

County of Hawai'i
Department of Human Resources

Procedures

Division: Equal Opportunity	Effective Date: March 1, 2015
	Amended: February 8, 2012; February 9, 2010; October 17, 2007; April 13, 2007; Initial Policy Issued: October 1, 2005
Subject: Anti-Discrimination and Harassment	
References:	
Purpose: To provide a procedure for receipt, investigation, resolution and appeal of complaints filed under the Anti-Discrimination and Harassment Policy.	

POLICY

The "Anti-Discrimination and Harassment Policy" ("Policy") effective October 1, 2005, and amended April 13, 2007, October 17, 2007, February 9, 2010, February 8, 2012, and March 1, 2015 is incorporated herein by reference.

BACKGROUND

Discrimination and harassment 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
- domestic or sexual violence victim status (including those who have a minor child who is a victim of domestic or sexual violence)
- arrest and court record¹
- any other classification protected by state or federal law

violate the Policy, (effective March 1, 2015, as amended,) and federal and state civil rights laws.

APPLICABILITY

The Policy applies to all employees. The Policy also applies to County vendors and suppliers or their agents, as well as to non-employees who interact with County employees in the performance of their job duties. The Policy also applies when conduct that does not occur in the workplace or during work hours impacts the workplace.

¹ As a general rule, the County may inquire about and consider an individual's conviction record only after making a conditional offer of employment, and only under certain circumstances may a prior conviction be the basis of an employment decision. However, for certain positions, state law expressly allows employers to inquire into an individual's criminal history (including non-conviction data) prior to making a conditional offer of employment for the purpose of determining the individual's suitability for a particular position. See Hawaii Revised Statutes §§ 378-2.5, 831-3.1, 846-2.7.

RESPONSIBILITIES

- I. Departments/Agencies shall:
 - A. Promote a safe and healthy workplace in which all employees can work to their full potential, free from all forms of discrimination and harassment which violate the Policy;
 - B. Ensure that programs and services are offered in environments that are free from discrimination and harassment;
 - C. Follow this Procedure to ensure that complaints which allege violation of the Policy will be received, investigated and resolved in an expedient, thorough and confidential manner;
 - D. Ensure that all employees attend mandatory Anti-Discrimination and Harassment, refresher, and other relevant trainings offered by the Department of Human Resources;
 - E. Fully investigate any complaint alleging discrimination or harassment which violates the Policy.

i. 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. The EOO must be notified.

ii. Formal Complaints

Departments shall complete investigations of complaints within 30 calendar days, except for extraordinary circumstances, which must be documented. If the investigation is not concluded within 30 calendar days the complainant must be advised in writing and given a date for the conclusion of the investigation, not to exceed 30 calendar days. If the investigation is not completed within the 30 calendar day extension, the complainant must be notified in writing with an anticipated date for completion.

Upon the completion of an investigation, the Department shall inform the complainant of the findings in writing and notify the complainant that the decision may be appealed to the Mayor.

If the investigation is not concluded within the completion date noted, the complainant may appeal to the EOO who will notify the Director of Human Resources.

I. Supervisors/Managers shall:

- A. Set an example by not engaging in conduct which violates the Policy;

- B. Review the Policy and Procedure with their employees on a regular basis to ensure that employees understand they must not engage in conduct that violates the Policy and document same, as appropriate;
- C. Ensure that all employees act in accordance with the Policy;
- D. Take immediate and appropriate action to stop employees from engaging in any conduct prohibited by the Policy;
- E. Immediately report formal complaints to their department head.

Supervisors who do not fulfill their responsibilities as described above may be subject to discipline up to and including discharge. If applicable, any disciplinary action taken 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.

Departments' Human Resources Representatives shall make the Policy, Procedure, and Complaint Form available to anyone who requests it.

II. Employees shall:

- A. Not engage in conduct that is prohibited by the Policy;
- B. Cooperate with all efforts to enforce, maintain, and uphold the Policy;
- C. Report any acts which violate the Policy to their supervisor. If the complaint alleges that the employee's supervisor is violating the Policy, the employee shall report this to another appropriate

authority, such as the supervisor's supervisor, the department head, or the Equal Opportunity Officer;

- D. Immediately report any acts of retaliation resulting from their participation in the complaint process to an appropriate authority.

III. Equal Opportunity Officer (EOO) shall:

- A. Provide information and guidance to departments' Human Resources Representatives, supervisors, employees, and others regarding various aspects of the Policy and Procedure;
- B. Upon receipt of a discrimination and/or harassment complaint, analyze the complaint allegations to determine if they violate the Policy. If the subject matter of the complaint does not violate the Policy, the EOO shall advise the complainant of this in writing. The EOO may, in this type of situation, suggest an alternate venue such as Dispute Resolution, the Internal Complaint Procedure, etc. if applicable;
- C. After following the step outlined in III. B., and depending upon the circumstances and nature of the complaint allegations, refer the complaint to the appropriate department head for investigation, or conduct an investigation, if appropriate;
- D. Report the findings of investigations conducted by the EOO to the Director of Human Resources who will initiate appropriate action;
- E. Encourage departments to conduct complaint investigations in a timely manner as noted in I. E. If the EOO is conducting the investigation, the investigation shall be conducted in a timely manner as noted in I. E., Responsibilities Section (page 3).

- F. Maintain central confidential files of all documented discrimination and harassment complaints;
- G. Keep complaint statistics and report annually.

IV. Department of Human Resources shall:

- A. Implement the Anti-Discrimination and Harassment Policy;
- B. Establish a procedure to assist departments;
- C. Coordinate the development and ensure availability of mandatory supervisory and non-supervisory Anti-Discrimination and Harassment and other relevant civil rights training to County employees on a regular basis.

PROCEDURES

I. NOTIFICATION

- A. Departments/agencies shall distribute copies of the Anti-Discrimination and Harassment Policy and Procedure, and DHR Form EO 002, "Acknowledgment of Receipt of the Anti-Discrimination and Harassment Policy and Procedure," to all their employees. Employees shall sign DHR Form EO 002 and return it to their departmental designate. This measure shall be followed with respect to all new employees and whenever the Department of Human Resources amends and distributes the Policy and Procedure.
- B. Departments/agencies shall file the DHR Form EO 002 in the employee's personnel file for future reference.
- C. Departments/agencies shall post copies of the Policy, Procedure, and DHR Form EO 001 (the complaint form) on all bulletin boards.

- D. Departments/agencies shall provide a copy of the Policy to agents and/or independent contractors and inform agents/independent contractors of their intent to enforce the policy.
- E. The Policy and Procedure shall be posted on the County's website and the intranet.

II. FILING COMPLAINTS

Employees who believe that they have been subjected to conduct which violates the Policy by a non-employee shall file a complaint under this procedure.

- A. Employees and non-employees who believe they have been subjected to discrimination and/or harassment which violates the Policy by a County employee shall file a complaint with the offending employee's department head in writing.
- B. Employees who believe they have been subjected to discrimination and/or harassment which violates the Policy by a department head, deputy department head, the Mayor, or Managing Director shall file complaints with the EOO.
- C. Complaints shall be filed on DHR Form EO 001. A copy of DHR Form EO 001 is available on the County's website, the Intranet, from departments' Human Resources Representatives, or from the Department of Human Resources.
- D. Complaints alleging a violation of the Policy shall include the following information:
 - 1. The name, job title, and department of the person filing the complaint; for non-employees,

the name and contact information of the person filing the complaint;

2. The name, job title, and department or other identifying information of the person(s) alleged to have engaged in discrimination and/or harassment;
3. The date(s), time(s), and location(s) of the allegedly discriminatory/harassing incident(s);
4. The protected class upon which the complainant believes the discrimination or harassment is based. If “other” is noted as a protected class on the complaint form, it must be named.²
5. If a complaint of retaliation is filed, the complainant must have previously filed a complaint alleging a violation of the Policy or engaged in a protected activity noted in the Policy or considered protected by an applicable civil rights law.³
6. What happened – details of the discriminating incident, offensive comments, or conduct;
7. Names, job titles, departments, and contact information of any witnesses;
8. Information regarding any related complaints of discrimination or harassment which the complainant filed previously;

² Complaints which allege harassment or discrimination not based on a protected class named in the Policy do not violate the Policy. The complainant shall be so informed and directed to another venue for filing the complaint, if known.

³ Complaints alleging retaliation under the Family and Medical Leave Act (FMLA), the Fair Labor Standards Act (FLSA), the Whistleblower Protection Act, etc. are not actionable under this Policy.

- 9. The resolution the complainant is seeking. What would the complainant like the County to consider to resolve the complaint?
- E. If the employee believes that the alleged discrimination or harassment violates the collective bargaining agreement, the employee shall file a grievance in accordance with the applicable bargaining unit's grievance procedure. This grievance shall be in lieu of the complaint procedure contained herein if the grievance procedure addresses all issues arising from the complaint. If not, the complainant may file a complaint under the Policy to address issues that are not within the scope of the grievance procedure.

III. RECEIVING COMPLAINTS - DEPARTMENTS

- A. Departments receiving complaints of discrimination and/or harassment which violate the Policy shall notify the EOO of the complaint.
- B. The respondent(s), or person(s) alleged to have engaged in the harassing or discriminatory conduct, shall be notified of the complaint allegations and of the investigation in writing, following the appropriate provisions of the collective bargaining agreement, if applicable.
- C. The investigation and findings shall be documented.
- D. The department shall conclude its investigation and respond to the complaint within the time periods noted in I.E., Responsibilities Section (page 3).

- E. The department shall advise the complainant of the outcome of the complaint investigation in writing and notice of the appeal process to the Mayor as outlined in V. Further Appeal. The EOO shall receive a copy of this correspondence.
- F. When complaints alleging violation of the Policy are filed with the EOO, the EOO shall notify the department head of the complaint and refer the complaint to the department head for investigation, except in extenuating circumstances. The EOO may exercise discretion to not refer the complaint to the department for investigation and to conduct the investigation. In such an event, the department head shall be informed of the complaint and the investigation. The department head shall cooperate fully.

IV. COMPLAINT INVESTIGATION

Complaints which allege violations of the Anti-Discrimination and Harassment Policy shall be thoroughly and expeditiously investigated as noted in I.E., Responsibilities Section (page 3).

- A. To the extent possible, the investigation shall be documented thoroughly and conducted in a confidential and discreet manner. The investigative findings shall be one of the following: there is insufficient evidence to support the allegations; the evidence supports the allegations; the evidence does not support the allegations.⁴
- B. If the complaint is substantiated, the department shall undertake to resolve the complaint in a manner that is satisfactory to the complainant and the department.

⁴ Findings must be based on a preponderance of evidence.

- C. If applicable, 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.
- D. Regardless of the investigation's outcome, management shall monitor the workplace closely to ensure that there are no resulting acts of retaliation. If retaliation does occur, an investigation must be conducted in accordance with this procedure and appropriate action taken.

V. FURTHER APPEAL

- A. In the event that the complainant is dissatisfied with a department head's or the EOO's decision regarding the outcome of a complaint, the complainant may file an appeal to the Mayor within 7 calendar days following notification of the complaint disposition.
- B. In the event the complainant is dissatisfied with the outcome of the appeal to the Mayor, the complainant may contact a federal or state agency having jurisdiction over the subject matter of the complaint.