

Rule 14 - EQUAL EMPLOYMENT OPPORTUNITY / DISCRIMINATION / SEXUAL HARASSMENT POLICY

14.1 GENERAL POLICY ON EQUAL EMPLOYMENT OPPORTUNITY

Purpose

The purpose of this Policy is to: establish a strong commitment to prohibit and prevent discrimination, harassment, and retaliation in employment; to define those terms; and to establish a procedure for investigating and resolving internal complaints. The County encourages all covered individuals to report—as soon as possible—any conduct that is believed to violate this Policy.

Policy

It is the policy of the County of Tulare (hereinafter “County”) to provide equal employment opportunity for all applicants and employees.

Harassment or discrimination against an applicant, unpaid intern, volunteer or employee by a supervisor, management employee, elected or appointed official, co-worker, member of the public, or contractor on the basis of race, religion, color, sex (including gender, gender identity, gender expression, transgender, pregnancy, and breastfeeding), national origin, ancestry, citizenship status, disability, medical condition, genetic characteristics or information, marital status, age, sexual orientation (including homosexuality, bisexuality, or heterosexuality), military or veteran status, or any other protected classification will not be tolerated.

All County recruitment, hiring, training, promotion, transferring, and related personnel transactions shall be done without regard to any of the bases listed above or other criteria prohibited by law not constituting bona fide occupational qualifications. All personnel policies, procedures, and practices shall be administered accordingly.

The County recognizes its responsibility to provide equal employment opportunities, to take affirmative and direct action at all levels of County government, regarding job classifications, salaries, training, fringe benefits, and other personnel policies, and to improve employment and career opportunities for minority group persons and women according to affirmative action principles. Appointing Authorities are required to assure that equal employment opportunity concepts are supported by their departments.

14.2 GENERAL POLICY ON DISCRIMINATION AND SEXUAL HARASSMENT

The County, as part of its continuing affirmative action efforts and pursuant to the guidelines on harassment, discrimination and retaliation issued by the Equal Employment Opportunity Commission (hereinafter “EEOC”), the Department of Fair Employment and Housing (hereinafter “DFEH”), and/or the Labor Commissioner, fully supports efforts to protect and safeguard the rights and opportunities of all people to seek, obtain and hold employment without harassment, discrimination or retaliation. This includes sexual harassment (which includes harassment based on pregnancy, perceived pregnancy, childbirth, breastfeeding, or related medical conditions) and harassment based on gender, gender identity, and gender expression. It is the policy of the County that all applicants and employees are entitled to a work environment which is free from unlawful harassment,

discrimination, and/or retaliation and to provide reasonable accommodation to qualified employees with physical or mental disabilities.

Discrimination, retaliation, and sexual harassment are violations of both state and federal laws. Supervisors and co-workers are prohibited from engaging in unlawful behavior. Harassment, discrimination and/or retaliation against an applicant or employee by a supervisor, management employee, elected or appointed official, co-worker, intern, volunteer, member of the public, or contractor on any of the bases listed above, will not be tolerated. The County has zero tolerance for any conduct that violates this Policy. Conduct need not arise to the level of a violation of law to violate this Policy. A single act may violate this Policy.

Any retaliation against a person for filing a complaint or participating in the complaint resolution process is prohibited. Individuals found to be retaliating in violation of this Policy will be subject to appropriate sanction or disciplinary action up to and including termination.

Harassment, discrimination, or retaliation can decrease work productivity, undermine the integrity of employment relationships, decrease morale, and cause severe emotional and physical stress.

1. All employees shall be informed of the complaint process under this Policy and be assured of their right to file complaints or participate in an investigation without fear of reprisal. All employees, including supervisors and managers, should be trained regarding behavior that constitutes harassment, discrimination and/or retaliation. Employees should also understand the importance of reporting incidents immediately to ensure that further incidents do not occur.

2. County Department Heads must convey to their employees that harassment, discrimination and/or retaliation is unacceptable, and to clearly inform them that behavior constituting harassment, discrimination and/or retaliation will not be tolerated. The Department Head shall make employees aware that harassment, discrimination and/or retaliation towards another employee, a client or a member of the public while the employee is on duty and/or representing the County is unacceptable and may be grounds for disciplinary action up to and including termination.

14.3 **TERMS AND DEFINITIONS**

Harassment

Harassment includes any conduct which creates an intimidating, offensive, or hostile working environment or that interferes with an employee's work performance. Such conduct constitutes harassment when (1) submission to the conduct is made either an explicit or implicit condition of employment; (2) submission or rejection of the conduct is used as the basis for an employment decision; or (3) the harassment interferes with an employee's work performance or creates an intimidating, hostile, or offensive work environment.

Harassing conduct can take many forms and may include, but is not limited to, the following (when based upon an employee's protected status as noted above): slurs, jokes, statements, gestures, assault, impeding or blocking another's movement or otherwise physically interfering with normal work, pictures, drawings, or cartoons, violating someone's "personal space," foul or obscene language, leering, stalking, staring, unwanted or offensive letters or poems, offensive email or voicemail messages. Harassment also includes,

unwanted sexual advances, requests for sexual favors and other acts of a sexual nature, where submission is made a term or condition of employment, where submission to or rejection of the conduct is used as the basis for employment decisions, or where the conduct is intended to or actually does unreasonably interfere with an individual's work performance or create an intimidating, hostile, or offensive working environment.

Discrimination

Discrimination, is any unlawful consideration or use of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

This Policy prohibits treating individuals differently because of the individual's protected classification as defined in this Policy.

Retaliation

Any adverse conduct taken because an applicant, employee, or contractor has reported harassment or discrimination, or has participated in the complaint and investigation process described herein, is prohibited. "Adverse conduct" includes but is not limited to: taking sides because an individual has reported harassment or discrimination, spreading rumors about a complaint, shunning and avoiding an individual who reports harassment or discrimination, or real or implied threats of intimidation to prevent an individual from reporting harassment or discrimination. Employees will not be retaliated against for the complaining of, who make good faith reports of, or for participating in the investigation of, harassment or discrimination.

Mental Disability

"Mental disability" includes, but is not limited to, all of the following:

- 1) Having any mental or psychological disorder or condition, such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity. For purposes of this section:
 - a) "Limits" shall be determined without regard to mitigating measures, such as medications, assistive devices, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.
 - b) A mental or psychological disorder or condition limits a major life activity if it makes the achievement of the major life activity difficult.
 - c) "Major life activities" shall be broadly construed and shall include physical, mental, and social activities and working.
- 2) Any other mental or psychological disorder or condition not described in paragraph 14.3 that requires special education or related services.
- 3) Having a record or history of a mental or psychological disorder or condition described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.
- 4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any mental condition that makes achievement of a major life activity difficult.
- 5) Being regarded or treated by the employer or other entity covered by this part as

having, or having had, a mental or psychological disorder or condition that has no present disabling effect, but that may become a mental disability as described in paragraph (1) or (2).

- 6) "Mental disability" does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psycho active substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

Physical Disability

"Physical disability" includes, but is not limited to, all of the following:

1. Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following:
 - a) Affects one or more of the following body systems: neurological, immunological, muscular skeletal, special sense organs, respiratory, including speechorgans, cardiovascular, reproductive, digestive, genitourinary, hemic, and lymphatic, skin, and endocrine.
 - b) Limits a "major life activity". For purposes of this section:
 - (i) "Limits" shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.
 - (ii) A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult.
 - (iii) "Major life activities" shall be broadly construed and includes physical, mental, and social activities and working.
2. Any other health impairment not described in paragraph (1) that requires special education or related services.
3. Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.
4. Being regarded or treated by the employer or other entity covered by this part as having, or having had, any physical condition that makes achievement of a major life activity difficult.
5. Being regarded or treated by the employer or other entity covered by this part as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (1) or (2).
6. "Physical disability" does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

14.4 **IMPROPER CONDUCT**

A County official, manager, supervisor, or employee may be subject to disciplinary action for:

1. Failing to take corrective action when the officials or supervisory employees know, or reasonably should have known, that an employee or applicant for employment is being subjected to prohibited harassment or discrimination or retaliation on the job by anyone, or
2. Retaliating against an employee or applicant for employment who complained of sexual harassment or discrimination, or who testified on behalf of one who made a complaint, or who assisted or participated in any manner on behalf of a complainant in an investigation, proceeding or hearing conducted under this Policy.

14.5 **EMPLOYEE ACTION**

Many persons are not aware their behavior is offensive or potentially discriminatory or harassing. Often simply advising someone of the offensive nature of their behavior will resolve the problem. Whenever possible, employees should inform the discriminator/harasser that his or her behavior is unwelcome, offensive, in poor taste or highly inappropriate. If this does not resolve the concern or if an employee feels threatened, or has difficulty expressing his or her concern and therefore does not feel comfortable confronting the discriminator/harasser, the complaint procedure should be used.

14.6 **COMPLAINT PROCEDURE**

The complaint procedure has been determined as the most appropriate means for registering a complaint of discrimination, sexual harassment, or retaliation to ensure an appropriate and timely investigation and resolution. Complainants pursuing other methods will be redirected to this procedure.

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 whether or not a complaint has been registered through the appropriate procedure. All complaints will be followed by a fair, complete, and timely investigation.

Complaint Procedure

- A. An employee, job applicant, contractor volunteer or unpaid intern, who believes he or she has been harassed, discriminated and/or retaliated against, may make a complaint verbally or in writing with any of the following. There is no need to follow the chain of command.
 1. Immediate Supervisor;
 2. Any Supervisor or Manager within or outside of the department;
 3. Department Head; or
 4. Director of Human Resources
- B. Managers and Supervisors shall:
 1. Immediately report all reported and/or observed incidents falling under this Policy

and their supporting facts to their Department Head.

2. Thoroughly document all reported and/or observed incidents and their supporting facts.

Department Heads shall:

1. Immediately report all reported and/or observed incidents and their supporting facts to the Human Resources Officer who will inform the Director of Human Resources.
 2. Thoroughly document all reported and/or observed incidents and their supporting facts.
- C. Upon receiving notification of a harassment complaint, the Director of Human Resources shall:
1. Authorize and supervise the investigation of the complaint and/or investigate the complaint. The investigation will include interviews with: 1) the complainant; 2) the accused harasser; and 3) other persons who have relevant knowledge concerning the allegations in the complaint.
 2. Review the factual information gathered through the investigation to determine whether the alleged conduct constitutes harassment, discrimination, or retaliation giving consideration to all factual information, the totality of the circumstances, including the nature of the conduct, and the context in which the alleged incidents occurred.
 3. Report a summary of the determination as to whether harassment occurred to appropriate persons, including the complainant, the alleged harasser, the supervisor, and the Department Head. If discipline is imposed, the level of discipline will not be communicated to the complainant.
 - a. The results of the investigation shall be reported to the County Administrative Officer (CAO) along with a recommended action and remedy, if deemed appropriate. The CAO will review the results of the investigation and any recommended actions, then take whatever action he or she deems necessary and appropriate.
 - b. Upon conclusion of the investigation, the Director of Human Resources will notify the Appointing Authority and employee in accordance with the restrictions set forth in federal and state law.
 4. If conduct in violation of this Policy occurred, take, or recommend to the Appointing Authority prompt and effective remedial action. The remedial action will be commensurate with the severity of the offense.
 5. Take reasonable steps to protect the complainant from further harassment, discrimination, or retaliation.
 6. Take reasonable steps to protect the complainant from retaliation as a result of communicating the complaint.

- D. Any employee who violates this policy may be subject to discipline, up to and including termination of employment. Where disciplinary action is warranted, the Appointing Authority shall take prompt and appropriate action. If the Appointing Authority does not take disciplinary action when warranted, the County Administrative Officer shall make a recommendation regarding disciplinary action to the Board of Supervisors, and the Board of Supervisors shall take disciplinary action as it deems necessary and appropriate, consistent with County Personnel Rules and applicable law.
- E. The County takes a proactive approach to potential policy violations and will conduct an investigation if its officers, supervisors, or managers become aware that harassment, discrimination, or retaliation may be occurring, regardless of whether the recipient or third party reports a potential violation.
- F. Option to Report to Outside Administrative Agencies: An individual has the option to report harassment, discrimination, or retaliation to the EEOC or DFEH. These administrative agencies offer legal remedies and a complaint process. The nearest offices are listed in the government section of the telephone book or employees can check the posters that are located on employer bulletin boards for office locations and telephone numbers.

Confidentiality

Every possible effort will be made to maintain the confidentiality of complaints made under this Policy. Complete confidentiality is not guaranteed, however, due to the need to fully investigate and the duty to take effective remedial action. As a result, confidentiality will be maintained to the extent possible.

Responsibilities

Managers and supervisors are responsible for:

1. Informing employees of this Policy.
2. Modeling appropriate behavior.
3. Taking all steps necessary to prevent harassment, discrimination, or retaliation from occurring.
4. Receiving complaints in a fair and serious manner, and documenting steps taken to resolve complaints.
5. Monitoring the work environment and taking immediate appropriate action to stop potential violations, such as removing inappropriate pictures or correcting inappropriate language.
6. Following up with those who have complained to ensure that the behavior has stopped and that there are no reprisals.
7. Informing those who complain of harassment or discrimination of his or her

option to contact the EEOC or DFEH regarding alleged Policy violations.

8. Assisting, advising, or consulting with employees and the Director of Human Resources regarding this Policy and Complaint Procedure.
9. Assisting in the investigation of complaints involving employee(s) in their departments and, if the complaint is substantiated, recommending appropriate corrective or disciplinary action in accordance with County Personnel Rules, up to and including termination.
10. Implementing appropriate corrective action if the allegations are founded.
11. Reporting potential violations of this Policy of which he or she becomes aware, regardless of whether a complaint has been submitted, to the Human Resources Department or the Department Head.
12. Participating in periodic training and scheduling employees for training.

Dissemination of Policy

All employees shall receive a copy of this Policy when they are hired. The Policy may be updated from time to time and redistributed.

(Please read this policy, sign below, and return it to your supervisor.)

I have read and I understand my rights and obligations under this policy. I agree to comply with the policy.

Print your name: _____

Date: _____

Signature: _____

Date: _____