Personnel Regulation 21: Equal Employment Opportunity and Anti-Harassment

APPLICABILITY & PURPOSE

This Personnel Management Regulation (PMR) defines County of Marin policy and procedure for Equal Employment Opportunity, Anti-Harassment, Anti-Discrimination, and Anti-Retaliation in employment.

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21.1 Policy

A. The Marin County Board of Supervisors, in compliance with all applicable federal, state and local laws, is committed to being an equal opportunity employer and ensuring no employees or job applicants shall be harassed, discriminated against, or retaliated against based on any Protected Class, as defined below in Section 21.1. This policy shall apply to all employment practices.

B. All employment actions including, but not limited to, recruiting, hiring, training, promoting, compensating, transferring and laying off, shall be based on merit and job-related criteria, without regard to Protected Classes.

~~B. Protected classes include actual or perceived membership in the following classes: (a) sex; (b) race; (c) color; (d) ancestry; (e) religious creed; (f) national origin; (g) physical or mental disability; (h) medical condition; (i) age; (j) marital status; (k) the taking of protected family and medical leave; (l) sexual orientation, (m) gender identity or expression; and n) genetic information. (collectively "Protected Classes" or individually "Protected Class").C. It is the duty and responsibility of all appointing authorities and County employees to adhere to the provisions of this policy.~~

1. The definition of protected class includes a perception that the person has any of those characteristics or any combination of those characteristics, and/or a perception that the person is associated with a person who has, or is perceived to have, any of those characteristics or any combination of those characteristics.

C. It is the duty and responsibility of all appointing authorities and County employees to adhere to the provisions of this policy.

D. County procedures will not allow for the use of or collaboration with any organization that prohibits employment in violation of federal or state discrimination laws.

E. This policy of equal employment opportunity will be a part of new employee orientation, and trainings will be provided to employees as required by state and/or federal law.

F. Violations of this policy, based on any Protected Class, constitute misconduct that undermines the integrity of the employment relationship, workplace culture, and employee wellbeing. Appropriate corrective action, that may include but is not limited to training, coaching, disciplinary action up to and including dismissal, shall be taken against people who violate any provision of this policy.

21.2 Discrimination and Retaliation

A. Discrimination Defined

1. In conformance with the Board policy to provide a workplace free from discrimination and to provide for equal employment opportunities, barring any lawful or valid reasons, all employees and applicants will have equal access to County operations and employment regardless of their actual or perceived status in a Protected Class.

As used in this policy, barring any lawful or valid reason, discrimination is defined as the unfair, unequal, or disparate treatment of an employee (*see* PMR 2.1Q), applicant (*see* PMR 2.1D), intern, or volunteer with respect to the terms, conditions or privileges of County employment because of that person's

membership in a protected class as defined under this policy or under applicable state or federal law. Discrimination may involve, but is not limited to:

a. Failing to hire, promote or train a person because of their protected class.

b. Disciplining an employee because of the employee's protected class.

c. Refusing to provide a reasonable accommodation for an employee's or applicant's known disability.

d. Withholding work-related assistance, cooperation, and/or information to an applicant or employee because of their protected class.

e. Any bias in the exercise of official actions on behalf of the County that explicitly changes the terms, conditions, or privileges of employment and which is based on a person's protected class.

B. Retaliation Defined

Retaliation constitutes a violation of this policy. Retaliation is defined as any adverse employment action which would not have occurred but for the complaining party's engaging in opposition to employment practices or other protected activities. An adverse employment action could include but is not limited to a denial of promotion, refusal to hire, discipline, decrease in pay, change of hours, reduction in authority and responsibility, and such examples as listed in 21.2, A., 1. above. Retaliation for filing a complaint about, or participating in, a PMR 21 investigation is also a violation of this policy and will not be tolerated.

21.3 Harassment

A. Harassment Defined

1. Harassment is unwelcome verbal, physical, visual, written, or environmental misconduct based on a Protected Class, which is offensive to a reasonable person in like or similar circumstances.

2. Harassment can consist of virtually any form or combination of verbal, physical, visual/written, or environmental conduct. It need not be explicit, or even specifically directed at the complainant.

3. Harassment includes, but is not limited to, the following misconduct:

a. Verbal Misconduct: remarks, slurs, jokes, or innuendos based on a Protected Class or perceived status in a Protected Class.

b. Physical Misconduct: touching, assault, gestures, or physical interference with movement based on actual or perceived status in a Protected Class.

c. Visual or Written Misconduct: Display or circulation of material, such as, but not limited to, posters, cartoons, drawings, computer graphics, e-mails, or other depictions based upon actual or perceived status in a Protected Class.

d. Environmental Misconduct: Other misconduct based on a Protected Class or perceived status in a Protected Class.

4. County employees, applicants and persons providing services pursuant to a contract are eligible to file a complaint of harassment under this policy.

21.4 Complaint Reporting and Resolution Process for Alleged Discrimination, Harassment or Retaliation

A. Purpose:

The County is committed to maintaining a workplace free of discrimination, harassment, and retaliation, and to resolving complaints promptly, fairly, and thoroughly. The goal of this process is to ensure that all relevant facts are gathered and an appropriate and reasonable resolution is reached. When applicable, this may include corrective action to prevent future issues.

These processes provide employees with a clear method to file complaints, raise concerns, or provide information regarding workplace conduct that they, in good faith, believe constitutes discrimination, harassment, and/or retaliation in violation of this Policy.

B. Reporting Violations of this Policy

1. Supervisors and Managers

a. Supervisors and managers are responsible for taking all steps necessary for all employees to promote equal opportunity employment and prevent discrimination, harassment, and retaliation from occurring within the County of Marin workplace. These steps include taking immediate action to stop any equal employment violation, harassment or retaliation and taking appropriate disciplinary action after timely investigation, where appropriate.

b. If an employee communicates alleged discrimination, harassment and/or retaliation, the manager, supervisor, department head or person performing supervisory duties to whom the allegation is communicated will ensure that it is reported to the Equal Employment Director or Director of Human Resources. In the event the allegation involves the Human Resources Department, the allegation should be communicated to the County Executive. Failure to report such an allegation may result in disciplinary action.

If the employee declines to complete the PMR 21 Complaint Form (hereinafter "Complaint Form") the manager, supervisor or person performing supervisory duties will complete the Complaint Form and attempt to confirm with the complainant that the form is correct and request that the complainant sign the form. The person completing the form shall submit it to the appropriate person within fourteen (14) calendar days of being informed about the alleged violation by the employee.

c. If a supervisor or manager has witnessed or learned of alleged discrimination, harassment and/or retaliation, the manager, supervisor, department head or person performing supervisory duties shall ensure that it is reported to the Equal Employment Director or Director of Human Resources regardless if the supervisor/manager took immediate corrective action as stated in a. above.

2. Other Employees

All employees are strongly encouraged to immediately report any suspected violation of this policy to their lead worker, supervisor, manager, department head, the Equal Employment Director, the Director of Human Resources, or the County Executive. ~~The complainant will be asked to complete, sign, and submit the County's Complaint Form. The Complaint Form is available on the County's website as provided in PMR 21 – Form 1, on the: County's website, the internal employee site, from the Director of Human Resources, the Equal Employment Director, or a member of management.~~ 3. Time to Report

a. Complainants are strongly encouraged to file a complaint as soon as the Complainant is aware of the alleged violation. Consistent with State law, a Complainant must file within three (3) years from

the date upon which the alleged violation occurred, or the Complainant should have first become aware of the alleged discriminatory act / violation.

b. Under no circumstances will an employee of the County who believes that he or she has been a victim of any violation of PMR 21 be required to first report that alleged conduct to a supervisor or other authority if that person or authority is the individual who has allegedly engaged in the conduct.

4. . Complaint Resolution Process

a. , Once an employee files a complaint, the County will conduct an intake meeting with that employee. During that intake meeting, the employee's options to remedy the complaint will be explained, which may include, but are not limited to the following:

i. Investigation of the complaint.

ii. If appropriate, the County will discuss the option to address the matter directly with the involved individual(s) if the complainant is interested in addressing the matter directly with the involved individual(s). The County will discuss coaching and supportive resources with the complainant to assist the employee when considering this resolution option. The complainant will be informed they will still have the option to escalate the resolution process to an investigation if the complainant does not feel this step resolved the complaint and concerns.

A complainant's choice to participate in this process discussed in 21.4a.(ii)may not relieve the County of its obligation to address conduct that may violate this policy. If information obtained through either the intake or informal process indicates that conduct may have occurred that would constitute harassment, discrimination or retaliation as defined in this policy, the County may initiate a formal review, investigation or other appropriate action. If necessary, the County will take corrective action as warranted regardless of whether the complainant wishes to pursue a formal complaint or considers the matter to have been resolved.

iii. Notwithstanding the above, the County may be obligated to conduct an investigation depending on the seriousness of the complainant's allegations regardless of the complainant's desire to remain confidential or not have an investigation conducted. Further, if the complainant does not do an Intake Meeting or is not available, the County may still conduct an investigation based on the initial complaint.

5. Investigation

a. Complaints meeting the criteria for harassment, retaliation or discrimination as described in this policy will be fully and impartially investigated and/or appropriate corrective action will be taken.
    i. The county may determine, at its own discretion, that a formal investigation is not necessary when the relevant facts have already been established through reliable and corroborated evidence, such as when multiple credible witnesses independently confirm the conduct, the conduct was witnessed by a supervisor or manager, or through other such undisputed evidence that establishes that the conduct occurred. In such circumstances, the county may proceed directly to corrective action pursuant to county policy.
b. All investigations will be conducted in compliance with any applicable state and federal laws or regulations, including but not limited to the Public Safety Officers Procedural Bill of Rights Act and the Firefighters Procedural Bill of Rights, where appropriate. Confidentiality during the investigation process cannot be guaranteed. During the investigation process, EEO/HR will

discuss the issue of confidentiality by informing the complainant(s) that information regarding their complaint will be disclosed only to those individuals who have a legitimate need to know in connection with evaluating, investigating, resolving, or taking, if necessary, appropriate corrective action. Such individuals include witnesses, the respondent(s) and, if appropriate, the complainant's department head and the County's HR Director. Individuals involved in an investigation are strongly encouraged to maintain confidentiality with the exception of their representation of choice to maintain impartiality and integrity of the investigation process.

c. All employees shall cooperate with any form of investigation of alleged violations of this policy conducted by the County, its agents, or employees.

.d. The Equal Employment Director or designee will notify the complainant and the subject of the investigation and, as appropriate, the applicable department head(s). The subject and the complainant have the right to a representative of his/her/their choice during such interview and shall be notified prior to the interview. Consistent with applicable law, a witness may assert their right to a representative if they reasonably believe the interview could lead to disciplinary action against them.

e. Within fourteen (14) calendar days of the filing of a complaint, the Equal Employment Director or other person assigned by the Director of Human Resources will initiate an investigation.

f. Within one hundred and eighty (180) calendar days of the initiation of the investigation, the person designated to investigate and/or resolve the complaint will report, in writing, the findings of fact to the Equal Employment Director or the Director of Human Resources upon completion of the investigation. If the investigator has not completed the investigation within one hundred and eighty (180) calendar, prior to the expiration of this deadline the investigator shall inform the complainant and the subject of the investigation of the reason s/he is unable to issue a report within the required time period and shall provide an estimated time for completion, which shall not exceed an additional ninety (90) calendar days. If the investigation has not been concluded within a total of two hundred and seventy (270) calendar days from its initiation and an appeal is available under section 21.5, the complainant may file an appeal unless the parties mutually agree to an extension of these timelines.

g. After the Director of Human Resources receives the results of the investigation, the Equal Employment Director in consultation with the Director of Human Resources will determine whether the Policy has been violated and will communicate this determination to the Department Head Upon completion of consultation with the Department Head or designee, within thirty (30) calendar days of the receipt of the investigation findings, the findings of the investigation and whether any action will be taken, will then be communicated to the complainant and subject.

i. In the event a complaint is sustained, remedial action will be decided in accordance with County policy and based upon the advice of the Director of Human Resources to the subject's Appointing Authority. If disciplinary action is taken, it shall be done in accordance with PMR 47. Due to the confidential nature of disciplinary actions, the complainant will not be informed of the particular remedial action taken.

j. For all purposes under Section 21.4 B 5. Investigations, any reference to the Equal Employment Director, Director of Human Resources or Department Head shall mean the County Executive if the complaint is against the respective office holder. If the complaint is against the County Executive the complaint will be referred to the President of the Board of Supervisors for action.

21.5 Discrimination Appeals

A. Right to Internal Appeal

If an applicant or employee is dissatisfied with the determination of a discrimination, harassment or retaliation complaint under 21.4 B. 5., the applicant or employee may petition in writing for a hearing provided that one or more of the following conditions exist:

1. Examination Appeal

The Complainant alleges he/she was not advanced in the examination process due to discrimination based on a Protected Class.

2. Selection Appeal

The Complainant alleges he/she was not selected for a position in the County of Marin due to discrimination based on a Protected Class.

3. Classification Appeal

A dispute exists between the employee (Complainant) and his or her department as to whether the employee is properly classified, or the employee's classification was studied and the study resulted in a recommendation of no change or a lesser classification and the Complainant alleges that such action or inaction was due to discrimination or retaliation based on a Protected Class.

4. Discipline Appeal

The Complainant alleges he/she was suspended, demoted, dismissed or had a reduction in compensation due to discrimination or retaliation based on a Protected Class. Such disciplinary appeals shall be filed within the timeframes set forth in PMR 47.7B. or 47.7.C.

It may be necessary to stay PMR 47.7B. or 47.7.C. timelines in order for Human Resources to process the PMR 21 complaint. Under these circumstances, the PMR 47.7.B. or 47.7.C. appeal timeline shall commence upon the determination of the investigation under 21.4.B. 5.

5. Other Discrimination or Retaliation Appeals

The Complainant alleges another form of discrimination or retaliation based on a Protected Class. Discrimination, for the purpose of appeals, occurs when an adverse employment action, which is based upon a protected class, results in a material impact to the employee's terms, conditions or privileges of employment.

B. Internal Appeal Procedure

1. The petition shall be filed with the Director of Human Resources within fourteen (14) calendar days (except for allegations under 21.5 A.4.) after receipt of the determination provided under PMR 21.4 B. 4.

a. Appeals under 21.5 A.4. (Discipline Appeals) shall be filed with the Director of Human Resources within the timeframes set forth in PMR 47.7 B. or 47.7. C, unless it is necessary to stay timelines in order for Human Resources to process and/or investigate the PMR 21 complaint. It may be necessary to stay PMR 47.7B. or 47.7.C. timelines in order for Human Resources to process the PMR 21 complaint. Under these circumstances, the PMR 47.7.B. or 47.7.C. appeal timeline shall commence upon the determination of the investigation under 21.4.B. 5.

2. Appeals of PMR 21 investigations shall be heard by an ALJ mutually selected by the County and the Complainant.

The ALJ shall conduct a full evidentiary hearing and shall make a final decision on whether PMR 21 was violated and if so what shall be the remedy. The parties may, however, at any time mutually agree to a settlement or alternate disposition of the complaint.

3. The general hearing procedures and rules outlined in PMR 3 shall be followed by the ALJ, except as provided by 21.5 B4.

4. An appeal under 21.5 A4 (Discipline Appeals) shall be conducted in accordance with the hearing procedure set forth in PMR 47.8. The hearing shall be conducted by an ALJ and will concern the alleged discrimination or retaliation complaint and the disciplinary action. The ALJ shall issue written findings with respect to both the alleged discrimination or retaliation complaint and the disciplinary action.

The written findings issued by the ALJ regarding the disciplinary action shall be reviewed by the Personnel Commission. Based on such written findings, the Personnel Commission shall adopt, modify or reject the ALJ's findings and decision pertaining to the disciplinary action. If the Personnel Commission adopts the ALJ's findings and decision, it shall issue the ALJ's decision as its own. If the Personnel Commission modifies or rejects the ALJ's decision, the Personnel Commission shall issue its own written findings and decision as set forth in PMR 47.9.

5. The granting of an evidentiary hearing related to a PMR 21 violation(s) shall be binding on all parties, reviewable by writ of mandate to the Superior Court pursuant to Code of Civil Procedure § 1094.5.

6. The cost of the ALJ shall be paid by the County.

21.6. External Complaint

A. Complaints of discrimination, harassment, or retaliation may also be filed with state or federal compliance agencies by contacting:

California Civil Rights Department at (800) 884-1684 (voice) or (800) 700-2320 (TTY), or California's relay service at 711. Website: www.calcivilrights.ca.gov. Complaint information may be obtained at https://calcivilrights.ca.gov/complaintprocess/ or the

United States Equal Employment Opportunity Commission at (800) 669-4000 or (800) 669-6820 (TTY), or (844) 234-5122 (ASL Video Phone). Website: www.eeoc.gov/employees. Email: info@eeoc.gov

Individuals who wish to pursue filing with these external agencies should contact them directly to obtain further information. Filing a complaint or an appeal under this policy does not preclude an employee from filing an administrative complaint with those agencies.

B. The County's obligation to defend and indemnify its officers and employees is prescribed by California Government Code Sections 825 et seq. and 995 et seq. For allegations of harassment filed against a County employee in a court of law or other appropriate outside governmental agency, the determination to provide the employee with legal representation and/or pay the cost of settlement or judgment will be made consistent with all applicable requirements of the California Government Code including but not limited to those listed above.

21.7 Sexual Harassment Training Requirements

California law requires that every two years, all employees receive training to increase their understanding of workplace sexual harassment and provide them with tools to prevent such harassment - employers may utilize the Civil Rights Department's online trainings at www.calcivilrights.ca.gov/shpt/ to satisfy this requirement. This training must include information about preventing harassment based on sexual orientation, gender identity, and gender expression, as well as information about employees' role in creating an underlying culture of mutual respect in our workplace. Specific components of the training include how to promptly and effectively respond to sexual harassment when it occurs, the effects of abusive conduct in the workplace, and ways to appropriately intervene if one witnesses behavior that is not aligned with this policy.