



CHESTERFIELD COUNTY ADMINISTRATIVE POLICIES AND PROCEDURES

Department: Human Resources
Subject: Sexual Harassment

Policy Number: 6-13
Supersedes: 10/15/17
Date Issued: 09/15/18

I. POLICY

Sexual harassment in the workplace is prohibited by the County because it erodes morale and impairs employees' work ability. All employees shall be responsible for abiding by this policy and promoting a workplace that is free of sexual harassment.

To ensure employees are informed of the County's Sexual Harassment Policy and trained on their rights and responsibilities under the policy, the Learning and Performance Center will offer sexual harassment training to all new employees during new employee orientation. New supervisors, within 30 days of employment or appointment to the new position, shall contact the Learning and Performance Center to schedule Sexual Harassment Training for Supervisors. It is the department director's responsibility to ensure all new employees/supervisors receive training. Additionally, all department directors and supervisors should periodically attend refresher training on sexual harassment offered by HR quarterly and employees will receive a copy of the policy periodically.

II. IDENTIFYING SEXUAL HARASSMENT

- A. **General Guidelines** – Acts of sexual harassment shall result in disciplinary action which may include dismissal. Under this policy, sexual harassment occurs whenever unwelcome conduct of a sexual, sex-based or gender-based nature affects a term or condition of employment or creates a hostile or abusive working environment. The conduct is measured against what an objective, reasonable person, would consider sexually harassing. The complainant need not suffer any physical injury to be a victim of sexual harassment. Sexual harassment may occur by a man against a woman, a woman against a man, a man against a man or a woman against a woman. Sexual harassment may occur by or against an employee, contractor or vendor. Sexual harassment may occur at the workplace, or away from the workplace, and may occur during or after work hours, if the conduct impacts the complainant's work environment.
- B. **Supervisor Duties** – Supervisors and department directors are obligated to ensure that their employees are not subjected to sexual harassment from other employees, citizens, customers, contractors, or vendors if they know or should have known that such sexually harassing behavior was occurring.
- C. **Supervisor/Subordinate Relationships** – Romantic relationships between individuals who have supervisory relationships within their chain of command are never considered consensual. If a romantic relationship forms or develops between a supervisor and subordinate, both parties have an affirmative duty to notify their supervisor, department director or HR. Violations of this section of the policy shall result in transfer or disciplinary action, depending on the circumstances, against one or both of the participants based on the needs of the County.
- D. **Consensual Relationships** – Employees involved in consensual relationships have an affirmative duty to notify the other party that continued non-work-related contact is unwelcome as a precondition to filing a sexual harassment complaint.
- E. **Refusal to Disclose** – The County is not obligated to force an alleged victim of sexual harassment to reveal the name of their harasser if the victim refuses to disclose the name because the victim has talked with the harasser, resolved the matter to their satisfaction and represented in writing that they do not want the County to investigate the incident. However,

the manner in which the County will handle these situations will be determined only after interviewing the victim and analyzing the facts and circumstances of each case.

- F. **Retaliation** – Retaliation exists when an individual is discriminated against for reporting sexual harassment or for cooperating, giving testimony, or participating in any manner in a sexual harassment investigation, proceeding or hearing. Retaliation is prohibited under this policy. Anyone who is being subjected to retaliation shall report it pursuant to Section IV of the policy and it shall be investigated and resolved in the same manner as sexual harassment complaints.
- G. **False/Vindictive Claims** – False allegations or vindictive acts of retaliation shall constitute violations of this policy.

III. FORMS OF SEXUAL HARASSMENT

- A. One form of prohibited sexual harassment under this policy occurs when someone (1) attempts to force an individual to submit to unwelcome sexual advances; (2) requests sexual favors; or (3) engages in unwelcome verbal or physical conduct of a sexual nature when submission is made a term or condition of employment or submission or rejection is used as a basis for employment decisions, including hiring decisions and provision of job benefits or failure to submit alters a term or condition of employment or results in a tangible change in employment status. Employment decisions, terms and conditions of employment and tangible changes in employment status may include promotions, demotions, compensation, termination, performance appraisals, decisions causing a significant change of benefits, reassignment with significantly different responsibilities or disciplinary actions.
- B. Another form of prohibited sexual harassment under the policy occurs through the creation of a hostile work environment when unwelcome conduct of a sexual or gender-based nature unreasonably interferes with an individual's work performance or creates an intimidating, hostile, abusive or offensive work environment. A hostile work environment can be created when any of the following behaviors are directed at another or when a third party overhears or observes such behaviors. Even conduct that is intended to be innocent may still constitute sexual harassment if it falls within the terms of this policy.

The following are examples of behavior that may create a hostile work environment, however, generally, depending on its severity, one single isolated incident will not result in a hostile work environment but may still result in disciplinary action. The behaviors include but are not limited to:

1. Verbal harassment, insults, ridicule or acts of intimidation, aggression or abuse, based on gender
2. Unwanted, intentional touching (i.e., patting, massaging, rubbing, hugging or pinching)
3. Sexual or suggestive remarks about a person's weight, body, clothing, make-up, appearance, or hairstyle
4. Demeaning or inappropriate sex-based terms, including intimate or offensive nicknames
5. Subjecting members of one sex to disadvantageous terms or conditions of employment to which members of the other sex are not subjected
6. Displaying or distributing sexually suggestive calendars, magazines, pin-ups, graffiti, pictures, cartoons, posters, software, e-mail or jokes
7. Repeated or continuing use of inappropriate gestures or profanity of a sexual nature
8. Telling sexual jokes or making sexual remarks, including sexual innuendo or comments with a double meaning
9. Unwelcome pressure to date or engage in sexual activities

10. Encouraging others to make inappropriate jokes, comments or advances
 11. Commenting to a group on an individual's identification or complaint of sexual harassment
 12. Commenting to a group, teasing an individual or telling lies or spreading rumors about issues of a sexual nature
 13. Engaging in consensual sexual activity on the job
 14. Displaying or fondling one's own breasts or genitals in front of others
 15. Making facial expressions such as throwing kisses or licking lips or whistling at another in a sexually suggestive manner
 16. Asking intimate or sexually probing questions
 17. Boasting of sexual experiences or discussing sexual activities
 18. Giving sexually explicit notes or pictures or sexually offensive items to another
 19. Stalking an individual by following them, making repeated telephone calls, etc., whether during or after work hours, and either asking them for sexual favors or harassing them
 20. Requesting sexual favors, accompanied by implied or overt threats concerning an individual's employment status or benefits or promise of preferential treatment with regard to an individual's employment status or benefits
- C. A third form of sexual harassment, sexual assault, is prohibited by this policy and may constitute a crime. Substantiated allegations of sexual assault constitute grounds for immediate leave without pay of the alleged harasser pending investigation. A finding of sexual assault constitutes grounds for immediate dismissal. (Sexual assault includes but is not limited to: Unwanted kissing, grabbing, pressing against or fondling of the intimate parts of another's body or rape or forcing another to touch the intimate parts of one's body.)

IV. ENFORCEMENT PROCEDURE

- A. **Complaint Procedure** – Any person covered by the policy who is being subjected to sexual harassment should tell the offender to stop the behavior unless they are uncomfortable doing so. If they are unable to tell the offender to stop or if the conduct reoccurs after the offender has been told to stop, the person shall make a complaint to their supervisor, department director or HR. If a complaint is not made within 300 days of the sexually harassing incident, the county is not obligated to investigate but may do so if, due to the nature of the complaint or the position of the alleged offender, the county concludes that an investigation will further the county's sexual harassment policy. However, if the complainant alleges an incident against an alleged harasser that occurred within 300 days and other incidents that occurred over 300 days ago, then all such incidents shall be considered by the investigator in determining the outcome of the complaint. If a complaint is made against a person who is not in the complainant's department, then the complainant's supervisor or department director shall notify the alleged harasser's department director to conduct the investigation or, if Subsection B applies, shall notify HR.
- B. **HR Notification** – The department director, supervisor or other person to whom a sexual harassment complaint is made shall immediately notify HR to investigate a sexual harassment complaint, regardless of whether they believe the complaint is valid, if:
1. The complainant wishes to utilize the HR complaint process
 2. The complaint is directed at a deputy county administrator or other county official, department director, or supervisor having the authority to affect the complainant's employment; or
 3. The complaint is for sexual battery

- C. **Department Level Investigation** – For the purpose of encouraging employees to report incidents of sexual harassment, a department director, supervisor or after consultation with HR, may resolve a complaint of sexual harassment at the departmental level if requested by the complainant. This procedure is not available if the complaint is within Subsection B. The department director or supervisor shall investigate all allegations of sexual harassment and shall take immediate action to notify the alleged harasser of a complaint without disclosing the complainant’s name, if at all possible. They shall document in writing all conversations and actions taken to resolve the complaint. HR, the complainant and the alleged harasser shall be informed of the investigation findings. The complaint shall be resolved within 15 workdays of receipt, if practicable.
- D. **Previous Complaints** – If a department director, supervisor or other person receives a complaint from an individual who previously complained about sexual harassment, whether or not the new allegations are against the same person, or if the complaint is against a person who has previously been accused of harassment, then HR shall be notified. HR will then follow the appropriate process to investigate the complaint. If the person who receives the complaint is unsure whether a person has previously complained or previously been accused, he shall contact HR.
- E. **Complaint Involving Non-Employee** – If a complaint is filed by or against a contractor or vendor or against a customer or citizen it may be investigated by the department involved or HR pursuant to the limitations of Subsection B. If the complaint is founded against a non-employee, the investigator shall take appropriate action to ensure that the harassment ceases.
- F. **HR Investigation** – If a complainant wants HR to investigate the complaint, or if the complaint is one described in Subsection B, HR shall be contacted. A Notice of Complaint shall be issued to the alleged harasser. An HR representative shall conduct confidential, in-depth interviews with the complainant, witnesses, co-workers and the alleged harasser to gather all relevant information and shall refrain from disclosing the complainant’s name, if at all possible. After interviewing all relevant parties, the HR representative, in conjunction with the County Attorney’s office, shall determine whether or not sexual harassment has occurred based on the evidence gathered during the investigation. The HR representative shall suggest appropriate disciplinary actions in writing, if necessary, (i) to the alleged harasser’s department director if the alleged harasser is subordinate to a department director (ii) to the appropriate deputy county administrator if the alleged harasser is a department director or (iii) to the County Administrator if the alleged harasser is a deputy county administrator or other County official or reports directly to the County Administrator. HR shall also inform the complainant of the final outcome of the investigation. HR shall maintain all documents regarding sexual harassment in a confidential manner and after resolution and statistical analysis of a complaint, HR shall forward all records of the complaint to the County Attorney to maintain.
- G. **Accused Rights** – If accused of an act of sexual harassment, an individual: (1) shall be notified of the complaint as soon as possible, (2) shall be entitled to respond to the complaint; (3) shall receive discipline in conformance with the County’s Personnel Policies and Procedures if the charges are substantiated; and (4) shall be entitled to utilize the County’s Employee Grievance Procedure if they disagree with the disciplinary action, if eligible.
- H. **Cooperation** – All County employees are required to cooperate in sexual harassment investigations.
- I. **Impeding Investigations** – Impeding an investigation or otherwise covering up a violation is prohibited.
- J. **Confidentiality** – All participants in the investigation, including the complainant and the alleged harasser, shall be required to keep the details and results of any investigation confidential.

- K. **Violation/Discipline** – In determining whether a violation of the policy has occurred, the investigator shall consider the totality of the circumstances, the nature of the act and the context in which the incident occurred. HR will make recommendations on situationally appropriate discipline. HR and the County Attorney’s office shall be consulted if the department considers discipline that is different than the original recommendation. All violations of this policy, including violation of the retaliation, confidentiality, cooperation, impeding investigations and false/vindictive claims provisions, shall result in disciplinary action up to and including termination in accordance with the County’s Personnel Policies and Procedures. Anyone who fails to report an incident to HR pursuant to Subsections B and D or allows sexual harassment to continue or fails to take appropriate corrective action or retaliates or discriminates against the complainant, or any other individual who cooperates in the investigation, shall be subject to discipline, up to and including termination. A complainant should report such a violation to HR for investigation.
- L. **Interim Remedial Measures** – After a complaint is received, interim remedial measures may be taken to protect the individuals involved and/or to protect the interests of the County. Any remedial measure may be reversed or modified pending final resolution of a complaint.
- M. **Follow-up** – Once a complaint has been resolved, HR will follow-up with the complainant periodically to ensure that the harassment has ceased and/or no retaliation is occurring.
- N. **Files** – The supervisor or department director shall ensure that all documents and files regarding a sexual harassment investigation are maintained in a confidential manner and that access to such files is restricted. Sexual harassment files shall be maintained separate and apart from any other files containing employee information. At the time that a supervisor or department director leaves their position, all files maintained pursuant to this section shall be delivered to HR. For investigations conducted by HR, all documents, files and final reports shall be maintained in a confidential location in HR. Copies will be forwarded to the County Attorney’s office. Upon request, the department director and appropriate departmental leadership will be permitted to come to HR to review the report.
- O. **Grievance** – Eligible employees may use the County’s Employee Grievance Procedure (6-9) for relief from acts of sexual harassment that are not resolved to the satisfaction of the complainant. The Grievance Procedure time limits shall begin to run after the initial investigation is completed and the complainant is notified of the results.
- P. **Title VII** – Individuals may also consult with the Equal Employment Opportunity Commission concerning their rights under Title VII.
- Q. **Conflict of Interest** – The County will ensure that those who are named in a complaint are not a part of the HR investigative team. If a conflict of interest cannot be resolved with internal staff, the County may utilize a third-party investigator to conduct the investigation.