

3.45 DISCRIMINATION, HARASSMENT, AND OFFENSIVE BEHAVIOR PROHIBITED

ORIGINATING DEPARTMENT:

Human Resources

ADOPTED:

August 15, 2014

PURPOSE:

To provide equal employment opportunity to all qualified persons;

To provide a work environment free from discrimination, harassment or offensive behavior on the basis of race, color, national origin, religion, sex, gender, age, marital status, pregnancy, disability, veterans' status, genetic information, or other status protected by federal, state or applicable local law;

To provide an avenue for employees to report claims of discrimination, harassment (including sexual harassment) or offensive behavior; and

To provide a procedure for investigating and resolving claims of discrimination, harassment (including sexual harassment) or offensive behavior.

POLICY:

Various Federal and state laws, including Title VII of the Civil Rights Act of 1964 and the Florida Civil Rights Act, prohibit discrimination in employment based on protected class. There shall be no unlawful discrimination or harassment against applicants or employees on the basis of race, color, national origin, religion, sex, gender, age, marital status, pregnancy, disability, veterans' status, genetic information, or other status protected by federal, state or applicable local law. This policy applies to all terms and conditions of employment, and to all phases of the employment relationship, including recruitment, hiring, assignments, selection for training, promotion, upgrading, transfer, layoff, discipline, discharge, pay and benefits.

There shall be no unlawful retaliation against any employee because he or she has reported or complained, internally or externally, about discrimination, harassment or offensive behavior; because he or she has refused to participate in discrimination, harassment or offensive behavior; or because he or she has participated in an investigation, internal or external, of alleged discrimination, harassment or offensive behavior.

A formalized method for investigating and resolving complaints of discrimination, harassment or offensive behavior has been established, as fully outlined below. **It is the responsibility of all employees to fully comply with this process and the other requirements of this Policy to ensure equal employment opportunity for all persons.**

Failure on the part of any employee, supervisor or management personnel to fully comply with the requirements of this policy may result in disciplinary action up to and including termination from County employment.

PROCEDURE:

Employee Responsibilities

It is the responsibility of all employees to:

- be knowledgeable about the County's current employment Policies and Procedures, and about this policy on Discrimination, Harassment and Offensive Behavior;
- attend training provided by the County on sexual harassment and other forms of discrimination and harassment;
- refrain from engaging in discrimination, harassment or offensive behavior toward, or in the presence of, other employees;
- refrain from the display of offensive materials related to race or sex or any protected status;
- **immediately inform** any person, whether elected official, director, manager, supervisor, co-worker or outside party (such as vendor or contractor) who has demonstrated unwelcome and offensive behavior that such behavior is offensive and that you request the behavior stop;
- **immediately cease** all discriminatory, harassing or offensive behaviors if you are requested by another employee to stop such behaviors;
- **immediately report**, according to the procedures below, any experienced, observed or alleged incidents of discrimination, harassment or offensive conduct or behavior by another employee, elected official, director, manager, supervisor or third party;
- keep claims of discrimination, harassment and/or offensive behavior otherwise confidential;
- refrain from retaliation against other employees for reporting or participating in the investigation of claims of discrimination, harassment or offensive behavior; and
- refrain from making complaints in bad faith – that is, complaints that are known by you to be false.

Note: It is never acceptable for an employee experiencing or witnessing discrimination, harassment or offensive behavior to take no action.

Supervisory Responsibilities

It is the responsibility of all persons with supervisory responsibilities to:

- be knowledgeable about the County's current employment Policies and Procedures, and about this policy on Discrimination, Harassment and Offensive Behavior;
- attend training provided by the County on sexual harassment and other forms of discrimination and harassment;
- monitor carefully and frequently the workplace within your area of responsibility, be aware of the conduct of all employees under your supervision as it relates to this policy, and take all steps necessary to ensure that the work environment is free from discrimination, harassment and/or offensive behavior;
- immediately report to the Human Resources Director any observed, perceived, alleged or reported incidents of discrimination, harassment or offensive behavior by or concerning any employee, supervisor, manager, director, elected official or third party.

Notification to Human Resources (HR) must occur without delay.

- cooperate with the HR Director, the County Attorney, the County Administrator or any investigator in the investigation of the complaint and cooperate in the determination of any appropriate disciplinary actions that may result;
- refrain from engaging in discrimination, harassment and/or offensive behavior;
- refrain from retaliation against any person;
- avoid the appearance of impropriety at all times in relationships with subordinate employees;
- keep confidential any and all information, report or investigations of claims of discrimination, harassment and/or offensive behavior. Disclosure should be limited only to persons identified by the Human Resources department as having a “need to know”.

Note: It is never acceptable for a member of management who becomes aware of alleged or perceived discrimination, harassment or offensive behavior to take no action. Failure to report any and all information, complaints, etc. to HR will result in disciplinary or performance action, up to and including termination from employment.

Reporting Discrimination, Harassment or Offensive Behavior

It is the responsibility of all employees experiencing, witnessing, or receiving information concerning discrimination, harassment or offensive behavior to immediately report the same to:

- the employee’s supervisor;
- the employee’s manager;
- the employee’s department director;
- any member of management; and/or
- any person in the HR department.

You are not expected to report discrimination, harassment or offensive behavior to your manager or director if it is your manager or director that is responsible for the offensive conduct, but you are expected to report the behavior to someone, listed above, with whom you feel comfortable speaking.

All directors (or other management personnel) aware of or receiving complaints of discrimination, harassment or offensive behavior shall immediately inform the HR Director, who shall follow the processes for investigating complaints, outlined below.

No employee will be retaliated against for complaining about discrimination, harassment or offensive behavior. Accordingly, **fear of retaliation is never an acceptable reason for failing to make a complaint.**

Investigating Complaints of Discrimination, Harassment or Offensive Behavior

All complaints shall be investigated, coordinated and handled through the County’s HR Director, in consultation with the Office of County Attorney, unless otherwise specifically provided in this Policy.

Because of the extremely sensitive nature of these types of complaints and the potential “spill-over effect” on the job, future, and personal lives of all involved, the following procedures are established:

- If the complaint is against a member of the Board of County Commissioners, the HR Director shall bring the complaint to the Chairperson (unless the complaint is against the Chairperson, in which case, it shall be brought to the Vice-Chairperson). The Chairperson (or Vice Chairperson), in coordination with the County Attorney, will appoint an independent outside investigator to investigate the complaint. The investigator shall investigate and issue a report to the Chairperson (or Vice Chairperson, as applicable) in accordance with the procedures, below.
- If the complaint is made against the County Administrator, the County Attorney or the Director of Economic Development, the HR Director shall bring the complaint to the Chairperson of the Board of County Commissioners. The Chairperson, in coordination with the County Attorney (or designee if the complaint is against the County Attorney), will appoint an independent outside investigator to investigate the complaint. The investigator shall investigate and issue a report to the Chairperson in accordance with the procedures, below.
- If the complaint is made against a Department Director, the HR Director shall bring the complaint to the County Administrator. The County Administrator may appoint the HR Director, a member of the County Attorney’s staff or an independent outside investigator selected in coordination with the County Attorney, to investigate the complaint. The investigator shall investigate and issue a report to the County Administrator, in accordance with the procedures, below.
- If the complaint is made against the HR Director, it shall be brought directly to the County Administrator. The County Administrator may appoint a member of the County Attorney’s staff or an independent outside investigator selected in coordination with the County Attorney, to investigate the complaint. The investigator shall investigate and issue a report to the County Administrator, in accordance with the procedures, below.
- If the complaint is made against any other County employee (whether supervisory or non-supervisory), or if the complaint is against a third person (such as a vendor or contractor), unless directed by the County Administrator otherwise, the HR Director may investigate the complaint or assign a member of his or her staff to conduct the investigation. The investigator shall investigate and issue a report to the HR Director, in accordance with the procedures, below. The HR Director will report to the County Administrator.

In all cases, a separate complaint file will be opened by the HR Director which will be separate from the personnel files of the persons involved. Said file shall be confidential to the extent allowed by the Florida Public Records Act and will be available only to the Chairperson, the County Attorney (or designee), the County Administrator (or designee), the HR Director (or designee), and the investigator appointed to investigate the complaint.

The investigator will be charged with the responsibility of gathering information relevant to the claim and shall have the right to interview employees and witnesses. When appropriate, the Chairperson of the Board of County Commissioners (or designee), the County Administrator (or

designee), the County Attorney (or designee, or the HR Director (or designee) shall assist in coordinating the interviews and obtaining any documentary evidence needed.

The investigator will not discuss any aspect of the investigation with anyone, and the identity of persons interviewed will remain confidential, except to those persons who have access to the file as provided above, and then, only upon their request.

Investigators shall instruct all persons interviewed to keep the contents of their interview confidential. Unless otherwise required by law, failure to maintain confidentiality by any person, whether management personnel or staff, may result in disciplinary action up to and including termination from County employment.

Upon completion of the investigation, the investigator will make a report and turn over the file and all investigative materials, including notes, to the HR Director, County Administrator, Chair of the BCC, or County Attorney, as appropriate.

Disciplinary Action

- As to complaints against a member of the Board of County Commission, the County Administrator, County Attorney or Director of Economic Development, if, based on the investigator's report, the Chairperson (or Vice Chairperson if applicable) finds no reasonable cause supporting the allegations in the complaint, the file shall clearly so indicate and all parties shall be advised. No additional entry may be made in that file.

If, based upon the investigator's report, the Chairperson (or Vice Chairperson if applicable) finds reasonable cause supporting the allegations in the complaint, in whole or in part, the Chairperson (or Vice Chairperson, if applicable) shall bring the matter to the Board of County Commissioners for action consistent with the requirements of law and County policy.

- As to complaints against Department Directors, if, based on the investigator's report, the County Administrator finds no reasonable cause supporting the allegations in the complaint, the file shall clearly so indicate and all parties shall be advised. No additional entry may be made in that file.

If, based upon the investigator's report, the County Administrator finds reasonable cause supporting the allegations in the complaint, in whole or in part, he or she may attempt to resolve the matter amicably between the charging and charged parties. Absent a mutually acceptable resolution, the County Administrator shall make a determination as to what disciplinary action, if any, shall be taken. All disciplinary action shall be reasonably calculated to ensure that the discrimination, harassment or offensive behavior ceases.

- As to all other employees, if, based on the investigator's report, the HR Director finds no reasonable cause supporting the allegations in the complaint, the file shall clearly so indicate and all parties shall be advised. No additional entry may be made in the file. If, based upon the investigator's report, the HR Director finds reasonable cause supporting the allegations in the complaint, in whole or in part, he or she may attempt to resolve the matter amicably between the charging and charged parties. Absent a mutually acceptable resolution, the HR Director, in conjunction with the County

Administrator, shall make a determination as to what disciplinary action, if any, shall be taken. All disciplinary action shall be reasonably calculated to ensure that the discrimination, harassment or offensive behavior ceases. If the decision is made to discipline any employee, other than a conversation confirmation, a copy of the notice of disciplinary action will be placed in the employee's personnel file in accordance with the County's usual procedure.

Employees (except those employed "at-will") who are disciplined as a result of a finding of discrimination, harassment or offensive behavior, or for filing an intentional bad faith claim of discrimination, harassment or offensive behavior, shall be entitled to file a grievance in accordance with applicable County Policy or any applicable Collective Bargaining Agreement.

In all cases, a record of the decision will be made and placed in a separate file which shall be maintained by the County Attorney and the parties will be made aware of the decision. Employee files shall be handled pursuant to Disciplinary guidelines. The investigation file will be maintained separately and is confidential except as is required by the Florida Public Records Act.

DEFINITIONS:

Adverse Action – Any act that has the effect of precluding a job applicant or employee from enjoying equal employment opportunities with respect to wages, hours and/or terms and conditions of employment, including but not limited to, actions involving hiring, promotion, demotion, discipline, discharge, performance evaluations, job assignments and access to benefits.

Discrimination – Any adverse action against a job applicant or employee which deprives the person of the equal opportunity to enjoy the benefits, terms and/or conditions of employment, on the basis of that person's protected class status.

Harassment – Any unwelcome act against an employee or class of employees that is sufficiently severe and/or pervasive as to alter the terms and conditions of employment, results in a tangible change in employment status or benefits, or creates a hostile work environment. The term "harassment" includes "sexual harassment".

Hostile Work Environment – Unwelcome comments or conduct, *based on protected class*, that unreasonably interfere with an employee's work performance or create an intimidating, hostile or offensive work environment. A hostile work environment may or may not result in tangible employment actions. A work environment that is perceived to be "hostile" based on reasons other than protected class is not technically a "hostile work environment", although it may be offensive. It is the responsibility of all employees to refrain from all hostile or offensive behavior.

Management – The employee's supervisor, manager; department director; any other supervisor, manager or dept. director; or any person in the HR department.

Offensive Behavior – Not all complained-of behavior rises to the level of unlawful discrimination or harassment. However, jokes, innuendos, insults, gestures, comments and other behaviors, as well as the display of posters, photographs, cartoons, magazines, graffiti and the like, based upon race, color, national origin, religion, sex, pregnancy, disability, marital

status, veterans' status or other status protected by federal, state or applicable local law, are clearly inappropriate in the workplace. The County's goal is to correct offensive behavior before it rises to the level of unlawful harassment or discrimination.

Protected Class – a job applicant or employee's race, color, national origin, sex/gender, age, pregnancy status, disability, marital status, veterans' status, genetic information, or other status protected by federal, state or applicable local law.

Retaliation – Adverse action or harassment against an employee because that employee has reported or complained, internally or externally, about discrimination, harassment or offensive behavior; because an employee has refused to participate in discrimination, harassment or offensive behavior; or because an employee has participated in an investigation, internal or external, of alleged discrimination, harassment or offensive behavior.

Sexual Harassment – Any unwelcome act against an employee or class of employees that is based on sex or on the employee's gender, and that is sufficiently severe and/or pervasive as to alter the terms and conditions of employment, results in a tangible change in employment status or benefits, or creates a hostile work environment. Sexual Harassment may occur in either or a combination of the following forms:

Quid Pro Quo Sexual Harassment – which occurs when an individual implicitly or explicitly abuses his or her position of authority in an attempt to obtain unwelcome sexual favors or liberties, or in response to an employee's refusal to provide sexual favors or liberties.

Hostile Work Environment Sexual Harassment – involves comments or conduct, such as intimidation, ridicule, pressure or insult based on, related to or because of sex or gender. It may be indicated by unwelcome, inappropriate, sexually explicit verbal, visual or other behavior such as jokes, innuendo or the display of sexually explicit material; unwelcome physically inappropriate behavior such as gestures or inappropriate touching; or unwelcome comments or actions that are not necessarily related to sexual activity, but which are demeaning because of an employee's gender, or which demonstrate gender animosity.

SCHEDULED REVIEW DATE: Annually	AMENDED: August 11, 2023
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