who enforce the rules that truly protect other people. Some will claim that information in this report is history and old news. It is the opinion of the Grand Jury that this information is not only relevant, but is required in order to raise the public's awareness to the importance of compliance with Federal and State EEO legislation. The goal is to learn from mistakes and to take cautionary action to avoid repeating them.

Sexual harassment, discrimination, and retaliation have no place in any employment setting, particularly those where the entities are expected to respect the value of its employees and the people they serve.

## METHOD OF INVESTIGATION

The 2012-2013 Orange County Grand Jury performed the following tasks to collect information:

- Developed and sent questionnaires to all 34 OC cities and to the County's Director of the newly recentralized HRSD regarding topics including training, receipt of complaints and method of investigations;
- Interviewed City a sampling of executives and Human Resource Managers;
- Interviewed all County Supervisors, a number of executives and department heads;
- Reviewed EEO complaint statistics for the past 5 years in both OC cities and the County;
- Documented and reviewed confidential communications with County and City personnel regarding EEO incidents and violations;
- Conducted research on legal regulations and protected classes covered under both State of California and Federal harassment and discrimination laws.<sup>1</sup>

## **In the Beginning – The Genesis of Protections**

The Civil Rights Act of 1964 was passed on July 2<sup>nd</sup> of that year. The untimely loss of President John F. Kennedy in November 1963 to an assassin's bullet threatened to derail the legislation he had long championed. However, a new champion, an unlikely one in the minds of most civil rights organizations, was found in the person of the new President, Lyndon B. Johnson.

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<sup>1</sup> <http://www.history.com/topics/civil-rights-act>

<sup>2</sup> [www.quotes.net/authors/Lyndon+B.+Johnson](http://www.quotes.net/authors/Lyndon+B.+Johnson)

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July 2, 1964 LBJ signs Civil rights Legislation as members of Congress look on.

Five days after the assassination, with the nation still grieving, President Johnson eloquently invoked the recent tragedy in an effort to give some meaning to that most senseless of acts. Addressing a Joint Session of Congress, President Johnson stated

*“We have talked long enough in this country about civil rights. It is time to write the next chapter and to write it in the books of law . . . . No eulogy could more eloquently honor President Kennedy's memory than the earliest possible passage of the civil rights bill for which he fought so long.”*<sup>2</sup>

From the Civil Rights Act of 1964 to the present, civil rights have expanded from primarily a rural issue (strongly linked to voting rights) to now include many categories/classes to ensure all Americans are afforded equal opportunity, dignity and respect in all aspects of American life. This report focuses on the employment aspect.

## **The Federal Definition of Sexual Harassment**

In 1972, the United States Congress created the Equal Employment Opportunity Commission (EEOC). The EEOC was empowered to enforce Title VII of the Civil Rights

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<sup>2</sup> [www.quotes.net/authors/Lyndon+B.+Johnson](http://www.quotes.net/authors/Lyndon+B.+Johnson)

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Act of 1964. The EEOC created regulations prohibiting sexual harassment and defined harassment as a form of sexual discrimination. Since 1972, the definitions and categories of what constitutes sexual harassment have expanded and now include several areas not originally defined.

It is unlawful to harass individuals because of gender. Harassment can include any unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature only. Harassment does not have to be of a sexual nature and can include offensive remarks about a person's gender. For example, it is illegal to harass a woman by making offensive comments about women in general.

Both the victim and the harasser can be either a woman or a man, and the victim and harasser can be the same gender.<sup>3</sup>

The law doesn't prohibit simple teasing, offhand comments, or isolated incidents that may not be considered serious. But teasing or off-hand comments are illegal when they are so frequent or so severe that they create a hostile or offensive work environment.

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, any employee, or someone who is not an employee at all, such as a client or vendor. When a manager or supervisor expects "Quid Pro Quo"<sup>4,5</sup> to achieve their goals, it is considered sexual harassment in the eyes of the law.

Sexual harassment is not specifically aimed at protected classes. Federal laws identify legally protected classes as race, color, religion, national origin, age, gender and disability.

Several regulations comprise Federal (EEO) Laws:

- Title VII of the Civil Rights Act of 1964 - prohibits employment discrimination based on race, color, religion, sex, or national origin;
- Equal Pay Act of 1963 (EPA) protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination;
- Age Discrimination in Employment Act of 1967 (ADEA) protects individuals who are 40 years of age or older;
- Title I and Title V of the Americans with Disabilities Act (ADA) of 1990 prohibits employment discrimination against qualified individuals with

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<sup>3</sup> <http://oag.ca.gov/publications/CRhandbook/ch2>

<sup>4</sup> [www.fs.fed.us/cr/sepm/fwp/correspondence/sex\\_harassment.html](http://www.fs.fed.us/cr/sepm/fwp/correspondence/sex_harassment.html)

<sup>5</sup> "Quid Pro Quo" in Latin refers to a favor or advantage granted in return for something

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- disabilities in the private sector, and in State and local governments; in addition, reasonable accommodation for the disabled was mandated.
- Sections 501 and 505 of the Rehabilitation Act of 1973 prohibit discrimination against qualified individuals with disabilities who work in the Federal government;
  - Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employment discrimination based on genetic information about an applicant, employee, or former employee;
  - The Civil Rights Act of 1991 includes the ability to award monetary damages in cases of intentional employment discrimination;
  - It is legally unlawful to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit;
  - Regulations require that employers reasonably accommodate applicants' and employees' sincerely held religious practices, unless doing so would impose an undue burden on the operation of the employer's business.<sup>6</sup>

The Equal Employment Opportunities Commission (EEOC) enforces these laws and provides oversight and coordination of all EEO regulations, practices and policies. Employers are required to post notices to all employees advising them of their rights under the law and an employee's right to be free from retaliation. These notices must be accessible to persons with visual or other disabilities that affect their ability to read.

## **State of California – Additional Regulations**

In California, the Fair Employment and Housing Act (FEHA) is the primary law prohibiting discrimination in employment, housing and public accommodation. At the time of its adoption, the Legislature reaffirmed that it is the public policy of California to protect and safeguard such rights and opportunities.<sup>7</sup> The Law is administered by the Department of Fair Employment and Housing (DFEH).

Laws related to harassment and discrimination are not automatically duplicative between Federal and State governments. While the basic tenets remain the same, protected classes and the right to sue for monetary damages may differ.

In California, prohibitions against harassment, discrimination and retaliation are based on race, religious creed, color, national origin, ancestry, physical disability (including HIV/AIDS), mental disability, medical condition, marital status, sex (including pregnancy, childbirth, or related medical conditions), age (40 or above), or sexual orientation. The law refers specifically to an affected person in a protected class.

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<sup>6</sup> <http://www.eeoc.gov/facts/qanda.html>

<sup>7</sup> <http://oag.ca.gov/publications/CRhandbook/ch2>

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FEHA also protects contract workers from harassment in the workplace. The same protection as outlined above applies to contract workers.

## State of California - Definition of Sexual Harassment

The State of California defines sexual harassment as any unsolicited or unwelcome sexual advance, requests for sexual favors or other verbal, physical, visual or written conduct of a sexual nature directed to persons of the same or opposite sex when:

1. Submission to such conduct is made either explicitly or implicitly as a term or condition of employment;
2. Submission to or rejection of such conduct by an employee is used as a basis for employment decisions affecting the employee; or
3. Such conduct has the purpose or effect of substantially interfering with an employee's work performance or creating an intimidating, hostile or otherwise offensive work environment.

Additionally, State court has defined two types of sexual harassment:

1. **Quid Pro Quo:** This form of sexual harassment occurs when a supervisor or manager:
  - a. Demands, as an explicit or implied term or condition of employment or employment-related decisions, a subordinate submit to sexual advances (this may include situations which began as consensual relationships, but which later ceased to be consensual); and/or
  - b. Makes requests for sexual favors or other verbal, visual or physical conduct of a sexual nature that is an explicit or implied term or condition of employment decisions.

Examples of Quid Pro Quo harassment include:

- a. Requests for sexual favors in exchange for a promotion or raise;
  - b. Expressed or implied statements that a person will be demoted or fired if she or he does not submit to a sexual request; and/or
  - c. Carrying out the threat.
2. **Hostile Work Environment:** The courts look at the totality of the circumstances surrounding the alleged incidents of harassment to determine whether unlawful conduct has occurred. Generally, there must be a pattern of unlawful conduct, although a single serious incident in some cases, such as a sexual battery, is enough to constitute sexual harassment. This form of sexual harassment occurs when an individual is subjected to any unwelcome sexual advances or other gender-based conduct that is sufficiently severe or pervasive as to interfere with the individual's work performance or creates an intimidating, hostile or offensive work environment. The harasser can be a manager, supervisor, co-worker, any employee, or in certain circumstances, possibly even a non-employee, such as a supplier or customer. The intent of the person accused of sexual harassment is

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of secondary importance. The impact of the offensive behavior on the offended person is the primary factor in determining if sexual harassment has occurred.<sup>8</sup>

## **Cities – How They Handle EEO Matters**

The 2012-2013 Grand Jury developed and distributed a questionnaire to the Human Resource Managers of the 34 cities in Orange County which included questions related to EEO. All cities responded, with the exception of the City of Westminster. The County's Director of HRSD also responded to the same questions.<sup>9</sup>

The Grand Jury's study is based on responses from 33 cities and the County. Because the Grand Jury cannot presume to interpret or somehow guess at the meaning of an entity's response, the responses have been reported as indicated on the questionnaire. Where partial responses were given, efforts were made to obtain additional clarification.

## **The following represents feedback from the cities and County HRSD:**

### **Do you have policies and procedures that comply with EEO laws, specifically Harassment, Discrimination and Retaliation prevention?**

All cities and the County have established policies and procedures that comply with EEO law.

### **Are employees given an employee Handbook that includes EEO Anti-Harassment, Anti-Discrimination and Anti-Retaliation materials?**

All cities provided materials documenting their comprehensive compliance with Federal and State legal requirements. These materials included Employee Handbooks, Memorandums of Understanding with labor groups and specific city-adopted policies.

The County has policies and procedures governing harassment, discrimination, retaliation, methods for filing complaints which the County updates annually to ensure compliance. The Chair of the Orange County Board of Supervisors sends an annual letter to employees reminding them of their rights and responsibilities. In addition, the New Hire Packet contains EEO information.

### **Is your Human Resources Department Centralized?**

Because cities have fewer employees than the County, it is no surprise that all cities responded that their HR Department is centralized. Centralization refers to the grouping of all traditional HR functions within one Department.

As a cost-saving measure, the County moved to a decentralized human resources model after the bankruptcy in 1994. Under decentralization most County

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<sup>8</sup> [www.hostileworkenvironmentguide.com/definitionwhostileworkenvironment.html](http://www.hostileworkenvironmentguide.com/definitionwhostileworkenvironment.html)

<sup>9</sup> Grand Jury Questionnaire, December, 2012

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agencies had their own HR division responsible for the delivery of HR services. Although each agency HR staff could and was encouraged to consult regularly with the County's Human Resource Department, the reality was that communication was limited. Some agency HR departments had issues with compliance, harassment, discrimination, and/or retaliation violations which they often did not recognize. As a consequence, some violations were observed or, at a minimum overlooked, and not reported to Central HRD as mandated by County policy. In addition, there were routine deviations from recruitment and selection processes. HR staff frequently lacked specific HR expertise and experience. The lack of training contributed to some instances of favoritism and recruitment violations.

In the wake of the HRD Performance Audit, the County is currently implementing the recentralization of all HR functions into one department (HRSD). To further reinforce the change in functionality, the former HRD has been renamed the Human Resource Services Department (HRSD). This change will involve additional training of existing personnel and hiring of skilled HR professionals.

### **Is Anti-Harassment, Anti-Discrimination and Prevention of Retaliation training given to HR staff, with particular attention to conducting investigation of complaints?**

All cities indicated that HR personnel receive EEO training with an emphasis on investigatory training. This training includes, but is not limited to, Americans with Disabilities Act (ADA) Compliance, Leave Rights, Preventing Harassment and Discrimination in the Workplace.

County restructuring into HRSD resulted in the implementation of procedures to train HR staff throughout the year.<sup>10</sup>

### **How often is EEO Anti-Harassment, Anti-Discrimination and Prevention of Retaliation training given to management, supervision and line staff?**

State and Federal law require training for management and supervision every two years, but defines no specific requirement for line staff. The cities responded to this question as shown in Table 1 – Grand Jury Questionnaire, Question No. 6.

| FREQUENCY<br>OF TRAINING    | MANAGEMENT    | SUPERVISION   | LINE STAFF   |
|-----------------------------|---------------|---------------|--------------|
| County Board of Supervisors | Every 2 Years | Every 2 Years | None         |
| County HRSD                 | Every 2 Years | Every 2 Years | In late 2013 |
| Aliso Viejo                 | Every 2 Years | Every 2 Years | None         |
| Anaheim                     | Every Year    | Every Year    | Every Year   |
| Brea                        | Every 2 Years | Every 2 Years | As Needed    |

<sup>10</sup> Presentation by HRSD Director, November 26, 2012

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|                        |                |                 |               |
|------------------------|----------------|-----------------|---------------|
| Buena Park             | Every 2 Years  | Every 2 Years   | Every 2 Years |
| Costa Mesa             | Every 6 Months | 2+ Per Year     | None          |
| Cypress                | Every 2 Years  | Every 2 Years   | As Needed     |
| Dana Point             | Every 2 Years  | Every 2 Years   | Every 2 Years |
| Fountain Valley        | Every 2 Years  | Every 2 Years   | Every 2 Years |
| Fullerton              | Every 2 Years  | Every 2 Years   | As Needed     |
| Garden Grove           | Every 2 Years  | Every 2 Years   | Every 2 Years |
| Huntington Beach       | Every 2 Years  | Every 2 Years   | Every 2 Years |
| Irvine                 | Every 2 Years  | Every 2 Years   | As Needed     |
| La Habra               | Every 2 Years  | Every 2 Years   | As Needed     |
| La Palma               | Every 2 Years  | Every 2 Years   | As Needed     |
| Laguna Beach           | Every 2 Years  | Every 2 Years   | As Needed     |
| Laguna Hills           | Every 2 Years  | Every 2 Years   | Every 2 Years |
| Laguna Niguel          | Every 2 Years  | Every 2 Years   | None          |
| Laguna Woods           | Every 2 Years  | Every 2 Years   | Every 2 Years |
| Lake Forest            | Every 2 Years  | Every 2 Years   | As Needed     |
| Los Alamitos           | Every Year     | Every Year      | Every Year    |
| Mission Viejo          | Every 2 Years  | Every 2 Years   | As Needed     |
| Newport Beach          | Every 2 Years  | Every 2 Years   | As Needed     |
| Orange                 | Every 2 Years  | Every 2 Years   | None          |
| Placentia              | Every 2 Years  | Every 2 Years   | As Needed     |
| Rancho Santa Margarita | Every 2 Years  | Every 2 Years   | None          |
| San Clemente           | Every 2 Years  | Every 2 Years   | As Needed     |
| San Juan Capistrano    | Every 2 Years  | Every 2 Years   | None          |
| Santa Ana              | Every 2 Years  | Every 2 Years   | As Needed     |
| Seal Beach             | Every 2 Years  | Every 2 Years   | As Needed     |
| Stanton                | Every 2 Years  | Every 2 Years   | Every 2 Years |
| Tustin                 | Every 2 Years  | Every 2 Years   | Every 2 Years |
| Villa Park             | Every 2 Years  | Every 2 Years   | None          |
| Westminster            | NO RESPONSE    | NO RESPONSE     | NO RESPONSE   |
| Yorba Linda            | Every 2 Years  | Every Two Years | None          |

All cities are compliant with State and Federal law. Best practices and risk management make it prudent to provide training for line staff. Since it is line staff that generally files EEO complaints, it is critical that they understand their rights and their recourse when filing complaints, i.e. being able to make the distinction between acceptable and unacceptable behavior. While a behavior may be annoying, it may not meet the test of unacceptability in EEO terms.

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The County provides on-line training for management and supervisors, however, limited training has been offered to line staff in only some departments. In 2013, HRSD will begin classroom training for management and supervisors and, at a minimum, online training for line staff. It is the considered opinion and experience of the Grand Jury that classroom training is far more effective than on-line training which provides limited opportunity for personal interaction.

### **How soon after promotion to management or supervision is an employee required to attend EEO Anti-Harassment, Discrimination and Retaliation training (AB1825 law requires training within 6 months)?**

All cities complete training within six months of a promotion to supervisor.

Historically, County government did not have policies and procedures to comply with AB1825. Recent changes in HRSD address this issue and a policy to train new supervisors within six months as required by law has already been established, yet another example of the proactive efforts of the newly reorganized HRSD.

### **Do you use outside companies/consultants for EEO training?**

All cities in Orange County use highly recognized and respected companies/consultants such as Liebert Cassidy Whitmore, Global Compliance, HR Consortiums, and Willis Training Solutions. Some training firms, in order to make training more cost-effective for public sector employers, invite employers within a geographic area to join training consortiums and share the cost thus enabling more cities to provide training to their employees.

The County has also used Liebert Cassidy Whitmore etc. and has recently solicited a Request for Proposal (RFP) to prospective vendors, seeking bids to expand human resource training for all employees as well as for HRSD staff.

### **What is your annual budget to comply with EEO mandated laws and regulations?**

Cities generally budget annually for training. EEO training expenditures are often included in the Human Resource Services Department budget. HR training budgets range from zero to \$157,000 annually. The range in budgets appears to be proportional to the number of city employees. Smaller cities (Aliso Viejo, Villa Park, Dana Point, and Fountain Valley) do not have a dedicated budget line item, where larger cities (Irvine, Anaheim, Orange, etc.) have a dedicated budget line item to cover training expenses.

The County currently has budgeted sufficient funds (\$234,952) to provide training for management and supervision and for expenses to hire outside expertise to investigate EEO complaints and issues when needed. The Board of Supervisors has committed funds for increasing the budget for EEO training to include all employees.

### **Do you have a documented process for EEO complaint notification, investigation and resolution?**

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All responding cities in Orange County have documented processes to manage EEO complaints (notification, investigation and resolution).

County HRSD recently implemented procedures to define a clear and concise process for the receipt, investigation and resolution of EEO complaints/incidents.

### **When a conflict of interest exists, what options are available to employees and/or staff to ensure a fair and unbiased investigation?**

All responding cities in Orange County have escalation processes to effectively address conflicts of interest related to complaints as they may arise.

The County recently established a comprehensive escalation process. To reinforce this new process, the Directors of HRSD, Internal Audit, and County Counsel created a Compliance Oversight Committee (COC) to review EEO related complaints received by the Department of Internal Audit's fraud hotline, the EEO Access Office, and complaints regarding executive management or elected officials. An example of concern the COC might explore is how best to handle a complaint directed at the complainant's supervisor, ensuring that a subordinate is never assigned to investigate his or her supervisor.

### **Are the names and phone numbers of internal and /or external EEO contacts documented and distributed to all employees regarding HR/EEO reporting?**

All responding cities answered affirmatively to this question. Commendably, the cities have multiple methods for an employee to file a grievance or complaint.

As noted earlier, the County issues an annual letter from the Chair of the Board of Supervisors, which includes the various filing procedures available to its 17,000 employees. Lunch and break rooms contain posters that include procedures to file an EEO complaint. The existing County EEO Access Office has been chronically understaffed. With the recent hiring of an individual experienced in EEO and related investigations, communication with employees and executive management is expected to improve dramatically. In addition, an additional position has been allocated to the EEO Access Office and will be filled in the near future.

### **Is your city currently involved in any litigation concerning EEO Harassment, Discrimination or Retaliation complaints?**

The cities responded as follows:

1. **Yes** - Buena Park, Huntington Beach, Newport Beach, Santa Ana,
2. **No** - Aliso Viejo, Anaheim, Brea, Costa Mesa, Cypress, Dana Point, Fountain Valley, Fullerton, Garden Grove, Irvine, Laguna Beach, La Habra, La Palma, Laguna Hills, Laguna Niguel, Lake Forest, Laguna Woods, Los Alamitos, Mission Viejo, Orange, Seal Beach, Placentia, Rancho Santa Margarita, San Clemente, San Juan Capistrano, Stanton, Tustin, Villa Park, Yorba Linda.

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The County responded as follows:

**Yes** - With approximately 17,000 employees, the County has averaged 50 EEO complaints per year. It is worth noting that the 50 complaints may represent only those actually received by the previous HRD and could easily have excluded statistics from the decentralized HRD staff within individual departments. Centralized HRSD will be able to provide more comprehensive statistics. County departments headed by an elected official are not required to report to or be part of the recentralized HRSD. Major problems for the County are all County-wide complaints not being reported and whether or not the assigned investigator is properly trained

The Grand Jury acknowledges that the difference in the number of complaints, when comparing cities with the County, is not statistically material. All of the responding entities have had EEO complaints; all have procedures for handling EEO complaints. Given size, and notwithstanding the reporting concerns noted above, proportionately both cities and County appear to have a similar number of EEO complaints.

### **Do you have employment practices liability coverage for HR/EEOC?**

There are several types of insurance coverage that a city may have. Employment practices liability coverage for EEO would likely be part of a governmental entity's Liability Protection Program. Not all, but many, public entities avail themselves of membership in Joint Powers Authorities which provide insurance coverage at a more reasonable cost for members of their multi-member insurance pool. In this type of arrangement, each member's initial premiums are based on its size and annual budget. Member entities also carry their own Self-Insured Retention (SIR), which is similar to either a stop-loss or deductible. If the liability cost of a claim exceeds the individual member's SIR, Pool coverage would then take over. Ultimately, all members of the Pool share costs, making a Joint Powers Authority a prudent risk management protection route.<sup>11</sup>

Responses from cities vary as shown in the following:

1. Aliso Viejo is insured up to \$50 million (SIR not specified);
2. Anaheim is insured for \$4 million through SIR and ACCEL;
3. Brea is insured up to \$41 million, with an SIR of the first \$150,000;
4. Buena Park is insured (maximum amount not specified) and is self-insured for the first \$150,000;
5. Costa Mesa is insured up to \$10 million and self-insured for the first \$150,000;
6. Cypress is insured up to \$41 million and self-insured for the first \$150,000;
7. Dana Point is insured up to \$50 million (Deductible not specified);
8. Fountain Valley – Has insurance, but did not specify the amount;

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<sup>11</sup> [www.cj pia.org/4dcgi/programs/coverage\\_summaries.html](http://www.cj pia.org/4dcgi/programs/coverage_summaries.html)

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9. Fullerton is self-insured for claims up to \$2 million, with additional coverage up to \$30 million;
10. Garden Grove is self-insured;
11. Huntington Beach is insured up to \$20,000,000 and is self-insured for the first \$1,000,000;
12. Irvine is insured up to \$1 million, with an SIR of the first \$150,000;
13. La Habra is insured up to \$12 million. (Deductible not specified);
14. La Palma is insured up to \$50 million, with an SIR of the first \$5 million;
15. Laguna Beach is self-insured with Pool coverage to \$1million; additional coverage to \$40 million;
16. Laguna Hills is insured for the first \$1 million (maximum amount was not specified).
17. Laguna Niguel is insured up to \$50 million (Deductible not specified);
18. Laguna Woods is self-insured;
19. Lake Forest is insured up to \$50 million (Deductible not specified);
20. Los Alamitos is self-insured;
21. Mission Viejo is insured up to \$15 million and self-insured for the first \$5.5 million;
22. Newport Beach is insured up to \$10 million and self-insured for the first \$500,000;
23. Orange has a \$200,000 policy through the California Insurance Pool Authority;
24. Placentia is self-insured;
25. Rancho Santa Margarita is insured up to \$1 million and self-insured for the first \$10,000;
26. San Clemente is insured up to \$50 million (Deductible not specified);
27. San Juan Capistrano is insured up to \$50 million with no deductible;
28. Santa Ana is self-insured for Liability up to \$1 million with Excess Liability coverage up to \$52 million;
29. Seal Beach is insured up to \$50 million (Deductible not specified);
30. Stanton is self-insured up to \$25,000;
31. Tustin is insured up to \$2 million with an SIR of the first \$150,000;
32. Villa Park is insured up to \$50 million.
33. Yorba Linda is insured up to \$28 million and self-insured for the first \$150,000.

The County is self-insured for the first \$5 million and has coverage for claims extending beyond the first \$5 million, up to maximum coverage of \$100 million per occurrence.

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## FINDINGS

In accordance with California Penal Code Sections 933 and Section 933.05, the 2012 - 2013 Grand Jury requests responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of the policies, procedures and level of EEO protections City and County government provide employees in municipal and county government in Orange County, the 2012 - 2013 Orange County Grand Jury has arrived at the principal findings as follows (NOTE: These findings are unconfirmed with the City of Westminster who did not respond to the Grand Jury's Questionnaire):

- F1. Municipalities in Orange County cities are well-versed in EEO issues and maintain exemplary compliance strategies.
- F2. In an effort to improve Human Resource efficiencies and increase focus on EEO, the County has centralized its Human Resource functions in the new HRSD.
- F3. The County has implemented a Compliance Oversight Committee (COC) to review all EEO complaints in the County.
- F4. Complaint ratios between OC cities and the County of Orange are similar; but differences in how previous complaints were handled in the County led to major problems.
- F5. The County and several cities do not offer, or provide limited, training in harassment, discrimination, and retaliation, particularly for line staff. At this time, although line staff training is not required, all staff benefit from EEO training.
- F6. There are several Risk Management Joint Powers Insurance Pools (of which most cities are members) to ensure adequate coverage and sharing of liability with other member entities.

## RECOMMENDATIONS

In accordance with California Penal Code Sections §933 and §933.05, the 2012 - 2013 Grand Jury requests responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

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Based on its investigation of EEO practices and compliance in the 33 responding cities and Orange County Government, the Grand Jury makes the following recommendations:

- R1. All OC cities and County government shall include funding for training of management and supervision as required by law and ensure training for all employees every two to three years. (F2,3,4,5)
- R2. OC cities shall review SIR aggregate limits every five years to assess changes in risk management economies and insurance pool mix. (F6)
- R3. OC cities and the County of Orange government shall continue efforts to utilize best practices with respect to Harassment, Discrimination, and Retaliation. (F1,3)
- R4. The OC Board of Supervisors shall continue to provide funding and resources sufficient to complete HRSD's centralization program. (F2)

## REQUIRED RESPONSES

California Penal Code Section 933 requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.) such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section 933.05 (a), (b), and (c), details, as follows, the manners in which such comments are to be made:

- (a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:
  - 1. The respondent agrees with the finding.
  - 2. The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:
  - 1. The recommendation has been implemented, with a summary regarding the implemented action.
  - 2. The recommendation has not yet been implemented, but will be

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implemented in the future, with a time frame for implementation.

3. The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
  4. The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.
- (c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected official, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code Section 933.05 are required from:

Responses to **Findings F1, F4, F5, F6** are requested from the Human Resources administrators/directors/managers in 33 responding Orange County municipalities.

Responses to **Finding F2, F3, F4, F5, F6** are requested from the Orange County Human Resource Services Department.

Responses to **Finding F3** are requested from the Orange County Chief Executive Office and the Orange County Internal Audit Department.

Responses to **Finding 6** are requested from the Orange County Chief Executive Office and required from the Board of Supervisors.

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| <u>REQUIRED/REQUESTED<br/>RESPONSES</u> | <u>F1</u> | <u>F2</u> | <u>F3</u> | <u>F4</u> | <u>F5</u> | <u>F6</u> |  | <u>R1</u> | <u>R2</u> | <u>R3</u> | <u>R4</u> |
|---|-----------|-----------|-----------|-----------|-----------|-----------|--|-----------|-----------|-----------|-----------|
| <u>OC Board of Supervisors</u>          |           |           |           |           |           |           |  | x         | x         |           | x         |
| <u>OC Director of HRSD</u>              |           | x         | x         | x         | x         |           |  | x         | x         | x         |           |
| <u>OC CEO's Office</u>                  |           |           | x         |           |           |           |  |           |           |           |           |
| <u>OC Director of Internal Audit</u>    |           |           | x         |           |           |           |  |           |           |           |           |
| <u>Aliso Viejo</u>                      | x         |           | -         | -         | x         | -         |  | x         | x         | x         |           |
| <u>Anaheim</u>                          | x         |           |           |           | x         | -         |  | x         | x         | x         |           |
| <u>Brea</u>                             | x         |           |           |           | x         | -         |  | x         | x         | x         |           |
| <u>Buena Park</u>                       | x         |           |           |           | x         | -         |  | x         | x         | x         |           |
| <u>Costa Mesa</u>                       | x         |           |           |           | x         | -         |  | x         | x         | x         |           |
| <u>Cypress</u>                          | x         |           |           |           | x         | -         |  | x         | x         | x         |           |
| <u>Dana Point</u>                       | x         |           |           |           | x         | -         |  | x         | x         | x         |           |
| <u>Fountain Valley</u>                  | x         |           |           | -         | x         |           |  | x         | x         | x         |           |
| <u>Fullerton</u>                        | x         |           | -         |           | x         | -         |  | x         | x         | x         |           |
| <u>Garden Grove</u>                     | x         |           |           |           | x         | -         |  | x         | x         | x         |           |
| <u>Huntington Beach</u>                 | x         |           |           |           | x         | -         |  | x         | x         | x         |           |
| <u>Irvine</u>                           | x         | -         |           |           | x         | -         |  | x         | x         | x         |           |
| <u>La Habra</u>                         | x         | -         |           |           | x         | -         |  | x         | x         | x         |           |
| <u>La Palma</u>                         | x         |           |           |           | x         | -         |  | x         | x         | x         |           |
| <u>Laguna Beach</u>                     | x         |           |           |           | x         | -         |  | x         | x         | x         |           |
| <u>Laguna Hills</u>                     | x         |           |           | -         | x         | -         |  | x         | x         | x         |           |
| <u>Laguna Niguel</u>                    | x         |           |           | -         | x         | -         |  | x         | x         | x         |           |
| <u>Laguna Woods</u>                     | x         | -         |           |           | x         | -         |  | x         | x         | x         |           |
| <u>Lake Forest</u>                      | x         |           |           | -         | x         | -         |  | x         | x         | x         |           |
| <u>Los Alamitos</u>                     | x         | -         |           | -         | x         | -         |  | x         | x         | x         |           |
| <u>Mission Viejo</u>                    | x         |           |           |           | x         | -         |  | x         | x         | x         |           |
| <u>Newport Beach</u>                    | x         | -         |           |           | x         | -         |  | x         | x         | x         |           |
| <u>Orange</u>                           | x         |           |           |           | x         | -         |  | x         | x         | x         |           |
| <u>Placentia</u>                        | x         |           |           |           | x         | -         |  | x         | x         | x         |           |
| <u>Rancho Santa Margarita</u>           | x         |           |           |           | x         | -         |  | x         | x         | x         |           |
| <u>San Clemente</u>                     | x         |           |           |           | x         | -         |  | x         | x         | x         |           |
| <u>San Juan Capistrano</u>              | x         |           |           |           | x         | -         |  | x         | x         | x         |           |
| <u>Santa Ana</u>                        | x         |           |           |           | x         | -         |  | x         | x         | x         |           |
| <u>Seal Beach</u>                       | x         | -         |           | -         | x         | -         |  | x         | x         | x         |           |
| <u>Stanton</u>                          | x         |           |           |           | x         | -         |  | x         | x         | x         |           |
| <u>Tustin</u>                           | x         |           |           |           | x         | -         |  | x         | x         | x         |           |
| <u>Villa Park</u>                       | x         | -         |           | -         | x         | -         |  | x         | x         | x         |           |
| <u>Westminster</u>                      | x         |           |           |           | x         | -         |  | x         | x         | x         |           |
| <u>Yorba Linda</u>                      | x         |           |           |           | x         | -         |  | x         | x         | x         |           |

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## **ACRONYMS USED IN THIS REPORT**

*OC = Orange County*

*GJ = Grand Jury*

*EEO = Equal Employment Opportunity*

*EEOC = Federal Equal Employment Opportunities Commission*

*HR = Human Resources*

*HRSD = OC Human Resource Services Department (newly recentralized in second half of 2012)*

*DFEH = State of California Department of Fair Employment and Housing*

*EPA = Equal Pay Act of 1963*

*ADEA = Age Discrimination in Employment Act (1990)*

*ADA = Americans with Disabilities Act (1973)*

*GINA = Gender Information Non-Discrimination Act (2008)*

*FEHA = Fair Employment and Housing Act (State of California)*

*HIV = Human Immunodeficiency Virus*

*AIDS = Auto Immune Deficiency Virus*

*AB 1825 = State of California Assembly Bill Number 1825*

*HRD = Human Resources Department (the decentralized arrangement in place from post-bankruptcy 1994 to mid-2012)*

*HR = Human Resources*

*COC = Compliance Oversight Committee comprised of Director of Human Resource Services Department, Director of Internal Audit and County Counsel*

*OCEA = Orange County Employees' Association*

*RFP = Request for Proposal (essentially a bidding process)*

*SIR = Self Insured Retention (reference to the equivalent of a deductible, the amount a City alone must cover prior to level at which Joint Powers Authority Pool participation takes over)*

*CEO = Orange County's Chief Executive's Officer*