



ADMINISTRATIVE POLICIES

SECTION:	Professional Conduct	POLICY #:	602
TITLE:	Discrimination and Harassment Free Workplace	PROCEDURE #:	602-A and 602-B
		ORDER #:	20-001
DEPT:	Human Resources	PROGRAM:	Human Resources
ADOPTED:	04/93	REVIEWED:	
		REVISED:	01/20

PURPOSE: Marion County is committed to a work environment free of discrimination, harassment, and intimidation. This policy outlines types of prohibited conduct and procedures for reporting and investigating prohibited conduct.

AUTHORITY: The Marion County Board of Commissioners may establish rules and regulations in reference to managing the interest and business of the county under ORS 203.010, 203.035, 203.111, 203.230.

The Marion County Board of Commissioners expresses the governing body’s official, organizational position on fundamental issues or specific repetitive situations through formally adopted, written policy statements. The policy statements serve to provide rules for public officials on the conduct of county business.

Marion County Administrative Policies and Procedures outline the methods through which the Board of Commissioners takes formal action on administrative policy. They are the official record of county administrative policy.

Statutory Authority: Equal Pay Act of 1963, Age Discrimination in Employment Act (ADEA), Americans with Disabilities Act of 1990, Titles VI and VII of the Civil Rights Act of 1964, Titles VIII and IX of the Civil Rights Act of 1968, Immigration Reform and Control Act of 1986, Federal Family and Medical Leave Act of 1993, Sections 503 and 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Vietnam Era Veterans Readjustment Act of 1974, Executive Order 11246 as amended, and regulations of the US Department of Health and Human Services issued pursuant to the Acts, Title 45 Code of Federal Regulations Part 80, 84 and 91, and ORS Chapter 659, ORS Chapter 659A, ORS 654.062(5)(a), ORS 399.065, ORS 171.120-.12.

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

SUBJECT: DISCRIMINATION and HARASSMENT FREE WORKPLACE

GENERAL POLICY: It is the policy of Marion County to maintain a work environment which is free of harassment based on race, color, age, religion, sex, sexual orientation, disability, national origin, and any other protected status in accordance with applicable state and/or federal law. Discrimination or harassment will not be tolerated in the workplace, in the provision of county services to members of the public, in any work-related setting outside of the workplace, or when using county-owned equipment including vehicles and electronic devices.

DEFINITIONS:

Complainant: A person (or persons) allegedly subjected to, or who witnessed or observed, discrimination, intimidation, workplace harassment, or sexual harassment and who files a complaint with their immediate supervisor, another manager, or Human Resources.

Discrimination: Unequal or different treatment of an individual in employment practices or the provision of county services on the basis of race, religion, color, sex, sexual orientation, age, physical or mental disability, marital status, national origin, or any other protected class status in accordance with state or federal law.

Employment Practices: Includes, but is not limited to, recruiting, hiring, promotion, demotion, transfer, termination, layoff, training, compensation, benefits, and performance evaluations.

Harassment: Verbal, non-verbal, or physical conduct that is derogatory, shows hostility towards, or is designed to threaten, intimidate or coerce an individual because of his or her race, religion, color, sex, sexual orientation, age, physical or mental disability, marital status, national origin, or any other protected status in accordance with state or federal law, and,

- Has the purpose or effect of creating an offensive, intimidating, hostile, or threatening environment;
- Has the purpose or effect of unreasonably interfering with an individual's work performance; or,
- Otherwise substantially and adversely affects an individual's employment opportunities or access to County programs, services, facilities, or activities.

Hostile Work Environment: A type of harassment based upon a protected class where a pattern of harassment creates an offensive, intimidating, hostile or threatening work environment, or has the purpose or effect of unreasonably interfering with an individual's work performance. To rise to the level of a legal claim of hostile work environment, the harassment must be severe and persistent, not an isolated joke or comment, although these behaviors may still be considered discriminatory, disrespectful or unprofessional. Disrespectful or unprofessional behaviors may be part of a disruptive environment and may be grounds for discipline, but would not be a civil rights violation unless they are based upon or related to a protected class.

Inappropriate Behavior of a Sexual Nature: Behavior that, while not amounting to sexual harassment, has a sexual component and has the potential to lower morale, decrease productivity or disrupt the workplace.

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National Origin Harassment: Behavior that denigrates, ridicules, or is verbally or physically abusive of a person because of his or her actual or perceived ancestry, heritage, cultural background, or ethnic identification.

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 this policy.

Protected Class Under Federal Law: Race; color; national origin; sex (includes pregnancy- related conditions); religion; age (40 and older); disability; a person who uses leave covered by the Federal Family and Medical Leave Act; a person who uses military leave; a person who associates with a member of a particular race, color, or national origin; a person who opposes unlawful employment practices, files a complaint or testifies about violations or possible violations; and any other protected class as defined by federal law.

Protected Class Under Oregon State Law: All federally protected classes, plus: age (18 and older); physical or mental disability; injured worker; a person who uses leave covered by the Oregon Family Leave Act; marital status; family relationship; sex; sexual orientation; whistleblower; expunged juvenile record; and any other protected class as defined by state law.

Quid Pro Quo Harassment: A type of sexual harassment where submission to harassment or sexual advances is used as the basis for employment practices and decisions or other county benefits and services. Quid pro quo harassment can be committed by someone who has the supervisory authority to make decisions about employment practices or who, because of their position, can control or withhold county services or allow a third person to avoid a detriment.

Racial Harassment: Behavior that denigrates, ridicules, or is verbally or physically abusive of a person because of his or her actual or perceived race including, but not limited to, jokes, derogatory statements or stereotypical comments about someone's actual or perceived race.

Retaliation: An adverse action against, or treatment of, an individual because he or she exercised rights protected under law such as complaining about harassment or discrimination, assisting with or participating in the investigation or resolution of complaints, or speaking out against harassment or discrimination.

Sex Discrimination: Unequal or different treatment in employment actions or services because of the individual's sex or stereotypes based upon sex, including sexual orientation or sexual identity.

Sexual Harassment: Unwelcome, pervasive or intrusive sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when submission to, or rejection of, such conduct by either males or females:

- Is made explicitly or implicitly a term or condition of employment;
- Is used as a basis for an employment decision; or

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- Unreasonably interferes with an employee's work performance or creates a hostile work environment.

Sexual harassment does not refer to behavior or occasional compliments of a socially acceptable nature. It refers to behavior that is unwelcome or personally offensive, and that lowers morale or interferes with work effectiveness. Two types of sexual harassment are quid pro quo harassment and hostile work environment.

Third Party Harassment: Behavior that is unwelcome to the individuals who see or hear the harassment even though it is not directed at them.

Whistleblower: An employee who, in good faith, discloses to a state or federal regulatory agency, law enforcement agency, manager, or attorney, lawfully accessed information related to an objectively reasonable belief of a violation of federal, state, or local law, rule or regulation by the employer.

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

POLICY GUIDELINES:

1. RESPONSIBILITIES

- 1.1. This policy is not limited in application to harassment between supervisors and subordinates, but also includes harassment between co-workers. Employees shall not engage in harassment, sexual harassment, or retaliation as defined in this policy.
- 1.2. The prohibition against employment discrimination and harassment may extend to conduct that employees are subjected to from: vendors; contractors; customers; or others who enter the workplace; and to conduct the public is subjected to by county employees.
- 1.3. Elected officials, the chief administrative officer, and department heads are responsible for enforcing this policy and for ensuring that all county officials, employees, and volunteers are made aware of and follow this policy.
- 1.4. Employees have the right to be free of discrimination associated with pregnancy, childbirth and related medical conditions, and the right to reasonable accommodation.
 - 1.4.1. Notice of these rights shall be:
 - 1.4.1.1. Posted in the workplace, generally available to all employees;
 - 1.4.1.2. Given to new employees at the time of hire;
 - 1.4.1.3. Given to existing employees, volunteers, and interns; and

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- 1.4.1.4. Given to an employee who informs her supervisor of pregnancy, within 10 days after the supervisor receives the information.
- 1.4.2. Marion County Administrative Policy 304, Americans with Disabilities Act, covers procedures for requesting a reasonable accommodation.
<https://apps.co.marion.or.us/APAP/>
- 1.5. Managers and employees are advised to document incidents of discrimination, sexual assault, or harassment. An employee may voluntarily disclose information regarding an incident of workplace harassment that involves him/her.
- 1.6. Elected officials, department heads, managers, and supervisors are responsible for taking immediate action if they observe or become aware of any form of discrimination, harassment, intimidation, retaliation, or whistleblower retaliation.
 - 1.6.1. Immediate action includes intervening to stop the discrimination, harassment, retaliation, or whistleblower retaliation, filing an incident report with Human Resources, and contacting Human Resources for review and consultation.
 - 1.6.2. Failure to take such action may result in discipline against the department head, manager, or supervisor.
- 1.7. The Human Resources Department is responsible for reviewing all incident reports or complaints of discrimination, harassment, intimidation, retaliation, or whistleblower retaliation, for determining the appropriate party to conduct an investigation, for providing oversight of the investigative process, and for providing training and consultation on the policy involving employment with Marion County.
- 1.8. All Marion County elected officials, department heads, employees, prospective employees, volunteers, interns and contractors must immediately notify their supervisor, a member of management, or the Human Resources Department if they observe or become aware of a situation involving discrimination, harassment, intimidation, retaliation, or whistleblower retaliation.
- 1.9. This policy prohibits retaliation against anyone who files a complaint, participates in an investigation, or reports observing discrimination, workplace harassment, workplace intimidation, sexual assault, or sexual harassment.
- 1.10. The employee filing a complaint shall cooperate fully in the investigation process and be as forthcoming as possible in the investigation to determine if evidence exists to support the allegation.
- 1.11. The investigator, complainant, accused, witnesses, and all other parties involved in the investigation are responsible to hold any information regarding the investigation as confidential as possible, sharing the information on a “need to know” basis only.
- 1.12. Department management, in consultation with Human Resources, is responsible for follow-up on complaints within their departments. This includes determining and imposing appropriate

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discipline if warranted, implementing and monitoring other corrective measures, and reporting the resolution back to Human Resources.

- 1.13. Managers 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:
 - 1.13.1. Constitutes discrimination, including conduct that constitutes sexual assault; or
 - 1.13.2. Constitutes discrimination that occurred between employees or between an employee and manager/supervisor in the workplace or at an offsite work-related event that is coordinated by or through the county; or
 - 1.13.3. Occurred between a manager/supervisor and an employee off the employment premises.
- 1.14. If an employee requests to enter into a separation agreement; a non-disclosure agreement non-disparagement clause, a no-rehire clause, and confidentiality clause may be included. All agreements under this subsection are subject to a seven-day revocation period.
- 1.15. Employees alleging an unlawful employment practice have five years after the occurrence of the alleged unlawful employment practice to file a complaint or civil action with the Bureau of Labor and Industries.
- 1.16. This policy must be provided to:
 - 1.16.1. All current employees;
 - 1.16.2. All current and new volunteers and interns;
 - 1.16.3. Employees at the time of hire; and
 - 1.16.4. An employee that disclosed information regarding prohibited discrimination or harassment.
- 1.17. Disciplinary Actions
 - 1.17.1. Observance of and adherence to this policy is mandatory for all county employees. Violation of this policy may result in disciplinary action up to and including termination.
 - 1.17.2. Probationary or temporary employees violating this policy may be subject to immediate termination.
 - 1.17.3. Volunteers violating this policy may be subject to immediate termination.
 - 1.17.4. The department head or department management, in consultation with Human Resources, shall be responsible for determining what immediate and appropriate disciplinary action shall be taken.
 - 1.17.5. Employees who violate this policy by retaliating against others may be subject to disciplinary action, up to and including dismissal.
 - 1.17.6. Violations of this policy in regard to whistleblower retaliation are a potential Class A misdemeanor and may be referred to the Marion County District Attorney's Office for prosecution.

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1.18. The Human Resources Department shall maintain records related to workplace harassment per the department's records retention procedures.

2. EXCEPTIONS

There are no exceptions to this policy.

3. IMPLEMENTATION

3.1. The Chief Human Resources Officer is responsible for implementation of this policy.

3.2. Elected officials, department heads, managers, and supervisors are expected to be knowledgeable of and shall be responsible for implementing this policy in their respective departments.

4. PERIODIC REVIEW

This policy shall be reviewed by the Human Resources Department every three years or more often if necessary, and updated as needed.

Adopted: 04/93
Reviewed:
Revised: 12/16
12/19
01/20