



ADMINISTRATIVE POLICIES

SECTION: Professional Conduct		POLICY #:	602
TITLE: Non-Discrimination		PROCEDURE #:	602-A, 602-B
		ORDER #:	08-19
DEPT: Business Services		DIVISION:	Human Resources
ADOPTED: 4/93	REVIEWED: 12/16	REVISED:	12/16

PURPOSE: The purpose of this policy is to establish Marion County’s commitment to maintaining an environment free from discrimination, or harassment of any person, prohibiting any form of discrimination, or harassment based on a protected classification, providing all employees with relevant training, clarifying the roles and responsibilities of supervisors and employees in preventing and responding to discrimination, or harassment, establishing a fair and expeditious method of investigating and resolving complaints, and prohibiting retaliation.

AUTHORITY: The Marion County Board of Commissioners may establish rules and regulations in reference to managing the interest and business of the county under ORS 203.010, 203.035 and 203.111.

The Marion County Board of Commissioners expresses the governing body’s formal, organizational position of fundamental issues or specific repetitive situations through formally adopted, written policy statements. The policy statements serve as guides to decision making for both elected and appointed officials on the conduct of county business.

The Administrative Policies and Procedures Manual of the Board of Commissioners outline the forms and process through which the board takes official action on administrative policy, and is the official record of county administrative policy.

Statutory Authority: Equal Pay Act of 1963, Age Discrimination in Employment Act (ADEA), Americans with Disabilities Act of 1990, Titles VI and VII of the Civil Rights Act of 1964, Titles VIII and IX of the Civil Rights Act of 1968, Immigration Reform and Control Act of 1986, Federal Family and Medical Leave Act of 1993, Sections 503 and 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Vietnam Era Veterans Readjustment Act of 1974, Executive Order 11246 as amended, and regulations of the US Department of Health and Human Services issued pursuant to the Acts, Title 45 Code of Federal Regulations

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Part 80, 84 and 91, and ORS Chapter 659, ORS Chapter 659A, ORS 654.062(5)(a), ORS 399.065, ORS 171.120 - .125

APPLICABILITY: All Marion County Employees, Volunteers and Elected Officials
GENERAL POLICY: It is the policy of Marion County that unlawful retaliation, whistleblower retaliation, discrimination, or harassment on the basis of race, religion, color, sex, sexual orientation, age, physical or mental disability, marital status, national origin, or any other protected status by law, will not be tolerated.

Discrimination or harassment will not be tolerated in the workplace, in the provision of County services to members of the public, in any work-related setting outside of the workplace, or when using County-owned equipment including vehicles and electronic devices such as computers, telephones, photocopiers and faxes.

All employees, volunteers and elected officials are covered by and expected to comply with this policy and share the responsibility for providing an environment free of discrimination and harassment. All employees are expected to attend mandatory training on recognizing and preventing harassment and discrimination. It is the responsibility of supervisors, department heads and elected officials to ensure that discrimination and harassment does not take place, or to immediately correct the problem. Individuals violating this policy will be subject to appropriate disciplinary action, up to and including termination of employment.

POLICY GUIDELINES:

I. Definitions

- A. Cultural Diversity – Differences in race, ethnicity, traditions, language, dialect, nationality, or religion among various groups within a community or organization.
- B. Discrimination – Unequal or different treatment of an individual in employment practices or the provision of county services on the basis of race, religion, color, sex, sexual orientation, age, physical or mental disability, marital status, national origin, or any other protected class status in accordance with state or federal law.
- C. Employment Practices – Includes, but is not limited to, recruitment, interviews, selections, evaluations, promotions, termination, training and development opportunities, coaching, discipline, job or shift assignments, compensation and benefits.
- D. Harassment – Verbal, non-verbal, or physical conduct that is derogatory, shows hostility towards, or is designed to threaten, intimidate or coerce an individual because of his or her race, religion, color, sex, sexual orientation, age, physical or mental disability, marital

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status, national origin, or any other protected status in accordance with state or federal law, and,

1. Has the purpose or effect of creating an offensive, intimidating, hostile, or threatening environment;
 2. Has the purpose or effect of unreasonably interfering with an individual's work performance; or,
 3. Otherwise substantially and adversely affects an individual's employment opportunities or access to County programs, services, facilities, or activities.
- E. Hostile Work Environment – A type of harassment based upon a protected class where a pattern of harassment creates an offensive, intimidating, hostile or threatening work environment, or has the purpose or effect of unreasonably interfering with an individual's work performance. To rise to the level of a legal claim of hostile work environment, the harassment must be severe and persistent, not an isolated joke or comment, although these behaviors may still be considered discriminatory, disrespectful or unprofessional. Disrespectful or unprofessional behaviors may be part of a disruptive environment and may be grounds for discipline, but would not be a civil rights violation unless they are based upon or related to a protected class.
- F. Inappropriate Behavior of a Sexual Nature – Behavior that, while not amounting to sexual harassment, has a sexual component and has the potential to lower morale, decrease productivity or disrupt the workplace.
- G. National Origin Harassment – Behavior that denigrates, ridicules or is verbally or physically abusive of a person because of his or her actual or perceived ancestry, heritage, cultural background, or ethnic identification.
- H. Protected Class – a group of individuals that share distinct, personal or social characteristics or societal status, and which is specifically protected by state or federal laws from adverse social or political stereotyping or prejudice by prohibiting unequal or disparate treatment based upon class membership.
- I. Quid Pro Quo Harassment – A type of sexual harassment where submission to harassment or sexual advances is used as the basis for employment practices and decisions or other county benefits and services. Quid pro quo harassment can be committed by someone who has the supervisory authority to make decisions about employment practices or who, because of their position, can control or withhold county services or allow a third person to avoid a detriment.
- J. Racial Harassment – Behavior that denigrates, ridicules, or is verbally or physically abusive of a person because of his or her actual or perceived race including, but not limited to, jokes, derogatory statements or stereotypical comments about someone's actual or perceived race.

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- K. Retaliation – An adverse action against, or treatment of, an individual because he or she exercised rights protected under law such as complaining about harassment or discrimination, assisting with or participating in the investigation or resolution of complaints, or speaking out against harassment or discrimination.
- L. Sex Discrimination – unequal or different treatment in employment actions or services because of the individual’s sex or stereotypes based upon sex, including sexual orientation or sexual identity.
- M. Sexual Harassment – Unwelcome, pervasive or intrusive sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when submission to, or rejection of, such conduct by either males or females:
1. Is made explicitly or implicitly a term or condition of employment,
 2. Is used as a basis for an employment decision, or,
 3. Unreasonably interferes with an employee’s work performance or creates a hostile work environment.
- Sexual harassment does not refer to behavior or occasional compliments of a socially acceptable nature. It refers to behavior that is unwelcome or personally offensive, and that lowers morale or interferes with work effectiveness. Two types of sexual harassment are quid pro quo harassment and hostile work environment.
- N. Third Party Harassment – Behavior that is unwelcome to the individuals who see or hear the harassment even though it is not directed at them.
- O. Whistleblower – An employee who, in good faith, discloses to a state or federal regulatory agency, law enforcement agency, manager, or attorney, lawfully accessed information related to an objectively reasonable belief of a violation of federal, state, or local law, rule or regulation by the employer.

II. Prohibited Conduct

- A. Discrimination – No employee shall discriminate in employment practices or provision of county services to any person on the basis of race, religion, color, sex, sexual orientation, age, physical or mental disability, marital status, national origin, or any other protected status in accordance with state or federal law. This includes, but is not limited to:

Discriminate treatment – pre-determining a job or promotion on the basis of actual or perceived membership in a protected class, failing to provide an accommodation when required or interfering with an individual’s equal opportunity to participate fully in accessing County programs, facilities or services.

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Disparate impact – interview questions or competency tests that tend to screen out protected classes and are not related to essential job functions or interfere with an individual’s equal opportunity to participate fully in accessing County programs, facilities or services.

- B. Harassment – No employee shall harass any other employee or person in the provision of county services on the basis of race, religion, color, sex, sexual orientation, age, physical or mental disability, marital status, national origin, or other protected status in accordance with state or federal law. This includes, but is not limited to:

Verbal – Use of epithets, slurs, negative stereotyping, jokes, or banter that is derogatory or shows hostility because of protected class status. This includes racial slurs, verbal threats or intimidation, derogatory remarks about national tradition, traits, or foods, jokes about disabilities, mimicking dialects or accents, or sexual innuendos.

Non-verbal – Distribution or display of written or graphic material placed or circulated in the workplace that ridicules, denigrates, insults, belittles, is disparaging of or shows hostility towards a protected class. This includes: inappropriate posters on walls, sending inappropriate jokes or other written or graphic materials by e-mail, Internet or fax, or downloading inappropriate material from the Internet.

Physical – Unwelcome physical touching or contact. This includes: pinching, grabbing, patting, touching, pushing, assaulting or other hostile acts like vandalizing work areas, interfering with accommodation devices, throwing items, or spitting at a person because of protected class status.

- C. Sexual Harassment – Sexual harassment in any form is discrimination and is strictly prohibited by this policy. This includes, but is not limited to:

Quid pro quo sexual harassment – demanding sexual favors in exchange for a promotion or raise, disciplining or firing an employee who ends a romantic relationship with the person making the decision, changing performance expectations after a subordinate refuses repeated requests for a personal relationship, or allowing a third party to avoid a detrimental report or fine in exchange for sex.

Hostile work environment sexual harassment – unwanted and uninvited sexual jokes or teasing, lewd remarks, comments about body parts or sex life, suggestive posters, calendars or cartoons, leering, staring, obscene gestures, repeated requests for dates, excessive attention in the form of love letters, calls or gifts, unwelcome and unwanted physical contact like touching, kissing, pinching, hugging, patting, brushing up against, fondling, assault or rape. This includes verbal, non-verbal and physical conduct that is sexually oriented and unwelcome.

- D. Retaliation – Retaliatory action of any kind taken by any employee or volunteer against any other person as a result of that person participating in any proceeding contained in this policy is strictly prohibited. This includes, but is not limited to:

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Demoting or firing an employee who filed a discrimination lawsuit with no prior documented disciplinary history, labeling him or her as a troublemaker, excessively scrutinizing the employee's work performance, or disciplining an employee who filed a complaint more harshly than actions taken against other employees in the past for similar offenses.

Excluding an employee who was a witness in a sexual harassment complaint from communications or meetings, blaming an employee because the harasser got in trouble, or giving an employee the cold shoulder or otherwise ostracizing him or her from work or social activities.

- E. Supervisor/Subordinate Relationship – Department heads, supervisors, lead workers and managers shall not be in a direct reporting relationship with or supervise someone with whom he or she is personally or intimately involved nor participate in any employment practice or action regarding that person.
- F. Whistleblower Retaliation – Retaliatory action against a whistleblower, including initiating or participating in civil or criminal charges, when the retaliatory action is taken in relation to a whistleblower disclosure.

III. Responsibilities

- A. Elected officials, the chief administrative officer and department heads are responsible for enforcing this policy and for ensuring that all county officials, employees and volunteers are made aware of and follow this policy.
- B. Elected officials, department heads, supervisors and managers are responsible for taking immediate action if they observe or become aware of any form of discrimination, harassment, retaliation or whistleblower retaliation. Immediate action includes intervening to stop the discrimination, harassment, retaliation, or whistleblower retaliation, filing an incident report with Human Resources, and contacting Human Resources for review and consultation. Failure to take such action may result in discipline against the department head, supervisor or manager.
- C. The Human Resources Division is responsible for reviewing all incident reports or complaints of discrimination, harassment, retaliation, or whistleblower retaliation, for determining the appropriate party to conduct an investigation, for providing oversight of the investigative process, and for providing training and consultation on the policy involving employment with Marion County.
- D. The Risk Management Division is responsible for reviewing all incident reports or complaints of discrimination, harassment, retaliation, or whistleblower retaliation, for determining the appropriate party to conduct an investigation, for providing oversight of the investigative process, involving equal opportunity to access Marion County programs, facilities, or services.

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- E. All employees and volunteers are responsible to immediately notify Human Resources or the appropriate department management if they observe or become aware of a situation involving discrimination, harassment, retaliation or whistleblower retaliation.

Employees are expected to self-report supervisor/subordinate relationships to Human Resources or department management in order to work towards a resolution that will avoid unintentional violations of this policy.

- F. The employee filing a complaint is responsible to cooperate fully in the investigation process and to be as forthcoming as possible in the investigation to determine if evidence exists to support the allegation.
- G. The investigator, complainant, accused, witnesses and all other parties involved in the investigation are responsible to hold any information regarding the investigation as confidential as possible, sharing the information on a “need to know” basis only.
- H. Department management in consultation with Human Resources or Risk Management is responsible for follow-up on the complaint. This includes determining and imposing appropriate discipline if warranted, implementing and monitoring other corrective measures, and reporting the resolution back to Human Resources or Risk Management.

IV. Disciplinary Actions

- A. Employees shall be subject to discipline in accordance with the appropriate collective bargaining agreements or personnel rules.

Probationary or temporary employees violating this policy may be subject to immediate termination.

Volunteers violating this policy may be subject to immediate termination.

- B. The department head or department management, in consultation with Human Resources, shall be responsible for determining what immediate and appropriate disciplinary action shall be taken.
- C. Employees will not be subject to discipline if a supervisor and subordinate self-report a relationship that they are in and work for a resolution to change the chain of supervision. The self-report must be made prior to the supervisor engaging in an employment practice regarding the subordinate. The resolution could include reassignment, transfer, or resignation of one of the employees, or a change in supervisors. Failure to self-report may subject the supervising employee to discipline.

IV. Other Actions for Whistleblower Retaliation

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- A. Violations of this policy in regard to whistleblower retaliation is a potential Class A misdemeanor and may be referred to the Marion County District Attorney's Office for prosecution.