



# Human Resources Complaint Review:

*Training, written policies and procedures*

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September 2018

A Report by the Internal Auditor

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# Executive Summary

## Key Findings

This audit of the Human Resources (HR) complaint investigation process focuses on whether the county can improve the efficiency and effectiveness of its investigations of submitted HR type complaints. Prompt investigations are critical to both the complainant and the individual accused of the inappropriate conduct (respondent) because both live in uncertainty until the investigation is complete. Opportunities for improvement exist related to training, written policies and procedures, documentation and record keeping.

Employees are not required to attend regular training on employment policies and practices (EPP's). This does not align with best practices, attendance should be required. For example, routine attendance is not required at training on the Americans with Disabilities Act (ADA), harassment, equal employment opportunity (EEO) complaint and grievance resolution.

Workplace complaint processes are not supported by detailed written policies and procedures. HR does have a flow chart which provides a general overview of the investigation process, however, something in the form of a detailed standard operating procedures manual should exist to help address external scrutiny. This documentation helps the county demonstrate it conducts thorough, fair, and systematic investigations. And that the county encourages mediation and early resolution of conflicts.

HR should create a systematic structure for their complaint files. The complaint file was often provided to us in no particular order. A systematic structure helps ensure documentation is easy to find and everything is present.

After an investigation is complete and the final report is issued, if corrective actions are recommended in the final report (e.g. training), HR should follow-up with department management. The goal is to ensure recommendations are implemented or ensure the reason for non-implementation is appropriate.

We also made recommendations to update EPP's, develop a quality assurance process, improve communication and more.

## Key Recommendations



Our specific recommendations for management are included on page 17 of this report. In summary, we made recommendations to ensure:

- Regular required training of employees on EEO, harassment and ADA policies.
- Detailed written policies and procedures are developed related to the HR complaint process.
- HR complaint files are organized in a systematic structure.
- HR follows up on recommendations in their report to management, as determined necessary and appropriate.

## Response

Management's response is located at the end of the report.

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# Background

In accordance with the Clackamas County 2018 internal audit plan, we conducted an audit of Clackamas County’s complaint review process.

## Complaint Investigations

### Laws and policies

Federal and state law prohibit discrimination in employment. The county has enacted harassment and equal employment opportunity (EEO) complaint and grievance policies. These policies prohibit conduct by employees that is discriminatory or inappropriate and might create a discriminatory hostile work environment. The employment policies and practices (EPP’s) require the Human Resources (HR) department (formerly known as the Department of Employee Services,) to investigate any EEO complaints within 30 days. HR should assess the eligibility of complaints under county policies or county code, determine whether a violation has occurred, and consider recommending corrective action(s).

### Investigation process and requirements

HR investigates complaints of violations of the county’s equal employment opportunity (EEO) and anti-harassment EPP’s<sup>1</sup>. Complaints received by HR must satisfy a number of criteria for HR to investigate. Covered individuals include applicants, current employees, and former employees of the county. The complaining party generally is either the individual who was subjected to the alleged discrimination, persons who were harmed by the alleged discrimination, or an individual filing a complaint “on behalf of” an aggrieved person or persons. The aggrieved must fall under a basis covered by the individual’s protected status and a covered issue. Protected status is defined by Oregon and federal law and generally includes:

- Race
- Sex
- National origin
- Religion
- Age
- Sexual orientation
- Genetic information
- Pregnancy
- Veteran status
- Gender identity
- Disability
- Color



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<sup>1</sup> Employment policies and practices (EPP) 1 and 2.

Based on the complaint and complainant, HR will determine if the complaint will be reviewed internally or hire an outside investigator. Generally investigations include collecting documentation and interviewing relevant parties. HR issues a final written report to identify the facts of the case and determines whether or not a violation occurred. A conclusion letter is provided to the complainant and respondent that includes the key findings related to the allegations. If the final report determines that a violation occurred, HR will typically verbally recommend corrective action to the appropriate department management. Represented employees who receive corrective or disciplinary action may challenge the action through the appropriate grievance procedure outlined in their collective bargaining agreement. Non-represented employees who receive corrective or disciplinary action may challenge the action through the appeals<sup>2</sup> process. Departments are responsible for enforcing and implementing the recommended corrective action.

For more information, see “Develop written procedures” in the Audit Results and Recommendations section of this report.

### **Why investigate?**

There are various reasons that local governments investigate allegations received.

Some of those include:

- Provides a defense to some employment claims.
- Allows for early identification and remediation of improper conduct.
- Provides a valuable record of alleged conduct.
- May reduce the likelihood of employee lawsuits.
- Some claims may trigger mandatory requirements to investigate under certain laws or regulations.



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<sup>2</sup> County Code 2.05.190.6 states, “An employee with regular status in the classified service who does not have available a grievance procedure pursuant to a collective bargaining agreement may appeal dismissals, or discipline with economic loss to the Hearings Officer appointed under this chapter.” [Codified by Ord. 05-2000, 7/13/00]

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# Audit Results and Recommendations

## Required and regular training is needed

### **There is no requirement for employees to attend regular training**

Best practices advise that organizations provide compliance training to all employees to support safety and help prevent harassment and discrimination. Employees are not required to attend regular training on Equal Employment Opportunity (EEO), grievance resolution, harassment or Americans with Disabilities Act (ADA) employment policies and practices (EPP).

Improvements have been made recently to make more training available to employees. Specifically with regards to EEO and harassment laws and policies there are a few ways in which employees have received training in the past or can receive training:

- The new employee workshop,
- An online training was available via the intranet<sup>3</sup>,
- Training classes were provided by HR,
- HR recently started participating in Frontline new supervisor training, and
- DashTrain<sup>4</sup> and DashTrain Plus<sup>5</sup> to provide online training to employees.

DashTrain Plus training is not customizable to county policies and procedures or county code. Harassment training was offered through DashTrain Plus in the spring of 2018. Statistics from HR indicate 1,518, or approximately 71%<sup>6</sup> of county employees, took the harassment training.

**71% of the county's employees took the harassment training**

### **Peer organizations surveyed require employees to regularly attend training on EEO, harassment, ADA, etc.**

We spoke to six organizations in our surrounding area to gain an understanding of, among other things, their training practices and requirements related to the scope of this audit. The Human Resources department for five of the six organizations surveyed have developed a training on their EEO, ADA and/or harassment policies. And employees are required to attend this training biannually or triennially.

Training provided by our peers varied from:

- **In person training is the best training.**  
Our peers and the county agreed. Having training that is live and in-person is the best option. This gives the trainer the opportunity to interact with the participants and the participants the option to ask questions.
- **Online or electronic training is a good option.**  
Due to resource constraints, many local governments choose the online training option. This is where the local government will develop a training that participants will login and

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<sup>3</sup> Employees were asked, but not required to view the "Maintaining a Harassment Free Workplace" training. Records of who attended this training were not maintained.

<sup>4</sup> DashTrain is an online video-only resource that supports the workplace performance of employees. DashTrain content is not assignable by administrators, nor does it have enhanced modules/interactivity. DashTrain can be described as the "Netflix for the workplace."

<sup>5</sup> DashTrain Plus features enhanced module learning and assignable content (from department administrators).

<sup>6</sup> As of June 30, 2017, the county reported having 2,120 full time employees. This number does not include temporary employees.

view online. Some of these trainings also include employee check-ins randomly throughout the training and test questions at the end of the training to ensure comprehension. The key is that these trainings track the participants and are catered to the organizations' policies, procedures, structure, reporting functions, etc.; while also encompassing applicable state and federal laws. In addition, a training certificate is typically produced when the employee passes the online training to help document who took the training, when it was completed, and that it was successfully completed. Notices are also sent electronically to alert those who need to take the training.

- **Click the box training is bad.**

Click the box training is typically when you provide various laws, regulations, policies and procedures to employees and they sign or login and click a box to verify that they "read and understood" the information presented. Click the box training provides little evidence that the employee effectively understands the information presented, such as a policy and/or procedure.

### **County training resources are limited**

Currently, the county only has one dedicated person in charge of and to administer training for the over 2,100 county employees and volunteers. This limited resource can make it difficult to ensure all employees are adequately trained on the county's policies and procedures.

**We recommend** management develop training specific to state laws and county policies and procedures with regards to EEO and harassment. **We also recommend** all employees be required to attend this training regularly (e.g. biannually or triennially) and that training attendance records be adequately maintained. While the ideal situation would be to do regular in person training for every county employee, given the limited training resources available and the structure and set-up<sup>7</sup> of the county, online or electronic training may be the most efficient and effective option for the county.

### **Consider having a separate supervisor and employee training**

Supervisors and managers play a significant role in onboarding and performance management. How well they do their job affects the county's ability to retain talent. An employee's relationship with their manager is the most important single factor in employee engagement. A recent Gallup study<sup>8</sup> found that at some point in their careers, one in two adults had left a job to get away from their manager.

While research does demonstrate that adult learners are resistant to required training and benefit more from training they volunteer to take, there is also a body of research that calls for organizations to invest in their supervisors and managers through training that is consistent across the organization. Systematic training could help ensure new managers receive sufficient support as they transition into a new role, can help underperforming managers improve, and helps good managers broaden their skills. In turn, this enhances employee engagement by affirming a baseline for what employees can expect from the organization even if their supervisor changes or they move across departments.

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<sup>7</sup> For example, many departments are not located on the Red Soils campus in Oregon City and not all employees work a "normal" work week (e.g. Monday through Thursday, 7:30am – 5:30pm).

<sup>8</sup> State of the American Manager: Analytics and Advice for Leaders

Our peers recognize that the roles of the employee and supervisor, with regards to EEO, harassment, etc., are different. Developing and requiring training for supervisors and managers would be a step toward meeting best practices for compliance training. With the goal of handling HR complaints at the lowest level possible, proper training to supervisors and managers can help with deescalating and assisting in the resolution of bad situations. This, in turn, could alleviate the need for employees to file a complaint with HR.

Training could also provide tools to supervisors in attaining the county's goal of harassment prevention. According to EPP's, managers are responsible for the acts of their agents and supervisory employees with respect to preventing sexual harassment in the work-place. Training could assist department managers and supervisors in their requirement to develop methods to sensitize employees on these issues.

Most organizations agree, separate training should be created for supervisors and employees. **We recommend** management consider developing separate training for employees and supervisors.

### Develop written procedures



#### **A lot has changed in three years**

Prior to the arrival of the current Human Resources' (HR) Director in 2015 there existed a small committee made up of the HR Director, County Administrator, a member of County Counsel and an elected official who would triage all HR related complaints (e.g. EEO, protected status, etc.). The committee would review the complaint and evaluate the next best steps. If it was decided that the complaint had merit and fell under HR's jurisdiction, the complaint was typically contracted out to a private firm or professional for investigation.

In the fall of 2015 changes were made to the triage process. The complaint intake form was updated, which was generally modeled after HR's peers. After reviewing the intake form and discussing the complaint with the complainant, the information is now triaged between the HR Director or HR Assistant Director and a member of County Counsel, to determine the next best steps to proceed.

If it is determined that the complaint is applicable to EEO, protected status, harassment or more<sup>9</sup>, the complaint is either contracted out for investigation or handled internally by HR.

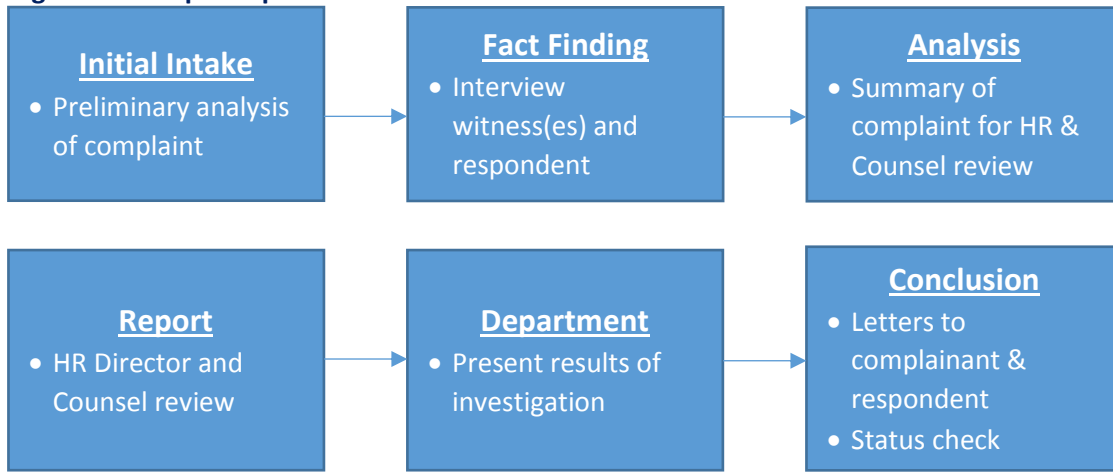
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<sup>9</sup> See "Background" section of this report.

## Complaint Process

The general complaint process is outlined in figure 1 (below).

Figure 1: Complaint process



## Workplace complaint process needs detailed countywide procedures

The county's personnel rules detail multiple ways to report complaints. Employees can report complaints orally or in writing to any supervisor or manager, HR representative or HR Director. HR does have flowcharts and a summary process for addressing internal complaints that appears to contain the appropriate anatomy of an investigation. HR does not have sufficiently detailed written procedures to ensure that complaints and investigations are consistently resolved and tracked. Procedures would provide criteria for resolution of complaints informally, through mediation<sup>10</sup> or by formal investigation.

**HR needs sufficiently detailed written procedures.**

A procedure should communicate to employees:

- A commitment to investigating employee complaints,
- How to lodge complaints,
- Standard of evidence an investigations conclusions are reached under,
- Promise a prompt, thorough, and impartial investigation,
- Make clear that retaliation will not be tolerated and how to report retaliation,
- Advise that false complaints<sup>11</sup> could lead to discipline.

Complaints should be addressed fairly and promptly at the lowest level possible. Based on the nature of the complaint, a formal investigation may be needed. If a complaint moves into a formal investigation, the conflict resolution process typically can get more lengthy and costly. Open investigations can disrupt work and have a negative impact on productivity and morale.

<sup>10</sup> For example, if the complaint is because one person believes another persons' perfume is too strong or too smelly.

<sup>11</sup> For example, if someone stated they were sexually harassed via inappropriate touching by a co-worker and video evidence for the specific date and time the allegation occurred confirms that no such specific act occurred.



### **Complaint procedures should encourage interest-based conflict resolution**

Formal processes are position-based and may not get to the underlying issues between individuals. A position-based process is based on what each party wants. Each party to the conflict holds on to a fixed idea, or position, arguing for it from an all-or-nothing, win-or-lose standpoint despite unexplored and potentially better alternatives.

When appropriate, a more informal, interest-based conflict resolution process such as mediation, is more likely than an investigation to address the casual issues of the complaint and



bring positive change to the work environment. An interest-based process focuses on developing agreements based on the interest of the parties that benefit both parties. When employees collaboratively problem solve, they are more likely to be satisfied with the outcome.

The U.S. Equal Employment Opportunity Commission has recommended alternative dispute resolution, of which mediation is one kind. According to HR staff, the county has also used mediation at times to help resolve complaints. Due to the newness of the tracking system we could not estimate how many complaints were dealt with informally through mediation.

To fairly and promptly resolve complaints at the lowest organization level possible, **we recommend** management develop detailed written procedures that begin with the initiation of complaints, address mediation, and go through formal investigations.

The department should develop consistent procedures related to the HR complaint reporting process. These procedures should identify which employee issues will be handled internally versus through the use of contracted resources. This could include specifically identifying workload levels, but for greater consistency should be based on the type of investigations, liability risk, and conflicts of interest. **We also recommend** HR regularly (e.g. biannually) evaluate HR procedures and practices for effectiveness and adherence to HR processes and practices.

### **Quality assurance process needed**

#### **HR does not have a standard quality assurance process to ensure statements and conclusions are supported by documented evidence and facts**

Recommended practices state that “findings and related conclusions should be reviewed and checked for accuracy preferable by someone other than the fact finder, before an ultimate decision is reached.”<sup>12</sup> HR conclusions presented in the final report are not verified or cross referenced to evidence collected to ensure those conclusions are accurate and supported. The HR Director and County Counsel review the final report, but this review is generally for editing

<sup>12</sup> “Best Practices in Internal Investigations: 2013 Edition,” page 5.

purposes and not an accuracy check<sup>13</sup>. This holds true to reports produced by an outside (contracted) investigator as well.

To ensure HR investigative reports and conclusions are supported by documented evidence and facts, **we recommend** management ensure statements and conclusions in the final report undergo a documented quality assurance process.

## HR complaint reporting communication needs improvement

### Improvements are ongoing, but more can be done

Human Resources offers a complaint intake form that is available to county employees (full or part-time), or other individuals who work with employees in some capacity (e.g. volunteers), to report violations of workplace discrimination, harassment, sexual harassment, racial/age/gender or other protected class discrimination, retaliation, and similar issues.

These forms do not allow for anonymous reporting. Until recently, the form was not available via the county intranet. The process required individuals to obtain the form directly from HR and fill it out. Employees were only alerted to the presence of the form through HR, managers, or (in some cases) through their bargaining unit.



In the last calendar year, the Public and Government Affairs (PGA) department was tasked with developing a way to promote the existence of the various employee reporting mechanisms, which includes the HR complaint intake form. Resulting from those meetings was the complaint intake form becoming available on HR's intranet page.

**We concur with PGA's recommendation** that an enhanced digital presence needs to be developed on the county's intranet page around the HR complaint process.

### Continue developing a "Complaint Packet"

A number of our peers have developed a packet for employees filing complaints with HR. Instead of just providing the employee with the complaint intake form, this packet generally outlines the entities outlook, policies and procedures on:

- Respectful workplace,
- Mediation or other possible resolution options,
- Employee Assistance Program (EAP) assistance options,
- Recommendation to speak with supervisor about issue(s) employee is experiencing<sup>14</sup>,
- Contacts in HR to discuss their concerns,

<sup>13</sup> For example, an accuracy check could consist of someone matching statements in the report to supporting documentation, recordings, e-mails, etc.

<sup>14</sup> This promotes HR trying to have employees handle their concern(s) at the lowest level possible, while also noting that if they are not comfortable, they can contact HR (or someone else who does not align with their management).

- Reference to state or federal laws surrounding employee behavior,
- The county’s policies surrounding employee behavior<sup>15</sup>, including retaliation<sup>16</sup>,
- Examples on what qualifies as an HR complaint (and what does not qualify),
- Investigative policies and procedures,
- How complaints will be treated as confidential as possible, but HR cannot promise complete confidentiality,
- Reference to other locations where complaints can be reported<sup>17</sup>, and
- Complaint intake form.

Typically, this complaint packet is discussed in regular HR trainings and is available online. **We recommend** management continue developing a complaint packet (or something similar) which includes some or all of the information outlined above.

## Standardize HR complaint file

### Systematic complaint folder structure needed

As outlined in the Objectives, Scope and Methodology (OSM) section of this report, we sampled and tested a number of complaints that were submitted and reviewed by HR. Key documentation and procedures in the complaint investigation process were identified by Internal Audit. Documentation was then provided by HR staff to Internal Audit for the selected sample items.

In general, complaint documentation was provided to us in no discernable structure or order. While all key documentation was generally present to support each investigation, opportunities exist to develop file structure consistency. Uniformity and organization in creating files will help the HR complaint process become more efficient as it will make it easier for investigators, management and quality controllers to determine whether the file and investigation steps are complete. For example, when multiple staff members use files that are not organized and consistent, the potential increases for steps to be duplicated or missed, or documents to be lost. It was also difficult to ensure all witnesses and respondents received the appropriate notification. Consistent organization of documentation are key strategies in efficiently completing a thorough investigation and facilitate review and oversight.

**Opportunities exist to develop file structure consistency.**

In order to improve the consistency and efficiency of HR complaint investigations, **we recommend** management create a file structure and a standardized checklist to help ensure all documentation is present and all required investigative procedures were performed.

<sup>15</sup> For example, EPP #1 - 3.

<sup>16</sup> For example, EPP #44.

<sup>17</sup> County’s fraud, waste and abuse hotline (EthicsPoint); Oregon Bureau of Labor and Industries (BOLI); Office of Civil Rights; Federal Equal Employment Opportunity Commission; etc.

## Most HR complaint files did not contain documentation of investigation planning

Only a few HR complaint files sampled included investigation planning documentation. It is important to acknowledge that planning documentation is a newer concept that is being developed by HR, so this contributed to the lack of documentation found during testing.

Recommended practices for workplace investigations note that effective planning prior to an investigation helps improve the conformity, consistency, and thoroughness of an investigation. Documentation of the planning process should take place in the form of a preliminary investigation plan. Although the HR complaint process flow-chart describes most of the steps in investigative planning, including investigation timeline, interview list plan, policy violation review, and witness notification, investigators are not required to document their investigation planning process in each file.



Appropriate planning for an investigation is important to ensure the investigation is effective. An effective investigation plan will help investigators work more efficiently, ensure that all necessary elements of an investigation are covered, and facilitate oversight. HR complaints and their subsequent investigation and outcomes can become the basis of future litigation. Internal and external legal counsel should be able to understand the steps taken to investigate a complaint and why alterations to an initial investigation plan were made. Adequate documentation of a thorough, consistent planning process is necessary to demonstrate the county is appropriately responding to each complaint.

In order to improve the efficiency and documentation of HR investigations, **we recommend** management ensure HR investigators demonstrate their investigation planning process within the complaint file.

### Application Xtender, PeopleSoft HR and HR Issues

HR Issues (a Microsoft Access Database) is the primary system currently used to track HR complaints. HR flowcharts also outline the use of the PeopleSoft HR Discipline Module and Application Xtender as resources to be used during the complaint investigation.

PeopleSoft HR is the county's book of record for HR related information.

Application Xtender is a content management system. Users can scan, store, retrieve, and preserve information in Application Xtender, while providing role-based access from nearly any device or web browser.



As discovered during testing and confirmed by HR staff, PeopleSoft HR and Application Xtender are not currently being used to track HR complaint information despite the flow-chart indicating the use of the aforementioned two systems.

In particular, PeopleSoft HR could be used in conjunction with HR Issues to track key complaint information. Application Xtender could be used to manage HR complaint investigation documentation. As previously noted, HR complaint investigation documentation was maintained in file folders. Efficiencies could be achieved by having HR complaint documentation maintained electronically.

**We recommend** management consider what information should be tracked in each of the three HR systems when they develop HR complaint written procedures. For efficiency, a system to track and have documentation scanned and maintained electronically could be good so information can be located easily and until a time when archiving standards allow for the disposal of such material.

### **System access needs to be routinely reviewed**

Access should be restricted to the various programs used to track the complaint process. Routine review of access to HR Issues, PeopleSoft HR and Application Xtender is not currently being performed. We identified instances where employees who should not have access to one of the three systems outlined above, did have access. **We recommend** management review access to the three systems at least annually.

## **Follow-up on recommendations**

### **Frequently HR makes recommendations in the final complaint investigation report**

At the conclusion of each HR complaint investigation a report is issued by HR to County Counsel. After the report is reviewed by the HR Director and County Counsel a meeting is scheduled with department management to go over the results of the investigation and the report. Frequently the report will result in recommended corrective action to department management. This can include training, mediation, and more. Currently there is no formal process to review the recommendations in the report with management to ensure corrective actions have been implemented.

**We recommend** HR management follow-up with corrective actions they have suggested in their report to ensure they have been implemented. Regular reporting to department directors and/or County Administration should occur when corrective actions are not being implemented timely.

## **Update employment policies and practices**

### **Administrative rule, County Code or EPP**

EPP's and county codes related to personnel rules have not been reviewed and updated in recent history. We found a number of aspects that were out of date.

For example:

- EPP 1 and 2 noted the last clerical update was on September 7, 2007,
- Links did not go to the correct location,
- EPP's still referenced the Department of Employee Services (which is now Human Resources),

- EPP indicated investigations will be completed within 30 days. (This is not the current practice of the HR department.)

We also found a number of aspects of HR related personnel rules that may better fall into an administrative rule. HR management did provide us with an outline of the plan to review and update the EPP's.

**We recommend** management review all personnel rules and revise them to reflect current practices, address best practices and determine the appropriate location for the rule, policy or practice (e.g. County Code, EPP, or Administrative Rule). **We also recommend** these policies or rules be regularly reviewed and updated by management (e.g. biannually, triennially).

## Investigators must be impartial and be perceived as impartial

### It is good that investigations are handled centrally

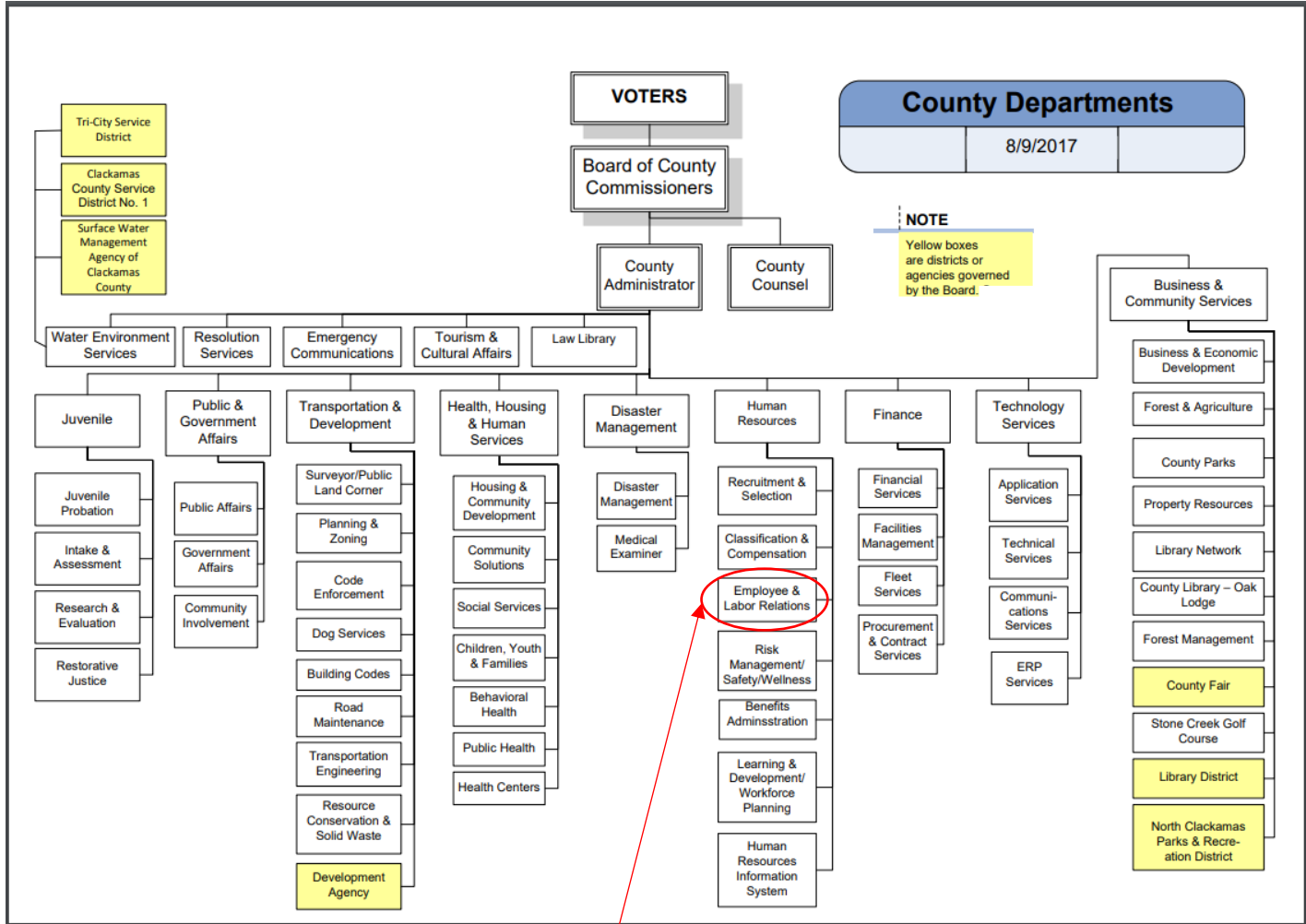
A properly conducted formal investigation is evidence-based and must meet high standards. When departments select an investigator, the investigator should not be in a position of direct authority over any of the people involved. Staff assigned to conduct investigations must be impartial and be perceived as impartial. The investigator must protect the confidentiality of the disputing parties to the extent possible. Investigators interview any witnesses and issue a report that serves as a basis to administer any discipline. The investigation should be thoroughly documented. Finally, the investigator should share any process improvements or training opportunities with management.



The county risks damaging its credibility and exposes itself to potential lawsuits if investigations are performed inconsistently. This is why the centralized model appears to work better than a decentralized model. The risks of investigation inconsistencies do not appear as high in a centralized model. A centralized model where investigators do not report to the same department management as the complainant, can help ensure investigators are impartial and, maybe even more importantly, perceived as impartial. With the exception of one of our peers we spoke with, investigations were handled by a central HR function.

**We recommend** management incorporate into written policies and procedures the necessity that investigators ensure they are independent and impartial.

**Figure 2: Organization Chart**



**HR type complaints are investigated here.**

## Corrective action and discipline

### Ensure appropriate progressive and proportionate discipline

Once the HR investigation is complete, it is up to the appointing authority to decide the appropriate level of progressive discipline and corrective action, if necessary, in line with any applicable union contracts. This process is generally outlined in EPP #36 and County Code section 2.05. HR management has indicated they make recommendations on progressive discipline verbally to the employee's appointing authority (e.g. manager/director). Appointing authorities are not required to follow HR's recommendation, some appointing authorities will apply the recommended progressive discipline from HR and some will not.

The challenge is that management may not have the necessary county history on what discipline and/or corrective action, if any, is appropriate and proportionate, given the findings. This can lead to grievances, law-suits and more. The county does not have a documented holistic approach to ensure consistent, appropriate and proportionate discipline across all departments and units. HR is likely best positioned to track and ensure consistent progressive and proportionate discipline throughout the county.

**We recommend** management work with County Administration and County Counsel to develop a system to assist appointing authorities (e.g. department management) in determining the proportionate and appropriate level of progressive discipline and/or corrective action when complaints are substantiated. This system should be documented in HR policies and procedures.

**We also recommend** management include in the written procedure:

- Who has final authority and approval regarding disciplinary action when complaints are substantiated (e.g. HR, Department Management/Director, County Administration, Elected Official), especially if there are disagreements between HR management and the appointing authorities on the appropriate progressive discipline.
- When complaints are substantiated by HR, how HR's recommended progressive discipline will be communicated to the appointing authority (e.g. in writing, verbally).
- How discipline will be tracked by HR, to ensure discipline is corrective, progressive, lawful and proportionate.

**We also recommend** management consider tracking the time it takes to complete an investigation, including any key milestones, and the results of any corrective action or discipline<sup>18</sup>.



<sup>18</sup> For example, did it result in a grievance or appeal, what was the result of the grievance or appeal proceedings, etc.



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## Recommendations in Summation

To improve county processes, we recommend HR management:

- Develop training specific to state laws and county policies and procedures with regards to EEO and harassment.
- Ensure all employees be required to attend training on EEO and harassment regularly (e.g. biannually or triennially) and that training attendance records be adequately maintained.
- Consider developing separate training for employees and supervisors.
- Develop detailed written procedures that begin with the initiation of complaints, address mediation, and go through formal investigations.
- Regularly (e.g. biannually) evaluate HR procedures and practices for effectiveness and adherence to HR processes and policies.
- Ensure statements and conclusions in the final report undergo a documented quality assurance process.
- Continue to work with Public and Government Affairs (PGA) on developing an enhanced digital presence on the county's intranet page around the HR complaint process.
- Continue developing a complaint packet (or something similar).
- Create a file structure and a standardized checklist to help ensure all documentation is present and all required investigative procedures were performed.
- Ensure HR investigators demonstrate their investigation planning process within the complaint file.
- Consider what information should be tracked in each of the three HR systems when they develop HR complaint written procedures.
- Review access to HR Issues, PeopleSoft HR and Application Xtender at least annually.
- Follow-up with corrective actions they have suggested in their report to ensure they have been implemented. Regular reporting to department directors and/or County Administration should occur when corrective actions are not being implemented timely.
- Review all personnel rules and revise them to reflect current practices, address best practices and determine the appropriate location for the rule, policy or practice (e.g. County Code, EPP, Administrative Rule).
- Regularly review and update (e.g. biannually, triennially) complaint related policies or rules.
- Incorporate into written policies and procedures the necessity that investigators ensure they are independent and impartial.
- Work with County Administration and County Counsel to develop a system to assist appointing authorities (e.g. department management) in determining the proportionate and appropriate level of progressive discipline and/or corrective action when complaints are substantiated.
- Include in the written procedure:
  - Who has final authority and approval regarding disciplinary action when complaints are substantiated (e.g. HR, Department Management/Director, County Administration, Elected Official), especially if there are disagreements between HR management and the appointing authorities on the appropriate progressive discipline.
  - When complaints are substantiated by HR, how HR's recommended progressive discipline will be communicated to the appointing authority (e.g. in writing, verbally).
  - How discipline will be tracked by HR, to ensure discipline is corrective, progressive, lawful and proportionate.
- Consider tracking the time it takes to complete an investigation, including any key milestones, and the results of any corrective action or discipline.

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# Objectives, Scope and Methodology

Our audit objective was to evaluate Clackamas County's Human Resources' (HR) complaint investigation process. We focused on industry reports, compared HR to its peers and ensured compliance with key county policies and procedures.

To address our audit objectives, we:

- Interviewed HR employees and employees of various complaint investigation departments throughout the State of Oregon to identify potential criteria, issues, sources of information and concerns.
- Reviewed professional literature to identify recommended practices for conducting workplace investigations.
- Reviewed county ordinances, county EPP's, state statutes, and federal regulations to identify governing laws.
- Reviewed any available HR policies and procedures.

We compared our operations to other HR and complaint receiving departments. We learned of additional procedures that could be implemented by the county and existing challenges the county's HR department faced.

We reviewed internal controls associated with processing HR complaints. These controls include HR management and County Counsel review.

We conducted a series of control, substantive and legal compliance tests. We used data from HR Issues, a Microsoft Access based database created by HR staff. Our population consisted of complaints recorded in the HR Issues database from March 2004 to March 2018.

Detail control, substantive and legal compliance testing was ultimately performed over 22 individual complaints received from September 2015 to January 2018. We selected all files judgmentally.

We reviewed federal and state laws, EPP's, county code and best practices related to our audit objectives.

Although some cases we reviewed may also have parallel complaints filed with outside agencies such as the Oregon Bureau of Labor and Industries (BOLI), or the courts, our scope of review was limited to the cases filed with the county's HR department.

An auditor from another organization, who was not involved with the audit, conducted a quality control review of the audit report to ensure it was accurate and conclusions were supported by audit evidence. This auditor is a Certified Public Accountant, Certified Internal Auditor and Certified Fraud Examiner.

The courtesies and cooperation extended by volunteers, officials and employees of the HR Department, County Counsel, outside organizations and County Administration during the course of this audit were commendable and sincerely appreciated.

Pictures courtesy of the Mt. Hood Territory, unless otherwise noted below:

Complaint – Page 2 - n.d. Web Oct. 2018 <<https://atticusblog.com/how-to-write-a-winning-complaint-3-top-tips-to-remember/>>

EDIC – Page 3 - n.d. Web Oct. 2018 <<https://www.councilofnonprofits.org/tools-resources/why-diversity-equity-and-inclusion-matter-nonprofits>>

Policies and Procedures – Page 7 - n.d. Web Oct. 2018 <<http://affiliatedacceptance.com/business-policies-and-procedures/>>

Mediation – Page 9 - n.d. Web Oct. 2018 <<http://upstatedmediation.com/community-police-mediation-program/>>

PeopleSoft Training Manual – Page 12 - n.d. Web Oct. 2018 <[http://web1.clackamas.us/des/documents/ps\\_hr\\_fluid\\_interface\\_training\\_manual.pdf](http://web1.clackamas.us/des/documents/ps_hr_fluid_interface_training_manual.pdf)>

Map – Page 12 - n.d. Web Oct. 2018 <<https://reach.scot/tips/get-extra-support-school-involved-planning-help-need/>>

Human Resources Globe – Page 16 - n.d. Web Oct. 2018 <<http://www.alexanderbrookes.com/human-resources-courses/>>

Impartial – Page 19 - n.d. Web Oct. 2018 <<https://info.umkc.edu/facultyomb/2016/09/29/neutrality-impartiality-an-ombuds-standard-of-practice/>>



## About Clackamas County Internal Audit

The Clackamas County Internal Audit Charter provides that the internal audit function shall have full, free, and unrestricted access to county functions, activities, operations, records, data files, computer programs, property and personnel. In addition, authority is granted to internal audit staff to request reasonable assistance from appropriate county personnel in acquiring requested records, documents and files, as well as inspection and entry privileges to all assets owned, leased, or borrowed by the county. The Internal Auditor reports to the Internal Audit Oversight Committee and to the elected Clackamas County Treasurer. Internal audit is independent of other departments within Clackamas County.

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Evelyn Minor-Lawrence  
Director

DEPARTMENT OF HUMAN RESOURCES

PUBLIC SERVICES BUILDING  
2051 Kaen Road | Oregon City, OR 97045

**To:** Brian Nava, Internal Auditor  
**From:** Evelyn Minor-Lawrence, Human Resources Director  
**Re:** Human Resources Complaint Review Audit Response  
**Date:** January 3, 2019

## Introduction

The Clackamas County Human Resources Department appreciates the thorough review of the internal complaint process conducted by Brian Nava, Internal Auditor. The audit process was comprehensive and included a review of relevant human resources best practices. The audit also included review of the practices of other local jurisdictions, providing us the opportunity to incorporate the best of all practices into our own process.

We are pleased to have the opportunity to respond to the report and specific recommendations. As identified in the report, the County's internal complaint program has been developing over the last few years, and management agrees with the recommendations made to improve the process.

We have addressed the recommendations as presented in the audit report, and have responded with specific actions that will address the recommendations, timelines, and any applicable information regarding our practices.

## Required and Regular Training is Needed

### **Recommendation:**

- Develop training specific to state laws and county policies and procedures with regard to EEO and harassment.
- Ensure all employees be required to attend training on EEO and harassment regularly (e.g. biannually or triennially) and that training attendance records be adequately maintained.
- Consider developing separate training for employees and supervisors.

**HR Response:** We agree that best practice is to provide compliance training to all employees to educate and prevent harassment and discrimination in the workplace. All new employees are currently required to attend New Employee Workshop (NEW), which provides an overview of Equal Employment Opportunity (EEO) and harassment, and references the County policies related to these subjects. New supervisors are also required to attend Frontline HR, which provides an overview of relevant issues for supervisors, and has historically included a session on EEO (until July 2017). In April 2018, an overview of the internal complaint process was added to the agenda. These courses will continue to be a requirement for new employees.

The County has delivered harassment training at different points in time. In 2013, all employees were required to complete an online harassment training (PowerPoint presentation and quiz), and completion records were maintained in each employee's personnel record. Following the Countywide training initiative, the training module was added to the County's Onboarding website, and supervisors were asked to ensure their new employees completed the training. Unfortunately, this method was not as effective as the overall Countywide initiative, and was difficult for Human Resources to monitor completion.

Recent efforts have made training more accessible to employees. Within the past year, the County purchased and implemented DashTrain and DashTrain Plus to provide online training resources for employees. On May 17, 2018, County Administrator Don Krupp e-mailed all County employees about the new training platform, and announced the mandatory harassment training. Supervisory staff was required to complete "Harassment Prevention Made Simple for Managers," and the general employee population to complete "Harassment Prevention Made Simple." Each module included an educational component and quiz. County Administrator Krupp's e-mail also provided a link to the County's Employment Policy and Practices (EPP) #2 on Harassment. As noted in the audit report, 71% of County employees completed this mandatory training. While there were a few pockets within the County that struggled to complete the training, the 71% completion rate was influenced by the Sheriff's Office electing to develop their own customized harassment training video for their employees, rather than participating in the Countywide DashTrain Plus module. We are aware that the Sheriff's Office is in the development phase of this project, and once their department based harassment training is complete, we anticipate the overall completion rate will increase significantly.

It was noted in the audit report that one of the limitations of online training resources is the inability to customize the training to include County policies. One of the distinct benefits of DashTrain and DashTrain Plus is that they are high quality resources and deliver consistent training to each learner, and do actually allow for attaching our County policies. Also, while there are many benefits of in-person training, a limitation is the potential for inconsistent content delivery. The audit report also referenced "click the box" type training, where employees are asked to read a policy and acknowledge they have read and understand the content. We see this more as a compliance function, and agree it does not promote effective learning. In order to effectively combine the online training with policy acknowledgement would require a countywide knowledge management system designed to deliver and maintain such information.

In summary, we plan to deliver EEO and harassment training biennially for existing employees through DashTrain Plus and continue to maintain appropriate records of completion for each employee. New employees will be prompted to complete the DashTrain Plus module within a certain period after joining the County. As with the training rolled out in 2018, employees will take either the supervisory or general employee version, depending on their role. We also plan to provide additional in-person training for supervisors.

In order to make these training efforts as effective as possible, we desire additional conversation with County Administration about where the responsibility for mandating training and EEO related training lies within the organization. For both of these topics there seems to be shared roles and responsibilities between Human Resources and County Administration, and we desire clarity on our roles and responsibilities.

Anticipated Implementation Date: Pending the appointment of a new County Administrator  
HR Program: Workforce Planning and Development, Jeri Oswald

## Develop Written Procedures

### **Recommendation:**

- Develop detailed written procedures that begin with the initiation of complaints, address mediation, and go through formal investigations.

HR Response: We are in agreement with the need to develop detailed written procedures to further document the internal complaint process beyond the process flowchart that is used within HR to ensure consistency. Detailed written procedures will help county employees better understand how the internal complaint process works.

Human Resources supports the use of mediation to resolve employee disputes, particularly with respect to non-EEO complaints such as the example regarding overly strong perfume. However, Human Resources disagrees that intake of EEO complaints is an appropriate junction to promote informal or mediated resolutions. As the report notes, complaint reporting and subsequent investigations are central to defending against EEO lawsuits and may, in fact, reduce the likelihood of such lawsuits.

Although the EEOC does promote the use of mediation to resolve formal charges filed by individuals, they do not share the employer's interest in information gathering and ensuring discipline. For example, the report of EEOC's Select Task Force on the Study of Harassment in the Workplace recommends that "where harassment is found to have occurred, discipline is prompt and proportionate to the behavior(s) at issue and the severity of the infraction." It would be difficult to ensure this outcome if complaints are diverted to mediation prior to an investigation. This is true even when the complaining employee supports mediation.

Anticipated Implementation Date: October 2019

HR Program: Director's Office, Erin Knapp

### **Recommendation:**

- Regularly evaluate HR procedures and practices for effectiveness and adherence to HR processes and policies.

HR Response: We agree that complaint related policies and resources should be reviewed and updated regularly, on a biennial basis. This review would address the applicable County policy, intranet pages, and written resources provided to participants in the complaint process. In 2019, the policies associated with harassment and EEO are being reviewed/revised as needed, so these will be scheduled to be evaluated for compliance in two years.

Anticipated Implementation Date: October 2021

HR Program: Director's Office, Erin Knapp

## Quality Assurance Process Needed

### **Recommendation:**

- Ensure statements and conclusions in the final report undergo a documented quality assurance process.

HR Response: The current quality assurance practice is that draft complaint investigation reports are reviewed by both the Human Resources Director and an attorney within the Office of County Counsel. The purpose of this review is to ensure that the findings of fact are clearly stated in the written report

and that conclusions drawn are supported by factual findings contained in the report. Such review is a regular and integral part of the review process.

A detailed review of supporting documents—such as reviewing witness statements or relevant employment records like timesheets—to ensure that they are correctly stated in the report would require a significant investment of time and resources. Moreover, certain aspects of investigative reports, such as credibility determinations are best made by the investigator, although the basis for the determination should be documented. The county should be permitted to reasonably rely on trained workplace investigators to accurately determine and summarize factual findings.

Anticipated Implementation Date: Current practice

HR Program: Director's Office

## HR Complaint Reporting Communication Needs Improvement

### **Recommendation:**

- Continue to work with Public and Government Affairs (PGA) on developing an enhanced digital presence on the county's intranet page around the HR complaint process.

HR Response: Don Krupp, County Administrator, notified county employees of the new intranet website titled "How to Raise a Concern" on November 10, 2018. This website provides information about various resources for employees when they do have concerns, including their direct supervisor (or another member of management), the internal complaint process within Human Resources, and EthicsPoint. (<http://web1.clackamas.us/report/>)

On November 15, 2018, Dylan Blaylock, Community Relations Specialist in Public and Government Affairs, sent an email to Brian Nava, Internal Auditor, and Evelyn Minor-Lawrence, Human Resources Director, stating the completion of the project, as initiated by County Administrator Krupp. At this time, we understand this project to be complete. However, we are willing to collaborate on future related projects to ensure we are providing adequate information to County employees about how to raise a concern, and the ensuing process once a concern has been raised.

Anticipated Implementation Date: This recommendation has been fulfilled

HR Program: Director's Office

### **Recommendation:**

- Continue developing a complaint packet (or something similar).

HR Response: We will complete the work we have initiated to create a complaint packet so that those involved in the process know what to expect and are aware of their resources. This tool will be used during the complaint intake process to ensure that employees are receiving consistent information.

Anticipated Implementation Date: February 2019

HR Program: Director's Office, Erin Knapp

## Standardize HR Complaint File

### **Recommendations:**

- Create a file structure and a standardized checklist to help ensure all documentation is present and all required investigative procedures were performed.
- Ensure HR investigators demonstrate their investigation planning process within the complaint file.

- Consider what information should be tracked in each of the three HR systems when they develop HR complaint written procedures.
- Review access to HR Issues, PeopleSoft HR and Application Xtender at least annually.

HR Response: We will establish a restricted, confidential filing system for internal complaints. We are currently evaluating the need to update our ERP system, and will implement an interim solution until decisions are made regarding the ERP system.

We also agree that a standardized checklist will be very helpful as we continue to address internal complaints. It may be reasonable to address these recommendations by creating a single document that addresses the investigation planning phase as well as the checklist requirements of the process, as noted in the above recommendations. This will ensure investigation planning is conducted at the beginning of each investigation, and steps are appropriately followed during each phase of the investigation.

We agree that careful recordkeeping is a critical aspect of the complaint process that will require additional discussion among Human Resources staff to reaffirm agreements about the use of existing systems, and further develop business practices to support more formal recordkeeping. A key outcome to address will also be the retrieval of complaint related data for use in trend analysis.

The WDM unit will review access to Peoplesoft HR and Application Xtender for those who work with the complaint process. The HR Issues log is maintained by the Office of the Director and has no security protocols for access. The location of the HR Issues Log is only given to those who need to use it. (This recommendation will be accomplished in January 2019).

Anticipated Implementation Date: May 2019

HR Program: Workforce Data Management, Krista Weatherford and Director's Office, Erin Knapp

## Follow-up on Recommendations

### **Recommendation:**

- Follow-up with corrective actions they have suggested in their report to ensure they have been implemented. Regular reporting to department directors and/or County Administration should occur when corrective actions are not being implemented timely.

HR Response: The current practice following completion of an investigation is for the Human Resources Director to meet with the department director to debrief about the investigation and verbally discuss suggestions for corrective action, including potential discipline. In the past, legal guidance has varied about the amount of detail to include in the recommendations sections of the investigation report. Because the department retains ultimate authority to determine discipline, a recommendation on the appropriate discipline or corrective action may undermine that decision if it is not followed. Presently, recommendations are typically actions the department can take to correct deficiencies in practices or communications.

We agree with the best practice of following up to ensure recommendations are implemented, and that the most appropriate party to do so is the assigned Employee and Labor Relations business partner. Within the HR current structure, implementing this can at times be challenging when the department may not agree with the recommendations for corrective action or discipline. We recommend a larger conversation between County Administration, County Counsel, and Human Resources about where the responsibility lies for enforcing such recommendations.



Anticipated Implementation Date: August 2019

HR Program: Director's Office/Employee and Labor Relations, Evelyn Minor-Lawrence and Eric Sarha

## Update Employment Policies and Practices

### **Recommendations:**

- Review all personnel rules and revise them to reflect current practices, address best practices and determine the appropriate location for the rule, policy or practice (e.g. County Code, EPP, Administrative Rule).
- Regularly review and update (e.g. biannually, triennially) complaint related policies or rules.

HR Response: Review of the County's personnel rules is an HR Department Initiative for fiscal year 18/19. To date we have identified the topics most frequently referenced and those deemed most problematic (in both policy and code), and begun the process of updating for legal compliance and current best practices.

This is the first of a multi-year project to remove personnel rules from the County Code (Personnel Ordinance) and maintain them in policy (County Employment Policy and Practices).

Anticipated Implementation Date: Phase 1 – completion by June 2019

HR Program: Director's Office, Evelyn Minor-Lawrence

## Investigators Must be Impartial and be Perceived as Impartial

### **Recommendation:**

- Incorporate into written policies and procedures the necessity that investigators ensure they are independent and impartial.

HR Response: As Human Resources professionals with Clackamas County, it is the expectation that staff members proactively disclose any potential conflict of interest related to a specific employment matter or investigation. This has also been the practice followed with outside investigators, to ensure they will perform their role in an independent and impartial manner.

The written complaint policies and procedures will include such language to affirm our commitment to acting in an independent and impartial manner.

Anticipated Implementation Date: October 2019

HR Program: Director's Office, Evelyn Minor-Lawrence

## Corrective Action and Discipline

### **Recommendation:**

- Work with County Administration and County Counsel to develop a system to assist appointing authorities (e.g. department management) in determining the proportionate and appropriate level of progressive discipline and/or corrective action when complaints are substantiated.
- Include in the written procedure:
  - Who has final authority and approval regarding disciplinary action when complaints are substantiated (e.g. HR, Department Management/Director, County Administration,

Elected Official), especially if there are disagreements between HR management and the appointing authorities on the appropriate progressive discipline.

- When complaints are substantiated by HR, how HR's recommended progressive discipline will be communicated to the appointing authority (e.g. in writing, verbally).
- How discipline will be tracked by HR, to ensure discipline is corrective, progressive, lawful and proportionate

Consider tracking the time it takes to complete an investigation, including any key milestones, and the results of any corrective action or discipline.

HR Response: We agree that determining the proportionate and appropriate level of discipline for substantiated allegations is critically important. Considering this, we propose that all the topics related to authority levels and decision making are addressed comprehensively rather than as separate issues, so that the topics are thoroughly reviewed.

The three elements noted in the second recommendation are critical to ensuring that Clackamas County has a shared understanding and clear process for addressing allegations that are substantiated through an investigation. Clearly setting these expectations will ensure that disciplinary matters are handled proportionally and equitably across Clackamas County.

Timelines for complaint investigations are presently tracked within our HR Issues database so that we know how long each case takes to complete, from initial intake to communicating the outcome of the investigation to the participants. We will work to further develop our tracking systems to include the results of corrective action or discipline so that the complete picture is known for each complaint case. We anticipate that as we discuss the issues associated with how we retain complaint files as discussed in a prior recommendations, this will be a key component as well.

Anticipated Implementation Date: December 2019, pending appointment of a new County Administrator

HR Program: Director's Office/Employee and Labor Relations, Evelyn Minor-Lawrence and Eric Sarha