

TO: ALL COUNTY PERSONNEL

**FROM: VERDENIA C. BAKER
COUNTY ADMINISTRATOR**

PREPARED BY: HUMAN RESOURCES

**SUBJECT: DISCRIMINATION, HARASSMENT, REASONABLE
ACCOMMODATION, AND RETALIATION IN THE WORKPLACE**

PPM #: CW-P-029

ISSUE DATE
December 18, 2023

EFFECTIVE DATE
December 18, 2023

PURPOSE:

To create and maintain a work environment in which people are treated with dignity, decency and respect. To assure County compliance with Federal, State and local laws requiring reasonable accommodation and prohibiting discrimination on the basis of race, color, religion, national origin, sex (including pregnancy discrimination, gender stereotyping, and sexual harassment), age, marital status, familial status, veteran status, genetic information, sexual orientation, gender identity or expression, disability or any other protected class recognized by Federal, State, or Local law. (“Protected Class”).

UPDATES:

Future updates to this PPM are the responsibility of the Director of Human Resources.

AUTHORITY:

1. Title VII of the Civil Rights Act of 1964, as may be amended
2. Equal Pay Act of 1963, as may be amended
3. Age Discrimination in Employment Act of 1967, as may be amended
4. The Rehabilitation Act of 1973, as may be amended
5. Americans with Disabilities Act of 1990 (ADA), as may be amended
6. Americans with Disabilities Act Amendments Act of 2008 (ADAAA), as may be amended
7. Vietnam Veterans Readjustment Assistance Act of 1974, as may be amended
8. Genetic Information Nondiscrimination Act of 2008, as may be amended
9. Pregnancy Discrimination Act, as may be amended
10. Immigration Reform and Control Act of 1986, as may be amended
11. Florida Civil Rights Act of 1992, as may be amended
12. Palm Beach County Ordinance 95-31, as may be amended
13. Florida Statute Section 760.10, as may be amended

POLICY:

The Board of County Commissioners (County) will not tolerate unlawful discrimination, harassment, or retaliation. It is the policy of the County to ensure that Palm Beach County is in compliance with all applicable anti-discrimination statutes. As an Equal Opportunity/Affirmative Action Employer, Palm Beach County is committed to exercising fair employment practices in all terms and conditions of employment for all employees and applicants for employment regardless of Protected Class.

Through the procedures that follow and by educational programming, the County will seek to prevent, correct and discipline behavior that violates this policy. All employees are accountable for compliance with this policy.

Any interference with an investigation, as defined by and in accordance with Fair Employment policies & practices, pursuant to this policy is a violation of County rules and policies and is subject to discipline, up to and including separation from employment.

PROHIBITED CONDUCT:

A. Discrimination/Harassment

It is a violation of this policy to discriminate in the provision of employment opportunities, benefits or privileges, to create discriminatory working conditions, or to use discriminatory evaluation standards in employment settings if the basis of that discriminatory treatment is in whole or in part, based upon the person's Protected Class as defined above within the purpose of this policy. The County expressly prohibits all employment related activity, which is in violation of any Federal, State, or local laws or statutes which prohibits discrimination in employment. To accomplish this objective, Palm Beach County Administration and Management staff will:

1. Ensure that all employees work in an environment free of harassment on the basis of any Protected Class;
2. Recruit, hire, train, and promote persons in all job titles, without regard to Protected Class;
3. Ensure that all personnel actions including, but not limited to compensation, benefits, transfers, layoffs, County sponsored and/or approved training, education, tuition reimbursement, social and recreational programs are administered without regard to any Protected Class;
4. Employ and advance disabled and Vietnam Era Veterans and qualified individuals with disabilities who, with or without reasonable accommodation, can perform the essential functions of a position; and
5. Make employment decisions to further the principle of equal employment opportunity, and which are within the spirit of the Federal, State and local laws or statutes prohibiting discrimination.

B. Sexual Harassment

The County will not tolerate any behavior, including verbal or physical conduct, which constitutes sexual harassment. Violations may lead to disciplinary action which, in sufficiently severe cases, may lead to termination.

Unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature will constitute sexual harassment when:

1. Submission to such conduct is either explicitly or implicitly a term or condition of an individual's employment (to include, but not limited to, conduct which impacts hiring, firing, promotions, or other working conditions or the working environment),

Or

2. Submission to or rejection of such conduct is used as the basis for employment decisions affecting that individual,

Or

3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance, or of creating an intimidating, hostile or offensive environment for working.

Sexual harassment is any unwelcome verbal or physical conduct of a sexual nature including, but not limited to, the following types of behavior:

1. Sexually degrading words or gestures used to describe an individual;
2. Comments about an individual's body, clothing, or lifestyle which have sexual implications;
3. Repeated offensive sexual flirtations; leering or ogling (inappropriate staring), sexual advances and propositions, verbal abuse of a sexual nature;
4. Conduct of a sexual nature that interferes with an individual's work performance or creates an intimidating, hostile or offensive environment;
5. Display of sexually demeaning objects, pictures, or cartoons in areas accessible to employees or members of the public;
6. Implied or direct threats or insinuations that an individual's refusal to submit to sexual advances will adversely affect the individual's employment status, evaluation, wages, advancement, assigned duties or career development;

7. Solicitation of sexual activity by promise of rewards to the individual's performance, evaluation, wages, advance, assigned duties or career development;
8. Unnecessary touching, patting, pinching, or brushing another's body or clothing; or
9. Stalking, telephone or computer harassment, or sexual assaults.

Sexual harassment may occur among co-workers or when a person who is in a position to control, influence, or affect another individual's job or career uses this power to either coerce the subordinate into sexual relations or punish a refusal to participate in sexual activity.

Consenting relationships may constitute sexual harassment under this policy when a professional power differential exists between employees, and a romantic or sexual relationship develops. There is a potential for abuse of power, even in relationships of apparent mutual consent. The County strongly discourages sexual relationships between a supervisor and a subordinate.

All supervisory personnel are responsible for compliance and must take immediate, appropriate and effective action to stop sexually harassing behavior. A failure to timely respond to or report sexually harassing behavior is a violation of this policy and will be subject to disciplinary action up to and including separation from employment.

C. Retaliation

No hardship, no loss of benefit, or loss of privilege, and no penalty may be imposed on any employee or applicant as punishment for the following, including, but not limited to:

1. Filing or being a witness to a charge, complaint, investigation or lawsuit regarding discrimination, harassment, or retaliation;
2. Answering questions during an investigation of alleged discrimination or harassment;
3. Communicating with a supervisor or manager about alleged employment discrimination, including harassment;
4. Refusing to follow orders that would result in discrimination;
5. Resisting sexual advances, or intervening to protect others;
6. Requesting an accommodation of a disability or a religious practice; or
7. Asking managers or co-worker's about salary information to uncover potentially discriminatory wages.

Retaliation, or interference with an investigation of any kind is a violation of this policy and will be subject to severe disciplinary action up to and including termination.

D. Reasonable Accommodation

1. Disability

A. Duties and Responsibilities

All managers and supervisors are responsible for compliance with the Americans with Disabilities Act (ADA) and the Americans with Disabilities Act Amendments Act (ADAAA). All managers and supervisors must make reasonable accommodations, upon request, to the known physical or mental limitation of otherwise qualified applicants and employees with disabilities to enable them to perform the essential duties of a position or participate fully in a selection process. A supervisor or manager's failure to timely respond to or report a request for accommodation is a violation of this policy and may be subject to disciplinary action up to and including termination.

The departments shall develop a position description for each job distinguishing essential and marginal functions.

B. Requesting an Accommodation

Employees can request a reasonable accommodation through a supervisor or manager, the Occupational Health Clinic, the Employee Assistance Program, or Fair Employment Programs (FEP). All requests for accommodations will be referred to FEP for review. The interactive process will include consultation between the employee, the Occupational Health Clinic, and the employing departmental staff. FEP will be contacted to reach a final determination on the request for reasonable accommodation. Each request will be resolved through an individualized assessment on a case-by-case basis.

Every advertisement for employment, including internal promotional opportunities, and notification for an interview must contain a statement indicating that the County complies with the provisions of the ADAAA and provide instructions for applicants with disabilities to request reasonable accommodation in order to participate in any part of the selection process. Accommodation requests will be reviewed in consultation with the applicant, the selecting department, the Occupational Health Clinic and FEP. Each request will be resolved through an individualized assessment on a case-by-case basis.

A reasonable accommodation need not be the accommodation preferred by the employee or applicant; however, it must be an effective accommodation which provides opportunities for persons with disabilities to achieve the same level of performance or participation equal to those of similarly-situated persons without disabilities. A qualified person with a disability has the right to refuse an accommodation. In such cases, FEP must be notified of the refusal.

2. Religion

An applicant or employee seeking religious accommodation must provide the basis for accommodation, an indication that the accommodation is being requested due to a conflict between religion and work, and a proposed accommodation. Applicants and employees must cooperate with efforts to determine available reasonable

accommodations.

The County is required to determine the reasonableness of the accommodation requested by an individual on a case-by-case basis. Supervisors and managers are required to confer with FEP prior to granting or denying a request for an accommodation.

3. Accessibility

It is the policy of the County to ensure that all County facilities and programs are accessible to employees, applicants and members of the public. All Department Heads are responsible for ensuring that all services, programs, and activities offered by their department are accessible and provide equal opportunity to persons with disabilities. Accommodations requiring structural modification, website modification, or barrier removal will be referred to Facilities Development and Operations (FDO) or Information Systems Services (ISS) for final approval.

PROCEDURE:

A. Responsibilities

All employees of Palm Beach County, including persons employed at-will, must share the responsibility of understanding and preventing discrimination. Administrators, managers, and supervisors have the responsibility to act promptly to eliminate any discrimination that exists in the area within their supervision. If Administrators, managers, or supervisors have information or believe that discrimination, sexual harassment, failure or refusal to accommodate, or retaliation might be occurring, they must take immediate and effective action to address the problem. Such action should include, but is not limited to, speaking directly to the individuals involved, developing a record of the alleged discriminatory activity, consultation with FEP, and corrective or disciplinary action.

Any established incidents of discrimination, retaliation, failure or refusal to accommodate, or sexual harassment by any employee will result in immediate and severe disciplinary action, up to and including separation from employment. It shall be the responsibility of every employee, and particularly every management and supervisory employee, to bring to the County's attention any evidence of discrimination, retaliation, failure or refusal to accommodate, or sexual harassment so that the matter can be investigated and appropriate action taken.

All County departments that issue notices or publications to the general public are also required to include a non-discrimination clause and inform the public that alternative formats are available upon request.

FEP is responsible for the overall coordination and implementation of the Americans with Disabilities Act. FEP may delegate the responsibilities of implementing an approved accommodation pursuant to the Act to other employees. FEP can be contacted by email at HR-FEP@pbcgov.org or phone at (561) 616-6860.

B. Filing a Charge

Employees who believe they have been discriminated or retaliated against, sexually harassed, or denied reasonable accommodation may file a complaint with FEP. Such complaints must be filed within 180 days of the alleged discriminatory act. FEP will investigate each complaint, which states prima facie evidence of discrimination, retaliation, failure or refusal to accommodate, or sexual harassment, and will recommend the appropriate action to be taken based upon the results of the investigation. The address of that section is below:

Fair Employment Programs
Airport Center Building #1
100 Australian Avenue, Suite 300
West Palm Beach, Florida 33406
561-616-6860


Employees believing they have been discriminated against retain the right to file a charge of discrimination with federal and state enforcement agencies. Such charges may be filed by contacting:

County
Palm Beach County Office of Equal Opportunity
301 North Olive Avenue, 10th Floor
West Palm Beach, Florida 33401
561-355-4883

Or

Federal
Equal Employment Opportunity Commission
Miami District Office
Miami Tower, Suite 1500
100 S E 2nd Street
Miami, Florida 33131-1855
1-800-669-4000 or 1-800-669-6820 (TTY)
1-844-234-5122 (ASL Video Phone)
Electronic Filing: <https://www.eeoc.gov/filing-charge-discrimination>

State
Florida Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301
1-800-342-8170



VERDENIA C. BAKER
COUNTY ADMINISTRATOR

Supersession History

1. PPM#CW-P-016, effective 7/1/88
2. PPM#CW-P-029, effective 7/1/88
3. PPM#CW-P-017, effective 3/1/93
4. PPM#CW-P-051, effective 1/1/93
5. PPM#CW-P-027, effective 12/11/95
6. PPM#CW-P-029, effective 8/11/97
7. PPM#-CW-P-029, effective 6/1/23