

County of Yolo

Administrative Policies and Procedures Manual

TITLE: EQUAL EMPLOYMENT OPPORTUNITY AND HARASSMENT	DEPARTMENT: HUMAN RESOURCES
TYPE: POLICY AND PROCEDURE	DATE: AUGUST 4, 2009

A. PURPOSE

The purpose of this Policy is to establish a strong commitment to prohibit and prevent unlawful discrimination and harassment in County employment, and to set forth a procedure for investigating and resolving complaints of unlawful discrimination and harassment based on legally protected characteristics.

B. POLICY

Discrimination and harassment against any individual because of such individual's race, color, religion, gender, national origin, ancestry, disability, medical condition, marital status, age (40 years and over), or sexual orientation is prohibited. This Policy applies to all terms and conditions of employment including, but not limited to, hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, compensation and training.

Retaliation against any person having filed a complaint of discrimination or charge of harassment is prohibited. Employees found to be retaliating against another employee, or otherwise violating this policy, shall be subjected to disciplinary action up to and including termination.

The right of a person to a prompt and equitable resolution of a complaint filed under this procedure shall not be impaired by the person's pursuit of other administrative remedies such as the filing of a complaint with the appropriate federal agency.

C. DEFINITIONS

1. Sexual Harassment

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

2. Disability

Disability is: 1) a physical or mental impairment that substantially limits one or more major life activities; or 2) having a record of such an impairment; or 3) being regarded as having such an impairment.

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a. Physical or Mental Impairments

Physical or mental impairments include, but are not limited to: vision, speech and hearing impairments; emotional disturbance and mental illness; seizure disorders; mental retardation; orthopedic and neuromotor disabilities; learning disabilities; heart disease; nervous conditions; cancer; asthma; Hepatitis B; HIV infection; and drug addiction if the addict has successfully completed or is participating in a rehabilitation program and no longer uses illegal drugs.

b. Substantial Limitation of Major Life Activities

An individual is disabled if he or she has a physical or mental impairment that (a) renders him or her unable to perform a major life activity, or that (b) substantially limits the condition, manner or duration under which he or she can perform a particular major life activity in comparison to other people.

Major life activities are functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

In determining whether a physical or mental impairment substantially limits the condition, manner or duration under which an individual can perform a particular major life activity the following factors shall be considered:

- 1) the nature and severity of the impairment;
- 2) the duration or expected duration of the impairment; and
- 3) the permanent or long-term impact (or expected impact) resulting from the impairment.

In determining whether a physical or mental impairment substantially limits an individual with respect to the major life activity of “working” the following factors should be considered:

- 1) the geographical area to which the individual has reasonable access;
- 2) the job from which the individual has been disqualified because of an impairment and the number and types of jobs within that geographical area utilizing similar training, knowledge, skills, or abilities from which the individual is also disqualified because of the impairment.

c. Having a Record of Impairment

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An individual is disabled if he or she has a history of having an impairment that substantially limits the performance of a major life activity; or has been diagnosed as having such an impairment.

d. Regarded as Having a Disability

An individual is disabled if he or she is treated or perceived as having an impairment that substantially limits major life activities (although no such impairment may exist).

3. Qualified Individual with a Disability

A qualified individual with a disability is person who (1) satisfies the job-related requirements of the position, and (2) can perform the essential functions of the position despite their disability, or who (3) with reasonable accommodation can perform the essential functions of the job.

a. Satisfies Job-Related Requirements

The first step is to determine whether the disabled individual satisfies the job-related requirements of the position. Satisfying the job-related requirements of the position means that the disabled individual possesses the appropriate educational background, employment experience, skills, and license required for the position.

b. Essential Factors

The second step is to determine whether the individual can perform the essential functions of the position despite his or her disability. Essential functions are the fundamental duties of a position. (Marginal or peripheral functions of a position are not considered essential).

A function may be essential because:

- 1) the reason the position exists is to perform that function;
- 2) of the limited number of employees available among whom the performance of that job function can be distributed; and
- 3) it is highly specialized and requires specific expertise or skill to perform.

The following factors will be considered in determining whether a function is essential: the agency's judgment as to which functions are essential; written job

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descriptions; the amount of time spent on the job performing the function; the consequences of not performing the function; the terms of a collective bargaining agreement; and the work experience of past and present incumbents in the position.

c. Reasonable Accommodation

If the individual cannot perform a marginal part of the essential job functions, the third step is to determine whether reasonable accommodation would enable the individual to perform the essential functions of the position without undue hardship on the agency.

Accommodation is any change in the work environment or in the way things are customarily done that enables a disabled individual to enjoy equal employment opportunities. Accommodation may mean modifications or adjustments to:

- 1) a job application process to enable an individual with a disability to be considered for the position;
- 2) the work environment in which a position is performed so that a disabled person can perform the essential functions of the position.

Accommodation includes making existing facilities and equipment used by employees readily accessible to and usable by individuals with disabilities.

Accommodation applies to:

- all employment decisions, the job application process and County provided services.
- facilities provided by the agency to all employees and the public;
- only known disabilities.

Accommodation is not required if:

- It eliminates essential functions of a position (and the agency cannot reasonably accommodate).
- Adjustments or modifications requested are primarily for the benefit of the disabled individual.

4. Undue Hardship

The agency will not be expected to provide an accommodation that imposes an undue hardship on the operation of the County's business. Undue hardship means significant difficulty or expense

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incurred in providing the accommodation. Undue hardship includes but is not limited to financial difficulty. Undue hardship refers to any accommodation that would be unduly costly, extensive, substantial or disruptive, or that would fundamentally alter the nature of the operation of the business.

Whether a particular accommodation will impose an undue hardship is determined on a case-by-case basis. The following factors will be considered in determining whether an accommodation would create an undue hardship: the nature and cost of the accommodation; the financial resources of the agency; the number of employees; and the type of operations of the agency, including the composition and functions of its work force.

a. Determining the Appropriate Accommodation

If a qualified individual with a disability requests the provision of a reasonable accommodation, the agency will informally discuss with the individual the limitations resulting from the disability and the potential accommodations that could overcome those limitations.

The accommodation process will generally involve five steps.

- First, the agency must analyze the job at issue and re-affirm its purpose and essential function.
- Second, the agency should consult with the disabled person to find out the job-related limitation imposed by the individual's disability.
- Third, the agency will consult with the disabled individual to identify potential accommodations if they exist.
- Fourth, the agency will assess each potential accommodation to determine if the individual can perform the essential functions of the job.
- Finally, the agency will consider and implement the best accommodation that is most appropriate for both the employee and the agency.

5. Discrimination

For purposes of this policy, discrimination shall mean:

- a. to limit or classify a job applicant, employee or individual in a way that may adversely affect opportunities or standing because of that person's protected status;
- b. to participate in a contract which could subject an applicant, employee or protected individual to discrimination;
- c. to use any standards, criteria or method of administration which could have the effect of discriminating on the basis of a protected classification;
- d. to deny equal jobs or benefits because of a protected classification;
- e. to fail to make reasonable accommodations to known disabilities unless it can be

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- shown that the accommodation would impose an undue hardship;
- f. to use selection criteria which excludes protected persons unless the criteria is job-related and consistent with business necessity; and
- g. to fail to use employment tests in a manner that ensures that the test results accurately reflect the applicant's or employee's skills or aptitude for a particular job.

6. Discriminatory Harassment

Examples of what might be construed as discriminatory harassment including sexual harassment may include, but are not limited to:

- a. Speech, such as epithets, derogatory comments or slurs on the basis of race, gender, religion, national origin, ancestry, disability, medical condition, marital status, age, or sexual orientation. This might include inappropriate e-mail, notes, or comments on appearance, dress, physical features, stories, or degrading jokes that are based on the above list of protected characteristics. Additionally, sexual harassment includes lewd propositioning on the basis of sex. This might include inappropriate sex-oriented comments on appearance, including dress or physical features, sexually degrading stories and jokes, or sexually suggestive or obscene letters, e-mail, notes, or invitations.
- b. Physical acts, such as assault, impeding or blocking movement, offensive touching, or any physical interference with normal work or movement when directed at an individual on the basis of sex, race, color, gender, religion, national origin, ancestry, disability, medical condition, marital status, age, or sexual orientation. This includes pinching, grabbing, patting, propositioning, leering, or making explicit or implied job threats or promises in return for submission to physical acts.
- c. Visual insults, such as displaying or electronically transmitting derogatory posters, cartoons, drawings or other items of an inappropriate nature related to sex, race, color, gender, religion, national origin, ancestry, disability, medical condition, marital status, age, or sexual orientation.
- d. Threats and Retaliation, or other inappropriate conduct related to race, color, gender, religion, national origin, ancestry, disability, medical condition, marital status, age, or sexual orientation where the conduct is intended to or actually does interfere with an individual's work performance or creates an intimidating, hostile, or offensive working environment.
- e. Unwanted sexual favors or advances, requests for sexual favors and other acts of a sexual nature, threats, or insinuations that refusal to agree to sexual favors or advances- or even the request for a date- will harm an employee's standing in any way.

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D. COMPLAINT PROCEDURE

1. An employee or job applicant who believes he or she has been discriminated or harassed on the basis of sex, race, color, gender, religion, national origin, ancestry, disability, medical condition, marital status, age, or sexual orientation may make a complaint verbally or in writing no later than thirty (30) days from the date of the alleged harassment with any of the following:
 - a. Immediate supervisor
 - b. Any supervisor or manager within or outside of the department
 - c. Department head
 - d. County Equal Employment Opportunity Coordinator, who shall be the Human Resources Director (or designee).
2. Any supervisor or department head who receives a discrimination or harassment complaint should notify the County Equal Employment Opportunity Coordinator immediately.
3. Upon receiving notification of a discrimination or harassment complaint, the County Equal Employment Opportunity Coordinator shall:
 - a. Authorize the investigation of the complaint by the department, and/or investigate the complaint. Depending on the circumstances the investigation may include interviews with: a) the complainant; b) the accused; and c) any other persons who are believed to have relevant knowledge concerning the complaint. This may include victims of similar conduct.
 - b. Review the factual information gathered through the investigation to determine whether the alleged conduct violates County policy giving consideration to all factual information, the totality of the circumstances, including the nature of the inappropriate conduct and the context in which the alleged incidents occurred
 - c. Report the results of the investigation and the determination as to whether discrimination or harassment occurred to appropriate persons, which may include the complainant, the alleged, the supervisor, and the department head.
4. If a violation of this County Equal Employment Opportunity and Harassment policy has been determined to have occurred, Yolo County will take prompt and effective remedial action. This may include disciplinary action, which will be commensurate with the severity of the offense. Reasonable steps will be taken to protect the complainant from further harassment and any retaliation as a result of communicating the complaint.

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5. If the County Equal Employment Opportunity Coordinator decides not to conduct an investigation or if his/her efforts to settle the problem are unsuccessful, the complainant may file an appeal within (30) days from the date of notification by the County Equal Employment Opportunity Coordinator. The appeal shall be heard by a hearing officer as provided for in Article 22, Section 2-2201 et seq. of the Yolo County Code.
 - a. Exclusion of Frivolous or Vague Appeals and Appeal Therefrom: In the event that the County Counsel determines that the complaint is frivolous, vague, or that the facts alleged in the complaint, even if true, would not substantiate a claim of sexual harassment or discrimination, or that the appeal claims discrimination based upon a factor that is not prohibited by the state or federal law or regulation, he/she shall not schedule the appeal for hearing.
 - b. Hearing of Appeal: The hearing officer shall fully hear the complaint and make written findings of fact and issues a determination as provided for in Article 22, Section 2-2201 et seq. of the Yolo County Code.
6. The County Equal Employment Opportunity Coordinator will maintain the files and records relating to the complaint.