



CHESTERFIELD COUNTY ADMINISTRATIVE POLICIES AND PROCEDURES

Department: Human Resources
Subject: Discrimination and Harassment

Policy Number: 6-23
Date Issued 09/15/18

I. POLICY

The County is an equal employment opportunity (EEO) employer committed to providing a work environment that is free from discrimination and harassment. Discrimination and harassment in the workplace on the basis of race, color, national origin, sex, age (40 or older), disability, religion or genetic information is prohibited by the County. While sex is a protected category under this policy, sexual harassment as defined under Administrative Procedure 6-13, Sexual Harassment, and all sexual harassment investigations shall be governed by Procedure 6-13.

All employees shall be responsible for abiding by this policy and promoting a workplace that is free of discrimination and harassment. Employees are obligated to report instances of discrimination and harassment or any illegal activity toward either employees, vendors, contractors, customers or residents to their direct department director, supervisor or HR. Managers and/or supervisors who allow workplace discrimination or harassment to continue or fail to take appropriate corrective action upon becoming aware of the discrimination or harassment may be considered parties to the offense, even though they may not have directly engaged in the discrimination or harassment.

To ensure employees are informed of the County's Discrimination and Harassment Policy and are trained on their rights and responsibilities under the policy, the Learning and Performance Center (LPC) will distribute this procedure to all new employees in New Employee Orientation and periodically offer training to existing employees. All department directors and supervisors should periodically attend refresher training on the discrimination and harassment training offered by LPC.

II. IDENTIFYING DISCRIMINATION AND HARASSMENT

- A. **General Guidelines** – Under this policy, discrimination or harassment occurs whenever an employee is denied an employment opportunity based on an identified protected category as defined by the Civil Rights Act of 1964 (Title VII), the Age Discrimination and Employment Act (ADEA), and the Americans with Disabilities Act (ADA). These protected categories are race, color, national origin, sex, age (40 and older), disability, religion and genetic information.
- B. **Age Discrimination** – Treating an applicant or employee unfavorably in personnel actions because of his or her age. Employees who are 40 years old or older are protected against age discrimination.
- C. **Bona Fide Occupational Qualification (BFOQ)** – An exception to the general prohibition of discrimination, which allows a hiring manager or department director to place restrictions on certain protected categories when hiring (except on the basis of race) if the restriction is necessary to the performance of the duties of the position. BFOQs must be pre-approved by HR and are only allowed when the very nature of the job requires certain limitations, e.g., gender or age.
- D. **Disability Discrimination** – Treating an applicant or employee unfavorably in personnel actions because they have a disability or are perceived to have a disability. All reasonable accommodation requests for disability should follow Administrative Procedure 6-18, Americans with Disabilities Act.

- E. **Disparate Impact** – When a neutral policy or practice has the effect of disproportionately excluding or harming members of a protected class.
- F. **Disparate Treatment** – When an employee is intentionally treated adversely because he or she is a member of a protected category.
- G. **Harassment** – Harassment is unwelcome conduct that is based on race, color, national origin, sex, age, disability, religion or genetic information. Harassment that is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive is prohibited by this policy. Harassment may include, but is not limited to, offensive comments, gestures, slurs, texts, email messages, jokes, posters, cartoons, pictures, or drawings that are based on an individual’s race, color, sex, religion, age, national origin, disability, or genetic information. Harassment does not require the intent to offend. Thus, inappropriate conduct meant as a joke, prank, or even a compliment may lead or contribute to harassment. While sex is a protected category under this policy, sexual harassment as defined under Administrative Procedure 6-13, Sexual Harassment, and all sexual harassment investigations shall be governed by Procedure 6-13.
- H. **Personnel action** – Hiring, compensation, benefits, transfers, lay-offs, promotions, training, or disciplinary actions, including termination.
- I. **Race/Color/National Origin Discrimination** – Adversely affecting an applicant or employee in a personnel action because of his or her race, color, or national origin. This includes discriminating against employees with certain physical characteristics (such as skin color, hair texture or other physical features) birthplace, ancestry, culture, native language, or accent.
- J. **Religious Discrimination** – Treating an applicant or employee unfavorably in a personnel action because of his or her religious beliefs or religious affiliation.
- K. **Retaliation** – When an individual is treated unfavorably because he or she has reported discrimination/harassment or has cooperated, given testimony, or participated in any manner in an EEO investigation, proceeding or hearing. Retaliation is prohibited under this policy. Anyone who is being subjected to retaliation shall report it pursuant to Section III of the policy and it shall be investigated and resolved in the same manner as discrimination/harassment complaints.
- L. **Sex Discrimination** – Treating an applicant or employee unfavorably because of his or her sex, gender identity, or sexual orientation. Sexual harassment is defined in Administrative Procedure 6-13, Sexual Harassment, and all sexual harassment investigations shall be governed by Administrative Procedure 6-13.

III. ENFORCEMENT PROCEDURE

- A. **Management Responsibilities** – Department directors, managers, and supervisors are obligated to ensure that objective practices within their departments comply with the County’s Policy 1-5 Non-Discrimination and Equal Opportunity plan and this policy. They are also obligated to maintain a non-discriminatory environment for employees and report instances of discrimination/harassment immediately to HR.
- B. **False/Vindictive Claims** – False allegations or vindictive acts of retaliation shall constitute violations of this policy.
- C. **Complaint Procedure** – Any County employee, applicant for employment, vendor, contractor, customer or resident is protected by this policy from illegal discrimination and harassment based on race, color, national origin, sex, age, disability, religion or genetic information. Sexual harassment investigations shall be governed by Administrative Procedure 6-13.

Individuals are protected from retaliation if they have opposed discrimination/harassment, filed a complaint of discrimination/harassment, or participated in the EEO complaint process.

- D. **Filing a Formal Complaint** – A person who is being subjected to discrimination or harassment shall make a complaint to their department director, supervisor, or HR within 300 days of the discrimination or harassment. The individual (complainant) will be asked to complete the EEO Discrimination/Harassment Complaint form.
- E. **Investigation** – An HR representative shall conduct confidential, in-depth interviews with the complainant, witnesses, co-workers and the respondent to gather all relevant information and shall refrain from disclosing the complainant’s name, if at all possible. The investigation may also include collecting statements, interviewing staff and gathering related documents. After interviewing all relevant parties, the HR representative, in conjunction with the County Attorney’s office, shall determine whether or not discrimination and/or harassment in violation of this policy 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 respondent’s department director if the respondent is subordinate to a department director (ii) to the appropriate deputy county administrator if the respondent is a department director or (iii) to the county administrator if the respondent is a deputy county administrator or other County official or reports directly to the county administrator.
- HR shall maintain all documents regarding discrimination and harassment in a confidential manner. HR shall forward all records of the complaint to the County Attorney to maintain. The individual filing the complaint will receive written notice of the findings.
- F. **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. If the complaint is founded against a non-employee, the investigator shall take appropriate action to ensure that the discrimination/harassment ceases.
- G. **Accused Rights** – If practical, within 10 calendar days of receipt of the formal complaint (after complainant interview), a Notice of Complaint form shall be issued to the respondent. If accused of discrimination or harassment, an individual has the right to:
1. Respond to the complaint;
 2. Receive discipline in conformance with the policies and procedures, if substantiated; and
 3. 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 discrimination and 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 respondent, shall be required to keep the details and results of any investigation confidential.
- K. **Violation/Discipline** – In determining whether a violation of this 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 or allows discrimination or 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 discrimination or harassment has ceased, and/or no retaliation is occurring.
- N. **Files** – The department director, manager or supervisor shall ensure that all documents and files regarding a EEO discrimination and harassment investigation are maintained in a confidential manner and that access to such files is restricted. EEO discrimination and harassment files shall be maintained separate and apart from any other files containing employee information. At the time that a department director, manager or supervisor 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.