

Implementing Order No.: IO 7-45

Title: Equal Employment Opportunity Policy Prohibiting Unlawful Discrimination, Harassment or Retaliation

Ordered: 12/17/2019

Effective: 12/27/2019

AUTHORITY:

Section 1.01, 2.02 and 5.02 of the Miami-Dade County Home Rule Amendment and Charter.

SUPERSEDES:

This Implementing Order supersedes Administrative Order No. 7-28, dated November 17, 1987, and Administrative Order No. 7-37 dated April 21, 2000.

POLICY:

Miami-Dade County is committed to a policy of equal opportunity in the workplace that embraces diversity, inclusion, and equality. Miami-Dade County does not make employment decisions or establish employment practices based on a person's race, color, religion, ancestry, sex, pregnancy, national origin, age, disability, marital status, familial status, gender identity, gender expression, sexual orientation, veteran's status, actual or perceived status as a victim of domestic violence, dating violence or stalking, exercise of a constitutional or statutorily protected right, or any other category protected by local, state or federal law. This includes decisions, actions and practices that occur in the course of recruitment, testing, hiring, work assignments, compensation and benefits, working conditions, performance evaluations, promotions, training opportunities, career development and advancement, transfers, discipline, discharge or any other application or selection process relating to employment.

Miami-Dade County prohibits all forms of discrimination and harassment, including sexual harassment, against employees or applicants on the basis of race, color, religion, ancestry, sex, pregnancy, national origin, age, disability, marital status, familial status, veteran's status, gender identity, gender expression, sexual orientation, actual or perceived status as a victim of domestic violence, dating violence or stalking, exercise of a constitutional or statutorily protected right, or any other category protected by local, state or federal law.

Any form of retaliation against anyone who has complained of or formally reported unlawful discrimination or harassment or has participated in an investigation of such a complaint regardless of whether the complaint relates to the complaining person or someone else is also prohibited. The County will not tolerate retaliation by any employee. Retaliation is a serious violation of this policy, as well as local, state, and federal law.

Miami-Dade County will take all steps necessary to prevent unlawful discrimination, harassment or retaliation from occurring and will take immediate and appropriate action when it learns of such conduct.

The intent of this policy is to deter conduct that is offensive, inappropriate, and demeaning before it becomes unlawful discrimination or harassment. As such, the County will take appropriate corrective or remedial action to address any workplace inappropriate conduct, even if it is an

isolated incident or otherwise falls short of the definition of unlawful harassment under applicable law.

Employees who are found to have engaged in conduct prohibited by this policy shall be subject to appropriate corrective and disciplinary action, which may range from counseling up to and including termination.

APPLICABILITY:

This Policy applies to all County employees, supervisors, managers (both mid-level and senior management), and other staff whether full-time or part-time, elected officials, applicants for employment with the County, interns, volunteers, employees of contracted service providers, vendors, board members, customers, and visitors, and covers their treatment of each other as well as others with whom they come into contact at County workplaces and/or at County-sponsored and/or business-related activities and events.

This policy extends to conduct that occurs at any location that could be reasonably regarded as an extension of the workplace, such as any field location, offsite business-related social function, travel, training conference, County vehicle, or any other location or facility where County government business is being conducted and discussed.

The County's disciplinary authority may not extend to third parties who are not employees of the County; however, a complaint that such a person engaged in a violation of this Policy will be investigated in accordance with this Policy, as will a complaint made to the County by a third party if such complaint is related to the County's workplaces.

All County employees are expected to be respectful of their co-workers and members of the public, and to be sensitive to the effects of their behavior on those around them. Supervisors and managers are expected to serve as models of appropriate conduct for other employees and will be held to a higher standard of accountability.

DEFINITIONS:

Discrimination includes adverse or disparate treatment of any employee with respect to the terms, conditions, or privileges of employment including, but not limited to, hiring, firing, promoting, disciplining, scheduling, training, or compensation based on any category protected by local, state or federal law.

Harassment falls into two categories for purposes of this policy: **Unlawful Harassment** and **Awful Harassment**.

- **Unlawful Harassment** is unwelcome verbal or physical conduct that demeans, stereotypes, or shows hostility or aversion toward a person or group because of the individual's protected class, including a person's race, color, religion, ancestry, sex, pregnancy, national origin, age, disability, marital status, familial status, gender identity, gender expression, sexual orientation, veteran's status, actual or perceived status as a victim of domestic violence, dating violence or stalking, exercise of a constitutional or statutorily protected activity or any other protected category under applicable federal, state or local law.

Unlawful harassment is unwelcome conduct based on a protected class where the conduct:

- (1) Has the purpose or effect of creating an intimidating, hostile, humiliating, or offensive working environment;
- (2) Has the purpose or effect of unreasonably interfering with a person's work performance; or
- (3) Otherwise adversely affects a person's employment opportunities.

Unlawful Harassment can be a single serious incident or a series of incidents over time.

Examples of Unlawful Harassment include, but are not limited to:

- Epithets, slurs, insults, innuendo, or negative stereotyping comments related to a protected class;
- Mocking someone's accent, speech, attire or mobility;
- Acts or jokes that are hostile or demeaning to a protected class;
- Threatening, intimidating or hostile acts that relate to a protected class;
- Racially offensive words or phrases;
- Written or graphic material that insults, stereotypes or shows aversion or hostility to an individual or group because of a protected class and that is placed on walls, bulletin boards, email, voicemail or elsewhere on the premises of the workplace;
- Displays of symbols, slogans or items that are associated with hate or intolerance toward any select group, such as swastikas or nooses;
- Unwelcome or inappropriate physical contact;
- Physical assault or stalking;
- Displays or electronic transmission of derogatory, demeaning or hostile materials, including e-mails, text messages, or social media posts;
- Unwillingness to train, evaluate, assist, or work with an employee;
- Pranks or hazing directed at someone because of their protected class; and
- Physical aggression or gestures based on someone's protected class.

The harasser can be the employee's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the County, such as a board member, vendor, client, or customer.

Lack of Intent to Offend is Not a Defense: Unlawful Harassment is not determined by looking at the intention of the person who engaged in the behavior, but the impact on the recipient(s) of the behavior.

- **Awful Harassment** is inappropriate behavior that is outside the scope of anti-discrimination laws and that falls short of a violation of this Policy. The conduct, though unwelcome and offensive, is unrelated to any protected class and can be isolated (or infrequent) and includes, but is not limited to: occasional unwelcome compliments, questionable jokes, limited bullying, nonviolent threats, the use of profanity, and insults unrelated to any protected class.

The County may take necessary corrective or remedial action to appropriately address any workplace inappropriate conduct, even if it does not constitute a violation of this policy and/or meet the definition of unlawful harassment.

- **Distinction Between Harassment and Legitimate Management Action:** The dividing line between harassment and other work-related conflicts may, at times, be difficult to establish. Situations of conflict and tensions are not automatically, nor necessarily harassment. It is a manager's responsibility to manage their team. To this effect, a manager must make a number of decisions that have an impact on individual employees, such as the assignment of work tasks, the monitoring of progress against expected results, etc. A manager must also communicate on sensitive matters, such as giving performance feedback. Such managerial actions, decisions and communications to staff, which are made in good faith and based on legitimate reasons, are not considered harassment.

Sexual Harassment is a form of Unlawful Harassment that includes making unwelcome sexual advances, requests for sexual favors, or engaging in other verbal or physical acts of a sexual or sex-based nature where such conduct interferes with the employee's work performance or creates an intimidating, hostile or offensive working environment. The County prohibits Sexual Harassment and will take prompt and appropriate action in response to complaints or knowledge of violations of this Policy.

Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature are considered sexual harassment when:

- (1) Submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment;
- (2) It is used as a basis for employment decisions;
- (3) Submission to or rejection of such conduct by a person is used as the basis for decisions or actions related to the support or opposition of legislation or other legislative processes;
or
- (4) Such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating, or sexually offensive work environment.

Examples of Sexual Harassment include, but are not limited to, the following conduct:

(1) **Verbal Conduct**

- Sexual "kidding," epithets, jokes, and written or oral references to sexual conduct;
- Gossip regarding a person's sex life;
- Comment on a person's physical appearance, body or sexual activity, deficiencies or prowess;
- Sexually suggestive comments about a person's clothing;
- Vocal activity like catcalls or whistles;
- Leering or staring at a person or part of their body;
- Obscene letters, notes, emails, text messages, photographs, cartoons, articles or other written or pictorial materials of a sexual nature; and/or

- Sexting or sexual messages or images posted on social media, for example, texts, instant messages, Facebook posts, Tweets, Snapchat, Instagram, or blog entries.

(2) **Direct Sexual Propositions:**

- Persistent requests for dates, drinks or other personal contact after being informed that the interest is unwelcome;
- Inappropriate sexually themed communication in person, online or via mobile devices;
- Indecent exposure; and/or
- Unwelcome sexual advances or invitations, including but not limited to, requests for sexual activity or intimate meetings outside of the workplace.

(3) **Sexual Coercion and Retaliation:**

- Explicit or implicit requests for sexual activity or silence about harassment in exchange for reward, employment or career advancement, positive performance evaluations or references, employment stability and continuation, or any other such condition or potential employment benefit;
- Sexual coercion under threat of punishment, including transfer, demotion, firing, negative performance evaluations, or interfering with someone's access to employment or promotional opportunities; and/or
- Retaliating against an employee for refusing a sexual advance or for reporting an incident of possible Sexual Harassment per this policy or for the person utilizing other legal avenues for reporting.

(4) **Sexual Contact:**

- Unwanted physical touching or assault, or blocking or impeding another person's ability to move;
- Unwanted physical contact of a sexual nature, including, but not limited to, touching, pinching, patting, massaging, tickling, groping, or kissing.

Sexual Harassment may involve individuals of the same or different genders.

This list of examples is not exhaustive and there may be other behaviors that constitute violations of this policy. **Lack of intent to offend someone is not a defense to allegations of sexual harassment.**

Retaliation includes any adverse action taken against any individual (applicant or employee) because they complained about or opposed unlawful discrimination, harassment, or retaliation, or participated in an employment discrimination proceeding (such as an internal investigation or lawsuit), including as a witness. Retaliation also includes adverse action taken against someone who is associated with the individual who engaged in the protected activity, such as a spouse, relative, or friend.

Examples of Retaliation may include but are not limited to:

- Denial of a promotion, demotion, suspension, or termination;
- Warnings, reprimands, or poor performance evaluations;
- Transfer to an undesirable or inconvenient work location;
- Removing a person from a special assignment;
- Changing the person's role, responsibilities, or supervisory authority;

- Newfound scrutiny of work performance by a supervisor;
- Exclusion from meetings, training or other career development opportunities;
- Requiring re-verification of work status;
- Encouraging co-workers to shun or ignore the person;
- Exclusion from team meetings;
- Workplace surveillance;
- Assignment of disproportionate workload.
- Disparaging the person to others in person or on social media;
- Disparaging the person to potential new employers;
- Threatening legal action;
- Threatening immigration action; and/or
- Abusive or harassing verbal or physical behavior.

Discrimination, harassment, and retaliation are unacceptable in the workplace. Certain conduct or behavior may constitute a violation of this policy even if it does not constitute a violation of law.

PERSONAL USE OF SOCIAL MEDIA:

Inappropriate postings or communication on personal social media that include discriminatory remarks, harassment, bullying, threats of violence, or similar inappropriate or unlawful conduct constitute a violation of this policy.

Examples of this type of conduct might include offensive posts that disparage someone or contribute to a hostile work environment on the basis of race, color, religion, ancestry, sex, pregnancy, national origin, age, disability, marital status, familial status, gender identity, gender expression, sexual orientation, or actual or perceived status as a victim of domestic violence, dating violence or stalking, or any other category protected by local, state or federal law.

COMPLAINT REPORTING PROCEDURE:

Any employee who believes they have been a victim of unlawful discrimination, harassment, or retaliation prohibited by this policy shall immediately file a written complaint with the Human Rights & Fair Employment Practices Division (HRFEP) of the Human Resources Department or their Departmental Fair Employment Practices Liaison (FEPL). HRFEP accepts formal complaints of discrimination, oversees the investigation of such complaints, and assists in facilitating resolution of complaints through mediation.

The County is committed to treating all complaints seriously, and HRFEP will handle each complaint on a case-by-case basis, using a flexible approach that considers the wishes of the Complainant, as well as the nature and severity of the alleged conduct.

HRFEP staff members are available to discuss complaints and the complaint processes with employees, managers and applicants.

Complaint Filing Timeline:

Employees and applicants must initiate HRFEP’s complaint process **within 365 calendar days** of the alleged discriminatory action. However, employees are encouraged to immediately report misbehavior under this policy. Memories fade; evidence is lost; and the investigation process becomes more difficult, and may be less effective, with the passage of time.

Complaints may be submitted to HRFEP by any of the following methods:

- By visiting the office located at 111 NW 1st Street, 21st floor, Miami, Florida 33128;
- By fax at (305)375-2114;
- By e-mail at ofep@miamidade.gov;
- By using the web based complaint reporting system available at <http://www.miamidade.gov/humanrights>

Miami-Dade County encourages prompt reporting of complaints so that it may respond appropriately and perform an investigation before the conduct rises to the level of violating the law.

Complaints of harassment will be taken seriously and, where appropriate, investigated promptly to determine whether harassing or inappropriate conduct is occurring and, if so, to take and/or recommend prompt remedial steps.

The County will investigate any conduct that may constitute a violation of this policy, even in the absence of a formal complaint. The investigation may involve interviews of witnesses, supervisors, other employees, and an analysis of personnel documents and other records.

If an investigation confirms the existence of a violation of this policy, the County will pursue prompt corrective action, including remedial relief for the victim, and appropriate disciplinary action against the offender, and training. If no violations are found, HRFEP may make recommendations to improve the work environment.

Mandatory Reporting by Supervisors:

Managers and supervisors **are required** to promptly report via e-mail to the departmental FEPL or HRFEP at ofep@miamidade.gov, any knowledge or awareness of **Unlawful Harassment, Sexual Harassment** or **Retaliation**. A manager or supervisor who witnesses or otherwise has direct or indirect knowledge regarding such information and fails to report it commits a violation of this policy. Such violation may be subject to disciplinary action, particularly if it is determined that the manager or supervisor has engaged in a pattern of overlooking or failing to report harassment or retaliation.

Supervisors are required to report regardless of whether the recipient of the behavior has filed a complaint under this policy or even if the recipient requests that no action be taken. The FEPL and/or HRFEP will be responsible for assessing the information and coordinating how best to proceed in light of all the circumstances, including the wishes of the recipient of the behavior.

Bystander Reporting Encouraged:

Any employee who witnesses discriminatory, harassing or retaliatory conduct or becomes aware of such conduct or a violation of this policy is strongly encouraged to immediately report this information to their departmental FEPL and/or HRFEP.

Anonymous Complaints:

Individuals may submit anonymous complaints of discrimination, harassment, or retaliation through a web-based reporting system available at <http://www.miamidade.gov/humanrights>. All anonymous complaints will be reviewed and processed by HRFEP in accordance with this policy

and applicable procedures. In the event that the complaint provides information insufficient to conduct an investigation, HRFEP will take reasonable steps to obtain additional information.

Non-Employees:

- **Complaints by Non-Employees:** Third parties who are not employed by the County may avail themselves of the protections of this policy to the same extent as employees and supervisors. These Third Parties may include customers, visitors, lobbyists, contractors, vendors, board members, volunteers, security personnel, custodial staff, and others who work in and around County workplaces.
- **Complaints against Non-Employees:** County employees are encouraged to report **all** instances of policy violations that occur in the workplace, including those by non-employees. While the County's authority to impose sanctions on a non-employee is limited, upon receipt of a complaint of harassment or retaliation by a non-employee third party, HRFEP will follow the same process described herein to the greatest extent possible. Upon a determination that a complaint of harassment or retaliation by a non-employee is substantiated, the County will take all action reasonably necessary and practicable to stop the behavior and prevent its reoccurrence. This can include notification to the third party's employer, removal from an advisory board, exclusion from chambers or other legislative areas, protection orders, or other available and appropriate actions.

Right to File with External Agencies:

A person who files a complaint under this policy with HRFEP may still choose to file a complaint with the U.S. Equal Employment Opportunity Commission (EEOC), the Florida Commission on Human Relations (FCHR), and/or seek the advice of a private attorney. The contact information for both the EEOC and the FCHR is listed below:

EEOC – Miami District Office

100 S.E. 2nd Street, Suite 1500
Miami, FL 33131
Ph: (305) 808-1745
www.eeoc.gov

FCHR

4075 Esplanade Way, Room 110
Tallahassee, FL 32399
Ph: (800) 342-8170
fchr.myflorida.com

COMPLAINT RESOLUTION:

At the conclusion of the investigation, the HRFEP investigator will prepare a written report. The report will explain the scope of the investigation and whether any allegations in the complaint were substantiated.

HRFEP's investigative report will summarize the evidence and the findings (see range of findings below):

- **Finding of "No Violation" of the County's Policy on Unlawful Discrimination, Harassment, and/or Retaliation**
If there is a determination that the behavior investigated did not violate this Policy, the Complainant may appeal such a finding pursuant to the procedure described below. If retaliatory behavior occurs after the issuance of this determination, either party may bring a complaint under this Policy.

- **Finding of “Inappropriate Behavior Not Rising to the Level of a Violation” of the County’s Policy on Unlawful Discrimination, Harassment and/or Retaliation**

There may be a determination that the behavior was inappropriate and unprofessional but did not rise to the level of violating this Policy. Such inappropriate behavior may merit discipline, ongoing monitoring, coaching, training, or other appropriate action. If retaliatory behavior occurs after the issuance of this determination, either party may bring a complaint under this Policy.

- **Finding of “Violation” of the County’s Policy on Unlawful Discrimination, Harassment, and/or Retaliation**

If there is a determination that the behavior did violate this Policy, the Human Resources Director, in consultation with HRFEP and the Labor Relations Section, will make recommendations to the Department Director related to the appropriate corrective actions to be taken. In addition, where appropriate, the Human Resources Director may issue recommendations to ensure that the person who filed the complaint is not subjected to further discrimination or harassment, and to remedy the effects of any discrimination or harassment that may have occurred.

Remedial steps, at the discretion of the Department Director, may include, but are not limited to, counseling or training, separation of the parties, and/or discipline of the accused, including a written warning, suspension, demotion, or termination in accordance with County policy.

The County’s ability to discipline an individual who is not an employee (such as a customer, vendor or contractor) is limited by the degree of control, if any, the County has over such individual. Nonetheless, the County will seek to take appropriate action in response to violations of this Policy.

CONFIDENTIALITY:

Miami-Dade County will maintain the confidentiality of the complaint, and the privacy of the persons involved, including, but not limited to, the complainant, the accused and any witnesses, to the greatest extent possible under the law, consistent with its goal of conducting a thorough and complete investigation.

CONFLICT OF INTEREST:

In order to eliminate any real or perceived conflict of interest, every employee of the Human Resources (HR) Department has the option of filing a discrimination complaint directly with the Mayor or the Mayor’s designee. Additionally, HRFEP shall forward any complaints that pose a real or perceived conflict of interest to the Office of the Mayor for processing, including any complaint(s) against employees of HRFEP or any member of Human Resources’ senior management. A conflict of interest also exists where members of HR senior management have had prior substantive involvement in the matter giving rise to the HR employee’s complaint. Upon receipt of the complaint, the Mayor or the Mayor’s designee will assign the complaint to a Fair Employment Practices Liaison (FEPL) of another department for further review or investigation, if warranted.

When necessary or appropriate, the County may also hire a qualified third-party investigator to conduct a formal investigation of any complaint filed under this policy.

RIGHT TO APPEAL:

A complainant may have the right to appeal HRFEP’s determination and a hearing on such appeal

will be granted before a Hearing Examiner.

All appeal requests must be received within 15 days from receipt of the determination. If the appeal request is not received within 15 days from receipt, the determination will become final and the case will be closed.

A request for appeal must be submitted in person or by certified mail addressed to the Division Director of Human Rights & Fair Employment Practices, 111 N.W. 1st Street, Suite 2100, Miami, FL 33128. Appeal requests submitted via e-mail, facsimile or telephone will not be accepted.

If the complainant is an employee whose position is covered by a collective bargaining agreement and the complaint involves discipline, s/he may not be entitled to an appeal under this process. Employees should contact the Labor Relations & Compensation Division of HR at (305)375-4171 for further information regarding their right to appeal disciplinary action and/or the career service grievance process.

FAIR EMPLOYMENT PRACTICES LIAISONS:

Fair Employment Practices Liaisons (FEPLS) serve as liaisons between HRFEP and the Department(s) in connection with discrimination, harassment, retaliation, and fair employment complaints, including any efforts to resolve complaints informally through inquiries or mediation, and, in some cases, conduct internal investigations of complaints.

Upon receipt of a complaint, the FEPL must notify the complainant of the option to file a complaint directly with HRFEP. The FEPL must promptly notify HRFEP in writing of any complaint filed directly with the department, including information related to the complainant's allegations, supporting documents, and the department's plan to address and resolve the complaint.

The FEPL will take all complaints seriously and will make every effort to resolve the complaint internally as quickly as possible through counseling, informal inquiry, or a preliminary fact-finding investigation.

HRFEP will provide technical assistance and support to the FEPL, as necessary, to achieve final resolution of a complaint.

HRFEP may direct the FEPL to immediately stop all efforts to resolve the complaint internally and forward the complaint to HRFEP for review and formal investigation, if warranted.

Complaints filed directly with HRFEP that are based on unfair employment practices, but do not involve allegations of discriminatory conduct based on a protected class, may be referred to the FEPL for further review and appropriate management action.

A contact list for the Fair Employment Practices Liaison of each County Department is available at <http://www.miamidade.gov/humanrights/library/departamental-liaisons-updated.pdf>

MANDATORY TRAINING:

All County employees and supervisors are required to participate in trainings relating to this Policy in order to enhance prevention efforts, and to train employees about appropriate behavior,

reporting and complaint resolution. Such training will be scheduled and conducted by the Human Resources Department, or outside experts when necessary or appropriate.

Department Directors shall be responsible for ensuring that employees are apprised of this policy and that mandatory employee training is conducted timely.

The Human Resources Department will monitor departmental training compliance.

This Implementing Order is hereby submitted to the Board of County Commissioners of Miami-Dade County, Florida.

Approved by the County Attorney as
to form and legal sufficiency _____