



TITLE: Non-Discrimination		PROCEDURE #: 602-A
DEPT: Business Services		DIVISION: Human Resources
EFFECTIVE DATE: 8/05	REVIEWED: 12/16	REVISED: 12/16

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

REFERENCE: Policy # 602

POLICY STATEMENT: These procedures are adopted to implement Marion County Administrative Policy 602, Non-Discrimination. The Business Services Director as necessary and consistent with the policy may revise these procedures.

APPLICABILITY: All County Employees and volunteers

PROCEDURES:

I. Complaint and Investigation Process:

A. Reporting and Receiving Complaints – Human Resources will be advised of all complaints of possible violations of the Non-Discrimination Policy involving employment with Marion County. Human Resources will provide oversight and guidance on all investigations into allegations of discrimination, harassment, retaliation, or whistleblower retaliation to ensure equity and consistency of the process within and across all departments.

1. Any employee or volunteer who has observed or has been subjected to any form of discrimination, harassment, retaliation, or whistleblower retaliation in the workplace is expected to report the incident to a manager, supervisor, department head or Human Resources. Any employee or volunteer who feels uncomfortable bringing the issue to the attention of department management may contact Human Resources directly.
2. Complaints will be accepted either in writing or orally. Oral complaints will be written down by the employee receiving the complaint, who will obtain the person’s verification that the prepared statement is correct.
3. Upon receipt of a complaint from an employee, volunteer or a third party, the appropriate department management shall file an incident report with Human Resources. When a complaint is received in Human Resources, the appropriate

SUBJECT: NON-DISCRIMINATION

department head or management will be notified that a complaint has been received.

4. Following the receipt of a complaint, Human Resources will determine if an investigation, inquiry or other plan of action is appropriate and will notify the department. Human Resources may notify or consult with Risk Management or Legal Counsel as appropriate.
 5. If an investigation is determined to be appropriate, Human Resources, in consultation with the department, will assign a qualified, neutral investigator to conduct interviews and gather facts on the complaint. If Human Resources determines that the matter can be investigated internally, then the department may assign a qualified, neutral investigator.
- B. Investigative Procedures – The County will investigate all complaints 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.
1. The investigator will schedule and conduct a thorough interview with the complainant. The complainant will be advised that all information will be kept as confidential as possible and practicable; however, complete confidentiality cannot be guaranteed. During the interview, complainant will be asked for specifics regarding the alleged discriminatory, harassing or retaliatory incident, including date, approximate time, location and any potential witnesses to the occurrence or similar occurrences.
 2. Following the interview with the complainant or other witnesses, the employee who has been accused will be advised that a complaint has been filed against him or her. The complaint will be discussed with the accused employee who will then be interviewed. The employee will be asked to respond to the allegations. The employee may offer the names of additional witnesses for the investigator to interview. An accused represented employee may request that a union steward be present during the interview as an observer only. Non-union employees may request that some other representative be present.
 3. A reasonable number of witnesses who may have evidence critical to the investigation will be interviewed by the investigator. A represented employee may request that a union steward be present during the interview as an observer only. Non-union employees may request that some other representative be present.
 4. All employees interviewed in response to a complaint will be advised to answer the questions fully and truthfully and that failure to do so will be considered misconduct that could result in discipline. In order to preserve the validity of the investigative process and minimize workplace disruption, they will also be advised to refrain from discussing the investigation outside of the interviews with the

SUBJECT: NON-DISCRIMINATION

investigator. This does not preclude an accused employee from discussing the matter with a union representative or other legal representative, as appropriate.

5. When all interviews have been completed, the investigator will prepare a confidential report to be submitted to Human Resources. The investigative report may be reviewed with Legal Counsel and Risk Management. Human Resources will review the report with the appropriate department head or department management.

II. Resolution of Complaints:

- A. Supervisors, employees and volunteers are encouraged to resolve discrimination and harassment issues at the department level in conformance with the Non-Discrimination Policy. The resolution must involve consultation with the Human Resources Division.
- B. 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. The employees may be offered the opportunity to participate in communication training, conflict resolution sessions, team building exercises, or other services or training, as appropriate.
- C. If evidence is found that supports the complaint and indicates a violation of the Non-Discrimination Policy 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. 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.
- D. 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.
- E. The department head or department management must report back in writing to Human Resources the resolution or actions taken. If training is indicated as part of the resolution, it will occur within three months of the proposed resolution. Completion of the training will be reported to Human Resources.
- F. Human Resources will notify the Board of Commissioners when action for a resolution is not taken by the department.
- G. If evidence is found that indicates a violation of the Non-Discrimination Policy 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.

SUBJECT: NON-DISCRIMINATION

III. Employee Rights in Civil or Criminal Charges Based on Whistleblower Disclosures:

- A. An employee who is civilly or criminally charged in relation to protected whistleblower disclosures may assert an affirmative defense pursuant to ORS 659A (2016).
- B. An employee may not assert the affirmative defense if:
 - 1. The employee is an attorney or if 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
 - 2. The information:
 - a. 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
 - b. 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
 - c. 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.