



COMMISSIONERS COURT COMMUNICATION

AGENDA DATE: 05/14/2012

CONSENT OR REGULAR: Consent

CONTRACT REFERENCE NO

(IF APPLICABLE): _____

SUBJECT:

Approve the change to the **El Paso County Civil Service Rules and Regulations** to delete Appendix F (Discrimination/Sexual Harassment Policy) from the current Civil Service Rules and Regulations and replace with the revised Anti-Harassment Policy which shall be placed as a new sub-section labeled 5.08 under Chapter 5: Personal Conduct and Affairs.

BACKGROUND/DISCUSSION OF TOPIC:

The County's current policy on Discrimination/Sexual Harassment was last updated and approved by the Court in 1994. Since then, there have been significant changes to employment law to include the expansion of protected classes, and various amended rules and regulations.

In general, the policy attached provides the County's stance on discriminatory and harassing behavior. Further, it has been modified to include newly updated protected classes, the County's position on harassment dealing with the public and vendors, and inserts a training clause as required by all County employees. Finally, it outlines the Anti-Harassment Committee's process when conducting investigations.

Specifically, it is important to note that the protected classes of race, color, religion, sex, national origin, age, disability, veteran status and sexual orientation were included in the past version of this policy, and are still being included with the newly proposed policy. The new policy, however, recommends inclusion of other protected classes such as ancestry, marital status, pregnancy, gender identity/expression, and genetic information in alignment with current trends. Further, the new policy clearly outlines the committee's role with investigations; and finally, it includes specific training requirements.

This policy was approved by Civil Service Commission on 05/01/2012.

FISCAL IMPACT:

There is no budget impact for this item.

RECOMMENDATION:

Approve the change to the **El Paso County Civil Service Rules and Regulations** to delete Appendix F (Discrimination/Sexual Harassment Policy) from the current Civil Service Rules and Regulations and replace with the revised Anti-Harassment Policy which shall be placed as a new sub-section labeled 5.08 under Chapter 5: Personal Conduct and Affairs.

SUBMITTED BY:

Betsy C. Keller, SPHR
HR Director
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Anti-Harassment Policy

Summary

The County of El Paso is committed to maintaining working environments that are free from harassment and discrimination. Accordingly, discrimination and harassment based on an individual's race, color, religion, sex, national origin, age, disability, ancestry, marital status, pregnancy, sexual orientation, gender identity/expression, veteran status, genetic information or any other legally protected characteristic is prohibited. The County will not tolerate discrimination or harassment of any kind, or retaliation in the workplace based upon the above characteristics whether committed by employees, supervisors, department heads, elected officials, or by individuals visiting or doing business with the County. County employees are responsible for promoting respect in the workplace, for being familiar with this policy, and for refraining from conduct that violates this policy.

I. Definitions

- A. For purposes of this policy, discrimination is defined as making employment decisions based on race, color, religion, sex, national origin, age, disability, ancestry, marital status, pregnancy, sexual orientation, gender identity/expression, veteran status, genetic information or any other legally protected characteristic.
- B. For purposes of this policy, harassment is defined as:
 - 1. Behavior which is based on race, color, religion, sex, national origin, age, disability, ancestry, marital status, pregnancy, sexual orientation, gender identity/expression, veteran status, genetic information or any other legally protected characteristic that is severe or pervasive and interferes with an individual's work performance or creates an intimidating, hostile or offensive working environment.
 - 2. Unwanted physical contact, use of inappropriate jokes, comments, innuendos, pictures, or posters, obscene or harassing telephone calls, e-mails, letters, notes or other forms of communication, and any other conduct that may create a hostile working environment when directed at an individual because of his/her race, color, religion, sex, national origin, age, disability, ancestry, marital status, pregnancy, sexual orientation, gender identity/expression, veteran status, genetic information or any other legally protected characteristic.
- C. Sexual harassment, whether between people of different sexes or the same sex, is defined to include, but is not limited to, unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. Sexual harassment may also include, but is not limited to: unwelcome sexual advances; demands/threats for sexual favors or actions; posting, distributing, or displaying sexual pictures or objects; suggestive gestures, sounds or stares; unwelcome physical contact; sending/forwarding inappropriate e-mails of a sexual or offensive nature; inappropriate jokes, comments or innuendos of a sexual nature; obscene or harassing telephone calls, e-mails, letters, notes or other forms of communication; pornographic, sexually explicit, or otherwise obscene material in the workplace, and any other conduct of a sexual nature that may create a hostile environment. Sexual harassment occurs when:
 - 1. Submission to such conduct is made implicitly or explicitly a term or condition of an individual's employment;
 - 2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions; or
 - 3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile or offensive working environment.

- D. For the purposes of this policy, “gender identity/expression” refers to an individual’s having or being perceived as having a gender-related self-identity, self-image, appearance, expression, or behavior, whether or not those gender-related characteristics differ from those associated with the individual’s assigned sex at birth.

II. Procedure

A. The County of El Paso is committed to enforcing this policy. Individuals who are found to have committed harassment will be subject to the full range of sanctions, up to and including termination of his/her employment. Intentionally making a false accusation of harassment is also prohibited.

B. Retaliation against an individual who complains in good faith of harassment under this policy is strictly prohibited. If an employee has been retaliated against, the employee is encouraged to report the retaliation immediately to Human Resources. Those found guilty of retaliation will be disciplined accordingly.

C. Employee Responsibilities:

1. All employees are expected to conduct themselves in a manner consistent with this policy.
2. Employees who believe that they have been subject to, or who have witnessed discrimination/harassment shall report, as soon as possible, their concerns to one of the following:
 - a. The employee's immediate supervisor;
 - b. The next level of supervision above their immediate supervisor if:
 - a. The employee believes their supervisor is party to the harassing behavior;
 - b. The employee believes their supervisor is indifferent to obvious harassing behavior;
 - c. The employee fears retaliation or reprisal from their supervisor for reporting harassing behavior.
 - c. The County’s Human Resources Director or designee.
 - d. Nothing in this policy prohibits an employee from filing externally with the Equal Employment Opportunity Commission (EEOC) or the Civil Division of the Texas Workforce Commission (TWC). If the employee elects to report through this avenue directly, they must provide notice to the Human Resources Department within 24 hours of filing said report or complaint.

D. Supervisor Responsibilities:

1. All supervisors have a duty and obligation to conduct themselves in a professional manner and refrain from any behavior which may create discrimination or a hostile environment.
2. Supervisors are further obligated to report any reports of discrimination or harassment, or those which they witness themselves.
3. Any supervisor who receives a report of discrimination or harassment shall immediately notify their Department Head.
4. The supervisor shall document any information as a result of the report, and must forward all information relating to the complaint to the Director of Human Resources, after ensuring their Department Head has been notified.
5. All complaints shall be handled in confidentiality and no person shall be penalized or subjected to retaliation for filing a complaint of discrimination or harassment.
6. The Department Head remains at all times responsible for maintaining a non-hostile workplace including protecting his/her employees from harassment/discrimination by vendors, visitors and

members of the public.

E. Vendors, Visitors and Members of the Public Responsibilities:

1. Visitors, vendors and members of the public shall not be permitted by a department head to discriminate against or harass County employees.
2. At a minimum, in cases involving vendors, notification to the company will be made addressing the harassing behavior.
3. Those who are found to have violated this policy may be prohibited from further dealing with specific employees within certain County departments depending on the circumstances.

III. Discrimination/Harassment Review Committee

- A. Once a receipt of the complaint has been submitted, the County Human Resources Director will determine if the complainant states a claim, that if found true, would be a violation under this policy.
 - a. If the complainant does not state a claim that would be a violation under this policy, the Human Resources Director will notify the grievant of that determination and provide recommendations for resolution as appropriate.
 - b. If the complainant does state a claim that would be a violation under this policy, the Human Resources Director shall convene a Discrimination/Harassment Review Committee to investigate.
- B. At the direction of the Human Resources Director, the Discrimination/Harassment Review Committee shall consist of three members to include: 1) a representative from the Human Resources Office, 2) an unbiased employee of the department in which the complaint originated, and 3) a representative selected by the Human Resources Director from a non-interested department. If an unbiased employee of the department which the complaint originated is not possible, then the Human Resources Director shall appoint at his/her discretion another person to serve on the committee.
- C. Each committee shall include at least one male and one female. No person may sit as a member of the Discrimination/Harassment Review Committee in cases in which the committee member is a victim, material witness, or alleged perpetrator of the discrimination/harassment. The Director of Human Resources may, at his/her discretion assign an alternate to participate in the Discrimination/Harassment Review Committee for any member of the committee.
- D. It shall be the duty of the Discrimination/Harassment Review Committee to review the complaint and conduct an investigation by reviewing the physical evidence available and by conducting interviews with the complainant(s), witnesses and the alleged harasser(s) as appropriate.
- E. Complainants are assured that reports and investigations of discrimination/harassment will be treated in a confidential manner, to the extent permitted by law. Information obtained during an investigation, however, may be used by the County in any subsequent legal action involving the County and for disciplinary purposes.
- F. The Office of the County Attorney shall provide legal advice and assistance to the Human Resources Department and the Discrimination/Harassment Review Committee regarding this policy and complaints/investigations under this policy.

G. Final Report

1. Upon completion of the investigation, the Discrimination/Harassment Review Committee shall generate a written report. The report shall include a summary of the allegations, the findings of the committee, and recommendations to the Department Head regarding the need for remedial action if warranted. The report will be reviewed by the Human Resources Director and a County Attorney's representative before finalization. The Human Resources Director, along with a County Attorney's Representative will meet with the Department Head to provide a report and discuss any questions he/she may have.
2. If the Department Head objects to the recommendations of the committee and is unable to resolve the difference, the matter will be placed on the agenda for consideration and determination by the Commissioners Court. Any proceedings before the Commissioners Court shall be heard in executive session and shall be kept confidential to the extent allowed by law.
3. Any County employee who is found, after appropriate investigation, to have engaged in discriminatory or harassing behavior prohibited by this policy will be subject to appropriate disciplinary action, up to and including termination.

IV. Training

- A. Every employee must attend the County's "Discrimination and Sexual Harassment Prevention Training for Employees" upon hire and every two years during the course of their employment with the County.
- B. Every supervisor must attend the County's "Discrimination and Sexual Harassment Prevention Training for Supervisors" upon hire and every two years during the course of their employment with the County.
- C. Training records will be kept on file in the Human Resources Department.