

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Chief Executive Office

BOARD AGENDA # *B-2

Urgent

Routine

AGENDA DATE January 24, 2012

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval of Revised County Harassment Policy and Revised Equal Employment Opportunity Grievance Procedures Including Title Changes to These Policies

STAFF RECOMMENDATIONS:

1. Approve the revised County Harassment Policy to include changing the title to the County Harassment, Discrimination and Retaliation Policy.
2. Approve the revised Equal Employment Opportunity Grievance Procedures to include changing the title to Equal Employment Opportunity Complaint Procedure.

FISCAL IMPACT:

There is no fiscal impact associated with this item.

BOARD ACTION AS FOLLOWS:

No. 2012-026

On motion of Supervisor Monteith, Seconded by Supervisor Withrow
and approved by the following vote,

Ayes: Supervisors: Chiesa, Withrow, Monteith, De Martini, and Chairman O'Brien

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:



ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

DISCUSSION:

Stanislaus County is committed to maintaining equal opportunity in all employment actions and public services in compliance with all applicable Federal and State laws. The County currently has two policies that provide guidance in assuring conformity with these regulations. The County's Harassment Policy provides behavior expectations for conduct in the workplace and the Equal Employment Grievance Procedures provide the procedures to investigate complaints under the County's Harassment Policy. During the last year, staff in the Chief Executive Office, with input from labor organizations, has been working to update these policies to better reflect the workplace and to provide clear expectations for compliance with all applicable regulations.

The Board of Supervisors last approved revisions to the County's Harassment Policy on November 2, 1998. Those revisions included merging the County's Sexual Harassment Policy and the County's Racial and Ethnic Harassment Policy into one policy prohibiting harassment in the workplace based upon protected classifications as defined by the Federal Equal Employment Opportunity Commission (EEOC) reflecting the changes made in the law at the time.

The County's Equal Employment Opportunity (EEO) Grievance Procedures were originally adopted by the Board of Supervisors in the early 1980s and provide the process for investigating complaints containing allegations of equal rights violations. When the 1998 Harassment Policy was updated, provisions for investigating allegations of equal rights violations were included in the update. In some instances, the investigation procedures contained in the two policies conflict with one another causing confusion for both the complainant and the individual responsible for completing the investigation. Additionally, the title of the EEO Grievance Procedures has caused confusion with employees between this policy and the County's Grievance Procedure. Thus, a name change is recommended to refer to the procedures as the Equal Employment Opportunity Complaint Procedure.

Staff in the Chief Executive Office completed draft changes to the policies and, in May 2011, requested all labor groups meet and confer over the draft changes to both policies. Through the joint labor process, the County has reached tentative agreement to revisions of both policies. Additionally, the County's Equal Rights Commission and Departmental Equal Rights Officers provided input to the proposed revisions. Attached to this item are the two proposed policies.

The key revisions to the County's Harassment Policy include:

- Expands the policy to include discrimination and retaliation in addition to harassment. This is reflected in the title change;
- Defines protected classifications (such as sex, gender, age) but references the County's Annual Non-Discrimination Statement approved by the Board of Supervisors each year for the updated list of protected classifications. The

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statement is distributed to each County Department for posting and may be found on the County's Equal Rights website;

- Provides a statement defining retaliation; and,
- Refers individuals to the County's EEO Complaint Procedure for the process of filing a complaint. The current policy and EEO Grievance Procedures both have complaint processes which are inconsistent with one another. The Harassment, Discrimination, and Retaliation Policy continues to provide all avenues an individual can use to file a complaint (example: manager, dept head, etc).

The key revisions to the Equal Employment Opportunity Grievance Procedures include:

- Recommends changing the title to Equal Opportunity Complaint Procedure;
- The complaint procedures outlined in the EEO Complaint Procedure becomes the main procedure to be used in the County for allegations of equal rights violations;
- Defines protected classifications and refers individuals to the Annual Commitment Statement and the County's Equal Rights website for further information;
- Clarifies that written responses will be provided to the complainant. The current policy is unclear and, in some cases, the complainant has not received a formal response causing confusion and morale issues;
- Provides consistent definitions and steps at all levels of the process, including timeframes where appropriate; and,
- Clarifies the ability to assign an outside Departmental Equal Rights Officer to assist in an investigation where a conflict might be present.

With the implementation of the recommended revisions to both policies, the following outcomes are anticipated:

- Broader and consistent defining of harassment, discrimination and retaliation in the workplace;
- Consistent methodology used to investigate allegations of equal rights violations; and,
- Increased morale due to consistent application of the two policies.

If approved, the Harassment, Discrimination, and Retaliation Policy and the Equal Employment Opportunity Complaint Procedure will be disseminated to all County employees for review. The County provides training to all County managers and supervisors every two years under AB 1825 that covers County policy and sexual harassment as required by law. Additional training is available to all County employees through the Preventing Harassment, Discrimination, and Retaliation in the Workplace course.

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POLICY ISSUE:

Approval of the proposed policy revisions supports the Board priority of Efficient Delivery of Public Services.

STAFFING IMPACT:

There is no immediate fiscal impact associated with this item. County Chief Executive Office Human Resources staff and departmental Equal Rights Officers currently fulfill this function and will continue to do so.

CONTACT:

Nancy Bronstein, Chief Executive Office, 209-525-6333



**STANISLAUS COUNTY
EMPLOYEE CONDUCT/BEHAVIOR EXPECTATIONS
WORKPLACE HARASSMENT, DISCRIMINATION
AND RETALIATION POLICY**

PURPOSE

Stanislaus County is proud of its tradition of a collegial work environment in which all individuals are treated with respect and dignity. Each individual has the right to work in a professional atmosphere, which promotes equal opportunities and prohibits discriminatory practices. **AT STANISLAUS COUNTY, HARASSMENT, DISCRIMINATION AND RETALIATION WHETHER VERBAL, PHYSICAL OR ENVIRONMENTAL, IS UNACCEPTABLE AND WILL NOT BE TOLERATED.**

It is the intention of this Policy to prohibit, eliminate and prevent unlawful harassment, discrimination and retaliation and its effects in the workplace. To do this, the County, through this Policy, will define unlawful harassment, discrimination and retaliation and will set forth a procedure for filing, investigating and resolving internal complaints.

POLICY

Harassment, discrimination and retaliation of an applicant or employee by an employee or non-employee on the basis of a protected classification is not acceptable and will not be tolerated. Protected classifications include, but are not limited to: race, color, religion, sex, national origin, ancestry, physical or mental disability, medical condition, marital status, age (over 40), sexual orientation, or genetic history. Annually, the Board of Supervisors reaffirms its commitment to non-discrimination by adopting the County's Equal Employment Opportunity Non-Discrimination Statement. Please review the annual Non-Discrimination Statement for updates to protected classifications. The Non-Discrimination statement is located in each department, in the Personnel Manual, and on-line on the County's Equal Rights website.

This Policy applies to all terms and conditions of employment, including, but not limited to: hiring, job assignments, promotion, disciplinary action, layoff, re-employment, transfer, leave of absence, compensation and training.

Disciplinary action up to, and including, termination will be instituted for employee's behavior which conflicts with expectations as described in the definition of harassment, discrimination, and retaliation set forth in this policy.

HARASSMENT AND DISCRIMINATION

Discrimination and harassment behavior is a form of misconduct that violates this policy and in some cases may constitute discrimination that is in violation of federal and state law. When evaluating complaints of hostile, offensive or abusive conduct the County will consider both current legal standards and County Policy Examples of harassment, discrimination, and prohibited unlawful behavior include, but are not limited to:

- Harassment behavior of any kind that is verbal, physical, visual, or electronically communicated based upon a protected classification. Examples of prohibited unlawful behavior include but is not limited to, the following:
 - Speech such as epithets, derogatory comments, offensive remarks or slurs and lewd propositioning on the basis of a protected classification. This includes inappropriate sex-oriented comments on appearance, including dress or physical features, or race-oriented stories and jokes.
 - 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 a protected classification. This includes pinching, grabbing, patting, propositioning, leering, or making explicit or implied on-the-job threats or promises in return for submission to physical acts.
 - Visual insults, such as derogatory posters, cartoons or drawings related to a protected classification.
 - Circulation or posting of written materials or electronic circulation of jokes, messages, cartoons, pictures.
 - Conduct that affects or interferes with an individual's job performance that creates a hostile, offensive, or abusive working environment.
- Sexual harassment is illegal and is a form of sex discrimination forbidden by federal and state law. The Equal Employment Opportunity Commission (EEOC) defines sexual harassment as:
 - Unwelcome sexual advances, requests for sexual favors, and other acts of a sexual nature when such conduct is made either explicitly or implicitly as a term or condition of an individual's employment; or
 - When rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
 - When 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.
- Other examples of types of conduct which may constitute sexual harassment include:
 - Explicit sexual propositions, preferential treatment in exchange for sexual favors, retaliating or getting back at someone who turns down sexual advances;
 - Sexual innuendos, suggestive comments; Sexually oriented joking or teasing, jokes about gender specific traits; or

- Dissemination of printed visual material, display or electronic communication of offensive or obscene jokes, messages, or pictures.
- **It is no defense to a claim of harassment that the alleged harasser did not intend to harass.**

RETALIATION

Any retaliation against a person for filing a harassment/discrimination charge or making a harassment/discrimination complaint is prohibited. Retaliation occurs when adverse action is taken against an individual who, reports a concern about potential illegal or unethical conduct or a violation of Stanislaus County's policies or procedures. Employees (supervisors, co-workers and management) found to be retaliating against another employee shall be subject to disciplinary action up to, and including, termination.

COMPLAINT PROCEDURE

Employees are encouraged to resolve issues and concerns under this policy at the lowest supervisory level of the organization possible given the circumstances of the issues involved. While Stanislaus County encourages individuals who believe they are being harassed to firmly and promptly notify the offender that his or her behavior is unwelcome, Stanislaus County also recognizes that power and status disparities between the individuals involved in the situation may require an alternative resolution process. In the event that such informal, direct communication between individuals is either ineffective or impractical, the County's Equal Employment Opportunity (EEO) Complaint Procedures should be followed in reporting a complaint of harassment, discrimination or retaliation. The County's EEO Complaint Procedure is located in the County's Personnel Manual and on-line on the County's Equal Rights website. To initiate the EEO Complaint Procedure, any employee, job applicant, or person seeking County services who believes he or she has been subject to harassment, discrimination or retaliation in violation of this policy may make a complaint orally or in writing with any of the following:

1. Immediate supervisor;
2. Any supervisor or manager within or outside the department;
3. Department Head;
4. Departmental Equal Rights Officer;
5. Director of Personnel or Chief Executive Office designee; or
6. County Equal Rights Officer.

This procedure shall apply to allegations of harassment, discrimination and retaliation in any employment action or in the delivery of public services based upon a protected classification. County departments may develop separate policies and procedures related to processing complaints regarding the delivery of public services in compliance with all applicable federal and state laws and regulations. Applicants or employees may also file a complaint with a government agency such as the Department of Fair Employment and Housing or the Equal Employment Opportunity Commission.

APPLICATION

This Policy applies to all employees of Stanislaus County, including volunteers, contract employees, supervisory employees, department heads, and elected officials. All employees shall receive a copy of this Policy and shall sign a written acknowledgment that they have received and read a copy of the policy. A copy of this acknowledgment shall be placed in the employee's official personnel file.

CONCLUSION

Stanislaus County has developed this Policy to ensure that all its employees can work in an environment free from harassment, discrimination and retaliation. Stanislaus County will make every effort to ensure that all personnel are familiar with the Policy and know that any complaint received will be thoroughly investigated and appropriately resolved. Employees are encouraged to contact their department's designated Human Resources Representative, or any member of the Chief Executive Office Human Resources Division at (209) 525-6333, with any questions related to the provisions of this policy.



**STANISLAUS COUNTY
EQUAL EMPLOYMENT OPPORTUNITY
NON-DISCRIMINATION STATEMENT**

POLICY STATEMENT

Each year the Board of Supervisors reviews and approves the County's Equal Rights/Non-Discrimination Commitment Statement. Upon approval of this Statement, it will be distributed to all County departments, all Departmental Equal Rights Officers, local community organizations, and on the County's web site.

Approval of this Commitment Statement communicates the County's commitment to a clearly defined Equal Rights Program, which is established to assure Equal Employment Opportunity and non-discrimination towards our employees, applicants, and those seeking the services provided by County government.



**STANISLAUS COUNTY
PERSONNEL MANUAL
BOARD OF SUPERVISORS RESOLUTION
EQUAL EMPLOYMENT OPPORTUNITY (EEO) COMPLAINT PROCEDURE**

Stanislaus County is committed to maintaining equal opportunity in all employment actions and public services in compliance with all applicable federal and state laws. The County's Workplace Harassment, Discrimination and Retaliation Policy is intended to prohibit, eliminate and prevent unlawful harassment, discrimination and retaliation and its effects in the workplace. The policy is located in the County's Personnel Manual and on-line on the County's Equal Rights website.

The following Equal Employment Opportunity Complaint (EEO) Procedure was developed to provide specific procedures to address complaints under the County's Workplace Harassment, Discrimination and Retaliation Policy and associated complaints regarding public services. These procedures apply to every County employee, job applicant, or person seeking County services who believes he or she may have been treated differently based upon a protected classification.

All employee labor organizations have agreed to the Equal Employment Opportunity Complaint Procedure which follows. Using this procedure is the most effective way to have an equal rights complaint reviewed, investigated and possibly resolved locally and in a timely manner.

- A. Intent - It is the intent of this procedure to provide an effective means of resolving individual or group problems of a sensitive nature in a timely manner and with a minimum of formal procedural requirements.
- B. Scope - This procedure shall apply to allegations of harassment, discrimination and retaliation in any employment action or in the delivery of public services based upon a protected classification. County departments may develop separate policies and procedures related to processing complaints regarding the delivery of public services in compliance with all applicable federal and state laws and regulations.
- C. Limitations - the establishment of this procedure for resolving complaints of discrimination, as it relates to matters of County employment practices, is not intended to supplant regular grievance or complaint procedures or prohibit employees or applicants from filing complaints with the Department of Fair Employment and Housing (DFEH), Equal Employment Opportunity Commission (EEOC), or the courts. This procedure is intended and should be viewed as a means of providing the special skills needed to promptly and fairly handle the sensitive issues involved, and to ensure full cooperation with Federal and State compliance agencies.
- D. Representatives - In presenting and resolving complaints, persons submitting complaints may represent themselves or may designate a representative of their own choosing. Costs associated with such representation, if any, will be borne by the complainant.

E. Definitions

Complainant: An employee or applicant for employment who alleges that he or she has been the subject of harassment, discrimination or retaliation on the basis of a protected classification. May also be a member of the public who alleges that he or she has been denied access to County government services or been discriminated against in the provision of such services on the basis of a protected classification.

Third Party: A separate individual from the subject (Complainant) who alleges that he or she witnessed another party be subjected to harassment, discrimination, or retaliation on the basis of a protected classification and brings forward a complaint.

County Equal Rights Officer: The Deputy Executive Officer assigned to the Chief Executive Office Human Resources Division, who is in close reporting relationship to top management and is assigned the responsibility of managing the County's Equal Rights Program including the procedure for handling complaints under this policy.

Departmental Equal Rights Officer: An employee assigned the responsibility of managing a department's equal rights program trained in EEO procedures and who provides informal counseling on matters pertaining to discrimination. Each County Department Head shall have an assigned Departmental Equal Rights Officer. Departmental Equal Rights Officers may be required to offer assistance to other Departments as requested by the County Equal Rights Officer or designee.

Protected Classification: The term describes characteristics or factors which are specifically protected from harassment, discrimination or retaliation based on federal or state laws. Protected classifications include, but are not limited to, race, color, national origin, ancestry, sex, sexual orientation, religion, political affiliation, action, or belief, marital status, age (over 40), pregnancy related condition, medical or physical disability, and genetic history.

Annually, the Board of Supervisors reaffirms its commitment to non-discrimination by adopting the County's Non-Discrimination Statement. Please review the Non-Discrimination Statement for updates to the list of protected classifications. The Non-Discrimination Statement is located in each department, in the Personnel Manual, and on-line on the County's Equal Rights website.

F. Steps in the Procedure

To initiate the EEO Complaint Procedure, any employee, job applicant, or person seeking County services who believes he or she has been subject to harassment, discrimination or retaliation based on a protected classification may make a complaint orally or in writing with any of the following:

1. Immediate supervisor;
2. Any supervisor or manager within or outside the department;
3. Department Head;
4. Departmental Equal Rights Officer;

5. Director of Personnel; or
6. County Equal Rights Officer.

Complainants are encouraged to report complaints as soon as learning of the issues related to their complaint. Any delays in reporting complaints may impact the department's ability to fully investigate and respond to the issues presented.

Complainants are encouraged to use the County EEO Complaint form to assist in documenting all of the issues in the complaint. The form is located in the County's Personnel Manual and on-line at <http://www.stancounty.com/personnel/equal-rights/doc/eoo-complaint-form.doc>.

Department Level Complaints

Complaints should first be addressed at the department level in an effort to resolve the issues presented. The Departmental Equal Rights Officer (or alternate Departmental Equal Rights Officer) will be responsible for evaluating and responding to the complaint. Due to the nature of certain complaints, the Department and the County Equal Rights Officer may assign an alternate Departmental Equal Rights Officer to complete the departmental level review or may forward the matter directly to the County Equal Rights Officer to coordinate the appropriate follow-up.

The Department process will typically include the following:

- a) Consult with the complainant to reach a complete understanding of the issues presented.
- b) Make necessary inquiries in an attempt to resolve the complaint. This may include interviews with other witnesses or subjects as necessary.
- c) Seek informal resolution of problems by facilitating open communications between the complainant and any other involved parties.

The Departmental Equal Rights Officer will provide a response to the complainant in writing within 60 calendar days of learning of the complaint. If the complaint will require more than 60-calendar days to fully evaluate and respond, the Departmental Equal Rights Officer will notify the complainant of the additional period of time necessary to complete their findings.

County Level Complaints

Complainants may appeal the findings of the Departmental Equal Rights Officer to the County Equal Rights Officer. It is recommended Complainants appeal to the County Equal Rights Officer as quickly as possible to assist the County Equal Rights Officer in completing a timely investigation.

The County Equal Rights Officer, upon receipt of a complaint:

Shall review the case with the Departmental Equal Rights Officer.

- a) May assign an investigator to conduct a prompt, impartial investigation, if necessary, and review finding thereafter. The complainant will be notified of the assigned investigator.
- b) The County Equal Rights Officer shall be authorized to issue subpoenas as necessary.
- c) Explore further the possibility of informal adjustment of the problems through negotiation or conciliation with Department Head or the parties to the complaint.
- d) Respond to the Complainant in writing with the County Equal Rights Officer decision and provide notification of appeal rights. If the Complainant wishes to appeal the County Equal Rights Officer's decision, he/she may do so in writing to the County Chief Executive Officer within fourteen (14) working days of receipt of the County Equal Rights Officer's decision.

1. Appeal to Chief Executive Officer: Upon receipt of an appeal of the County Equal Rights Officer's decision the County Chief Executive Officer shall:

- a) Review the case with the County's Equal Rights Officer, the Investigator, or Departmental Equal Rights Officer as appropriate.
- b) Request the Investigator gather further information and analysis as appropriate.
- c) Provide the complainant with a written decision and advise complainant of appeal rights.

2. Appeal to Hearing Board: Shall the affected individual wish to appeal the Chief Executive Officer's decision; he/she may request a hearing with the Hearing Board established pursuant to Stanislaus County Ordinance Code 3.28.060 within fourteen (14) calendar days of receipt of the Chief Executive Officer's decision. The appeal shall be in writing and shall be filed with the Chief Executive Officer. The Chief Executive Officer shall forthwith transmit the appeal request to the Hearing Board. The Hearing Board shall, within a reasonable time from the filing of the appeal, commence the hearing and shall notify the interested parties of the time and place of hearing at least five (5) working days in advance.

At the hearing, both the complainant and the County shall have the right to be heard publicly, to be represented by counsel, and to present evidentiary facts. The parties may agree to a hearing closed to the public and the Hearing Board may, at any time, exclude any persons who may be a witness in the appeal under consideration. The hearing shall be informal and the Hearing Board shall not be bound by any of the rules of evidence governing trial procedure and State courts. The Hearing Board shall render a written decision, a copy of which shall be transmitted to the Chief Executive Officer. The Chief

Executive Officer shall serve a copy of the decision upon the appellant. The decision is final.



**STANISLAUS COUNTY
PERSONNEL MANUAL
FORMAL DISCRIMINATION COMPLAINT FORM**

If you believe that you have been discriminated against in any aspect of employment because of a protected classification which includes but is not limited to, race, color, religion, ancestry, national origin, age, sex, sexual orientation, disability, political affiliation, medical condition or marital status, please fill out the form and return it to the Departmental Equal Rights Officer or County Equal Rights Officer.

Complainant's Full Name		
Street Address		
City	State	Zip Code
Home Phone Number	Work Phone Number	
Which department do you believe discriminated against you?		
Name and title of person (s) and/or action (s) causing discrimination.		
Are you currently working for the department listed above? [] Yes [] No		
What is your classification and job title?		
Date which most recent alleged discrimination took place.		
Have you discussed your complaint with the Departmental Equal Rights Officer? [] Yes [] No		
Check below why you believe you were discriminated against:		
[] Race	[] Sex	
[] Color	[] Disability	
[] Religion	[] Medical Condition	
[] Ancestry	[] Marital Status	
[] National Origin	Other _____	
[] Age		

Explain how you believe you were discriminated against and/or treated differently from other employees or applicants.

What corrective action are you seeking?

Signature of complainant:

Date of this complaint:



**STANISLAUS COUNTY
PERSONNEL MANUAL
EQUAL EMPLOYMENT OPPORTUNITY
COMPLAINT PROCEDURE INFORMATION SHEET**

Every complainant who files a charge of discrimination under the County's Equal Employment Opportunity Complaint Procedure has the right to file a private lawsuit.

Every complainant is also entitled to file a complaint alleging discrimination with either or both of the following enforcement agencies:

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
1900 Mariposa Mall, Suite 130
Fresno, California 93721

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
1265 West Shaw Avenue, Suite 103
Fresno, California 93711
209-487-5793