

Effective: March 1, 2015

Anti-Discrimination and Harassment Policy

Background

Under federal and state civil rights laws, employers are prohibited from making any employment decision on the basis of an individual's membership in a protected class. Harassment is a form of illegal discrimination under state and federal civil rights laws if it is based on any of the "protected classes" noted in the Anti-Discrimination and Harassment Policy ("Policy").

Scope

The Policy supersedes all previously issued policies relative to this subject matter.

All officers and employees are subject to and shall comply with the Policy. The Policy also applies to County vendors and suppliers and their agents, as well as non-employees who use County programs and services, and other persons who interact with County employees in the performance of their job duties.

The Policy also applies when conduct it prohibits occurs outside of the workplace or work hours and negatively impacts the workplace.

Policy Statement

The County of Hawai'i ("County") is an Equal Opportunity Provider and Employer. The County is committed to a policy of non-discrimination. The County affirms the right of all employees to work in an environment that is free of harassment, intimidation, and bias.

The County also affirms the right of all other persons to be free from harassment and discrimination when receiving services from the County, participating in County programs, and using County facilities.

The County prohibits discrimination and harassment of any employee, job applicant, or non-employee by any manager, supervisor, employee, customer, vendor, supplier, or agent on the basis of sex, pregnancy, lactation (breastfeeding), race, ancestry, color, national origin, religion, disability, genetic information, age, marital status, familial status, military service, veteran's status, sexual orientation, gender identity, gender expression, victim of domestic or sexual violence status (including those who have a minor child who is a victim of domestic or sexual violence), arrest and court record¹, or any other classification protected by state or federal law.

Retaliation against anyone who files a complaint under the Policy, participates in an investigation under the Policy, or engages in a protected activity under federal or state civil rights laws (i.e., requests a reasonable accommodation or a reasonable modification), is prohibited. Retaliation occurs when a person who engages in a protected activity is subject to an adverse action and there is a causal link between the protected activity and the adverse action.

Employees who violate the Policy will face immediate and appropriate disciplinary action, up to and including discharge. If applicable, any disciplinary action shall be based on just and proper cause, and the collective bargaining agreement of the offending employee.

When non-employees are found to have engaged in harassment of employees or others using County services or programs, the County shall take appropriate action to stop the harassment.

The Department of Human Resources is responsible for promulgating and implementing procedures to enforce this policy.

Other Information

- Discrimination and Harassment

Discrimination is an act which either denies or confers privileges on the basis of a person's membership in a "protected class." Decisions regarding employment, including recruitment, hiring, placement, training, promotion, compensation, benefits, transfers, layoffs, discipline, discharge, etc. must be based on valid, non-discriminatory business reasons.

¹ Pursuant to state law, the County may consider an individual's criminal history for employment purposes under certain circumstances.

Employment actions and the terms and conditions of employment must not be based on sex, pregnancy, lactation (breastfeeding), race, ancestry, color, national origin, religion, disability, genetic information, age, marital status, familial status, military service, veteran's status, sexual orientation, gender identity, gender expression, victim of domestic or sexual violence status (including those who have a minor child who is a victim of domestic or sexual violence), arrest and court record, or any other class protected by state or federal civil rights law.

Similarly, decisions regarding a non-employee's participation in County programs, receipt of County services, or access to facilities must not be based on sex, pregnancy, lactation (breastfeeding), race, ancestry, color, national origin, religion, disability, genetic information, age, marital status, military service, veteran's status, sexual orientation, gender identity, gender expression, victim of domestic or sexual violence status (including those who have a minor child who is a victim of domestic or sexual violence), arrest and court record, or any other class protected by state or federal civil rights law.

- Harassment

Harassment is a course of unwanted conduct, based on a protected class, which is annoying, humiliating, or hurtful to a person or group of persons. Harassment is usually behavior that is repeated over time; however, some acts are so severe in nature that they only need to occur once or twice to constitute harassment.

- Sexual Harassment

Employees, vendors, suppliers, agents, etc. of the County and non-employees who direct unwelcome sexual advances, requests for sexual favors, or other sexually based conduct towards any employee or non-employee are engaging in sexual harassment and are in violation of the Policy.

Sexual harassment also includes, but is not limited to:

- unnecessary or unwanted physical contact of a sexual nature such as patting, pinching, grabbing, rubbing, and intentionally brushing up against another person's body;
- verbal conduct in oral, written, or electronic format, such as unwanted sexual advances, propositions, sexually based verbal abuse, graphic sexual descriptions of a person's body, sexually

degrading language, communicating jokes with sexual conduct, remarks of a sexual nature;

- non-verbal conduct such as display of sexually suggestive objects, pictures, or photographs in the workplace in actual or electronic format, prolonged staring at a person's body or body parts, wolf whistles, and sexual gestures.

Inappropriate sexual conduct becomes sexual harassment when:

- it is unwelcome and interferes with a person's work environment or use of County services, programs or facilities;
- it creates a hostile environment for employees or non-employees;
- an employee's submission to or rejection of a manager or supervisor's sexual advance is a basis for personnel decisions (discharge, disciplinary action, demotion, promotion, etc.)
- submission to a sexual advance is a condition for keeping a job or other benefit, whether expressed directly or implied; and
- a non-employee's submission to or rejection of a County employee's sexual advance is a basis for decisions regarding use of County services, programs, or facilities.

Sexual harassment may occur between persons of the opposite sex or the same sex.

- Unwelcome Conduct

Conduct is considered unwelcome when a reasonable person, who experiences the conduct, believes it to be offensive. In determining whether the alleged conduct constitutes sexual harassment, an officer, employee, investigator, or team investigating a complaint of harassment shall use the "reasonable person of the same gender standard." Under the standard, sexual harassment shall be deemed to have occurred if the alleged offender's conduct would be considered sexual harassment from the perspective of a reasonable person of the victim's gender.

Conduct is also considered unwelcome when the recipient tells the offender, either directly or indirectly, that such conduct is unwelcome.

The intended recipient or an unintended bystander who witnesses the conduct may file a complaint of harassment.

- Other Forms of Harassment

In addition to sexual harassment, the Policy also prohibits harassment of any employee, or non-employee on the basis of pregnancy, lactation (breastfeeding), race, ancestry, color, national origin, disability, genetic information, age, marital status, familial status, military service, veteran's status, sexual orientation, gender identity, gender expression, domestic or sexual violence status (including those who have a minor child who is a victim of domestic or sexual violence), arrest and court record, and any other classification protected by state or federal civil rights law.

The County prohibits comments or conduct, which denigrate, mock, or otherwise insult a person or group of persons on any of the protected classes contained herein. This includes jokes, slurs, graphic images or other offensive commentary in written, verbal, or electronic formats.

In addition, the Policy prohibits conduct which directly or indirectly alters the terms and conditions of employment or provision of County services based upon a person's participation in conduct related to a protected category. Examples of this include, but are not limited to, a supervisor pressuring a gay employee to attend a religious service or socialize with members of the opposite sex, an employee refusing to speak to a co-worker with a different (or no) religious affiliation, or employees making fun of a non-employee with an intellectual disability.

- Harassment in Electronic Formats

The County prohibits harassment in electronic formats which violate the Policy.

Harassment in electronic formats includes, but is not limited to, offensive commentary using e-mails, text messages, social networking, and microblogging sites, in addition to accessing and displaying websites with content that violates this policy.

Employees may be found to have engaged in harassment if they e-mail, text, or post content which violates the Policy on social networking or microblogging sites using personal equipment, outside of work, and while they are off duty.

Complaint and Investigation Procedures

Anyone who has been the recipient of conduct prohibited by the Policy, or who has witnessed another person receive such conduct must report the matter immediately to a supervisor, department head, or the Equal Opportunity Officer (EOO) in the Department of Human Resources.

All complaints which allege discrimination and harassment which violate the Policy are serious and must be investigated immediately. Depending upon the complaint allegations, the investigation will be conducted by the department head, the department head's designate, the employee's supervisor, or the County's Equal Opportunity Officer. If, after investigation, the complaint is found to have merit, appropriate disciplinary action, up to and including discharge, shall be taken against the offender. If applicable, the disciplinary action shall be taken pursuant to the collective bargaining agreement of the offending employee. If the offending employee is not covered by a collective bargaining agreement, discipline shall be taken for just and proper cause.

- Informal Complaints

Employees may file informal complaints with their supervisors. Supervisors shall meet with the employee to ascertain the details of the complaint within two calendar days of receipt of an informal complaint. Within seven calendar days of receipt of an informal complaint, supervisors shall document the meeting and whatever other interviews may be necessary to investigate the complaint allegations. Within ten calendar days of receipt of an informal complaint, supervisors must meet with the complainant to discuss whatever steps were taken to correct the situation and document the meeting.

If the subject matter of the complaint alleges offensive conduct that is severe and pervasive, the supervisor shall treat the complaint as formal and submit it to the department head for investigation and follow up. In such cases, the EOO shall be notified.

- Formal Complaints

Generally, formal complaints shall be filed in writing using the Discrimination/Harassment Complaint Form (DHR Form EO 001). Any non-employee who has been the recipient of conduct that violates the Policy by an employee, agent or non-employee may file a complaint

with the department head of the offending employee's or the program activity's department. The complaint shall be filed using DHR Form EO 001.

Complaints may be filed with the EOO who will review the allegations to determine the appropriate venue for processing of the complaint. The EOO may initiate an investigation, forward the complaint to the department head for investigation, or return the complaint to the complainant if the allegations do not fall within the scope of the Policy.

Depending upon the subject matter, complaints alleging violation of state or federal law may be filed with the Hawai'i Civil Rights Commission (HCRC), the U.S. Equal Employment Opportunity Commission (EEOC) or other federal agency having jurisdiction over the subject matter. These agencies may be contacted directly for information about their complaint filing procedures.

Requests for Reasonable Accommodation

Employees who wish to request reasonable accommodation on the basis of disability shall follow the Procedures for Providing Reasonable Accommodation for Individuals with Disabilities.

Employees may also request reasonable accommodations on the basis of pregnancy, lactation, religion, gender identity, gender expression, and domestic or sexual violence victim status. Employees wishing to request accommodations of this type may obtain more information from their department's Human Resources Representative or the Equal Opportunity Officer in the Department of Human Resources.

- Confidentiality

The County is required to take action when it receives a complaint about harassment or discrimination that allegedly violates the Policy. Dissemination of information related to a complaint or investigation shall be on a need-to-know basis.

Education and Training

All County officers and employees must receive a copy of the Policy and acknowledge receipt of the Policy. The Policy shall be posted in areas common to employees, on the Intranet, and on the County's website.

To ensure that all employees understand their rights and obligations and managers and supervisors understand their duties and responsibilities with respect to the Policy, the County shall provide training related to discrimination and harassment. Departments must ensure that employees attend mandatory Anti-Discrimination and Harassment training and refresher training from time to time.

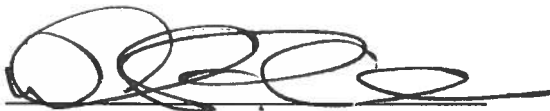
Employee Assistance Program

Employees who experience harassment may contact the County's Employee Assistance Program for assistance. Contact the Department of Human Resources for more information.

Assistance

The County's Equal Opportunity Officer in the Department of Human Resources is responsible for administration of the Policy.

Approved:



William P. Kenoi, Mayor
County of Hawai'i

Amended: February 8, 2012
February 9, 2010
October 17, 2007
April 13, 2007

Initial Policy Issued: October 1, 2005