



POLICY TITLE: Anti-Discrimination and Complaint Procedure

POLICY NO.: PR-37

I. PURPOSE

The purpose of this Policy is to establish formal guidelines to ensure that County employees, potential employees, and volunteers of Washington County may work in an environment free from Discrimination or actions of a Discriminating nature.

II. GENERAL POLICY

The Board of County Commissioners 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, yet stimulating, atmosphere. The accomplishment of this goal is essential to the County's mission. For that reason, the Board of County Commissioners will not tolerate unlawful Discrimination 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.

III. SCOPE

This Policy applies to all Employees as defined herein.

IV. DEFINITIONS AND PROHIBITED CONDUCT

The Board of County Commissioners, in compliance with all applicable federal, State, and local Discrimination laws and regulations, enforces this Policy in accordance with the following definitions and guidelines:

A. Definition of "Employee" or "Employees"

For purposes of this Policy, "Employee" or "Employees" means elected and appointed officials, department heads, division directors, all full- and part-time employees, board and commission members, and unpaid volunteers.

B. The Board of County Commissioners prohibits Discrimination of any kind as defined herein, and will take appropriate and immediate action in response to complaints or knowledge of violations of this Policy.

C. Discrimination

1. It is a violation of this Policy and, therefore, prohibited conduct, 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. The discrimination that is prohibited conduct under this Policy may also be strictly prohibited by a variety of federal, State, and local laws, including, but not limited to, Title VII of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and the Americans with Disabilities Act of 1990. This Policy is intended to comply with the prohibitions stated in these and other applicable anti-discrimination laws.

D. Types of Prohibited Discrimination and Associated Laws

1. **Age Discrimination** – Age discrimination involves treating an applicant or employee less favorably because of his or her age in any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoffs, training, benefits, and any other term or condition of employment. The Age Discrimination in Employment Act of 1967 (ADEA) prohibits age discrimination against people who are age forty (40) or older.
2. **Disability Discrimination** – Disability discrimination occurs when an employer or other entity covered by Title I and Title V of the Americans with Disabilities Act of 1990, as amended, or the Rehabilitation Act of 1973, as amended, treats a qualified individual with a disability who is an employee or applicant unfavorably because he or she has a disability or a history of a disability or is believed to have a physical or mental impairment that is not transitory and minor. Disability discrimination also occurs when an employer or other entity treats an employee or applicant unfavorably on the basis that he or she has a relationship with a disability. Disability discrimination may occur in any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoffs, training, benefits, and any other term or condition of employment, including not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee when making such reasonable accommodation would not cause undue hardship.
3. **Equal Pay/Compensation Discrimination** – Equal pay/compensation discrimination involves the inequality in wages between men and women and is illegal under the Equal Pay Act of 1963, as amended, the Lilly Ledbetter Fair Pay Act of 2009, as amended, and Title VII of the Americans with Disabilities Act of 1990, as amended. The

Equal Pay Act requires that men and women in the same workplace be given equal pay for equal work. The jobs need not be identical, but they must be substantially equal. Job content, not job titles, determines whether jobs are substantially equal. All forms of pay are covered, including salary, overtime pay, bonuses, stock options, profit sharing and bonus plans, life insurance, vacation and holiday pay, cleaning or gasoline allowances, hotel accommodations, reimbursement for travel expenses, and benefits. If there is an inequality in wages between men and women, employers may not reduce the wages of either sex to equalize their pay.

4. Genetic Information Discrimination – Genetic information discrimination involves the use of genetic information in making employment decisions and is illegal under Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA). GINA also restricts employers' acquisition of genetic information and strictly limits disclosure of genetic information. Genetic information includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about the manifestation of a disease or disorder in an individual's family members. Genetic information includes family medical history. Genetic information also includes an individual's request for, or receipt of, genetic services, or the participation in clinical research that includes genetic services by the individual or a family member of the individual, and the genetic information of a fetus carried by an individual or by a pregnant woman who is a family member of the individual and the genetic information of any embryo legally held by the individual or family member using an assisted reproductive technology. Discrimination on the basis of genetic information is illegal with regard to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoffs, training, fringe benefits, or any other term or condition of employment. An employer may never use genetic information to make an employment decision because genetic information is not relevant to an individual's current ability to work.
5. Harassment – Harassment is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 (ADEA), and the Americans with Disabilities Act of 1990 (ADA). While harassment is included in this Policy as a type of prohibited discrimination, Washington County maintains a separate policy that specifically deals with harassment, including sexual harassment. See Policy No. PR-13 Anti-Harassment and Complaint Procedure.
6. National Origin Discrimination – National origin discrimination involves treating people (applicants or employees) unfavorably

because they are from a particular country or part of the world, because of ethnicity or accent, or because they appear to be of a certain ethnic background even if they are not. National origin discrimination also can involve treating people unfavorably because they are married to or associated with a person of a certain national origin. Title VII of the Civil Rights Act of 1964, as amended, protects applicants and employees from discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of national origin.

7. **Pregnancy Discrimination** – Pregnancy discrimination involves treating a woman (applicant or employee) unfavorably because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth. The Pregnancy Discrimination Act (PDA) forbids discrimination based on pregnancy. Discrimination on the basis of pregnancy is illegal with regard to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoffs, training, fringe benefits, or any other term or condition of employment. If a woman is temporarily unable to perform her job due to a medical condition related to pregnancy or childbirth, she must be treated in the same way as any other temporarily disabled employee must be treated. For example, the employer may have to provide light duty, alternative assignments, disability leave, or unpaid leave to pregnant employees if it does so for other temporarily disabled employees.¹
8. **Race and Color Discrimination** – Race discrimination involves treating an individual (applicant or employee) unfavorably because he or she is of a certain race or because of personal characteristics associated with race (such as hair texture, skin color, or certain facial features). Color discrimination involves treating an individual unfavorably because of skin color complexion. Race and color discrimination also can involve treating someone unfavorably because the person is married to or associated with a person of a certain race or color. Title VII of the Civil Rights Act of 1964, as amended, protects applicants and employees from discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of race or color.
9. **Religious Discrimination** – Religious discrimination involves treating a person (applicant or employee) unfavorably because of his or her religious beliefs. The law protects not only people who belong to traditional, organized religions, such as Buddhism,

¹ See Policy No. PR-32 Reasonable Accommodation Due to Pregnancy.

Christianity, Hinduism, Islam, and Judaism, but also others who have sincerely held religious, ethical, or moral beliefs. Religious discrimination can also involve treating someone differently because that person is married to or associated with an individual or a particular religion. Title VII of the Civil Rights Act of 1964, as amended, protects applicants and employees from discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of religion or sincerely held religious, ethical, or moral beliefs.

10. Sex-Based Discrimination – Sex-based discrimination involves treating an individual (applicant or employee) unfavorably because of the individual’s sex. Discrimination against an individual because of gender identity, including transgender status, or because of sexual orientation, is discrimination because of sex in violation of Title VII of the Civil Rights Act of 1964, as amended. Title VII of the Civil Rights Act of 1964, as amended, protects applicants and employees from discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of sex, gender identity, and sexual orientation.
11. Sexual Harassment – Sexual harassment is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 (ADEA), and the Americans with Disabilities Act of 1990 (ADA). While sexual harassment is included in this Policy as a type of prohibited discrimination, Washington County maintains a separate policy that specifically deals with sexual harassment, together with harassment of a non-sexual nature. See Policy No. PR-13 Anti-Harassment and Complaint Procedure.
12. The types of discrimination addressed in this Policy also constitute potential violations of the Civil Rights Act of 1991, as amended, which provides monetary damages in cases of intentional employment discrimination.
13. The U.S. Equal Employment Opportunity Commission (EEOC) enforces all of the laws addressed in this Policy, together with other federal, State, and local laws as applicable. The EEOC also provides oversight and coordination of all federal equal employment opportunity regulations, practices, and policies which will be consulted in interpreting and implementing this Policy.

E. Retaliation

1. Retaliation is the punishment of job applicants or employees for

asserting their rights to be free from all types of employment discrimination, including harassment.²

2. All of the laws addressed in this Policy, together with other federal, State, and local laws as applicable [collectively, the equal employment opportunity (EEO) laws], prohibit retaliation. Retaliation is prohibited conduct under this Policy.
3. An employee's assertion of his or her rights under the EEO laws is called "protected activity" which can take many forms. The following examples of protected activity are intended to be guidelines and are not exclusive when determining acts that constitute protected activity under this Policy or all applicable laws:
 - a. Filing or being a witness or investigator in an EEO charge, complaint, investigation, or lawsuit;
 - b. Communicating with a supervisor or manager about employment discrimination, including harassment;³
 - c. Answering questions during an employer investigation of alleged harassment;⁴
 - d. Refusing to follow orders that would result in discrimination;
 - e. Resisting sexual advances, or intervening to protect others;⁵
 - f. Requesting accommodation of a disability⁶ or for a religious practice;
 - g. Asking managers or co-workers about salary information to uncover potentially discriminatory wages;
 - h. Participating in a complaint process;⁷
 - i. Other acts to oppose discrimination as long as the employee was acting on a reasonable belief that something in the workplace may violate the EEO laws, even if he or she did not use legal terminology to describe it.

² See also Policy No. PR-13 Anti-Harassment and Complaint Procedure.

³ See also Policy No. PR-13 Anti-Harassment and Complaint Procedure.

⁴ See also Policy No. PR-13 Anti-Harassment and Complaint Procedure.

⁵ See also Policy No. PR-13 Anti-Harassment and Complaint Procedure.

⁶ See also Policy No. PR-31 Americans with Disabilities Act (ADA) and Americans with Disabilities Amendments Act (ADAAA).

⁷ See also Policy No. PR-13 Anti-Harassment and Complaint Procedure.

4. Engaging in protected activity does not shield an employee from all discipline or discharge. Employers are free to discipline or terminate workers if the discipline or termination is motivated by non-retaliatory and non-discriminatory reasons that would otherwise result in such consequences.
5. An employer is not allowed to take any action in response to protected activity that would discourage an individual from resisting or complaining about future discrimination.
6. The following examples of potential retaliation are intended to be guidelines and are not exclusive when determining whether there has been a violation of this Policy:
 - a. Reprimanding an employee or giving a performance evaluation that is lower than it should be;
 - b. Transferring an employee to a less desirable position;
 - c. Engaging in verbal or physical abuse;
 - d. Threatening to make or actually making reports to authorities, such as reporting immigration status or contacting the police;
 - e. Increasing scrutiny;
 - f. Spreading false rumors or treating a family member negatively, e.g., canceling a contract with an employee's spouse; or
 - g. Making an employee's work more difficult, e.g., punishing an employee for filing an EEO complaint by purposefully changing his or her work schedule to conflict with family responsibilities.

F. Compliance with Policy and Applicable Laws

All Employees are expected to comply with this Policy and to take appropriate measures to ensure that the conduct prohibited herein does not occur. Appropriate disciplinary action will be taken against any Employee who violates this Policy. Based on the seriousness of the offense, disciplinary action may include verbal or written reprimand, suspension, or termination of employment.

G. Complaint Procedure

1. The Board of County Commissioners will courteously treat any person who invokes the complaint procedure under this Policy. The County will handle all complaints swiftly and confidentially, to the greatest extent permitted by applicable law, in light of the need to take appropriate corrective action. Lodging a complaint will in no way be used against an Employee or have an adverse impact on the Employee's employment status. Because of the damaging nature of all types of discrimination against victims and the entire workforce, aggrieved Employees are strongly urged to use this procedure. However, filing groundless or malicious complaints is an abuse of this Policy and will be treated as a violation thereof.
2. The Board of County Commissioners has established the following procedure for lodging a complaint of discrimination or retaliation. The County will treat all aspects of the complaint procedure in accordance with the confidentiality provisions of this Policy.
 - a. An individual may initiate the complaint procedure under this Policy by filing a complaint in writing with the County Attorney. No formal action will be taken against any person under this Policy unless the County Attorney has received a written and signed Harassment/Discrimination Investigation Consent Form containing sufficient details to determine whether this Policy may have been violated. The complainant [the person filing the complaint] may obtain a copy of the Harassment/Discrimination Investigation Consent Form from the County Attorney's Office, the Department of Human Resources, or online as part of this Policy made available by the Department of Human Resources at www.washco-md.net. If a supervisor or manager becomes aware that discrimination has occurred or is occurring, either from personal observation or as a result of an Employee's report, the supervisor or manager must immediately report the conduct to the County Attorney.
 - b. Upon receiving a complaint or being advised by a supervisor or manager that violation of this Policy may be occurring, the County Attorney will notify the County Administrator and the Director of Health and Human Services and review the Complaint with the County Administrator and the Director of Health and Human Services.
 - c. Within five (5) business days of receiving a complaint, the Director of Health and Human Services will notify the respondent or respondents [the person or persons charged in

- the complaint] of a complaint filing and initiate the investigation to determine whether there is a reasonable basis for believing that an alleged violation of this Policy occurred.
- d. During the investigation, the Director of Health and Human Services, together with the assistance of the County Attorney or other legal counsel or other appropriate management employees, will interview the complainant, the respondent or respondents, and any witnesses to determine whether the alleged conduct occurred.
 - e. Within fifteen (15) business days of the matter being referred to the Director of Health and Human Services by the County Attorney, the Director of Health and Human Services, together with other persons conducting the investigation, will conclude the investigation and submit a written report of the investigative findings to the County Administrator and the County Attorney.
 - f. If the investigation determines that discrimination or retaliation occurred in violation of this Policy, the Director of Health and Human Services, with the advice of the County Administrator and the County Attorney, will recommend appropriate disciplinary action. The appropriate disciplinary action will depend on the following factors: (i) the severity, frequency, and pervasiveness of the conduct; (ii) prior complaints made by the complainant; (iii) prior complaints made against the respondent or respondents; and (iv) the quality of the evidence (e.g., first-hand knowledge, credible corroboration).
 - g. If the investigation is inconclusive or if the investigation determines that there has been no violation of this Policy, but potentially problematic conduct may have occurred, the Director of Health and Human Services, with the advice of the County Administrator and the County Attorney, may recommend appropriate preventive action.
 - h. Within five (5) business days after the investigation is concluded and a recommendation is determined, the Director of Health and Human Services will meet with the complainant and the respondent or respondents separately, notify them of the findings of the investigation, and inform them of the action being recommended.
 - i. The complainant and the respondent or respondents may

submit statements to the Director of Health and Human Services challenging the factual basis of the findings. Any such statement must be submitted no later than five (5) business days after the meeting with the Director of Health and Human Services in which the findings of the investigation are discussed.

- j. If the recommendation is any disciplinary action other than termination, then within ten (10) business days from the date that the Director of Health and Human Services meets with the complainant and respondent or respondents, the Director of Health and Human Services will review the investigative report and any statements submitted by the complainant and respondent or respondents; discuss results of the investigation with the County Administrator, the County Attorney, and other management staff as may be appropriate; and decide what action, if any, will be taken. The Director of Health and Human Services will report the decision to the respondent or respondents and the appropriate management staff assigned to the department or departments in which the respondent or respondents work. The 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 respondent or respondents will be informed of the nature of the discipline and how it will be executed.
- k. If the recommendation is termination, then the Director of Health and Human Services will make the recommendation at the next regularly scheduled meeting of the Board of County Commissioners. Within five (5) business days following the Board of County Commissioners' decision regarding the recommendation of termination, the Director of Health and Human Services will report the Board's decision to the respondent or respondents and the appropriate management staff assigned to the department or departments in which the respondent or respondents work. The decision will be in writing and will include findings of act and a statement for or against disciplinary action. If disciplinary action is to be taken, the respondent or respondents will be informed of the nature of the discipline and how it will be executed.

H. Confidentiality

- 1. The Employee Assistance Program (EAP) provides confidential counseling services to County Employees. An employee who wishes to discuss an incident confidentially or to seek information

and advice of a personal nature is encouraged to contact the EAP. The EAP's role in such cases will be limited to personal counseling and treatment for the person who is then an EAP client. Contacting the EAP will not qualify as notification to the County of a potential discrimination issue.⁸

2. During the complaint process, the confidentiality of the information received, the privacy of the individuals involved, and the wishes of the complainant will be protected to the greatest extent permitted by applicable law. The expressed wishes of the complainant for confidentiality will be considered in the context of the County's legal obligation to act on the charge and the right of the respondent or respondents 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 the person or persons conducting the investigation will be kept confidential to the greatest extent permitted by applicable law.

I. Alternative Legal Remedies

Nothing in this Policy may prevent the complainant and the respondent or respondents from pursuing formal legal remedies or resolution through local, State, or federal agencies or the courts.

⁸ See Policy No. EB-14 Employee Assistance Program (EAP) for information on offered services.



HARASSMENT/DISCRIMINATION INVESTIGATION
COMPLAINT AND CONSENT FORM

Washington County maintains a policy that all of its employees should be free from any form of harassment and discrimination. As part of that policy, the County is committed to investigating claims of harassment and discrimination and taking appropriate disciplinary or other actions when the facts show that harassment or discrimination has occurred. So that Washington County may conduct an investigation of your concerns, please complete and submit this form to the County Attorney.

Complainant's Name: _____ Date: _____

I wish to file a complaint regarding the following event(s): _____

Provide any and all information pertinent to what has occurred, including the names of witnesses, events, dates, times, places, and what was said and done. Attach additional sheets if necessary.

I, _____, hereby consent to Washington County's conduct of a complete and thorough investigation of the above complaint. I further authorize Washington County representatives to disclose to others, as necessary, on a need-to-know basis, and as required by law, certain of the information that I have provided or that I may provide in the future. I understand that disclosure of certain information that I have provided on this form or in the future may be necessary to ensure that a complete investigation can be conducted. I acknowledge that I have read and understand the contents of this consent statement.

Complainant's Signature

Date

If you do not wish for the County to disclose certain information that you have provided, please specify that information in detail below. The County will attempt to honor your request to an extent that is consistent with the County's obligation to identify and correct instances of harassment and discrimination.

By signing this form, I acknowledge that the information I have provided is true and accurate to the best of my knowledge and recollection. I agree to fully and honestly cooperate with the investigation that the County will conduct as a result of this complaint.

Complainant's Signature

Date