



THE CITY OF SAN DIEGO

M E M O R A N D U M

DATE: Sept. 13, 2023
TO: Martha Sainz, Captain, ID #4907
FROM: Rudy Tai, Assistant Chief, Patrol Operations
SUBJECT: Written Warning

This memorandum is being hand delivered to you to advise you of a disciplinary written warning.

You have engaged in discriminating comments regarding [REDACTED]
[REDACTED] religion during his assignment at Southern Division under your supervision.

Your written warning is based on the following:

[REDACTED] stated while working for you at Southern Division you made offensive comments about his religion while processing a prisoner. You told him to "Stop being Christian on-duty" when he allowed a prisoner to use the telephone. [REDACTED] stated you came over to his desk and told him that you told [REDACTED] to not bring religious views to work or something along those lines. [REDACTED] believed you were referencing his religion during your comments. He was offended by the comments and perceived them be to discriminatory in nature. [REDACTED] believed it was offensive in nature and an inappropriate statement regarding religion.

In your statement, you said "You can't let your religion get in the way of doing a criminal investigation. That's why he didn't talk because of what you did. So,

don't do it again. Keep work with work." You admitted talking to [REDACTED] about his religious views negatively impacting his job performance.

Your actions do not uphold the principles of the Equal Employment Opportunity (EEO) policies and a work environment free from discrimination and harassment. You used derogatory language expressing your prejudices towards [REDACTED]

You have violated Civil Service Rule XI, Section 3(d) in that you have violated the following lawful or official regulation, to wit:

1. Administration Regulation 96.50 Equal Employment Policy 5.7.1

It is the City's policy that employees must set an example of accepted conduct and will not participate in or provoke behavior that is discriminatory, harassing, or retaliatory.

2. Department Procedure 5.03, EQUAL EMPLOYMENT OPPORTUNITY, Section V, POLICY STATEMENT, revised September 2, 2021, states in part:

A. Members shall be permitted a work atmosphere free from discrimination and harassment of any form. Members shall not discriminate against, nor harass other members. It shall be the responsibility of all supervisors to ensure a nondiscriminatory work environment exists.

1. San Diego Police Department Policy 5.03, Equal Employment Policy, is incorporated into this procedure by reference.

2. The San Diego Police Department is committed to ensuring the principles of equal treatment in all aspects of employment are understood, respected, and practiced throughout the organization. The Department's policy is to hire, train, compensate, assign, and promote all persons on the basis of merit.

3. Discrimination is unlawful. It creates a negative atmosphere that reduces work productivity and morale, undermines the integrity of the workplace, and destroys professionalism. The Department does not tolerate discrimination or harassment in any form.
 4. Federal and state law makes it illegal to discriminate on the basis of race, color, gender, creed, religion, national origin, age, marital status, ancestry, medical condition (history of cancer), pregnancy, disability, transgender status, or sexual orientation. The Department's EEO policy builds upon this foundation and extends to every employee our commitment to provide a workplace that is consistent with the law and actively supports and implements behavior that reflects our Vision, Values and Mission Statement.
3. Department Procedure 5.03, EQUAL EMPLOYMENT OPPORTUNITY, Section VI, Subsection B, DISCRIMINATION AND HARASSMENT, revised September 2, 2021, states in part:

B. Harassment-free Work Environment

1. All employees shall be provided a work environment free from harassment. Behavior constitutes harassment, as defined by this policy, when it is unwelcome and unsolicited, offends or otherwise causes distress, and is undertaken because of a person's race, color, gender, creed, religion, national origin, age, marital status, ancestry, medical condition, disability, pregnancy, transgender status or sexual orientation. Examples include the use of derogatory comments, slurs, jokes, or derogatory pictures, cartoons, or posters.
4. Department Procedure 5.03, EQUAL EMPLOYMENT OPPORTUNITY, Section VI, Subsection C.1-2, DISCRIMINATION AND HARASSMENT, revised September 2, 2021 states:

C. Impact vs. Intent

1. Whether or not harassment occurred depends not on whether the act was intended to cause harm, but the impact of the act on the individual's employment or work environment. For example, a person who teases in a sexual or racial manner, or tells sexual or

racial jokes, may create an offensive work environment for another worker even though the person intended such action merely to be "good fun." This applies to the field, as well as office positions. If one's behavior is harassing to an individual or a group of individuals, it will not suffice that the harasser failed to recognize the behavior as harassing.

2. It is not a requirement that the complainant be the intended target of the offensive conduct. Witnessing offensive behavior between other employees may be grounds for complaint.

H. Discrimination Based on Religion

Derogatory comments regarding a person's religious beliefs, or lack thereof, will not be tolerated. The Department is required to reasonably accommodate an employee's religious practices, provided it does not create an undue hardship in light of the public health, safety and welfare considerations associated with police work.

You violated the EEO policies and procedures when you made offensive comments about [REDACTED] religion related to processing a prisoner at Southern Division.

During an investigation, [REDACTED] and [REDACTED] interviewed a suspect and allowed the suspect to make a phone call. While interviewing the subject, the subject asked to call his girlfriend after the interview. [REDACTED] told the subject's girlfriend she would be able to talk with him when he was arrested at his residence. [REDACTED] allowed the subject to call his girlfriend over the speaker phone at the holding cell area. [REDACTED] informed you he allowed the subject to make a phone call to his girlfriend. You became upset with him and told him he cannot be Christian at work. You told him he was not going to be a good [REDACTED] if he brings God into the equation. [REDACTED] said it had nothing to do with God and he was being a kind person. You continued to tell [REDACTED] he will not be a successful [REDACTED] because of his religious beliefs because they allowed the suspect to make a phone call.

[REDACTED] heard you say to [REDACTED] "Stop being Christian on-duty" during the processing of a prisoner. [REDACTED] was offended by your comment.

You told him to not have his religious views negatively impact the performance of his duties during the arrest because he failed to obtain a statement. You said, "You can 't let your religion get in the way of doing a criminal investigation. That's why he didn't talk because of what you did. So, don 't do that again. Keep work with work." You felt the comment you made was appropriate and pertinent to his job performance.

Whether or not harassment occurred depends not on whether the act was intended to cause harm, but the impact of the act on the individual's employment or work environment. All employees of the San Diego Police Department shall be provided a work environment free from verbal harassment and discrimination based on religion. There was sufficient evidence to support allegations against you for making a discriminatory comment about religion based on the [REDACTED] and [REDACTED] corroborating statements and your own admission regardless of the context given.

As the Commanding Officer overseeing the personnel assigned to Southern Division, you are held to a higher standard on establishing and maintaining a professional healthy working environment, while preventing discrimination.

You are required to set an example of acceptable conduct by not participating in or provoking behavior that is discriminatory, harassing, or retaliatory.

It is your responsibility to establish and maintain a non-hostile, non-discriminatory work environment free from intimidation, ridicule, or insult.

5. Department Policy 9.20 COURTESY POLICY

Members shall be courteous to all persons. Members shall be tactful in the performance of their duties, shall control their tempers, exercise the utmost patience and discretion, and shall not engage in argumentative discussion. Members shall not use insolent language or gestures in the performance of his or her duties. Members shall not make derogatory comments about or express any prejudice concerning race, religion, politics, national origin, gender (to include gender identity and gender expression), sexual orientation, or similar personal characteristics.

You violated Department Procedure 9.20 when you made discourteous discriminatory comments about [REDACTED] religious beliefs.

As the Commanding Officer overseeing all your employees at Southern Division, you are required to set an example of acceptable conduct free from discourteous, discriminatory, harassing, and retaliatory behavior.

On November 24, 2021, you signed off on your Employee Performance Plan requiring you to conform with policies, procedures and work-related rules specific in Department Rules and Regulations, Department Instructions, City Personnel Manual, Civil Services Rules and the Department's Equal Employment Opportunity Policies.

You are hereby notified that any further instances of misconduct may result in more serious disciplinary action being taken against you.

You have the right to attach a written rebuttal to the Written Warning. The rebuttal must be received within 30 calendar days of receiving the Written Warning. The rebuttal will remain attached until the discipline is removed.

Previous disciplinary action include:

None.

Attached are copies of all reports and discipline applicable to this action. These reports are listed below:

1. Audio Interviews of Complainant
2. Audio Interviews of Complainant
3. Audio Interviews of Complainant
4. Audio Interview of Witness
5. Audio Interview of Witness
6. Audio Interview of Witness
7. Audio Interview of Witness
8. Audio Interview of Witness
9. Audio Interview of Witness
10. Audio Interview of Witness
11. Audio Interview of Witness
12. Audio Interview of Witness
13. Audio Interview of Witness
14. Audio Interview of Witness
15. Audio Interview of Witness
16. Audio Interview of Witness
17. Audio Interview of Witness

18. Audio Interview of [REDACTED]
19. Audio Interview of Subject Captain Martha Sainz
20. San Diego Police Department Discrimination and Harassment Control Forms and attached narrative
21. Sworn Witness/Civilian/ Subject Personnel Admonishments
22. Copy of Captain Sainz' original transcription of Interview
23. Copy of email thread by [REDACTED]
24. Copy of questionnaire for Law Offices of [REDACTED]
25. Copy of signed Employee Performance Plan Dated 11-24-21

This Written Warning has been discussed with me and I have received a copy of it and the above listed documents.

[REDACTED]
Rudy Tai
Assistant Chief

[REDACTED]
Martha Sainz

SEPT 15, 2023
Date

9:22
am.

[REDACTED]
Witness

9-15-23
Date

