

# San Francisco Police Department

## **Disciplinary Penalty & Referral Guidelines for Sworn Members of the San Francisco Police Department**



Draft 02/22/19

# San Francisco Police Department

## DISCIPLINARY PENALTY AND REFERRAL GUIDELINES

### **I. PURPOSE**

These guidelines are presented as examples of the factors the Chief of Police and the Department of Police Accountability (“DPA”) will consider in determining the charges for instances of misconduct. This will also serve as a guide when considering the classifications of misconduct, and appropriate penalties for sustained violations. The Disciplinary Penalty and Referral Guidelines will enhance consistency and assist in determination of appropriate and reasonable penalties. For purposes of these guidelines the term “employee” means sworn member of the San Francisco Police Department.

### **II. REFERRAL TO THE FULL COMMISSION**

Under San Francisco Charter section A8.343, the Chief may impose discipline of up to a 10-day suspension on allegations brought by the Internal Affairs Division or the DPA. Employees disciplined at the Chief’s level, except for written reprimands, may appeal that discipline to the Police Commission. Written reprimands may be appealed to the Department.

Some allegations of employee misconduct, even on a first offense, are so serious that the public interest is best served by presenting them to the Commission for hearing and determination. Additionally, depending on the severity of the offenses, the accused employee’s disciplinary history, the number of violations included in the allegation as well as other factors, the Chief or the DPA may elect to file charges with the Police Commission. Any discipline sought must be consistent with principles of just cause and progressive discipline.

### **III. REVIEW OF SUSTAINED ALLEGATIONS OF MISCONDUCT**

The suggested penalties are intended for guidance but are not binding. The referral guidelines are meant merely as a guide or starting point for assessing the appropriate level of discipline and should not be employed in a mechanical fashion. Fairness, consistency, and clearly-stated expectations make discipline tenable in large organizations. The attached matrix is intended to aid the Department, the DPA, and the Police Commission in the fulfillment of these tenets. It identifies ranges of possible penalties for various acts of employee misconduct with increasing levels of severity based on recurrences, consistent with principles of progressive discipline.

An offense is considered a first offense when it is formally documented that the Department attempted to correct the employee’s undesirable conduct. An offense should be considered a second or third offense only when it is of the same general nature as the previous misconduct. The offenses need not be identical. Additionally,

the period of consideration for prior offenses shall be seven years from the date the previous discipline was issued.

A penalty matrix cannot address all potential misconduct. As such, when recommending the appropriate discipline, the assessment should be reasonable in light of the employee's disciplinary history (or lack thereof), the facts unique to each case, and mitigating and aggravating factors.

Recommended discipline should normally fall within the range determined by the matrix, provided that it is consistent with principles of progressive discipline and supported by evidence establishing just cause for the recommendation. However, the matrix is ultimately only a guideline and not a mandate. Disciplinary recommendations shall consider mitigating and aggravating factors as outlined below. Such factors may justify a disciplinary recommendation that falls outside of the matrix or establish the appropriate penalty within the matrix. The maximum suspension an employee may receive per sustained allegation is ninety (90) days. (DGO 2.07; City Charter A8.343).

The following mitigating factors shall be considered:

- The misconduct was not willful or deliberate;
- The misconduct was not premeditated;
- The misconduct did not result in unwarranted injury or harm;
- The misconduct involved minor negligence or recklessness;
- The employee had a secondary or minor role in the misconduct;
- The employee may not have reasonably understood the consequences of his or her actions due to inexperience or lack of training;
- Commendations the employee has received;
- The employee was forthright and cooperative during the investigation;
- The employee is remorseful;
- The employee reported the harm caused by the rule violation, or independently initiated steps to mitigate it; and
- The employee has not been disciplined for misconduct within the seven years preceding the incident.

The following aggravating factors shall be considered:

- The misconduct was willful and deliberate;
- The misconduct involved gross negligence or recklessness;
- The misconduct was premeditated;
- The employee had a primary or leadership role in the misconduct;
- employee should have known that his or her actions were inappropriate based upon experience; The employee was not forthright or truthful during the investigation;
- The misconduct was motivated by unlawful bias and/or discrimination.

- Serious consequences occurred or may have occurred from the misconduct;
- The misconduct was committed with malicious intent or for personal gain;
- The misconduct resulted in unwarranted injury;
- Multiple sustained findings from incident;
- The employee has a history of prior discipline within seven years; or
- The misconduct ~~reasonably and~~ negatively impacted the Department's reputation, credibility or mission or ~~reasonably~~ diminished public confidence in the Department.

The aforementioned factors are not exhaustive. Any relevant aggravating or mitigating factor may be considered.

In cases involving multiple violations, those recommending discipline should base their decision on the most serious single violation. Other sustained rule violations should be considered aggravating factors which may elevate the final disciplinary recommendation.

#### **IV. MEDIATION**

Mediation is an alternative way of resolving complaints about police conduct. The DPA has a mediation program that enables complainants to resolve their issues with the accused employee in a face to face dispute resolution process involving a trained mediator. The goal of the program is to bring together the involved parties in an effort to achieve mutual understanding. Mediation is limited to eligible cases as determined by the DPA and must be agreed to by both the complainant and the accused employee. Cases that are successfully mediated are not considered disciplinary proceedings in an employee's record.

Department employees and the DPA are encouraged to take advantage of mediation when feasible.

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<b>LEGEND</b>	
<b>A</b>	Admonishment <sup>1</sup>
<b>B</b>	Reprimand
<b>C</b>	Suspension of 1 to 10 days
<b>D</b>	Suspension of 11 to 20 days
<b>E</b>	Suspension of 21 to 30 days
<b>F</b>	Suspension of 30 to 90 days
<b>G</b>	Demotion of Rank
<b>T</b>	Termination
<i>Note: Category "G" should be considered when the employee is in a civil service classification of inspector, sergeant or above.</i>	

**USE OF FORCE**

<b>Firearm Discharge</b>	First Offense	Second Offense	Third Offense
The unintentional discharge of a firearm, on or off-duty, with or without injury, determined to be out of policy (DGO 8.11, DGO 5.01)	<b>A-T</b>	<b>B-T</b>	<b>T</b>
The intentional discharge of a firearm, on or off-duty, in the performance of law enforcement duties, determined to be out of policy (DGO 8.11, DGO 5.01)	<b>B-T</b>	<b>C-T</b>	<b>T</b>

<b>Unauthorized Force</b>	First Offense	Second Offense	Third Offense
Unauthorized use of force (excluding firearm discharges)(DGO 5.01)	<b>A-T</b>	<b>C-T</b>	<b>E-T</b>
Failure to comply with Use of Force policy (DGO 5.01)	<b>A-T</b>	<b>C-T</b>	<b>E-T</b>

<sup>1</sup> An admonishment is a warning only and does not constitute formal discipline. (DGO 2.07).

**SEARCH AND SEIZURE**

<b>Detention/Arrest Violation</b>	<b>First Offense</b>	<b>Second Offense</b>	<b>Third Offense</b>
Improperly detaining or transporting a person (DGO 5.03)	<b>B-T</b>	<b>D-T</b>	<b>T</b>
Improperly arresting a person (DGO 5.03)	<b>B-T</b>	<b>D-T</b>	<b>T</b>

<b>Search Violation</b>	<b>First Offense</b>	<b>Second Offense</b>	<b>Third Offense</b>
Improper search or seizure of a person, property, vehicle, or location; improper entry (DGO 5.03)	<b>A-E</b>	<b>D-T</b>	<b>T</b>

**CONDUCT UNBECOMING AN OFFICER**

<b>General Unbecoming Conduct</b>	<b>First Offense</b>	<b>Second Offense</b>	<b>Third Offense</b>
Convicted of a felony (DGO 2.01, Rule 9)	<b>T</b>		
Convicted of a misdemeanor (DGO 2.01, Rule 9)	<b>C-T</b>	<b>E-T</b>	<b>T</b>
Failure to cooperate with a criminal investigation (DGO 2.01, Rules 9, 21)	<b>C-T</b>	<b>D-T</b>	<b>T</b>
Off-duty, improper remark to on-duty law enforcement personnel (DGO 2.01, Rule 9)	<b>A-F</b>	<b>B-F</b>	<b>T</b>
Use of official position to solicit gratuities/gifts/special favors (DGO 2.01, Rule 27)	<b>B-T</b>	<b>E-T</b>	<b>T</b>
Inappropriately converting on duty contact to off-duty relationship (DGO 2.01, Rules 9, 40)	<b>A-F</b>	<b>B-T</b>	
Intentionally damaging body camera system (DGO 2.01, Rule 22)	<b>E-T</b>	<b>T</b>	
Failure to maintain valid driver's license/registration/car insurance (DGO 2.01, Rule 9),	<b>A-B</b>	<b>B-F</b>	<b>D-T</b>
Compromise an official investigation (DGO 2.01, Rule 48)	<b>B-T</b>	<b>E-T</b>	<b>T</b>
Regular or continuous personal, non-work related relationship with a known felon except where unavoidable due to familial connection (DGO 2.01, Rules 9, 10).	<b>E-T</b>	<b>T</b>	
Inappropriately strike another while off-duty (DGO 2.01, Rule 9)	<b>A-F</b>	<b>C-T</b>	<b>T</b>
Violate court order as determined by the court (DGO 2.01, Rule 9)	<b>B-F</b>	<b>E-T</b>	<b>T</b>



Legally prohibited from possessing a firearm (DGO 2.01, Rule 9)	<b>T</b>		
Unable to perform essential functions of a Police Officer (DGO 2.01, Rule 4)	<b>T</b>		
Work off-duty while on temporary modified-duty disability pay or status (DGO 2.01, Rule 9)	<b>B-T</b>	<b>T</b>	
Inappropriate accessing of databases/confidential information (DGO 2.01, Rules 9, 10)	<b>B-F</b>	<b>E-T</b>	<b>T</b>
Unauthorized disclosure of confidential information (DGO 2.01, Rules 9, 48, 49)	<b>B-T</b>	<b>E-T</b>	<b>T</b>
Improper use of Department Computer systems for non-duty related activities (DGO 2.01, Rules 9, 10)	<b>A-F</b>	<b>C-F</b>	<b>D-T</b>

**Detrimental Workplace Behavior**

	First Offense	Second Offense	Third Offense
Conduct that interferes and/or disrupts work performance or the work environment (DGO 2.10, Rules 1, 5, 9; 11.07)	<b>A-B</b>	<b>B-F</b>	<b>E-T</b>

**Domestic Incident**

	First Offense	Second Offense	Third Offense
Domestic Violence Incident (DGO 2.01, Rule 9; 6.20)	<b>E-T</b>	<b>T</b>	
Violation of a court order, including but not limited to a restraining order (DGO 2.01, Rule 9)	<b>B-F</b>	<b>C-T</b>	<b>T</b>
Unable to possess a firearm by virtue of a domestic-related criminal conviction (DGO 2.01, Rule 9)	<b>T</b>		

<b>Sexual Misconduct</b>	First Offense	Second Offense	Third Offense
Obscene conduct or improper touching of another in a sexual manner (DGO 2.01, Rule 9)	<b>C-T</b>	<b>T</b>	
Forced sex acts upon another (DGO 2.01, Rule 9)	<b>T</b>		
Solicitation of sexual acts (DGO 2.01, Rule 9)	<b>D-T</b>	<b>T</b>	

<b>Financial Dishonesty/Theft</b>	First Offense	Second Offense	Third Offense
Any action by an employee on or off-duty with the intent to obtain compensation or benefits to which the employee is not entitled, including but not limited to; benefit abuse, overtime abuse, false credit application, insurance fraud, insufficient funds check or other act which could form the basis for criminal filing of theft or fraud (DGO 2.01, Rule 9)	<b>T</b>		
Taking or converting of money or property from another (DGO 2.01, Rule 9, DGO 6.15)	<b>T</b>		
Converts found/seized/recovered property to personal use (DGO 2.01, Rule 9, DGO 6.15)	<b>T</b>		
Converts City property/resources to personal use (DGO 2.01, Rule 9)	<b>B-T</b>	<b>T</b>	

## NEGLECT OF DUTY

<b>General Neglect of Duty</b>	<b>First Offense</b>	<b>Second Offense</b>	<b>Third Offense</b>
Failure to care for Department/City equipment, resulting in its damage/loss (DGO 2.01, Rule 23; DGO 10.02)	<b>A-B</b>	<b>B-C</b>	<b>C-T</b>
Improper/unsafe use of Department/City equipment (DGO 2.01, Rule 23; DGO 10.02)	<b>A-B</b>	<b>B-C</b>	<b>C-T</b>
Fail to activate body-worn camera as required (DGO 10.11)	<b>B-C</b>	<b>B-F</b>	<b>C-T</b>
Inappropriately disable, deactivate, or mute body-worn camera or intentionally obstruct audio or video recording. (DGO 10.11)	<b>C-T</b>	<b>C-T</b>	
Fail to properly care for/book property of arrestee/victim/other (DGO 6.15)	<b>A-B</b>	<b>B-C</b>	<b>C-T</b>
Excessive tardiness (DGO 2.01, Rule 1, 4, 5)	<b>A-B</b>	<b>B-C</b>	<b>C-T</b>
Absent from post/assigned area/duty station without authorization (DGO 2.01, Rule 1; DGO 1.03)	<b>A-B</b>	<b>B-C</b>	<b>C-T</b>
Negligently prepares/submits inaccurate/incomplete Department or other official report (DGO 2.01, Rules 1, 9, 25)	<b>A-E</b>	<b>B-T</b>	<b>E-T</b>
Fail to report for duty as scheduled (DGO 2.01, Rules 1, 4, 5)	<b>A-C</b>	<b>B-D</b>	<b>E-T</b>
Fail to handle assigned radio call (DGO 2.01, Rules 1, 9; DGO 1.03)	<b>A-C</b>	<b>B-D</b>	<b>E-F</b>
Abuse of sick leave (DGO 2.01, Rules 10, 49)	<b>A-C</b>	<b>B-D</b>	<b>E-F</b>
Intentional failure to report misconduct by another sworn or non-sworn employee (DGO 2.01, Rule 9; DGO 2.04)	<b>B-D</b>	<b>D-T</b>	<b>T</b>

Fail to process report in timely manner (DGO 1.03)	<b>A-B</b>	<b>B-C</b>	<b>C-T</b>
Fail to properly search vehicle/holding tank/cell (DGO 1.03)	<b>A-B</b>	<b>B-C</b>	<b>C-T</b>
Fail to properly search arrestee/detainee (DGO 1.03, 5.18)	<b>A-B</b>	<b>B-C</b>	<b>C-T</b>
Release wrong prisoner/property from custody (DGO 2.01, Rules 1, 9, 35; DGO 5.18)	<b>A-C</b>	<b>C-E</b>	<b>F-T</b>
Fail to control arrestee/detainee resulting in escape (DGO 2.01, Rule 35; DGO 5.18)	<b>A-C</b>	<b>C-E</b>	<b>F-T</b>
Fail to properly care for/monitor person in custody (DGO 2.01, Rule 35, DGO 5.18)	<b>A-C</b>	<b>C-E</b>	<b>T</b>
Work secondary employment without approval (DGO 11.02)	<b>A-B</b>	<b>B-C</b>	<b>C-F</b>
Fail to initiate/process personnel complaint (DGO 2.04; DGO 2.05)	<b>B-F</b>	<b>E-T</b>	<b>T</b>
Fail to properly review/approve Department report(s) (DGO 1.04; DGO 1.06)	<b>A-F</b>	<b>C-F</b>	<b>E-T</b>
Duplicate or retain body camera recording without authorization (DGO 10.11; DGO 2.01, Rule 48, 49)	<b>B-F</b>	<b>B-F</b>	<b>E-T</b>
Asleep while on duty (DGO 2.01, Rule 42)	<b>A-C</b>	<b>C-E</b>	<b>E-T</b>
Failure to carry required equipment (DGO 2.01, Rule 6; DGO 10.02)	<b>A-B</b>	<b>B-C</b>	<b>C-F</b>
Violation of any other Department general order, bulletin, rule, policy or manual or federal, state or local law (e.g. DGO 5.20 (Language Access), DGO 7.01 (Juvenile Procedures), DHR harassment policy)	<b>A-F</b>	<b>E-T</b>	<b>T</b>

<b>Failure To Appear</b>	<b>First Offense</b>	<b>Second Offense</b>	<b>Third Offense</b>
Failure to appear at judicial, administrative, or legislative proceeding, DPA or IAD interview, or Department required training or qualification (DGO 3.08)	<b>A-B</b>	<b>B-C</b>	<b>C-F</b>

Failure to access and acknowledge paper/electronic subpoena (DGO 3.08, 2.01, Rule 9)	<b>A-B</b>	<b>B-C</b>	<b>C-F</b>
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<b>Driving &amp; Traffic Collisions</b>	First Offense	Second Offense	Third Offense
Driving a City vehicle in a grossly negligent or reckless manner (DGO 2.01, Rule 23)	<b>B-F</b>	<b>D-T</b>	<b>T</b>
Involved in, and at fault for, a collision (DGO 2.01, Rule 23)	<b>A-F</b>	<b>C-F</b>	<b>D-T</b>
Driving a City vehicle in violation of policy, resulting in a fatality or severe injury (DGO 2.01, Rule 23)	<b>B-T</b>	<b>E-T</b>	<b>T</b>
Out of policy pursuit (DGO 5.05; 2.01, Rule 10)	<b>A-F</b>	<b>B-T</b>	<b>C-T</b>
Failure to follow pursuit policy (DGO 5.05; 2.01, Rule 10)	<b>A-F</b>	<b>B-T</b>	<b>C-T</b>
Failure to wear seat belt while operating or riding in a City vehicle as required (DGO 2.01, Rule 23)	<b>A-B</b>	<b>A-C</b>	<b>B-F</b>

<b>False Statements Including Reporting/Documentation</b>	First Offense	Second Offense	Third Offense
Making a material statement, written or verbal, within the scope of employment that the speaker knows or should have known is false (DGO 2.01, Rules 9, 10, 21)	<b>T</b>		
Making a non-material statement to a supervisor or investigator that the speaker knows or should have known is false (DGO 2.01, Rule 21)	<b>C-F</b>	<b>T</b>	
Intentionally fail to disclose information in an official document or communication that employee knew or should have known was relevant (DGO 2.01, Rules 9, 10, 21)	<b>C-T</b>	<b>T</b>	

**Insubordination**

	First Offense	Second Offense	Third Offens
Failure to comply with a lawful order or direction, whether verbal, written, or electronically conveyed (DGO 2.01, Rule 10)	<b>B-T</b>	<b>D-T</b>	<b>T</b>

**Other Policy/Rule**

	First Offense	Second Offense	Third Offense
Carrying/using unauthorized weapon/ammunition on or off duty (DGO 10.02)	<b>A-C</b>	<b>B-T</b>	<b>D-T</b>
Conduct on or off-duty, which may bring discredit to the employee, the Department, or the City, and which is not specifically classified under another category (DGO 2.01, Rule 9)	<b>A-T</b>	<b>B-T</b>	<b>C-T</b>
Direct/permit/authorize subordinate to commit misconduct (DGO 2.01, Rule 9; DGO 1.04; DGO 1.06)	<b>B-T</b>	<b>T</b>	

**ALCOHOL AND DRUGS**

<b>Alcohol Related (Other than DUI)</b>	<b>First Offense</b>	<b>Second Offense</b>	<b>Third Offense</b>
Unable to report for duty due to alcohol consumption (DGO 2.02; DGO 11.11)	<b>B-F</b>	<b>D-T</b>	<b>T</b>
Unfit for duty due to alcohol consumption (DGO 2.02)	<b>B-F</b>	<b>E-T</b>	<b>T</b>
Improperly possessed alcohol on duty (DGO 2.01, Rule 39)	<b>B-C</b>	<b>D-T</b>	<b>T</b>
Improperly consumed alcohol on duty (DGO 2.02)	<b>B-F</b>	<b>E-T</b>	<b>T</b>
Alcohol-Related incident off duty (Unbecoming Conduct) (DGO 2.01, Rule 9; DGO 2.02)	<b>B-F</b>	<b>E-T</b>	<b>T</b>
Failure to comply with Department's DGO 11.11 program (DGO 11.11; 2.01, Rule 10)	<b>B-T</b>	<b>D-T</b>	<b>T</b>

<b>Driving While Impaired</b>	<b>First Offense</b>	<b>Second Offense</b>	<b>Third Offense</b>
Driving under the influence, no aggravating circumstances (DGO 2.01, Rule 9)	<b>C-D</b>	<b>T</b>	
Violation of a probation or court order (DGO 2.01, Rule 9)	<b>E-T</b>	<b>T</b>	

<b>Narcotics/Drugs</b>	<b>First Offense</b>	<b>Second Offense</b>	<b>Third Offense</b>
Ingest/under the influence of illegal narcotics/drugs (DGO 2.03)	<b>T</b>		
Possess/sell/purchase/transport illegal narcotics/drugs (DGO 2.03, DGO 2.01, Rule 9)	<b>T</b>		
Improperly provide/offer prescription drugs (DGO 2.03, DGO 2.01, Rule 9)	<b>B-T</b>	<b>T</b>	
Improperly sell prescription drugs (DGO 2.03, DGO 2.01, Rule 9)	<b>T</b>		
Unfit for duty while under the influence of prescription drugs (DGO 2.03, DGO 2.01, Rule 9)	<b>B-F</b>	<b>E-T</b>	<b>T</b>
Improperly use/possess prescription drugs (DGO 2.03, DGO 2.01, Rule 9)	<b>B-T</b>	<b>T</b>	



**BIAS, RUDENESS, AND HARASSMENT**

<b>Biased Policing</b>	First Offense	Second Offense	Third Offense
Knowingly engaged in Biased Policing <u>or Discrimination</u> (DGO 2.01, Rules 9, 10, 14; DGO 5.17; and <u>DGO 11.07</u> )	<b>T</b>		

<b>Discourtesy</b>	First Offense	Second Offense	Third Offense
On-duty discourteous act or statement reasonably known to offend, belittle or defame directed toward a particular person (DGO 2.01, Rules 9, 14)	<b>B-T</b>	<b>D-T</b>	<b>T</b>
<u>Disability</u> : A discourteous act or statement reasonably known to offend, belittle or defame based on the actual or perceived disability of another which is uttered, written, or transmitted via any media, to or about another person.	<b>B-T</b>	<b>D-T</b>	<b>T</b>
<u>Ethnic/Racial</u> : A discourteous act or statement reasonably known to offend, belittle or defame based on the actual or perceived race or ethnicity of another which is uttered, written, or transmitted via any media, to or about another person.	<b>B-T</b>	<b>D-T</b>	<b>T</b>
<u>Gender Identity/Expression</u> : A discourteous act or statement reasonably known to offend, belittle or defame based on the actual or perceived gender identity or expression of another which is uttered, written, or transmitted via any media, to or about another person.	<b>B-T</b>	<b>D-T</b>	<b>T</b>
<u>Religion</u> : A discourteous act or statement reasonably known to offend, belittle or defame based on the actual or perceived religion of another that is uttered, written, or transmitted via any media, to or about another person.	<b>B-T</b>	<b>D-T</b>	<b>T</b>

Sexual Orientation: A discourteous act or statement reasonably known to offend, belittle or defame based on actual or perceived sexual orientation of another which is uttered, written, or transmitted via any media, to or about another person.	<b>B-T</b>	<b>D-T</b>	<b>T</b>
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**Unequal Treatment Violation-Workplace/Prohibited Expressions of Bias**

	First Offense	Second Offense	Third Offense
Display/transmit/post material demonstrating bias <u>or discrimination</u> against any groups (DGO 2.01, Rule 9; 11.07)	<b>C-T</b>	<del><b>D-T</b></del>	<del><b>T</b></del>
Retaliation (DGO 2.01, Rules 9, 10; 11.07)	<b>D-T</b>	<b>T</b>	
Improperly or unlawfully imposing disparate treatment/adverse impact/failing to provide reasonable accommodation to any of protected groups (DGO 2.01, Rule 9; 11.07)	<b>C-T</b>	<b>E-T</b>	<b>T</b>
Other forms of unequal treatment (DGO 2.01, Rule 9; 11.07)	<b>B-T</b>	<b>C-T</b>	<b>D-T</b>

**Unwelcome Sexual Advances-Workplace**

	First Offense	Second Offense	Third Offense
<p><u>General</u>: Sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature in the workplace that is not welcomed by another (DGO 2.01, Rules 9, 10; 11.07)</p>	<b>C-T</b>	<b>D-T</b>	<b>T</b>
<p><u>Quid Pro Quo</u>: Sexual advances, requests and/or conduct that is either explicitly or implicitly made and when submission to or rejection of such conduct is used as the basis for employment decisions (DGO 2.01, Rules 9, 10; 11.07)</p>	<b>T</b>		

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