



Evelyn Minor-Lawrence
Director

DEPARTMENT OF HUMAN RESOURCES

PUBLIC SERVICES BUILDING
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MEMORANDUM

TO: Clackamas County Board of County Commissioners (BCC)
FROM: Evelyn Minor-Lawrence, Human Resources Director
RE: EPP 2 – Discrimination and Harassment Free Workplace and Complaint Procedure
DATE: December 13, 2022

REQUEST: Approve new and revised definitions within *Employment Policy and Practice 2 – Discrimination and Harassment Free Workplace and Complaint Procedure*.

BACKGROUND:

The County's *EPP 2 – Discrimination and Harassment Free Workplace and Complaint Procedure* was most recently revised in 2020, and since that time, the County's Office of Equity and Inclusion identified that the previous definition for sexual orientation needed updating because it had incorrectly included gender identity. In its place, two recommended definition changes have been identified, based on the current definitions as found in Oregon Revised Statutes.

- **Add** definition of Gender Identity:

The 2020 version of EPP 2 did not define gender identity. During the 2021 legislative session, the Oregon legislature enacted a definition of gender identity at ORS 174.100. The new language to add to County policy uses the ORS definition and defines gender identity as:

“An individual's gender-related identity, appearance, expression or behavior, regardless of whether the identity, appearance, expression or behavior differs from that associated with the gender assigned to the individual at birth.”

- **Revise** the definition of Sexual Orientation:

Replace the existing definition of sexual orientation in EPP 2 with the existing definition reflected in ORS 174.100:

“An individual's actual or perceived heterosexuality, homosexuality or bisexuality.”

This definition from ORS 174.100 would replace the following existing EPP 2 definition:

“An individual’s actual or perceived heterosexuality, homosexuality, bisexuality or gender identity, regardless of whether the individual’s gender identity, appearance, expression or behavior differs from that traditionally associated with the individual’s sex at birth.”

During the 2019 legislative session, the Oregon Senate passed bill 479, which became ORS 243.319, and states that public employers must establish and adopt written policies seeking to prevent workplace harassment. The scope of the policy covers all employees, elected public officials, volunteers, and interns. Based on this statute, the County’s EPP 2 applies to all County employees, including elected public officials, prompting submission of these recommended changes to the Board of County Commissioners for approval.

Respectfully Submitted,

Evelyn Minor-Lawrence
Human Resources Director

Attachments:

EPP 2 – Discrimination and Harassment Free Workplace and Complaint Procedure 2022



<input type="checkbox"/> Administrative Policy
<input type="checkbox"/> Operational Policy

Clackamas County Policy

Name of Policy	Discrimination and Harassment Free Workplace and Complaint Procedure	Policy #	EPP 2
Policy Owner Name	Evelyn Minor-Lawrence	Effective Date	12/31/92
Policy Owner Position	Human Resources Director	Approved Date	06/11/20
Approved By	Board of County Commissioners	Next Review Date	07/01/23

I. PURPOSE

To affirm the County’s commitment to providing a workplace that is free of discrimination, harassment or retaliatory conduct and to outline the associated complaint procedure. The County is committed to creating and maintaining a respectful and professional work environment in which each person is valued and respected without regard to protected class status. This policy outlines types of prohibited conduct and procedures for reporting and investigating prohibited conduct.

SCOPE

This policy applies to the following: elected officials; employees, including part-time, limited term, temporary and seasonal; unpaid interns; volunteers; and contractors doing business with the County.

II. AUTHORITY

ORS 203.035 authorizes the Board of County Commissioners to promulgate policies for the management and operation of Clackamas County Government.

III. GENERAL POLICY

The County provides a work environment free from unlawful discrimination or harassment based on or because of an employee’s protected class status. Additionally, the County is committed to providing a work environment free from sexual harassment. Employees at every level of the organization, including temporary employees and volunteers, must not engage in any form of discrimination or harassment, which includes workplace intimidation, sexual assault, or sexual harassment. This policy applies to discrimination or harassment that occurs in the workplace and at work-related events that are off County premises but coordinated by or through the County.

Managers and supervisors are expected to be proactive in creating and maintaining a discrimination and harassment free workplace. Managers and supervisors must take appropriate measures to prevent and promptly correct any discrimination or harassment.

Conduct in violation of this policy will not be tolerated. Employees engaging in conduct that violates this policy may be subject to disciplinary action up to and including dismissal. Managers and supervisors who know or should know of conduct in violation of this policy and who fail to report such behavior or fail to take prompt, appropriate action may be subject to disciplinary action up to and including dismissal.

IV. DEFINITIONS

Complainant: A person (or persons) allegedly subjected to, or who witnessed or observed, discrimination, workplace harassment or sexual harassment and who files a complaint.

Contractor: An individual or business with whom the County has entered into an agreement or contract to provide goods or services.

Designated Individual: An individual designated by the County who is responsible for receiving reports of discrimination or harassment covered by this policy.

Discrimination: Making employment decisions related to hiring, firing, transferring, promoting, demoting, benefits, compensation, and other terms and conditions of employment, based on or because of an employee's protected class status. (See also Harassment.)

Gender Identity: An individual's gender-related identity, appearance, expression or behavior, regardless of whether the identity, appearance, expression or behavior differs from that associated with the gender assigned to the individual at birth.

Harassment: Discriminatory conduct that is directed at someone because they are members of a protected class, associate with someone who is a member of a protected class, or are perceived as a member of a protected class.

Non-disclosure Agreement: An agreement between the employer and employee not to disclose information related to complaints or personnel actions related to violations of this policy.

Non-disparagement Agreement: An agreement between the employer and employee not to make negative statements about the other related to complaints or personnel actions related to violations of County policies.

Protected Class: A group of people protected by law from discrimination on the basis of a shared characteristic, such as race, sex, sexual orientation, disability, or other, or a perception of that characteristic.

Respondent: The person who is the subject of the complaint.

Retaliation: Failing to treat a person who makes a complaint or has been a witness to an investigation impartially with regards to employment-related decisions, including but not limited to demotion, suspension, failure to promote or the provision of training opportunities, or any actions by any employee to ostracize, intimidate, ignore, demean or target any other person because they participated in a workplace investigation or otherwise engaged in protected activity.

Sexual Assault: Unwanted conduct of a sexual nature that is inflicted upon a person or compelled through the use of physical force, manipulation, threat or intimidation; or a sexual offense has been threatened or committed as described in ORS 163.305 to 163.467 or 163.525.

Sexual Harassment: Unwelcome, unwanted or offensive sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

(1) Submission to such conduct is made either explicitly or implicitly a term or condition of the individual's employment, or is used as a basis for any employment decision (granting leave requests, promotion, favorable performance appraisal, etc.); or

(2) Such conduct is unwelcome, unwanted or offensive and has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Examples of sexual harassment include but are not limited to: unwelcome, unwanted or offensive touching or physical contact of a sexual nature, such as closeness, impeding or blocking movement, assaulting or pinching; gestures; innuendoes; teasing, jokes, and other sexual talk; intimate inquiries; persistent courting; gender-based put-downs or insults; epithets; slurs; or derogatory comments.

Sexual Orientation: An individual's actual or perceived heterosexuality, homosexuality or bisexuality.

Workplace Intimidation: Unwelcome, unwanted or offensive conduct based on or because of an employee's protected class status. Workplace intimidation may occur between a manager or supervisor and a subordinate, between employees, and among non-employees who have business contact with employees. A complainant does not have to be the person harassed, but could be a person affected by the offensive conduct.

Examples of workplace intimidation include, but are not limited to, derogatory remarks, slurs and jokes about a person's protected class status.

V. PROCESS AND PROCEDURES

A. Reporting Discrimination and Harassment

Employees, volunteers, or interns who have experienced discrimination, harassment, sexual assault, sexual harassment, or retaliation in violation of this policy, or who have witnessed such behavior, or who have credible information about such behavior occurring, are expected and should bring the matter to the attention of the Internal Complaint Coordinator or the Director of Human Resources, who are Designated Individuals to receive such reports. Employees may also report their concerns to any supervisor or member of management. Reports may be made orally or in writing. Reports of discrimination and harassment may be made to the County within five years of the incident.

B. Investigation of Complaints

All complaints and reports of discrimination or harassment covered by this policy will be promptly and impartially investigated. To the extent possible, the County will investigate complaints and reports subject to this policy in a discrete and confidential manner. The County may need to take steps to ensure employees are protected from further potential discrimination or harassment.

All employees are expected to cooperate with the investigation and keep information regarding the investigation confidential. The County's Designated Individual or designee will notify the respondent and all witnesses that retaliating against a person for making a report of

discrimination, harassment, workplace intimidation, sexual harassment, or sexual assault will not be tolerated. The County's Designated Individual or designee will notify the complainant and the accused when the investigation is concluded.

Prompt and appropriate action will be taken if a complaint is substantiated. The County's Designated Individual or designee will inform the complainant if any part of a complaint is substantiated and action has been taken. The complainant will not be given the specifics of the action. The complainant and the accused will be notified by the County's Designated Individual or designee if a complaint is not substantiated.

Unless the complainant has signed a waiver of the employer's responsibility to conduct follow up contacts with the complainant, the employer shall follow up with the complainant once every three months for the calendar year following the date on which the employer received a report of discrimination or harassment to determine whether the alleged harassment has stopped or if the victim has experienced retaliation.

C. Protection Against Retaliation

This policy prohibits retaliation against anyone who files a complaint, participates in an investigation, or reports observing discrimination, harassment, workplace intimidation, sexual assault, or sexual harassment.

Anyone who believes they have been retaliated against because they filed a complaint, participated in an investigation, or reported observing discrimination or harassment, should report this behavior to the Human Resources Internal Complaint Coordinator. Complaints of retaliation will be investigated promptly. Employees who violate this policy by retaliating against others may be subject to disciplinary action, up to and including dismissal.

D. Employee Rights

a. Resources

Individuals who believe they are the victim of workplace harassment should contact their immediate supervisor, another manager, Internal Complaint Coordinator, Human Resources Director or designee, for information related to counseling, and support services, including the Employee Assistance Program.

The County cannot provide legal resources to its employees or referrals to specific attorneys. Employees may contact the Oregon State Bar for information about available legal services: <http://www.osbar.org/public/>.

b. Prohibited employment or settlement agreements

The County may not require, coerce, or enter into an agreement with an employee or prospective employee, as a condition of employment, continued employment, promotion, compensation or the receipt of benefits, that contains a nondisclosure provision, a non-disparagement provision or any other provision that has the purpose or effect of preventing the employee from disclosing or discussing conduct that is prohibited by this policy.

If an employee who has been aggrieved by workplace harassment, discrimination, or sexual assault wants to enter into a settlement, separation or severance agreement with the County regarding their experience and/or employment status, the employee should contact the Internal

Complaints Coordinator. The employee's request to enter into such an agreement must be in writing (email or text is acceptable). If the County and employee reach an agreement, the employee will have seven days to revoke the agreement after signing it. However, the employee may request that nondisclosure and non-disparagement provisions be included in any such agreement.

The County is committed to creating and maintaining a workplace free of sexual assault, harassment, discrimination, and retaliation and it has confidence in the process it has developed for addressing good-faith complaints. However, Oregon law requires the County to inform employees that if they have been aggrieved by workplace harassment, discrimination, or sexual assault and want to enter into an agreement with the County regarding their experiences and/or employment status, the employee should contact the Internal Complaints Coordinator. The employee's request to enter into such an agreement must be in writing (email or text is acceptable). Requests of this nature will be considered on a case-by-case basis; such agreements are not appropriate for every situation. If the County and employee do reach an agreement, the County will comply with Oregon law applicable to such agreements, including the prohibition on nondisclosure and non-disparagement provisions described above. The employee will have seven days to revoke the agreement after signing it.

c. Other reporting options

Nothing in this policy prevents any person from filing a grievance in accordance with a Collective Bargaining Agreement, a complaint with the Bureau of Labor and Industries (BOLI) or the Equal Employment Opportunity Commission (EEOC), or if applicable, the U.S. Department of Labor (USDOL) Civil Rights Center. A complaint filed with BOLI alleging an unlawful employment practices under ORS 659A.030, 659A.082 to 659A.865, 659A.112 or Section 2 of the SB726 (2019) must be filed no later than 5 years after the occurrence of the alleged unlawful employment practice. Nothing in this policy prevents any person from seeking remedy under any other available law, whether civil or criminal.

An employee or claimant must provide notice to the County of a claim against it within 180 days of the incident as required by ORS 30.275.

E. Documentation

The Human Resources Department will be the official record keeper for all reports of discrimination or harassment or related employment or settlement agreements containing prohibited provisions. All records will be maintained in a secure and confidential manner.

Any supervisor, manager or employee who observes or experiences what they believe to be incidents of discrimination or harassment should also document such incidents.

The Human Resources Department will maintain records of workplace harassment including: the date of the incident; the date the complaint was received by the Designated Individual or designee; the dates the investigation was started and closed; the investigation report; the outcome of the investigation and any actions taken by the agency; and the date the agency followed up with the victim, or a signed waiver of the employer's responsibility to conduct follow up contacts with the victim. The County may be required by law to disclose records related to

complaints of discrimination or harassment in taking appropriate disciplinary action. The County will take appropriate measures to protect confidentiality to the extent possible.

VI. ACCESS TO POLICY

Access to this administrative policy shall be as follows:

- Filed in the County's policy management system.
- Posted to the County's intranet.
- Posted to the County's internet.

VII. RESOURCES

For questions related to this policy, please contact the Human Resources Department.

See also:

EPP 1 - Equal Employment Opportunity