



TITLE: Discrimination and Harassment Free Workplace		PROCEDURE #: 602-A
DEPT: Human Resources		DIVISION: Human Resources
EFFECTIVE DATE: 8/05	REVIEWED:	REVISED: 01/20

OBJECTIVE: To establish procedures for the handling of complaints involving alleged discrimination or harassment in the workplace.

REFERENCE: Policy # 602

POLICY STATEMENT: It is the policy of Marion County to maintain a work environment which is free of harassment based on race, color, age, religion, sex, sexual orientation, disability, national origin, and any other protected status in accordance with applicable state and/or federal law. 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.

APPLICABILITY: All Marion County elected officials, department heads, employees, prospective employees, volunteers, interns, and contractors.

PROCEDURES:

1. Complaint and Investigation Process

- 1.1. An employee subjected to workplace harassment has a right to seek redress through:
 - 1.1.1. The complaint-reporting procedure outlined below;
 - 1.1.2. The Bureau of Labor and Industries’ complaint resolution process https://www.oregon.gov/boli/Pages/about_us.aspx; or
 - 1.1.3. Under any other available law, whether civil or criminal.

2. Reporting and Receiving Complaints

- 2.1. The Marion County Human Resources Department must be advised of all complaints of possible violations of Policy 602 and will provide oversight and guidance on all investigations into allegations of discrimination, harassment, intimidation, retaliation, or whistleblower retaliation, to ensure equity and consistency of the process within and across all departments.
- 2.2. Any employee or volunteer who has observed or has been subjected to any form of discrimination, harassment, intimidation, retaliation, or whistleblower retaliation in the workplace is expected to report the incident to a manager, supervisor, department head or Human Resources. Human Resources directly.

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2.3. Oral or written complaints will be accepted.

- 2.3.1. The employee receiving an oral complaint must write it out and obtain the complainant's signed and dated verification that the prepared statement is correct.
- 2.3.2. Upon receipt of a complaint from an employee, volunteer, or a third party, the supervisor or manager shall notify their department head. The manager or department head shall file an incident report with Human Resources.
- 2.3.3. When a complaint is received in Human Resources, the appropriate department head or management will be notified that a complaint has been received.
- 2.3.4. Following the receipt of a complaint, Human Resources will determine if an inquiry, assessment, investigation, or other plan of action is appropriate and will notify the department. Human Resources may notify or consult with Legal Counsel or Risk Management as appropriate.
- 2.3.5. If an investigation is determined to be appropriate, Human Resources, in consultation with the department and/or Legal Counsel, will assign a qualified, neutral investigator, or an external investigator, to conduct interviews and gather facts on the complaint.
 - 2.3.5.1. To maintain neutrality in the investigation process, investigators must not have a working or personal relationship with the complainant, accused, or witnesses.
- 2.3.6. If Human Resources determines that the matter can be investigated internally, then the department may assign a qualified, neutral investigator.
- 2.3.7. Human Resources shall connect victims of workplace harassment with the county's employee assistance provider for legal, counseling, and support services.

3. Investigative Procedures

- 3.1. All complaints will be investigated in a professional manner as expeditiously as possible. As much as possible and practicable, every effort will be made to maintain the confidentiality of the information gained through the complaint and investigative process.
- 3.2. The investigator will schedule and conduct a thorough interview with the complainant.
 - 3.2.1. The complainant will be advised that all information will be kept as confidential as possible and practicable; however, complete confidentiality cannot be guaranteed.
 - 3.2.2. During the interview, complainant will be asked for specifics regarding the alleged discriminatory, harassing, intimidating, or retaliatory incident, including date, approximate time, location and any potential witnesses to the occurrence or similar occurrences.
 - 3.2.3. Following the interview with the complainant or other witnesses, the investigator will advise the employee who has been accused that a complaint has been filed against him/her.

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- 3.2.3.1. The complaint will be discussed with the accused employee who will then be interviewed.
- 3.2.3.2. The employee will be asked to respond to the allegations and may offer the names of additional witnesses for the investigator to interview.
- 3.2.3.3. An accused represented employee may request that a union steward be present during the interview as an observer only.
- 3.2.3.4. Non-union employees may request that some other representative be present.
- 3.2.4. The investigator will interview a reasonable number of witnesses who may have evidence critical to the investigation.
 - 3.2.4.1. Represented employees may request that a union steward be present during the interview as an observer only.
 - 3.2.4.2. Non-union employees may request that some other representative be present.
- 3.2.5. In order to preserve the validity of the investigative process and minimize workplace disruption, all employees interviewed in response to a complaint will be advised to answer the questions fully and truthfully, and will be advised to refrain from discussing the investigation outside of the interviews with the investigator.
 - 3.2.5.1. Failure to do so will be considered misconduct that could result in discipline. This does not preclude an accused employee from discussing the matter with a union representative or other legal representative, as appropriate.
- 3.2.6. When all interviews have been completed, the internal or external investigator will prepare a confidential report to be submitted to Human Resources.
 - 3.2.6.1. The investigative report may be reviewed with Legal Counsel and Risk Management.
 - 3.2.6.2. Human Resources will review the report with the appropriate department head or department management.

4. Resolution of Complaints

- 4.1. Supervisors, employees, and volunteers are encouraged to resolve discrimination and harassment issues at the department level in conformance with Policy 602. The resolution must involve consultation with the Human Resources Department.
- 4.2. If there is no evidence found to support the allegations in the complaint, or the evidence that is found does not rise to the level of a violation of this policy or civil rights laws, both the complainant and the accused will be so advised by Human Resources or department management.
 - 4.2.1. The employees involved may be offered the opportunity to participate in communication training, conflict resolution sessions, team building exercises, or other services or training, as appropriate.
- 4.3. If evidence is found that supports the complaint and indicates a violation of Policy 602 or civil rights laws, then the investigation results summary and recommended sanctions will be presented to the department head or department management for consideration and determination of appropriate disciplinary action.

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- 4.4. The complainant and the accused employee will be advised by Human Resources or department management that the evidence supported the allegations and that appropriate steps will be taken to remedy the situation and to ensure that the incidents will not reoccur.
 - 4.5. Both parties will be advised by Human Resources or department management that retaliation for filing a complaint under these procedures will not be tolerated, must be reported immediately, and could subject the employee to discipline for retaliatory acts.
 - 4.6. Human Resources must maintain a report of the investigation that outlines the resolution or actions taken.
 - 4.6.1. If training is indicated as part of the resolution, it must occur within three months of the proposed resolution.
 - 4.6.2. Completion of the training must be reported, in writing, to Human Resources.
 - 4.7. Human Resources will notify the County Administrative Officer if action for a resolution is not taken by the department.
 - 4.8. If evidence is found that indicates a violation of Policy 602 based upon whistleblower retaliation may be a potential criminal misdemeanor, then the investigation results may be reported to the Marion County District Attorney's Office.
 - 4.9. Human Resources must follow-up with the complaining employee every three months in the year following receipt of the complaint, even if the allegation is not substantiated.
 - 4.9.1. Human resources must document the meetings with employees and retain the documentation with the investigation records.
5. Employee Rights in Civil or Criminal Charges Based on Whistleblower Disclosures:
- 5.1. An employee who is civilly or criminally charged in relation to protected whistleblower disclosures may assert an affirmative defense pursuant to ORS 659A (2016).
 - 5.2. An employee may not assert the affirmative defense if:
 - 5.2.1. The employee is an attorney;
 - 5.2.2. The information is disclosed in relation to the representation of a client and the employee is employed, retained, supervised, or directed by an attorney; or
 - 5.2.3. The information:
 - 5.2.3.1. Is disclosed or redisclosed by the employee or at the employee direction to a party other than to a state or federal regulatory agency, law enforcement agency, manager, or attorney; or
 - 5.2.3.2. Is stated in a commercial exclusive negotiating agreement with Marion County, provided that the agreement is not related to the employee's employment with Marion County; or
 - 5.2.3.3. Is stated in a commercial nondisclosure agreement with Marion County, provided that the agreement is not related to the employee's employment with Marion County.