

WORKPLACE HARASSMENT AND THE EMPLOYEE GRIEVANCE PROCESS

BACKGROUND:

Sparked by the concerns of several county employees regarding workplace harassment and a seemingly ineffective grievance resolution to those concerns, Tulare County Grand Jury (Grand Jury) initiated an inquiry.

Inappropriate behavior runs counter to workplace behavior policies, but harassment is unlawful. Harassment can be anything from engaging in behavior intended to force someone to quit to actual physical threats. Understanding what constitutes harassment at work is important in setting up and maintaining a workplace environment where all employees feel welcome, productive and protected. Determining the difference between inappropriate, but not illegal behavior and illegal harassment, is key to successful resolution of harassment grievances.

The County of Tulare's Grievance Form and Personnel Rules No. 13 and 14 (General Policy) are designed to educate and inform all unrepresented and designated represented county employees of their rights and responsibilities under Labor Code §1102, Title VII of the Civil Rights Act of 1964 and Government Code §12941et seq, targeting areas of discrimination and sexual harassment. Rule 14 states:

It is against the policies of the County for any employee, male or female, to discriminate against or sexually harass another employee.

To be clear, this report does not portend to find fault with existing regulations established to correct or mitigate infractions against established standards. Instead, this report is designed to draw attention to a problem that cannot be avoided if it is not opened and exposed; a report that encourages a pro-active and educational approach against the possibility of workplace harassment and/or violence.

REASON FOR INVESTIGATION

The 2014-2015 Tulare County Grand Jury deemed the understanding of what constitutes harassment in the workplace to be important.

METHOD OF INVESTIGATION:

Tulare County Grand Jury requested, and received documents from a reliable source that outlined county grievance structure and procedures. Interviews with pertinent county personnel were also conducted.

FACTS:

1. The county's grievance procedure under Rule 13 – Employee Grievance Procedure (13.2) states that discrimination complaints are routed to the Human Resources Director, who

conducts an investigation of the complaint. The County Administrative Officer (CAO), the department and the employee are then advised of the resolution of the complaint.

2. County of Tulare Grievance Form, Personnel Rule 13, offers three (3) formal steps towards complaint resolution. An employee's formal grievance filing begins the following process.
3. Step 1 includes information that describes the employee's attempts to resolve the grievance and requires a supervisor's response to the employee's complaint. If the grievant is not satisfied with the supervisor's ruling at this phase, he or she can choose to follow up with Step 2.
4. Step 2 requires Grievant Request for Appointing Authority Review, with Appointing Authority's Response to follow. The grievant has the option to pursue a Step 3 petition if unsatisfied with the ruling at this point.
5. Step 3 authorizes Grievant Request for a Panel Review. The grievance panel includes one county employee selected by the grievant, one person appointed by the department and one member appointed by the Board of Supervisors (BOS). The BOS appointed member chairs the committee.
6. Equal Employment/Discrimination/Sexual Harassment Policy Personnel Rule 14, does not specify workplace harassment or bullying by its definition, but it does define discrimination as "...any unlawful consideration or use of race, color, religion, national origin, sex, sexual orientation, creed, political affiliation, ancestry, marital status, age, physical disability, or mental disability or any other criteria prohibited by law..." A grievance alleging workplace harassment can be undertaken within the purview of this policy outline. Additionally, The United States Supreme Court stated that, where an employer has a published sexual harassment/discriminatory harassment policy, the employee must report it under that policy and give the employer the opportunity to remedy the situation.
7. Included within the report received by Tulare County Grand Jury were seventeen (17) former Discrimination and Harassment Complaints occurring from July 1, 2012 to June 30, 2013. There were three (3) cases specifically alleging some form of harassment. The outcome of each of these cases was 'not supported by evidence.'
8. Harassment and bullying in the Workplace
 - a. "Harassment is behavior that is characteristically repetitive and intends to harm through mental agony or causing a person to be upset is known as psychological harassment. From a legal point of view, such behavior is abusive, intimidating or humiliating and is found to be threatening. Most often, such behavior leaves behind no legal evidence except for complaints or report by the victim, who suffer torment and lowered self-esteem. Psychological harassment can range from verbal abuse to aggressive and intimidating actions. When this occurs at the victim's workplace, it is especially upsetting as it also can affect work performance." *Excerpt from attorneys at: JustAnswer LLC*

- b. Unlike harassment, bullying is a covert behavior directed at someone a bully feels threatened by. It is also a form of psychological intimidation and aggression that is not based on a protected characteristic. The target doesn't even realize when they are being bullied because the behavior is conveyed through trivial criticisms and isolating actions that occur behind closed doors. While harassment is illegal, bullying in the workplace is not.
- c. Demanding bosses are not necessarily bullies as long as they are respectful and fair and their primary motivation is to obtain the best performance by setting high yet reasonable expectations for working safely.
- d. Anyone can be a harasser. Many situations involve employees bullying their peers, rather than a supervisor bullying an employee.

9. Harassment is Personal

- a. Harassment consists of conduct outside the scope of necessary job performance. Presumably, this is motivated by personal gratification because of meanness or bigotry, or for other personal motives.

10. Scope of Hostility

- a. Managers, supervisors or co-workers rarely blatantly admit treating someone adversely because of his or her actual or perceived inclusion in a protected class. Therefore, there is rarely a "smoking gun" to prove discrimination or harassment. Rather, they are usually proven by the whole and totality of the circumstances occurring.
- b. To qualify as a "hostile" workplace, conduct must be intentional, severe, recurring and/or pervasive and interfere with the employee's ability to perform his or her job.

11. Harassment is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, (ADEA), and the Americans with Disabilities Act of 1990, (ADA).

12. Union representatives, where applicable, may assist employees in all steps of the grievance process.

FINDINGS:

F1. Regarding Policy 13, Step 3, Grievant Request for a Panel Review: it has been suggested by representatives that an independent appointed chair would afford this process more balance in this final step, due to the possibility of "conflict of interest" issues.

F2. Step 3 has rarely, if ever, been utilized according to those interviewed for this report.

- F3. Tulare County is in compliance with state and federal sexual harassment/discriminatory harassment policies in its publication of Personnel Rule 14.

RECOMMENDATIONS:

- R1. Management officials should be sensitive to issues affecting their employees in order to offset any escalation of matters that can become more problematic. Similarly, employee complaints that are not contained prior to a grievance petition can serve as a catalyst that prolongs the adjudication process.
- R2. To minimize the misapplication of the allegation and the risk for actual liability, Tulare County should review and revisit established policies regularly.
- R3. Establish annual training for supervisors in Procedure 13 and 14.
- R4. Develop policies and procedures that target preventative measures for possible conflicts.
- R5. A manager or supervisor should take immediate, appropriate action when observing or receiving complaints of unlawful harassment.
- R6. All Tulare County personnel should follow harassment and discriminatory protocols.
- R7. Implement a zero-tolerance bullying policy.
- R8. Explore feasibility and alternatives for selecting a Grievance Panel Chair at Step 3.
- R9. Post anti-harassment signage in conspicuous areas such as break rooms, etc.

REQUIRED RESPONSES:

- 1. Tulare County Human Resources & Development Department
- 2. Tulare County Board of Supervisors

Disclaimer

Grand Jury reports are based on documentary evidence and the testimony of sworn or admonished witnesses, not on conjecture or opinion. However, the Grand Jury is precluded by law from disclosing such evidence except upon specific approval of the Presiding Judge of the Superior Court, or another judge appointed by the Presiding Judge (Penal Code Section 911, 924.1 (a) and 929). Similarly, the Grand Jury is precluded by law from disclosing the identity of witnesses except upon an order of the court for narrowly defined purposes (Penal Code Section 924.2 and 929).



HUMAN RESOURCES
& DEVELOPMENT
TULARE COUNTY

June 26, 2015

The Honorable Judge Hillman
County Civic Center - Superior Court
221 S. Mooney Boulevard, Room 303
Visalia CA 93291

SUBJECT: Response to Tulare County Grand Jury 2014/15 Final Report
"Workplace Harassment and the Employee Grievance Process"

FINDINGS:

- F1. Regarding Policy 13, Step 3, Grievant Request for a Panel Review: it has been suggested by representatives that an independent appointed chair would afford this process more balance in this final step, due to the possibility of "conflict of interest" issues.

Response to F1:

Suggestion has been taken under consideration.

- F2. Step 3 has rarely, if ever, been utilized according to those interviewed for this report.

Response to F2:

The Human Resources Director confirms that in recent years there have been few grievances that have escalated to Step 3, a hearing panel. This is due to a concerted effort to resolve complaints at the lowest level, to mediate issues, and to take corrective action when the County has agreed with the complainant such as pay or benefits issues.

- F3. Tulare County is in compliance with state and federal sexual harassment/discriminatory harassment policies in its publication of Personnel Rule 14.

Response to F3:

Concur with this acknowledgement of compliance by the County.

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RECOMMENDATIONS:

- R1. Management officials should be sensitive to issues affecting their employees in order to offset any escalation of matters that can become more problematic. Similarly, employee complaints that are not contained prior to a grievance petition can serve as a catalyst that prolongs the adjudication process.

Response to R1:

A goal of the HRD Director, as outlined in the proposed Final Budget 2015-16 is to institute a holistic approach to problem-resolution by offering diagnosis of the problem, early intervention, mediation services, and corrective action through a variety of resources. This holistic approach will utilize best practices and collaboration with several County departments and when applicable include labor representatives.

- R2. To minimize the misapplication of the allegation and the risk for actual liability, Tulare County should review and revisit established policies regularly.

Response to R2:

The County Board of Supervisors reviews and sets policy related to working conditions which is administered by the County Administrative Office and implemented through the Human Resources Department, County Counsel/Risk Management, the Auditor-Controller and all impacted departments.

- R3. Establish annual training for supervisors in Procedure 13 and 14.

Response to R3:

Training for new supervisors occurs three times each year in the Supervisory Academy. Rule 13 Grievance Procedures is discussed in a workshop on "Discipline & Grievances." Elements of Rule 14 "EEOC/Discrimination/Sexual Harassment Policy" is also presented to supervisors. All County employees are asked to read and sign Rule 14 Policy at the new employee orientation and thereafter are to review the policy annually and acknowledge the review and understanding by signature. Additionally, County supervisors, managers, and lead workers are required to attend training every two years under AB1825 on these same topics. Additionally, the specific issue of bullying has now been added as a topic for review at these workshops. In FY 2014-15 the County Counsel and Human Resources and Development facilitated 22 trainings for 800 employees under the AB1825 topic of Harassment/Discrimination Prevention & Policy. Further the policy is posted on the County HRD website, contained in the official Personnel Rules, and noted in most labor association Memorandum of Understandings (MOU's).

- R4. Develop policies and procedures that target preventive measures for possible conflicts.

Response to R4:

In addition to trainings and communication resources noted above, in FY 2014-15 HRD scheduled workshops for supervisors and other management employees on the "4C's: Communication, Collaboration, Critical Thinking, and Creativity" in an effort to provide preventive tools and problem-resolution resources to employees. This was the first county-wide offering of this training to the workforce. HRD also facilitated workshops on "Race Relations" for the county and the Health & Human Services Agency has instituted a Cultural Diversity and Competency program.

- R5. A manager or supervisor should take immediate, appropriate action when observing or receiving complaints of unlawful harassment.

Response to R5:

Concur with this recommendation. Further in the Personnel Rule 14.1.1 it states "Employees should also understand the importance of reporting incidents immediately to assure that further incidents do not occur." Rule 14.9 under "Complaint Procedure" states: Nevertheless, Department Heads, other managers, and supervisors have a legal obligation to effectively deal with any and all reported or observed incidents that may constitute sexual harassment or discrimination.."

14.9.1 Managers and Supervisors shall:

- a. Immediately report all reported and/or observed incidents and their supporting facts to their Department Head;

14.9.2 Department Heads shall:

- a. Immediately report all reported and/or observed incidents and their supporting facts to the Human Resources Officer who will inform the Human Resources Director.

- 14.9.3 a. A supervisory employee receiving a complaint of discrimination sexual harassment shall immediately inform their Department Head of the complaint even if the complainant requests the incidents(s) be kept confidential. The Department Head will immediately notify the County of Tulare Human Resources Director of the complaint.

- R6. All Tulare County personnel should follow harassment and discriminatory protocols.

Response to R6:

Concur with this recommendation.

R7. Implement a zero-tolerance bullying policy.

Response to R7:

The issue(s) of bullying has been included in the AB1825 training and materials.

R8. Explore feasibility and alternatives for selecting a Grievance Panel Chair at Step 3.

Response to R8:

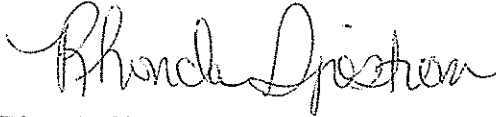
The HRD will take this recommendation under consideration.

R9. Post anti-harassment signage in conspicuous areas such as break rooms, etc.

Response to R9

The HRD will take this recommendation under consideration.

Sincerely,



Rhonda Sjostrom, Director
Human Resources & Development

Cc: Tulare County Grand Jury 2014-15
✓ Chuck White, Foreman

Tulare County Board of Supervisors
Chairman Steve Worthley

Jean Rousseau, CAO