



# Gender Issues in Policing from the Law and Order Perspectives

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# Gender Issues in Policing From the Law and Order Perspective

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## I. INTRODUCTION

In the wake of sexual harassment and assault allegations against powerful individuals in politics, media and business, the City of Los Angeles implemented a new policy in December 2017 requiring all departments to report sexual harassment incidents within 48 hours of learning about them.

Reports of sexual harassment among workers for the City of Los Angeles have increased after the introduction of a new data collection system in December. The city's personnel department received 26 reports of harassment in the two months after the new protocol was introduced in mid-December. In comparison, the department had received only 35 reports of harassment in a five-year stretch between 2013 and 2017.<sup>1</sup>

Cities and counties across the state can anticipate an increase in sexual harassment and assault reports as these issues continue to permeate the national discourse and the #metoo movement continues. Within cities and counties, law enforcement agencies typically have the greatest exposure to these claims. For example, since 2011, more than three-quarters of the sexual harassment and assault settlement payments in the City of Los Angeles have been connected to the police department.<sup>2</sup>



KPCC/Quartz's Chartbuilder Data: Los Angeles City Attorney; DWP, LAWA and Port of LA payouts tracked separately

There are several explanations for this. One is simply the sheer size and scope of police departments, which are typically among the largest entities within the city. Another is that complaints about sexual harassment and assault arise both internally (between employees) and externally (from members of the public against the employee), and law enforcement has significant public interface. Another is that law enforcement agencies have historically grappled with gender issues and a historic attitude of machismo.

Addressing gender issues in law enforcement can help the quality of policing by ensuring that the best candidates are hired and retained. It can also reduce potential liability for cities and counties.

<sup>1</sup> <https://www.scpr.org/news/2018/02/21/80997/why-la-city-received-more-sexual-harassment-claims/>

<sup>2</sup> <https://www.scpr.org/news/2018/02/22/81014/sexual-harassment-a-persistent-and-costly-problem/>





## **II. HISTORY OF WOMEN IN LAW ENFORCEMENT**

- 1845: New York City hired two women to work as matrons in the city's two jails.
- 1881: The Chicago Police Department assigned Marie Owen as a "patrolman." She worked mainly with women and children. Despite her title, her duties did not include patrol.
- 1905: Lola Baldwin in Portland, Oregon becomes the first female sworn police officer. Her duties were primarily social work. In 1908, she gained the power to conduct arrests.
- 1910: The Los Angeles Police Department swore in Alice Stebbin Wells as the country's first "policewoman" with badge number 1. Five years later, Wells founded the International Association of Police Women.
- 1912: Los Angeles Sheriff's Department swore in Margaret Adams as the nation's first female deputy sheriff.
- 1930-1940s: Opportunity for women to compete for law enforcement roles diminished as Great Depression and World War II increased competition for jobs.
- 1950-1960: Number of police women more than doubles from 2,600 to 5,617.
- 1968: Indianapolis Police Department makes history by assigning two female officers, Elizabeth Robinson and Betty Blankenship, to patrol.
- 1985: Penny Harrington became the first woman Chief of Police for a major city, in Portland, Oregon.
- 1990s: Several law enforcement associations devoted to women were established including the National Association of Women Law Enforcement Executives and the National Center for Women and Policing in 1995, and Women in Federal Law Enforcement in 1999.
- 2012: Bureau of Labor Statistics reports that women make up 12.6% of all sworn police officers in the United States.
- 2017: For the first time in its 167-year history, Los Angeles County has seven female police chiefs leading local law enforcement agencies.



### III. WHY DO GENDER ISSUES IN POLICING MATTER?

#### A. Benefits of a Diverse Police Force

The International Association Chiefs of Police (IACP) defines the overall benefits of a diverse police agency as: "Having a department that reflects the community it serves helps to build trust and confidence, offers operational advantages, improves understanding and responsiveness and reduces the perception of bias."<sup>3</sup>

Further, a study published by the National Center for Women & Policing (2003)<sup>4</sup> identified six advantages of hiring and retaining more women:

1. Female officers are proven as competent as their male counterparts.
2. Female officers are less likely to use excessive force.
3. More female officers will improve law enforcement's response to violence against women.
4. Female officers implement "community-oriented policing."
5. Increasing the presence of female officers reduces problems of sex discrimination and harassment within a law enforcement agency.
6. The presence of women can bring about beneficial changes in policy for all officers.

#### B. Liability Exposure

Failure to address gender discrimination and harassment claims can expose cities and counties to legal exposure, and can be costly.

A recent study by the International Association of Chiefs of Police found that women have won more than one-third of the sexual harassment lawsuits and more than one-third of the gender discrimination lawsuits they filed against police departments.<sup>5</sup> Even if a city prevails in a lawsuit, the costs and negative publicity from dealing with such lawsuits can be significant.

These are just a sample of issues that have been raised within the past year:

- The City of Phoenix approved a \$75,000 settlement in a lawsuit filed by a police officer over allegations of gender discrimination in the police force.

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<sup>3</sup> <http://www.theiacp.org/portals/0/pdfs/ASymbolofFairnessandNeutrality.pdf>

<sup>4</sup> <http://womenandpolicing.com/pdf/newadvantagesreport.pdf>

<sup>5</sup> International Association of Chiefs of Police, "The Future of Women in Policing: Mandates for Action," (International Association of Chiefs of Police, 1998) 13-15.



- The City of Philadelphia paid \$1.25 million to settle a lawsuit by a woman who claimed a veteran police commander sexually assaulted her when she was an officer in the department.
- Chicago police lieutenant who rose to become the first woman to ever command the department's Marine and Helicopter Unit filed a federal sex discrimination lawsuit, alleging she was harassed by a sexist boss and ultimately demoted because he didn't want a woman in her post.
- A 15-year veteran of the U.S. Capitol Police filed a lawsuit against the department in February 2018, alleging sex and disability discrimination and retaliation, claiming she was wrongfully dismissed from the elite and male-dominated K-9 unit during training after mistreatment by her supervisor.
- A former police officer in Texas claims she was fired in retaliation for filing sexual harassment complaints against her supervisor, who made "repeated sexual advances" toward her, according to a federal lawsuit.

Although most stories that make the headlines pertain to allegations of wrongful termination, there are several exposure points for police departments. These include the recruitment, hiring, promotion, and firing processes. Identifying issues at all these stages can help reduce exposure and increase the quality of policing.

#### **IV. RECRUITMENT**

In studying NYPD academy recruits, a 2004 study found that male and female recruits had similar motivations for becoming police officers. These motivations include the opportunity to help people, job security, job benefits, early retirement, and excitement of work. However, agencies across the country have found difficulty recruiting female applicants.

##### **A. Potential Barriers to Recruiting Female Officers**

1. Stereotypes of Law Enforcement
2. Strained relationships with the community
3. Reputation of the agency
4. Lack of awareness of opportunities
5. Lack of Women Law Enforcement Role Models



## B. How to Improve Recruitment

Many departments rely on word of mouth, or recruit at areas such as military bases where there are more men than women. Some research has shown that targeted recruiting strategies may be useful in increasing the number of women in policing. These strategies may include:

1. Updated Job Descriptions & Recruitment Materials; and
2. Strategic Recruiting such as attending career fairs for women, connecting with Women in ROTC programs, and advertising at gyms and sports clubs with large female attendance.

In a 2009 study of 985 state, county, and municipal police agencies, researchers looked at the effect of two specific practices used to recruit women.<sup>6</sup>

- The first practice involved offering special entry considerations to women including lower education standards, lower fitness standards, exam exemptions, faster promotion, higher pay, preference on waiting lists, or pre-entry training.
- The second practice involved using special recruiting strategies aimed at women.

The study found that special entry considerations were not related to either increased number of female applicants or increased hiring of women; however, very few agencies gave such advantages to female applicants. Targeted recruiting strategies were not related to increased number of applications from women, but were related to increased female hires. Agencies utilizing targeted recruitment strategies hired an average of 2.2 times as many women as expected.

### 2. Austin Police Department Applies Targeted Recruiting

The Austin, Texas Police Department, in an effort to encourage more women to apply, organizes recruitment and information sessions specifically designed to explain the hiring process and career opportunities for women at the agency. Additionally, the department publishes YouTube videos, such as "Women of APD," that feature women talking about their experience serving as officers in the police department.

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<sup>6</sup> Taylor, B., Kubu, B., Fridell, L., Rees, C., Jordan, T., & Chaney, J. (2006). Cop crunch: Identifying strategies for dealing with the recruiting and hiring crisis in law enforcement. Police Executive Research Forum. USDOJ: Washington, DC.



### 3. Takeaway

Mindful recruiting is a way to increase diversity in a department. It should be emphasized that it is generally not permissible to recruit only members of one race, national origin, or gender. Programs that require meeting specific hiring goals for any particular group are generally prohibited under federal law except when necessary to remedy discrimination. However, there are several lawful ways to increase diversity.

The National Center for Women & Policing has identified several examples of permissible targeted recruitment and outreach including:

- Development of recruitment materials featuring women;
- Distribution of recruitment materials and applications to businesses owned or frequented by women, minority neighborhoods, community centers and churches, and health clubs or sports teams with primarily female membership;
- Advertisements in publications and on radio and television stations with a predominantly female audience;
- Attending career fairs and open houses featuring women.

## V. HIRING & ANNUAL TESTING

Applicants to law enforcement agencies usually have to pass a written exam, psychological exam, oral interview, physical agility test, firearms qualification, polygraph test, medical examination, and background check to be considered eligible for hire by the department.

The fitness for duty test has been the focal point of litigation regarding gender discrimination. However, firearms qualification and medical examinations have also posed barriers, which many departments have addressed.

### A. Fitness for Duty Tests

Fitness for duty tests replaced the previous height and weight requirements for law enforcement officers.<sup>7</sup> Many agencies use these tests in the hiring process and as annual exams to determine continuation of employment.

Although fitness for duty testing was intended to be more inclusive of females and minorities, some view rigid fitness for duty tests as still being discriminatory. In a

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<sup>7</sup> *Hardy v. Stumpf* (1974) 37 Cal.App.3d 958, 112 Cal.Rptr. 739 (lawsuit challenging the reasonableness of height and weight requirements for becoming Oakland police officers.)



1996 study of several police departments, 28% of female applicants passed the physical fitness test while 93% of male applicants passed.<sup>8</sup>

The results of this study fall within the Equal Employment Opportunity Commission's (EEOC) definition of disparate impact. Under the EEOC:

A selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or eighty percent) of the rate for the group with the highest rate will be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact.<sup>9</sup>

If there is an adverse impact, the test and its use must be job-related and consistent with business necessity. Some physical ability tests that intend to simulate the tasks undertaken by police officers have been found to have an unlawful disparate impact on women where they are insufficiently related to actual job duties.<sup>10</sup>

For example, a physical test that included a stair climb, a run, and an obstacle course was found to have a disparate impact on women and be insufficiently related to the police officer's actual job. Similarly, tests that purport to measure overall physical fitness (such as push-ups, sit-ups, and running) but apply a unitary standard to men and women have been found to disproportionately exclude women from law enforcement positions and be insufficiently job-related. For example, the requirement that men and women perform the same number of push-ups and sit-ups in one component of a physical fitness test was found to violate Title VII.<sup>11</sup>

## 1. Colorado Springs Lawsuit & Settlement

In May 2015, twelve female police officers sued the City of Colorado Springs alleging that the City's annual physical ability test discriminated against them and was not related to their jobs.<sup>12</sup> The women brought their lawsuit under Title VII.

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<sup>8</sup> Birzer, M.L. & Craig, D.E. (1996). Gender Differences in police physical ability test performance. *American Journal of Police* 15, 93-108.

<sup>9</sup> Uniform Guidelines on Employee Selection Procedures Section 4(d).

<sup>10</sup> See, e.g., *Thomas v. City of Evanston*, 610 F. Supp. 422, 428 (N.D. Ill. 1985) (concluding that physical agility tests for law enforcement officers had a disparate impact on women); but see *Lanning v. SEPTA*, 308 F.3d 286 (3d Cir. 2002) (finding a challenged test for minimum aerobic capacity to be Title VII-compliant after a demonstration of tailored job-related need).

<sup>11</sup> *United States v. City of Erie*, 411 F. Supp. 2d 524 (W.D. Pa. 2005); *United States v. City of Philadelphia*, Nos. 74-400, 74-339, 1979 WL 302, at \*2 (E.D. Pa. Sept. 5, 1979).

<sup>12</sup> *Rebecca Ardnt, et al. v. City of Colorado Springs* (D. Co. Case No. 15-cv-00922 RPM-MJW.)



The plaintiffs argued that mandatory police testing imposed disproportionate challenges on women over the age of 40. The testing included one-minute maximum sit-up and push-up tests, as well as two running tests, one of which focused on agility. Nearly 40 percent of the department's women in that demographic failed the test the first time around, compared with 9 percent of men, causing them to be stripped of their duties and placed on alternate assignments, the lawsuit said.

At the conclusion of a bench trial in July 2017, U.S. District Judge Richard Matsch concluded the test "shamed and ostracized" the 12 plaintiffs – many of them decorated officers with decades of service – while providing "meaningless" results. Matsch said the Police Department also erred in making the test a sole criterion for an officers' firing, rather than as "one component."

On January 19, 2018, the City of Colorado Springs settled the lawsuit for \$2.5 million.<sup>13</sup> This does not include the City's legal fees over three years or \$314,193 which was paid as worker's compensation to officers who suffered injuries because of the physical abilities test.<sup>14</sup>

## 2. Modifying Fitness for Duty Tests

In his book *Taking Back Our Streets: Fighting Crime in America*, former LAPD Chief Willie Williams stated that among his top priorities within the LAPD was to hire more women and minorities.

Chief Williams determined, among other things, that some pre-employment tests were disproportionately hampering women from becoming officers. One such test was a requirement to climb over a six-foot wall before the candidate could continue in the hiring process. Since men naturally have more upper body strength, this step was found to discriminate against women and many women failed as a result. In response, Williams had the six-foot wall climb moved to the police academy portion of the process rather than at the onset. By doing this, recruits were first properly trained on effective techniques for scaling a wall before being assessed.<sup>15</sup>

Other cities have also found alternative ways to test the fitness of their officers. In addition to targeted recruiting, the City of Austin Police Department also recently replaced the pushup requirement on its physical fitness test, which deterred some women from applying, with a rowing machine exercise to measure upper body strength.

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<sup>13</sup> <https://www.csindy.com/TheWire/archives/2018/01/19/city-of-colorado-springs-settles-female-police-officer-lawsuit-for-25-million>

<sup>14</sup> <https://www.csindy.com/coloradosprings/city-pays-for-controversial-police-physical-ability-test/Content?oid=3482482>

<sup>15</sup> Williams, W. (1996). *Taking back our streets: fighting crime in America*. New York: Scribner.



### 3. Takeaway

When law enforcement agencies use fitness for duty tests, they have to make sure there's a legitimate basis behind them. Agencies can find creative ways to ensure that their police force has the physical capabilities and skills to perform their duties, without discriminating against women.

#### B. Firearms Qualification & Proper Equipment

##### 1. Proper Handgrips for Women

22 percent of the female respondents indicated that firearms qualifications were the most challenging aspect of their training, and 25 percent reported receiving extra scrutiny/negative attention during their training.

LAPD noticed that many female recruits were failing their firearms qualification due to low scores. Many people were quick to assume that this was evidence that women did not belong in law enforcement. However, LAPD reviewed the issue and found that the larger handgrips on firearms were too big for most women, making it harder to grip the guns for women. Once smaller handgrips were put in place, the shooting scores for women increased.<sup>16</sup>

##### 2. Properly Fitting Vests

Some agencies and departments have been known to issue men's bulletproof vests to women. This can both be unsafe and send the wrong message. For both men and women, if body armor does not fit correctly and provide adequate coverage, it can affect safety and effectiveness.

### 3. Takeaway

Law enforcement agencies are encouraged to maintain a supply of alternative grips to accommodate smaller hands and short triggers to reduce distance from the back of the grip to the front of the trigger. Both are relatively inexpensive and can be easily installed by an armorer.

Further, it is important to ensure that all officers have properly fitting equipment to ensure safety and promote inclusiveness.

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<sup>16</sup> Williams, W. (1996).



## VI. RETENTION

According to the International Association of Chiefs of Police, retention remains one of the largest barriers to increasing the number of women in policing. While women generally enter policing for many of the same reasons men do, studies have shown that the reasons why women leave are different. These include lack of training, lack of promotional opportunity, inflexible working patterns, and administrative policies that disadvantage female officers.

### A. Mentoring

Mentoring can assist in the retention and promotion of female employees, as well as help with job performance. And it can provide a financial benefit for agencies. One typical medium-sized county agency estimated that it costs \$40,000 to recruit, hire, and train a new officer.<sup>17</sup>

### B. Developing and Promoting Comprehensive Policies

Employment discrimination on the basis of pregnancy, childbirth, or a related medical condition is discrimination on the basis of sex.<sup>18</sup>

As a starting point, it is important for cities to follow and provide employees with information regarding Family Medical Leave Act (FMLA) and the California Family Rights Act (CFRA). Further, the Pregnancy Discrimination Act (PDA) requires that pregnant women and women disabled by childbirth or related medical conditions be treated at least as well as employees who are not pregnant but who are similar in their ability or inability to work.

It is also important for cities to work with their attorneys and police departments to develop specific policies and provide their employees information on such important issues as notification procedures, availability of light duty assignments, paid and unpaid leave benefits, range qualification for pregnant employees, maternity uniforms, flexible work options, and other issues.

There are several considerations that cities should discuss with their attorneys when developing their policies. For example, In *UAW v. Johnson Controls*,<sup>19</sup> the Supreme Court ruled that employers were prohibited from adopting fetal protection policies that exclude women of child-bearing age from certain hazardous jobs. This decision as well as others has established that employers are prohibited from forcing a

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<sup>17</sup> April Kranda, "A Mentoring Program to Help Reduce Employee Turnover," *The Police Chief*, June 1997, 51-52

<sup>18</sup> *California Fed. Sav. & Loan Ass'n v. Guerra*, 479 U.S. 272, 276-77, 107 S. Ct. 683, 687 (1987).

<sup>19</sup> 499 U.S. 187 (1991).



pregnant employee to take disability leave as long as the employee is still physically fit to work.

An Example of FMLA & PDA Liability: *Hicks v. City of Tuscaloosa*

In *Hicks v. City of Tuscaloosa*<sup>20</sup>, the Eleventh Circuit upheld a \$161,319.92 jury award for a female law enforcement officer who alleged that she was forced to quit police work after she returned to work following her pregnancy.

The officer, Stephanie Hicks was an investigator on the narcotics task force when she became pregnant in January 2012. Hick's commanding officer, Lieutenant Teena Richardson, said that she would only give Hicks six weeks of FMLA leave, but Hicks took the full twelve weeks from August 2012 to November 2012.

Prior to her FMLA leave, Hicks received "exceeded expectations" from Lieutenant Richardson. On Hick's first day back from leave, she was written up. Hicks overheard Richardson talking to Captain Robertson saying 'that b\*\*\*\*,' and claiming she would find a way to write Hicks up and get her out of here. Another officer overheard Richardson talking loudly about Hicks saying 'that stupid c\*\*\* thinks she gets 12 weeks. I know for a fact she only gets six.'

Eight days after her return, on the recommendation of Captain Robertson, Hicks was reassigned to patrol duty. The city asserted that Hicks was reassigned based on poor performance. As a result of the transfer to patrol, Hicks "lost her vehicle and weekends off," was "going to receive a pay cut and different job duties," and would be required to wear a ballistic vest while on duty.

Before starting back in the patrol division, Hicks took time off when a physician diagnosed her with postpartum depression. Lieutenant Richardson admitted that she asked Hicks if she was suffering postpartum because "something was different about [her]...[she] was a new mom and ...new moms go through depressed states." During this leave for postpartum depression, Hick's doctor wrote a letter to the Chief recommending that Hicks be considered for alternative duties because the ballistic vest she was now required to wear on patrol duty was restrictive and could cause breast infections that lead to an inability to breastfeed. In response, Chief Anderson told Hicks that she could continue to patrol her beat without a vest or with a specially fitted one. Hicks claimed that not wearing a vest was dangerous and even the "specially fitted" vests were ineffective because they left gaping holes. Hicks resigned that day.

Hicks sued the department and won at trial on three theories: (1) discriminatory reassignment under the Pregnancy Discrimination Act (PDA), (2) PDA constructive discharge, and (3) FMLA retaliation.

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<sup>20</sup> 870 F.3d 1253 (2017).



On the reassignment claim (under the PDA and FMLA), the City maintained that Hicks was reassigned for poor performance. However, the jury found, and the Eleventh Circuit agreed, that there was sufficient evidence of discrimination. The Eleventh Circuit held that "multiple overheard conversations using defamatory language plus the temporal proximity of only eight days from when [Hicks] returned to when she was reassigned support the inference that there was intentional discrimination."

On the constructive-discharge claim, the City argued that Chief Anderson did not harbor any discriminatory animus, and that he offered Hicks access to lactation rooms, priority in receiving breaks, and a tailored vest. However, the Eleventh Circuit held that the jury could have found that the accommodations for breastfeeding that the city offered were so inadequate, that "any reasonable person" in Hicks's position "would have been compelled to resign."

Finally, the Eleventh Circuit held that lactation is a "medical condition" related to pregnancy or childbirth, and is thus protected by the PDA. The Eleventh Circuit ruled that while the City may not have been required to provide Hicks with *special* accommodations for breastfeeding, the City's action in refusing an accommodation afforded to other employees compelled Hicks to resign, and thus constituted constructive termination. In her case, Hicks showed that other employees with temporary injuries were given "alternative" duty, and she was merely requested to be granted the same alternative duty but was denied.

**Takeaway:** The Hicks case highlights issues that arise when an employee takes FMLA leave and returns. In this case, it appears that the City made multiple missteps, which caused Hicks to resign. This case also demonstrates that discrimination against women is not limited to male employees. Here, Hicks' supervisor was a female.

### **C. Performance Evaluations and Promotion Opportunities**

According to the Bureau of Justice Statistics, women accounted for approximately 12% of full-time local police officers in 2013 (the latest data available). Women made up an even smaller share of department leadership: About one-in-ten supervisors or managers and just 3% of local police chiefs were women in 2013.<sup>21</sup>

The nationwide survey of 7,917 police officers in departments with at least 100 officers finds that many female officers think men in their department are treated better than women when it comes to assignments and promotions. About four-in-ten female officers (43%) say this is the case, compared with just 6% of male officers.<sup>22</sup>

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<sup>21</sup> <http://www.pewsocialtrends.org/2017/01/11/behind-the-badge/>

<sup>22</sup> <http://www.pewresearch.org/fact-tank/2017/01/11/police-report-q-and-a/>



A fair and unbiased performance system is essential to a law enforcement agency since performance evaluations are frequently used as the basis for making decisions regarding transfers, specialty assignments, and promotions. The National Center for Women & Policing has identified several ways to monitor bias in performance evaluations<sup>23</sup>:

- Compare how supervisors rate women employees in relation to male employees. Whenever a woman receives a low rating, carefully examine the basis for that rating and determine if men are receiving the same ratings for the same performance.
- Note the areas in which women receive low ratings. Evaluate whether women are receiving lower ratings for subjective characteristics.
- Monitor the performance evaluations of any women who have complained of discrimination or harassment to ensure that the performance evaluation is not being used as a tool for retaliation. For example, an agency can compare evaluations before and after the employee made the complaint.

Biased reviews can open a city up to discrimination lawsuits. The courts have held that “adverse treatment that is reasonably likely to impair a reasonable employee’s job performance or prospects for advancement or promotion falls within the reach of the antidiscrimination provisions....”<sup>24</sup>

Fair performance evaluations are also important for retention. One reason cited by women for leaving law enforcement is that they see less promotional opportunities than their male counterparts.<sup>25</sup>

#### **D. Preventing Sexual and Gender Harassment, Discrimination, and Retaliation**

Research has shown that sexual harassment is much more likely to occur in male-dominated workplaces and in fields that have been traditionally considered masculine.<sup>26</sup> Within the law enforcement field, studies found that anywhere from 60-70% of women officers experienced sexual/gender harassment. However, only about 4-6% ever reported the harassment.<sup>27</sup> Further, 40% of women indicated that sexually

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<sup>23</sup> <https://www.ncjrs.gov/pdffiles1/bja/185235.pdf>

<sup>24</sup> See *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1055-56.

<sup>25</sup> Kim Adams, “Women in Senior Police Management” (Australasian Centre for Policing Research, 2001).

<sup>26</sup> Mary P. Koss, Lisa A. Goodman, Angela Browne, Louise F. Fitzgerald, Gwendolyn Puryear Keita and Nancy Felipe Russo, *No Safe Haven: Male Violence Against Women at Home, at Work, and in the Community* (Washington DC: American Psychological Association, 1994).

<sup>27</sup> National Center for Women & Policing, *Recruiting & Retaining Women: A Self-Assessment Guide for Law Enforcement* 133 (2000)





oriented materials or sexually oriented jokes are a daily occurrence, and many of those responding said they believe it is their plight to endure otherwise unacceptable working conditions if they want to maintain a career in law enforcement.<sup>28</sup>

The Fair Employment and Housing Act (FEHA) requires employers to take “all reasonable steps necessary to prevent discrimination and harassment from occurring.”<sup>29</sup> There are several ways that cities can address this issue, such as:

- Publicizing and Enforcing a Strong Sexual Harassment Policy.
- Training: California law mandating that public employers (and private employers with 50 or more employees) provide at least two hours of training and education regarding sexual harassment to all supervisory employees once every two years.

Many firms (such as Burke, Williams & Sorensen, LLP) offer training that is engaging and entertaining, and is customized to meet the unique needs of public safety agencies.

- Ensuring an Adequate Complaint and Investigation Process: Law enforcement agencies should ensure that people know how to file sexual harassment complaints, and that their internal affairs investigators are trained to understand sexual harassment and relevant laws.
- Discipline of wrongdoers: It is important to discipline offenders in a timely manner. California Government Code section 12940(j) provides that it is “unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action.” The law also provides that employers are liable if they “fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.”<sup>30</sup>
- Preventing Retaliation: The reason women most often give for not reporting sexual harassment and discrimination is their fear of retaliation from co-workers and the administration. Men may also fail to report harassment and discrimination due to a fear of being retaliated against. Some examples of reported retaliation amongst law enforcement agencies include being ostracized, being the subject of rumors, denial of transfers and promotions, and failure to receive back-up in emergency situations. This both creates safety issues and is unlawful.

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<sup>28</sup> George V. Robinson, “Sexual Harassment in Florida Law Enforcement: Panacea or Pandora’s Box,” (Ocala Police Department).

<sup>29</sup> Cal. Gov’t. Code section 12940(k).

<sup>30</sup> Gov. Code section 12940(k).



In addition to ensuring that their sexual harassment and discrimination policies prohibit retaliation, cities should ensure that these policies are enforced. A city can be held liable for failing to prevent retaliation under state and federal law.

Sexual harassment and discrimination allegations can be tricky. For example, it is crucial that a complainant feels safe in her current assignment. However, cities will have to determine if removing the alleged harasser from the workplace will implicate personnel policies and/or labor contracts. Therefore, it is advisable to contact counsel to assist in handling these situations.

**Takeaway:** Sexual and gender harassment can expose a city to liability and cause law enforcement agencies to lose quality employees. Sexual and gender harassment are two of the top reasons women most often give for leaving their law enforcement careers.

In addition to exposure for interactions between employees, cities can also be liable for their employees' interactions with inmates, persons in their custody or under supervision, and members of the public. These can lead to both tort claims in state court and constitutional claims in federal court.

Cities should be pro-active to ensure that their employees, internal affairs staff, and supervisors are well versed regarding sexual and gender harassment policies, discrimination policies, and anti-retaliation policies.

## **VII. CONCLUSION**

Women have made great strides in the areas of law enforcement. The number of women in law enforcement has grown over time, and the increase in number of female police chiefs, particularly in Southern California, show great progress.

However, women are still underrepresented and the percentage of women in policing has plateaued at about 12.6% and cities can take several pro-active steps to ensure that departments are recruiting and retaining the best candidates. Doing so both benefits police departments, and reduces a city's potential liability.