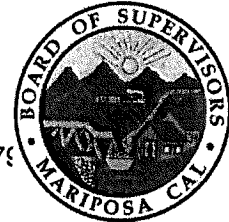




MARIPOSA COUNTY

Human Resources/Risk Management • (209) 742-1375



Policy BE

RESOLUTION - ACTION REQUESTED 2015-266

MEETING: June 2, 2015

TO: The Board of Supervisors

FROM: Steve Johnson, Human Resources Director - Risk Manager

RE: Update County Discrimination and Harassment in the Workplace Policy

RECOMMENDATION AND JUSTIFICATION:

Adopt a Resolution Updating and Revising the County's Discrimination and Harassment in the Workplace Policy, to be Effective Immediately.

Consistent with the Human Resources/Risk Management Department's approved work plan, staff is recommending updating and revising the County's Discrimination and Harassment in the Workplace Policy, to be effective with the date of this approval.

The County's current Discrimination and Harassment in the Workplace Policy ("Policy") was last updated by the Board of Supervisors in May, 2010. Since that time, many changes in State and Federal law have occurred that affect the standards for identifying and preventing harassment, discrimination and retaliation in the workplace. In order to address these changes, the County's Human Resources/Risk Management Department staff engaged the services of labor law Attorney Patricia Eyres, through the County's insurance and loss prevention Agency, California State Association of Counties - Excess Insurance Authority (CSAC-EIA), to review the County's existing Policy and make recommended corrections and changes where needed to comply with legal requirements.

In addition to Ms. Eyres' review, staff also engaged in a review process of the updated Policy with all of the County's Department Heads, bargaining unit representatives and County Supervisors Kevin Cann and John Carrier (who make up the County Board of Supervisors, Board Liaison, General Government, for Human Resources).

The result is the revised and attached updated Policy that is presented for the Board's review and approval.

This updated Policy contains the following major changes to the existing Policy:

- Clarifies that all aspects of the policy applies to: all County officers, employees, unpaid interns, volunteers, contractors, vendors, suppliers and other persons who participate in County programs and services.
- Updates the protected characteristics and/or protected classes under both Federal and California law, including the most recent expansions of the California Fair Employment and Housing Act ("FEHA.")

- Updates the methods that an employee can report or complain about harassment, based on the newest FEHA regulations to ensure that the employee cannot be required to either: (1) confront the offender directly, or (2) report it directly to their own supervisor, as the supervisor may be the alleged harasser.
- Clarifies that a report or complaint of harassment or retaliation need not be "formal" or "informal", consistent with FEHA standards, nor that the complaining employee be required to submit a formal complaint in writing before the County's legal duty to investigate begins, consistent with FEHA regulations.
- Adds language that includes bullying and abusive behavior in the workplace as additional causes of workplace discrimination and harassment. Abusive and bullying behavior is now a required addition to the State mandated harassment training that is provided to County management and supervisors every two years.
- Clarifies that all individuals involved in an investigation have due process rights, consistent with FEHA regulations.

If the Board of Supervisors' approve the updated Policy, staff will: 1) distribute this Policy to all County officers, employees, unpaid interns and volunteers, along with a form that will require their signature to indicate that they have received and understand the Policy, and 2) post the Policy on the Human Resources/Risk Management portion of the County's website and 3) ask Departments to notify contractors, vendors and suppliers regarding the Policy's existence.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

In March, 2000 and May, 2010, the Board approved Resolution numbers 00-110 and 10-206, respectfully, which established, and then modified, a County Discrimination and Harassment in the Workplace Policy.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

As the current Policy is inconsistent with existing law, without making the appropriate corrections, the County will be legally out-of-compliance.

FINANCIAL IMPACT:

None. The cost of Attorney Patricia Eyres' time is included in the cost that the County pays as part of its administrative fee to CSAC-EIA

ATTACHMENTS:

Mariposa County Harassment Policy 5-14-15 (DOC)

CAO RECOMMENDATION

Requested Action Recommended

Mary Hodson

Mary Hodson, CAO

5/27/2015

RESULT: ADOPTED [UNANIMOUS]
MOVER: Rosemarie Smallcombe, District I Supervisor
SECONDER: Marshall Long, District III Supervisor
AYES: Smallcombe, Jones, Long, Cann, Carrier

MARIPOSA COUNTY POLICY AGAINST DISCRIMINATION AND HARASSMENT IN THE WORKPLACE

Mariposa County is committed to providing a work environment free of all forms of discrimination and harassment. Actions, words, jokes or comments based on such things as race, color, religion, religious dress or grooming practices, national origin, ancestry, disability, medical condition, genetic characteristics, marital or domestic partner status, sex (including pregnancy or childbirth), sexual orientation, gender identity and/or expression, military or veteran status, age or any other characteristic or classification protected by federal, state, and local laws and ordinances, are strictly prohibited. All phases of the employment relationship including recruitment, testing, hiring, upgrading, reasonable accommodation or return to work processes, promotion/demotion, layoffs, discipline, rates of pay, benefits and selection for training are covered by this policy. Those subject to this policy include all employees (including permanent, temporary, probationary, part-time, and full-time), supervisors, managers, volunteers, interns, contractors, visitors and elected officials. This includes responsibility for their conduct and the right to an environment free from harassment or retaliation in all County facilities and worksites.

Because the County is committed to a workplace free of discrimination and harassment of any kind, the County policy sets a higher standard for behavior than may be set by the law. Under both federal and state law, illegal harassment occurs when it is based on a person's protected class (race, color, religion, religious dress or grooming practices, national origin, ancestry, disability, medical condition, genetic characteristics, marital or domestic partner status, sex (including pregnancy or childbirth), sexual orientation, gender identity and/or expression, military or veteran status or age) and the harassment reaches a level that is sufficiently severe or pervasive to alter a person's working conditions. However, Mariposa County's policy against discrimination and harassment covers all harassing, discriminatory, abusive, or bullying behavior, whether or not it would be found to be illegal. This policy reflects the County's desire to maintain work environments that are harmonious and productive. Therefore, County employees are expected to adhere to a standard of conduct during the course and scope of employment that demonstrates respect and courtesy towards other employees and persons. County employees shall under no circumstances engage in behavior that constitutes any type of harassment based on an individual's protected characteristics or membership in a protected class. Those found to have violated the County Policy will be subject to discipline that is commensurate with the severity of the offense and that is designed to stop the harassing behavior and to prevent future harassing or retaliatory conduct.

RETALIATION

Retaliation against a person who reports or complains about harassment, against a person participating in an investigation of a report or complaint, or any person who in good faith opposes discrimination or harassment in any County workplace is strictly prohibited. Those engaging in retaliatory behavior will be subject to discipline up to and including termination. Retaliatory conduct may exist when a person is subject to discipline, denied promotion, or is subject to reprisals, ridicule, threats, ostracism, intimidation, coercion, or other abusive conduct as a result of bringing a complaint of harassment, participating or cooperating in an investigation or opposing discriminatory practices. Put simply, a person reporting an incident of harassment, bringing a complaint of harassment or supporting a claim of harassment cannot be punished or treated differently or punished in any way for bringing the complaint.

FORMS OF HARASSMENT

Harassment includes behavior or content that creates an offensive, intimidating, hostile or abusive work environment and includes, but is not limited to:

Verbal Harassment

Examples could include epithets, derogatory comments, jokes, or slurs on the basis of a protected class (race, color, religion, religious dress or grooming practices, national origin, ancestry, disability, medical condition, genetic characteristics, marital or domestic partner status, sex (including pregnancy or childbirth), sexual orientation, gender identity and/or expression, military or veteran status or age). This may include well-intentioned comments on a person's appearance, religious dress or grooming practices, or race-related stories. This may also include referring to an adult as "girl" or "boy" or using terms such as "hunk," "babe," "stud," or "honey." Verbal harassment may also include sexual innuendo, graphic or explicit jokes, suggestive sounds, or stories of a sexual nature.

Physical Harassment

Examples could include assault, touching, impeding or blocking movement, grabbing, patting, leering, making express or implied job-related threats in return for submission to intimate or physical acts, taunting, or any physical interference with normal work or movement. Put simply, physical harassment may include any kind of unwanted physical contact directed toward an individual because of his or her protected characteristics or membership in a protected class. Conduct of a sexual nature does not have to be motivated by sexual desire to constitute harassment.

Visual Harassment

Examples could include posters, cartoons, photographs, drawings, video clips, gestures, or written materials which discuss or depict people based on their race, color, religion, religious dress or grooming practices, national origin, ancestry, disability, medical condition, genetic characteristics, marital or domestic partner status, sex (including pregnancy or childbirth), sexual orientation, gender identity and/or expression, military or veteran status or age. Visual harassment may also include Internet sites, social networking sites, or other electronic media depicting material of a sexual or offensive nature, or content that is insensitive or inflammatory based on other protected characteristics.

Abusive Conduct

Abusive conduct directed toward any individual on account of their protected characteristics or membership in a protected class (race, color, religion, religious dress or grooming practices, national origin, ancestry, disability, medical condition, genetic characteristics, marital or domestic partner status, sex (including pregnancy or childbirth), sexual orientation, gender identity and/or expression, military or veteran status or age). "Abusive conduct" is defined under California Government Code section 12950.1(g)(2) as the "conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests." Abusive conduct "may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance."

Bullying

Generally, bullying is repeated, potentially health-harming mistreatment of another employee. Examples of prohibited bullying include, but aren't limited to: screaming; swearing; name calling; stealing; giving dangerous work assignments; using threatening, intimidating, or cruel behaviors; deliberately humiliating a person; denying advancement; and stealing work credit. Generally, bullying involves: (1) written, verbal, graphic or physical acts (including electronically transmitted content, such as using the Internet, a cell phone, a personal digital assistant (PDA), or a wireless handheld device); (2) behavior that substantially interferes with work, opportunities, and benefits of one or more employees, sometimes through actual sabotaging of work; (3) behavior that adversely affects an employee's ability to function at work by placing the employee in reasonable fear of physical harm or by causing emotional distress.

Sexual Harassment

Sexual harassment is a form of gender discrimination that can take any of the forms of harassment described above. Sexual harassment under this policy refers to unwelcome physical, verbal or visual conduct of a sexual nature or that is based on an employee's gender, gender characteristics, identity or expression that has the effect of interfering with a person's work performance or creating an intimidating, hostile or offensive working environment. Also included are overt forms of sexual harassment such as:

- Unwelcome sexual advances, where submission to the conduct is an explicit or implicit term or condition of employment;
- Unwelcome sexual advances, where submission to, or rejection of, the conduct is used as the basis for an employment decision; or
- The conduct had the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
- Sexual harassment includes behavior by women directed at men, by men directed at women, same-sex harassment, and harassment based on sexual orientation.
- Under California law, the conduct does not have to be motivated by sexual desire in order to constitute illegal harassment.

STANDARDS OF BEHAVIOR

Any conduct which discriminates or harasses a person covered by this policy on the basis of race, color, religion, religious dress or grooming practices, national origin, ancestry, disability, medical condition, genetic characteristics, marital or domestic partner status, sex (including pregnancy or childbirth), sexual orientation, gender identity and/or expression, military or veteran status or age violates the County's policy and will not be tolerated. Because employees come to work with different backgrounds and experiences, it is natural that various levels of sensitivity are represented. Well-meaning people can disagree about what is offensive or inappropriate. In order to clarify what type of behavior is acceptable and unacceptable in the workplace, the following examples are provided as a means of offering guidance, and promoting a comfortable and harassment-free work environment for all.

Prohibited conduct includes, but is not limited to:

- Disparaging, offensive comments, or inflammatory comments or jokes about a person's race, color, religion, religious dress or grooming practices, national origin, ancestry, disability, medical condition, genetic characteristics, marital or domestic partner status, sex (including pregnancy or childbirth), sexual orientation, gender identity and/or expression, military or veteran status or age.
- Any behavior or practice which treats an individual differently because of his or her protected characteristics or membership in a protected class, including race, color, religion, religious dress or grooming practices, national origin, ancestry, disability, medical condition, genetic characteristics, marital or domestic partner status, sex (including pregnancy or childbirth), sexual orientation, gender identity and/or expression, military or veteran status or age.
- Systematic exclusion of an individual because of his or her protected characteristics, or membership in a protected class, including race, color, religion, religious dress or grooming practices, national origin, ancestry, disability, medical condition, genetic characteristics, marital or domestic partner status, sex (including pregnancy or childbirth), sexual orientation, gender identity and/or expression, military or veteran status or age.
- Slang names or labels related to religion, race ancestry, sexual orientation, gender identity and/or gender expression.
- Ignoring or failing to take seriously a person who reports or complains of any form of harassment.
- Blaming the person who reports or complains of harassment, or suggesting that they are "thin skinned," "too sensitive," or that they don't have a sense of humor.
- Continuing behavior directed at a person based on race, color, religion, religious dress or grooming practices, national origin, ancestry, disability, medical condition, genetic characteristics, marital or domestic partner status, sex (including pregnancy or childbirth), sexual orientation, gender identity and/or expression, military or veteran status, age or other protected characteristic once a person has objected to the behavior.
- Displaying or transmitting in the workplace sexual pictures, cartoons, calendars, drawings, photographs, video or other electronic material or multimedia.
- Acts of abusive conduct, whether by words, gestures, written or electronic communications.
- Acts of bullying, whether by words, gestures, written or electronic communications. Because bystander support can encourage bullying, the County also prohibits both active and passive support for acts of bullying. Employees should either walk away from these acts when they see them or attempt to stop them. In either case, employees should report incidents to a manager or supervisor, or to the Human Resources Director/Risk Manager. Those who engage in bullying or retaliation for complaints about bullying will be subject to appropriate discipline.

COMPLAINT AND INVESTIGATION PROCEDURE

It is the County's intent to prevent harassment and to encourage appropriate and respectful conduct between people. The County strongly encourages those who feel they are being harassed to use the complaint procedure set forth below. Although the County will investigate any complaint of harassment regardless of when the harassment may have occurred, those who feel they are being harassed are strongly encouraged to use the complaint procedure as soon as the harassing conduct begins. It is the County's desire to eliminate harassment at the earliest stages. Be assured that the County will take seriously any report or complaint that is raised, and will engage in an appropriate factual inquiry. If harassment is found to have occurred, the County will take immediate and appropriate corrective action to stop the harassment and prevent it from occurring in the future. Corrective action may include disciplinary action for the offending individual(s). The County will protect from retaliation the reporting or complaining party and others who participate in the County's investigation.

It is the responsibility of each member of County management to create an atmosphere free of discrimination and harassment, sexual or otherwise. In addition, it is the responsibility of each employee to respect the rights of supervisors, co-workers, customers and visitors to our facilities. Managers and supervisors are expressly required to notify the Human Resources Director/Risk Manager about any complaints, reports, or observed incidents of harassment or discrimination in any County work environment. Failure by any manager or supervisor to report known or suspected incidents of harassment may be subject to disciplinary action.

Direct Communication

In some cases a person may be unaware that his/her conduct is offensive. In these cases, direct communication between the individuals may be helpful to stop the behavior.

If the offended person is uncomfortable talking directly to the offending party or to his/her supervisor, or if the harassing behavior is of such a serious nature that the person feels the informal step would be ineffective, he or she may proceed directly to the complaint step.

Complaint

Any supervisor or manager who receives a complaint of harassment has a duty to follow this policy. If the complaining party is willing to engage in the informal process, the supervisor or manager should assist in that process and monitor the situation to ensure that the informal process is effective.

If an employee experiences any form of harassment, or has a related complaint that the work environment is hostile, offensive, intimidating or abusive, the employee should promptly report the matter to any supervisor or manager or to the Human Resources Director/Risk Manager or to the County Administrative Officer. The complaint or report may be made orally or in writing. Employees may, but are not required to report the incident to their immediate supervisor.

All investigations will be conducted with appropriate attention to privacy for the complainant and witnesses. Information obtained through the investigation process will be confidential to the greatest extent possible. However, no individual may be promised anonymity or absolute confidentiality. All individuals who participate in the investigation, whether as the person reporting an incident, making a complaint, the person(s) whose behavior is being investigated, or individual witnesses will be treated with respect and will be afforded due process.

Retaliation against any individual who participates in the investigation process in good faith is prohibited. Violations of this policy and procedure will be subject to discipline, up to and including termination for willful or repetitive violations.

Factual Inquiry/Investigation

Upon receipt of a complaint, the County will conduct a timely investigation to determine the facts and to identify any appropriate corrective action. The investigation is a neutral fact-finding inquiry by a qualified investigator. Should the County determine that the individual circumstances require an independent investigator to ensure impartiality, the County will take appropriate steps to engage a qualified investigator.

The County will ensure that statements of the complainant, alleged offender and all witnesses are documented thoroughly and that the investigation is conducted in a thorough, objective and neutral manner, and is considerate of the rights and emotions of all the parties involved. After all evidence and information is collected and evaluated, the County will reach prompt and reasonable conclusions.

Discipline

If harassment is found to have occurred, the County will take appropriate disciplinary action pursuant to the County's disciplinary policy, which is commensurate with the severity of the offense.

Closure

Once the factual inquiry is complete and a determination has been made as to the merits of the complaint, the individual who brought the complaint will be notified of the outcome and given an opportunity to address a County representative. After the matter has been concluded, the County will periodically follow up with the individual who made the complaint to ensure that the harassment has been eliminated and the individual has not experienced any retaliation.

Other Remedies

In addition, if an employee believes that harassment has occurred, she or he may, within one year of the harassment, file a complaint of discrimination with the California Department of Fair Employment and Housing. The Department will serve as a neutral fact finder and will attempt to help the parties voluntarily resolve the dispute. No action will be taken against any employee in any manner for opposing harassment or for filing a complaint with, or otherwise participating in an investigation, proceeding or hearing conducted by the Department of Fair Employment and Housing with respect to harassment.

Created: 6/90 (Res. No. 90-301)
Revised: 3/00 (Res. No. 00-110); 5/10 (Res. 10-206); 6/15 (Res. 15-266)