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## **320** POLICY: Prohibition on Retaliation

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### **320.1 PURPOSE AND SCOPE**

This policy prohibits retaliation against members who identify workplace issues, such as fraud, waste, abuse of authority, gross mismanagement or any inappropriate conduct or practices, including violations that may pose a threat to the health, safety or well-being of members.

This policy does not prohibit actions taken for non-discriminatory or non-retaliatory reasons, such as discipline for cause.

These guidelines are intended to supplement and not limit members' access to other applicable remedies. Nothing in this policy shall diminish the rights or remedies of a member pursuant to any applicable federal law, provision of the U.S. Constitution, law, ordinance or collective bargaining agreement or memorandum of understanding.

### **320.2 POLICY**

The Orcas Island Fire & Rescue has a zero tolerance for retaliation and is committed to taking reasonable steps to protect from retaliation members who, in good faith, engage in permitted behavior or who report or participate in the reporting or investigation of workplace issues. All complaints of retaliation will be taken seriously and will be promptly and appropriately investigated.

#### **320.2.1 Retaliation**

Retaliation is taking or threatening to take an adverse personnel action, or withholding or threatening to withhold a favorable personnel action, with respect to an OIFR member because the member reported a criminal offense.

#### **320.2.2 Ostracism**

Ostracism, which is a form of retaliation under this instruction, is wrongfully excluding a OIFR member from social acceptance or membership in or association with a group of which the OIFR member was a part of or a reasonable person would conclude wanted to be a part with the intent to do any of the following:

- a. Inflict emotional distress on the OIFR member
- b. Discourage reporting of a criminal offense or sexual harassment
- c. Discourage the due administration of justice concerning a criminal offense or sexual harassment; and, because the perpetrator knew or believed that:
  1. The member reported or was planning to report a criminal offense or sexual harassment;
  2. The member was a victim or alleged victim of a criminal offense or sexual harassment;
  3. The member was reported by another as being a victim of a criminal offense or sexual harassment;

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4. The member intervened to prevent or attempt to prevent a criminal offense or sexual harassment from occurring; or,
5. The member cooperated in an investigation or the member has served or will serve as a witness or otherwise cooperate in the future in a criminal, disciplinary, or administrative proceeding or investigation involving a criminal offense or sexual harassment.

**320.2.3 Maltreatment.**

Maltreatment, which is a form of retaliation under this instruction, is treatment by peers or by other persons, that, when viewed objectively under all the circumstances, is abusive or otherwise unnecessary for any lawful purpose, that is done with the intent to discourage reporting of a criminal offense or otherwise discourage the due administration of justice, and that results in physical or mental harm or suffering, or reasonably could have caused, physical or mental harm or suffering.

**320.2.4 Personnel Action.**

Any action taken on an OIFR member that affects or has the potential to affect that OIFR member's current position or career. Such actions include promotion; disciplinary or other corrective action; transfer or reassignment; a performance evaluation; decisions concerning pay, benefits, awards, or training, relief and removal; separation; discharge; and any other significant change in duties or responsibilities inconsistent with the fire service member's grade.

**320.3 RETALIATION PROHIBITED**

No member may retaliate against any person for engaging in lawful or otherwise permitted behavior; for opposing a practice believed to be unlawful, unethical, discriminatory or retaliatory; for reporting or making a complaint under this policy; or for participating in any investigation related to a complaint under this or any other policy. Retaliation includes any adverse action or conduct, including, but not limited to:

- a. Refusing to hire or denying a promotion.
- b. Extending the probationary period.
- c. Unjustified reassignment of duties or change of work schedule.
- d. Real or implied threats or other forms of intimidation to dissuade the reporting of wrongdoing or filing of a complaint, or as a consequence of having reported or participated in protected activity.
- e. Taking unwarranted disciplinary action.
- f. Spreading rumors about the person filing the complaint or about the alleged wrongdoing.
- g. Shunning or unreasonably avoiding a person because he/she has engaged in protected activity.

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**320.4 COMPLAINTS OF RETALIATION**

Any member who feels he/she has been retaliated against in violation of this policy should promptly report the matter to any supervisor, a command staff member, the Fire Chief or the Fire District #2 Administrative Assistant – Human Resources.

Members shall act in good faith, not engage in unwarranted reporting of trivial or minor deviations or transgressions, and make reasonable efforts to verify facts before making any complaint in order to avoid baseless allegations. Members shall not report or state an intention to report information or an allegation knowing it to be false or with willful or reckless disregard for the truth or falsity of the information, or otherwise act in bad faith.

Investigations are generally more effective when the identity of the reporting member is known, thereby allowing investigators to obtain additional information from the reporting member. However, complaints may be made anonymously. All reasonable efforts shall be made to protect the reporting member's identity. However, confidential information may be disclosed to the extent required by law or to the degree necessary to conduct an adequate investigation and make a determination regarding a complaint. In some situations, the investigative process may not be complete unless the source of the information and a statement by the member is part of the investigative process.

**320.5 INDIVIDUAL RESPONSIBILITIES**

All OIFR members share the responsibility to refrain from retaliating against an alleged victim or other OIFR member who reports a criminal offense.

**320.6 SUPERVISOR RESPONSIBILITIES**

Supervisors are expected to remain familiar with this policy and ensure that members under their command are aware of its provisions.

The responsibilities of supervisors include, but are not limited to:

- a. Ensuring complaints of retaliation are investigated as provided in the Personnel Complaints Policy.
- b. Receiving all complaints in a fair and impartial manner.
- c. Documenting the complaint and any steps taken to resolve the problem.
- d. Acknowledging receipt of the complaint, notifying the Fire Chief via the chain of command and explaining to the member how the complaint will be handled.
- e. Taking appropriate and reasonable steps to mitigate any further violations of this policy.
- f. Monitoring the work environment to ensure that any member making a complaint is not subjected to further retaliation.
- g. Periodically following up with the complainant to ensure that retaliation is not continuing.
- h. Not interfering with or denying the right of a member to make any complaint.

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- i. Taking reasonable steps to accommodate requests for assignment or schedule changes made by a member who may be the target of retaliation if it would likely mitigate the potential for further violations of this policy.

**320.7 RELATIONSHIP OF RETALIATION TO OTHER POLICIES**

All OIFR members are subject to lawful orders. When an OIFR member has been lawfully ordered to cease from engaging in retaliation, the fire service member is subject to disciplinary action for violation of that order.

**320.8 COMMAND STAFF RESPONSIBILITIES**

The Fire Chief should communicate to all supervisors the prohibition against retaliation.

Command staff shall treat all complaints as serious matters and shall ensure that prompt actions take place, including, but not limited to:

- a. Communicating to all members the prohibition against retaliation.
- b. Reviewing complaint investigations in a timely manner.
- c. Taking steps toward remediation of any inappropriate conduct or condition and instituting measures to eliminate or minimize the likelihood of recurrence.
- d. Communicating the outcome to the complainant in a timely manner.

**320.9 WHISTLE-BLOWING**

Washington law protects members who make good faith reports of improper government actions. Improper government actions include violations of Washington law, abuse of authority, gross waste of funds, and substantial and specific danger to the public health or safety (RCW 42.40.010 et seq.; RCW 49.60.210; RCW 42.41.010 et seq.).

Members who believe they have been the subject of retaliation for engaging in such protected behaviors should promptly report it to a supervisor. Supervisors should refer the complaint to the Fire Chief or authorized designee through the appropriate supervisory chain of command for investigation pursuant to the Personnel Complaints Policy.

**344.9.1 Display of Reporting Procedures**

The District shall display the Orcas Island Fire & Rescue policy to members regarding their rights and the procedures for reporting information of an alleged improper government action. A copy of the policy shall be made available to members upon request (RCW 42.41.030).

**320.10 RECORDS RETENTION AND RELEASE**

The Public Records Officer shall ensure that documentation of investigations is maintained in accordance with the established records retention schedules.

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### **320.11 TRAINING**

This policy should be reviewed with each new member.

All members should receive periodic refresher training on the requirements of this policy.