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County Administrator

**BOARD OF COUNTY COMMISSIONERS**  
**ESCAMBIA COUNTY, FLORIDA**

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**MEMORANDUM**

**TO:** Board of County Commissioners  
Other Elected Officials  
Management Team

**FROM:** Sam Jernigan, Program Coordinator  
County Administration

**DATE:** April 13, 2020

**RE:** Policy Manual Update

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Enclosed is an update for the Board of County Commissioners' Policy Manual, as submitted by the Human Resources Department. Please call (595-4917) if you have any questions or need additional information.

**REPLACE:** Section II, Part C.38, Unlawful Harassment Policy, delete Page 66ee (1-9) and insert Page 66ee (1-11), amended April 2, 2020.

Enclosure

c: Paolo Ghio, SRIA  
Clerk to the Board  
Sharon Pitts, Assistant to the County Administrator

**Board of County Commissioners  
Escambia County, Florida**

Title: Unlawful Harassment Policy, Section II, Part C. 38  
Date Adopted: April 17, 2018  
Effective Date: November 1, 2018, as amended  
Reference:  
Policy Amended: April 2, 2020

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**I. Purpose**

Escambia County strives to create and maintain a work environment in which people are treated with dignity, decency, and respect. The environment of the County should be characterized by mutual trust and the absence of intimidation, oppression, and exploitation. Employees should be able to work and learn in a safe atmosphere. The accomplishment of this goal is essential to the mission of the County. It is the intent of this policy to promote a healthy work environment free from harassment, discrimination, and other inappropriate or offensive conduct motivated by bias against any race, age group, religion, disability, ethnicity, national origin, or other personal characteristic or trait as well as to provide procedures for preventing, reporting, investigating, and resolving complaints of such misconduct.

**II. Scope**

All employees, regardless of their positions including regular, temporary, relief, intermittent, provisional, grant-funded, interns, and student appointment employees, are covered by and are expected to comply with this policy and to take appropriate measures to ensure that prohibited conduct does not occur. Appropriate disciplinary action will be taken against any employee who violates this policy.

**III. Responsibilities**

**A. Board of County Commissioners/Employer**

1. Employer shall mean any supervisory or managerial employee to whom an allegation of harassment, discrimination, or retaliation is presented.
2. Escambia County will not tolerate unlawful discrimination or harassment of any kind. Through enforcement of this policy and by education of employees, the County will seek to prevent, correct, and discipline behavior that violates this policy.
3. It is the responsibility of the Human Resources (HR) Director to maintain a copy of the record of a complaint, of discrimination or harassment. A complaint may be made orally or in writing.

4. It is the responsibility of the HR Director to maintain the currency of this policy.

**B. Employees**

1. Employee means any person working under the authority of the County or acting as a volunteer on behalf of the County.
2. It is the duty of every employee of the County to be familiar with and abide by the County's policies regarding illegal discrimination and unlawful harassment.
3. It is the duty of every employee to report illegal discrimination or unlawful harassment to the appropriate person(s), even if it is being practiced against another employee.
4. It is the duty of every employee to cooperate in any investigation into allegations of harassment.

**IV. Prohibited Conduct Under This Policy**

No County employee will subject any person, whether or not the person is employed with the County, to harassment, discrimination, or other offensive or inappropriate conduct of any nature, through verbal, nonverbal, or physical behavior, based on a bias or predisposition against the person's race, sex, age, religion, disability, ethnicity, national origin, sexual orientation, gender identity, genetic information, marital status, or other personal characteristic that is not directly related to the job.

**A. Discrimination**

1. It is a violation of Escambia County's policy to discriminate in the provision of employment opportunities, benefits or privileges; to create discriminatory work conditions; or to use discriminatory evaluative standards in employment if the basis of that discriminatory treatment is, in whole or in part, the person's race, color, national origin, age, religion, disability status, gender, sexual orientation, gender identity, genetic information, or marital status.
2. Discrimination of this kind is also strictly prohibited by a variety of federal, state and local laws, including Title VII of the Civil Rights Act 1964, the Age Discrimination Act of 1975, and the Americans with Disabilities Act of 1990, and Chapter 760, Florida Statutes. This policy is intended to comply with the prohibitions stated in these anti- discrimination laws.

**B. Harassment**

1. Escambia County prohibits harassment of any kind based upon a person's nationality, origin, race, color, religion, gender, sexual orientation, age, body, pregnancy, disability, marital status, or appearance. For purposes of this policy, harassment is any verbal, written, or physical conduct designed to threaten, intimidate, or coerce an employee, co-worker, or any person working for or on behalf of the County. Harassment includes but is not limited

to epithets and negative stereotyping, as well as verbal taunting (including racial and ethnic slurs) that, in the employee's opinion, impairs his or her ability to perform his or her job is included in the definition of harassment.

2. A single substantiated incident of inappropriate behavior may constitute misconduct requiring discipline, while a pattern of such behavior will constitute harassment in most cases and discipline will result.

#### C. Hostile Work Environment Harassment

1. This occurs when unwelcome written, verbal, or physical conduct stemming from a bias against a particular race, age group, color, religion, disability, ethnicity, national origin, sexual orientation, body type, pregnancy, marital status, or other personal characteristic unreasonably interferes with an employee's job performance, or when it creates an intimidating, demeaning, abusive, or offensive work environment. A hostile work environment can be created by anyone including supervisors, other employees, or third parties (customers, vendors, contractor).
2. This section refers to hostile work environment harassment of a non-sexual nature. For the definition of hostile work environment sexual harassment, see below.

#### D. Sexual Harassment

1. Sexual harassment is a form of unlawful employment discrimination under Title VII of the Civil Rights Act of 1964 and is prohibited under Escambia County's anti-harassment policy. According to the Equal Employment Opportunity Commission (EEOC), sexual harassment is defined as "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature . . . when . . . submission to or rejection of such conduct is used as the basis for employment decisions . . . or such conduct has the purpose or effect of . . . creating an intimidating, hostile or offensive working environment."
2. There are two types of sexual harassment:
  - a. "Quid pro quo sexual harassment," where submission to the sexual harassment is used as the basis for employment decisions. This occurs if employee benefits such as raises, promotions, and better working hours are directly linked to compliance with sexual advances. Examples: A supervisor promising an employee a raise if she goes on a date with him; a manager telling an employee she will fire him if he does not have sex with her.
  - b. "Hostile work environment sexual harassment," where the sexual harassment creates an offensive and unpleasant working environment. A hostile work environment can be created by anyone in the work environment, whether it be supervisors, other employees, or customers. Hostile work environment sexual harassment consists of verbiage of a sexual nature, unwelcome sexual materials, or unwelcome physical contact as a regular part of the work environment. Texts, e-mails, social media postings, cartoons, or posters of a sexual nature; vulgar or lewd comments or jokes; or unwanted touching or fondling

all fall into this category.

3. Sexual harassment occurs when unsolicited and unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature:
  - a. Is made explicitly or implicitly a term or condition of employment.
  - b. Is used as a basis for an employment decision.
  - c. Unreasonably interferes with an employee's work performance or creates an intimidating, hostile, or otherwise offensive environment.
4. Sexual harassment may take different forms. The following examples of sexual harassment are intended to be guidelines and are not exclusive when determining whether there has been a violation of this policy:
  - a. Verbal sexual harassment includes innuendoes, suggestive comments, jokes of a sexual nature, sexual propositions, lewd remarks and threats, requests for any type of sexual favor (this includes repeated, unwelcome requests for dates), and verbal abuse or "kidding" that is oriented toward a prohibitive form of harassment, including that which is sexual in nature and unwelcome.
  - b. Nonverbal sexual harassment includes the distribution, display, or discussion of any written or graphic material, including calendars, posters, and cartoons that are sexually suggestive or show hostility toward an individual or group because of sex as well as suggestive or insulting sounds, leering, staring, whistling, obscene gestures, content in letters and notes, facsimiles, e-mail, photos, text messages, tweets and Internet postings, or other form of communication that is sexual in nature and offensive.
  - c. Physical sexual harassment includes unwelcome, unwanted physical contact, including touching, tickling, pinching, patting, brushing up against, hugging, cornering, kissing, and fondling as well as forced sexual intercourse or assault.
5. Anyone who is subject to sexual harassment should, if possible, inform the alleged harasser that the conduct is unwanted and unwelcome. The Board of County Commissioners recognizes that sexual harassment may occur in unequal relationships (i.e. between a supervisor and his/her employee) and that it may not be possible for the victim to inform the alleged harasser.
6. Courteous, mutually respectful, pleasant, noncoercive interactions between employees, including men and women, that are appropriate in the workplace and acceptable to and welcomed by both parties are not considered to be harassment, including sexual harassment.

E. Retaliation

1. No hardship, loss, benefit or penalty may be imposed on an employee in response to:

- a. Making or responding to a bona fide complaint of discrimination or harassment.
  - b. Appearing as a witness in the investigation of a complaint.
  - c. Serving as an investigator of a complaint.
2. Retaliation or attempted retaliation in response to making a complaint or invoking the complaint process is a violation of this policy. Any person who is found to have violated this aspect of the policy will be subject to sanctions up to and including termination of employment.

**V. Prohibited conduct is not restricted to regular work site**

This policy prohibits harassment, discrimination, and other offensive or inappropriate conduct at any place where Escambia County work or work-related activities are conducted, whether or not such work or activity is conducted at any County premise or facility.

**VI. Consensual Romantic or Sexual Relationships**

- A. Escambia County strongly discourages romantic or sexual relationships between a manager or other supervisory employee and his or her staff (an employee who reports directly or indirectly to that person) because such relationships tend to create compromising conflicts of interest or the appearance of such conflicts. In addition, such a relationship may give rise to the perception by others that there is favoritism or bias in employment decisions affecting the staff employee. Moreover, given the uneven balance of power within such relationships, consent by the staff member is suspect and may be viewed by others or, at a later date, by the staff member as having been given as the result of coercion or intimidation. The atmosphere created by such appearances of bias, favoritism, intimidation, coercion or exploitation undermines the spirit of trust and mutual respect that is essential to a healthy work environment. If there is such a relationship, the parties need to be aware that one or both may be moved to a different department, or other actions may be taken.
- B. If any employee of Escambia County enters into a consensual relationship that is romantic or sexual in nature with a member of his or her staff (an employee who reports directly or indirectly to him or her), or if one of the parties is in a supervisory capacity in the same department in which the other party works, the parties must notify the HR Director or other appropriate Department Director. Because of potential issues regarding quid pro quo harassment, Escambia County has made reporting **mandatory**. This requirement does not apply to employees who do not work in the same department or to parties who do not supervise or otherwise manage responsibilities over the other.
- C. Once the relationship is made known to Escambia County, the County will review the situation with the HR Director considering all the facts available at the time (reporting relationship between the parties, effect on co-workers, job titles of the parties, etc.) and will determine whether one or both parties need to be moved to another job or department.

- D. If it is determined that one party must be moved, and there are jobs in other departments available for both, the parties may decide who will be the one to apply for a new position. If the parties cannot amicably come to a decision, or the party is not chosen for the position to which he or she applied, the parties will contact human resources, which will decide which party should be moved. That decision will be based on which move will be least disruptive to the organization as a whole. If it is determined that one or both parties must be moved, but no other jobs are available for either party, the parties will be given the option of terminating their relationship or resigning.

## **VII. Complaint Process**

- A. Escambia County will treat any person who makes a complaint courteously; and the County will handle all complaints swiftly and confidentially to the extent possible recognizing the need to take appropriate corrective action. Making a complaint will in no way be used against the employee or have an adverse impact on the individual's employment status. Because of the damaging nature of harassment to the victims and to the entire workforce, aggrieved employees are strongly urged to use this procedure.
1. Escambia County has established the following procedure for making a complaint of harassment, discrimination, or retaliation. The County will treat all aspects of the procedure confidentially to the extent reasonably possible. However, the County is under an obligation to prevent harassment and discrimination occurring in the workplace and it may be necessary to disclose facts and names to remedy the harassment, discrimination, or retaliation.
  2. While the County encourages individuals who believe they are being harassed to firmly and promptly notify the offender that his/her behavior is unwelcome, the County also recognizes the power and status disparities between an alleged harasser and a target may make a confrontation impossible. In the event that such informal, direct communication between individuals is either ineffective or impossible, a complaint shall be made.
  3. Making a Complaint:
    - a. Pursuant this policy, any complaint should be made immediately upon discovery or awareness of the discrimination or harassment. The complaint need not be in writing to be effective.
    - b. An individual who feels harassed, discriminated, or retaliated against may initiate the complaint process by filing a complaint orally or in writing with Escambia County's HR Director. The complaint can be made using the Complaint Form adopted and approved pursuant this policy and included herein. Copies of the Complaint Form shall also be available at [www.myescambia.com](http://www.myescambia.com).
    - c. The complainant (the employee making the complaint) may obtain a complaint form from the HR department or from the Division Manager or Director of the employee's assigned department to assist in making a complaint.

- i. If a supervisor or manager becomes aware that harassment or discrimination is occurring, either from personal observation or as a result of an employee's coming forward, the supervisor or manager should immediately report his or her observation or knowledge to the HR Director.
  - ii. If a complaint is made against a member of management, including any Division Manager or Director, the HR Director will receive and investigate the complaint.
  - iii. If a complaint is made against the HR Director, the County Administrator will receive and investigate the complaint.
- d. Internal EEO complaints for the Escambia County Mass Transit Authority shall be investigated by the EEO Mass Transit Officer, in accordance with the requirements of the FTA.
- e. Fire-Rescue Division of the Public Safety Department consists of career and volunteer firefighters with support and administrative staff operating under a unified command as a combination department. Fire-Rescue operates as a paramilitary organization. In order to facilitate the making of a complaint, in addition to the procedures described in paragraphs 1 and 3 a. through c. above, any personnel who are working within Fire-Rescue Division as career or volunteer personnel may make a complaint to his or her direct supervisor who shall make a written report which shall be submitted to each level of command (Lieutenant to Battalion Chief to Deputy Fire Chief) and lastly to Fire Chief. In the event any of the supervisors within the chain of command are the subject of a complaint, then complaint shall be made directly to the Fire Chief or the HR Director.
  - i. Volunteer personnel may make a complaint to his or her District Chief who shall make a written report which shall be transmitted to the Deputy Fire Chief and who, in turn, shall transmit the written report to and confer with the Fire Chief. The Fire Chief will make a written report and refer the complaint to the HR Director for investigation.
  - ii. Any Fire-Rescue personnel who becomes aware of harassment, discrimination, or retaliation involving other Fire-Rescue personnel shall notify the Fire Chief through the chain of command except in those circumstances where those in command are alleged to have harassed, discriminated or retaliated, in which case, the chain of command can be bypassed and the Fire Chief or HR Director shall be notified directly.

#### 4. Investigation of Complaint

- a. In determining whether alleged misconduct warrants disciplinary action or other response, the HR Director or their designee will look at the totality of the



circumstances, the nature of the incident(s) or behavior, and the context in which they occurred. The determination of the appropriate response to each complaint will be made from the facts, on a case-by-case basis. Upon receiving a complaint or being advised by a supervisor or manager that violation of this policy may be occurring, the HR Director will notify the County Administrator and review the complaint with the County Attorney's Office.

- b. Within ten (10) working days of receiving the complaint, the HR Director or their designee will initiate an initial investigation to determine whether there is a reasonable basis that the alleged violation of this policy occurred. If no basis is found, the investigation will conclude that the complaint did not meet the criteria for harassment or discrimination set forth in this policy, the complainant will be informed, and no further action is required.
- c. If the investigation is to continue, the HR Director or their designee, together with Administration, and/or legal counsel or other management employees, will interview the complainant, the subject of the complaint, and any witnesses to determine whether the alleged conduct occurred.
- d. Within fifteen (15) working days of the complaint being made (or the matter being referred to the HR Director), the HR Director or other person conducting the investigation will conclude the investigation and submit a written report of his or her findings to the County Administrator. The goal is to have the investigation, findings, and report completed within a total of 25 days; however, time may be extended based upon the nature of the allegations and need for additional investigation.

## 5. Determination of Complaint

- a. If it is determined that harassment or discrimination in violation of this policy has occurred, the HR Director will recommend appropriate disciplinary action. The appropriate action will depend on the following factors: a) the severity, frequency, and pervasiveness of the conduct; b) prior substantiated complaints made against the respondent; and c) the quality of the evidence (e.g., first-hand knowledge, credible corroboration).
- b. If the investigation is inconclusive or if it is determined that there has been no violation of policy but potentially problematic conduct may have occurred, the HR Director may recommend appropriate preventive action.
- c. Within five (5) working days after the investigation is concluded, the HR Director or their designee will meet with the complainant and the alleged offender or subject of the complaint, separately, notify them of the findings of the investigation, and inform them of the action being recommended.
- d. The complainant and the subject of the complaint may submit statements to the

HR Director challenging the factual basis of the findings. Any such statement must be submitted no later than five (5) working days after the meeting with the HR Director in which the findings of the investigation are discussed.

- e. Within ten (10) days from the date the HR Director meets with the complainant and the subject of the complaint, the County Administrator, or designee, will review the investigative report and any statements submitted by the complainant, the subject of the complaint, or others, discuss results of the investigation with the HR Director and other management staff as may be appropriate, and decide what action, if any, will be taken.
  - f. The County's decision will be in writing and will include findings of fact and a statement for or against disciplinary action. If disciplinary action is to be taken, the subject of the complaint will be informed of the nature of the discipline and how it will be executed.
- B. If at any point before the final decision is made, the investigating authority does not respond in a timely manner to the complainant when asked for updates on the status of the complaint, the complainant should contact the HR Director directly.
- 1. If no response is received from the HR Director, the complainant should contact the County Administrator directly.
  - 2. If there is still no response from the investigative authority, HR Director, or County Administrator, the complainant may initiate the grievance process.
- C. Unlawful harassment is a very serious allegation which is not to be taken lightly or used as a means to avoid warranted discipline. Making groundless or malicious complaints is an abuse of this policy and will be treated as a violation.

## **VIII. Grievance Process**

- A. In the event the parties involved in the complaint do not agree with the findings and recommendations, he/she may grieve the case to the Grievance Committee.
- 1. The Grievance Committee will be composed of three (3) members to include a representative of the grievant, a representative of the other party(s) involved, and a representative of either the HR Department or the Office of Compliance and Ethics (whichever did not participate in the original investigation). The grievant and other party's representative shall be selected by the HR Director from each of two (2) nominees submitted respectively by the grievant and the other party.
  - 2. No person who is a relative of the grievant or who is under the same direct supervisory chain of command as grievant shall be eligible to sit on such Grievance Committee. Elected public officials shall also be ineligible to serve on the Committee. In the event one or both parties fail to submit nominees to the HR Director, he/she shall be authorized to complete the selection of the members of the Grievance Committee.

**B. Step One Grievance: Appeal to the Grievance Committee**

1. Within five (5) working days of the County's decision, either party (complainant or subject of the complaint) may initiate a grievance of the County's decision in writing to the HR Director.
2. Members of the Grievance Committee shall, within ten (10) working days following their appointment, unless an extension of time has been agreed upon, conduct a review of the case and/or a hearing if determined necessary to enable the Committee to render a fair and equitable decision. The Grievance Committee shall not be bound by the technical rules of evidence but shall seek diligently all of the information and evidence bearing on the merits of the case.
3. Within five (5) working days after the conclusion of the hearing, the Grievance Committee shall render its decision in writing which shall be certified to the grievant. Copies of the decision shall be delivered to all parties at interest.

**C. Step Two Grievance: Appeal to the Merit System Protection Board (MSPB)**

1. If such disposition by the Grievance Committee is not satisfactory to either party, either party may appeal such decision to the MSPB within five (5) working days following the receipt of the decision of the Grievance Committee, which the appeal must be in writing and received by the HR Director within the time allowed for the appeal. The appealing party shall have the burden of proof.
2. The hearing before the MSPB shall be de novo and shall follow the same procedure and format as used by the MSPB in conducting disciplinary hearings appealed directly to the MSPB.
3. Review of MSPB action shall be by petition for writ of certiorari to the circuit court of Escambia County Florida as described in section 2-210 of the MSPB ordinance.

- D. Union employees have the option of grieving the findings and recommendations of an unlawful harassment claim through their respective union grievance process. If chosen to grieve through the union, the employee foregoes the grievance process in this policy.**

**IX. Confidentiality**

- A. During the complaint process, the confidentiality of the information received, the privacy of the individuals involved, and the wishes of the complaining person will be protected to as great a degree as is possible. The expressed wishes of the complaining person for confidentiality will be considered in the context of the County's legal obligation to act on the charge and the right of the charged party to obtain information. In most cases, however, confidentiality will be strictly maintained by the County and those involved in the investigation. In addition, any notes or documents written by or received by any person(s)

involved in the investigation will be kept confidential to the extent possible and according to any existing state or federal law.

- B. The employee assistance program (EAP) provides confidential counseling services to County employees. Individuals wishing to discuss an incident confidentially or seeking information and advice of a personal nature are encouraged to contact the EAP. The role of the EAP in such cases will be limited to personal counseling and treatment for the person who is then an EAP client.
- C. Contacting the EAP will not qualify as notification to Escambia County of a potential harassment or discrimination issue (see Complaint Process above for more on how to notify the County of an issue or complaint).

#### **X. Training, Administration and Records.**

- A. The HR Director shall be responsible for training, administration, and records associated with the Unlawful Harassment Policy.
- B. All County employees are required to attend no less than one (1) hour of harassment prevention training on an annual basis.
- C. Department Directors shall be responsible for scheduling an adequate number of training sessions and shall provide adequate notice of the training sessions. "Harassment Prevention Training" includes any training on the provisions, application, and enforcement of this policy.
- D. Failure to attend the minimum requirements for harassment prevention training annually shall constitute a "for cause" basis for disciplinary action.

#### **XI. Alternative legal remedies**

Nothing in this policy shall prevent the complainant or other affected individuals from pursuing formal legal remedies or resolution through local, state, or federal agencies or the courts. The following are two such agencies that may be contacted:

Equal Employment Opportunity Commission (EEOC)  
Mobile Office (251) 690-2590 or (800) 669-4000

Florida Commission on Human Relations  
(850) 488-7082