

COUNTY OF ALBEMARLE
PERSONNEL POLICY

§P-21

EEOC POLICY STATEMENT INCLUDING
SEXUAL HARASSMENT POLICY

A. Generally

The policies contained in this section set forth provisions for initial and continuous employment of all personnel of Albemarle County. In addition to policies established by the Albemarle County Board of Supervisors, the division shall comply with all applicable state and federal laws and regulations.

B. Equal Employment Opportunity

Albemarle County shall adhere to a policy of equal employment opportunities for all employees. It is the policy of the Board to not discriminate against any employee because of race, color, religion, age, sex, disability, national origin, marital status, or physical disability except in situations where such disability will constitute an employment liability. Discrimination against any person shall be prohibited in recruitment, examination, appointment, training, promotion, retention, discipline, and any other aspect of personnel administration for any of the above-listed reasons, because of political or religious opinion or affiliation, or because of other non-merit factors.

The statement, "Albemarle County is an Equal Opportunity Employer," shall be placed on all employment application forms and shall be disseminated throughout Albemarle County. The County will abide by Section 504 of the Handicapped Rehabilitation Act and the American's with Disabilities Act.

C. Sexual Harassment

I. POLICY

Sexual harassment in the workplace is prohibited by the County because it erodes morale, impairs employees' work ability and violates state and federal law. All employees shall be responsible for abiding by this policy and promoting a workplace that is free of sexual harassment.

To ensure employees are informed of the County's Sexual Harassment Policy and trained on their rights and responsibilities under the policy, the Department of Human Resources (HR) will offer sexual harassment training to all new employees within 30 days of employment or appointment to the new position, and will offer training on an ongoing basis to existing employees. It is the department director/office administrator's responsibility to ensure new employees register for training. Additionally, all department directors/office administrators and supervisors should periodically attend refresher training on sexual harassment offered by HR and employees will receive a copy of the policy periodically.

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EEOC Policy Statement including Sexual Harassment Policy (continued)**II. IDENTIFYING SEXUAL HARASSMENT**

- A. **General Guidelines** – Acts of sexual harassment shall result in disciplinary action which may include dismissal. Under this policy, sexual harassment occurs whenever unwelcome conduct of a sexual, sex-based or gender-based nature affects a term or condition of employment or creates a hostile or abusive working environment. The conduct is measured against what an objective, reasonable woman or reasonable man, depending on the gender of the complainant, would consider sexually harassing. The complainant need not suffer any physical injury to be a victim of sexual harassment.

Sexual harassment may occur by a man against a woman, a woman against a man, a man against a man or a woman against a woman. Sexual harassment may occur by or against an employee, contractor or vendor. Sexual harassment may occur at the workplace, or away from the workplace, and may occur during or after work hours, if the conduct impacts the complainant's work environment.

- B. **Supervisor Duties** – Supervisors and department directors/office administrators are obligated to ensure that their employees are not subjected to sexual harassment from other employees, citizens, customers, contractors or vendors if they know or should have known that such sexually harassing behavior was occurring.
- C. **Supervisor/Subordinate Relationships** – Romantic relationships between supervisors and subordinates are never considered legally consensual and shall result in transfer or disciplinary action, depending on the circumstances, against one or both of the participants based on the needs of the County.
- D. **Consensual Relationships** – Employees involved in consensual relationships have an affirmative duty to notify the other party that continued non-work related contact is unwelcome as a precondition to filing a sexual harassment complaint.
- E. **Refusal to Disclose** – The County is not obligated to force an alleged victim of sexual harassment to reveal the name of their harasser if the victim refuses to disclose the name because the victim has talked with the harasser, resolved the matter to their satisfaction and represented in writing that they do not want the County to investigate the incident. However, the manner in which the County will handle these situations will be determined only after interviewing the victim and analyzing the facts and circumstances of each case.
- F. **Retaliation** – Retaliation exists when an individual is discriminated against for reporting sexual harassment or for cooperating, giving testimony, or participating in any manner in a sexual harassment investigation, proceeding or hearing. Retaliation is prohibited under this policy. Anyone who is being subjected to retaliation shall report it pursuant to Section IV of the policy and it shall be investigated and resolved in the same manner as sexual harassment complaints.

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- G. **Liability** – In addition to facing disciplinary action from the County, employees who engage in or permit sexual harassment, including supervisors who know or reasonably should know that such misconduct is occurring in their workplace, may face civil liability under federal anti-discrimination laws, such as Title VII of the Civil Rights Act (“Title VII”).
- H. **False Claims** – False allegations of sexual harassment shall constitute violations of the County’s standards of conduct and shall be cause for disciplinary action.

III. FORMS OF SEXUAL HARASSMENT

- A. One form of prohibited sexual harassment under this policy occurs when someone:
- (1) attempts to force an individual to submit to unwelcome sexual advances;
 - (2) requests sexual favors; or
 - (3) engages in unwelcome verbal or physical conduct of a sexual nature when submission is made a term or condition of employment or submission or rejection is used as a basis for employment decisions, including hiring decisions and provision of job benefits or failure to submit alters a term or condition of employment or results in a tangible change in employment status. Employment decisions, terms and conditions of employment and tangible changes in employment status may include promotions, demotions, compensation, termination, performance appraisals, and decisions causing a significant change of benefits, reassignment with significantly different responsibilities or disciplinary actions.
- B. Another form of prohibited sexual harassment under the policy occurs through the creation of a hostile work environment when unwelcome conduct of a sexual or gender-based nature unreasonably interferes with an individual’s work performance or creates an intimidating, hostile, abusive or offensive work environment. A hostile work environment can be created when any of the following behaviors are directed at another or when a third party overhears or observes such behaviors. The following are examples of behavior that may create a hostile work environment; however, generally, depending on its severity, one single isolated incident will not result in a hostile work environment but may still result in disciplinary action. The behaviors include but are not limited to:
1. Verbal harassment, insults, ridicule or acts of intimidation, aggression or abuse, based on gender
 2. Unwanted, intentional touching (i.e., patting, massaging, rubbing, hugging or pinching)

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3. Sexual or suggestive remarks about a person's weight, body, clothing, make-up, appearance or hairstyle
4. Demeaning or inappropriate sex-based terms, including intimate or offensive nicknames
5. Subjecting members of one sex to disadvantageous terms or conditions of employment to which members of the other sex are not subjected
6. Displaying or distributing sexually suggestive calendars, magazines, pin-ups, graffiti, pictures, cartoons, posters, software, e-mail or jokes
7. Repeated or continuing use of inappropriate gestures or profanity of a sexual nature
8. Telling sexual jokes or making sexual remarks, including sexual innuendo or comments with a double meaning
9. Unwelcome pressure to date or engage in sexual activities
10. Encouraging others to make inappropriate jokes, comments or advances
11. Commenting to a group on an individual's identification or complaint of sexual harassment
12. Commenting to a group, teasing an individual or telling lies or spreading rumors about issues of a sexual nature
13. Engaging in consensual sexual activity on the job
14. Displaying or fondling one's own intimate parts in front of others
15. Making facial expressions such as throwing kisses or licking lips or whistling at another in a sexually suggestive manner
16. Asking intimate or sexually probing questions
17. Boasting of sexual experiences or discussing sexual activities
18. Giving sexually explicit notes or pictures or sexually offensive items to another

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19. Stalking an individual by following them, making repeated telephone calls, etc., whether during or after work hours, and either asking them for sexual favors or otherwise harassing them
 20. Requesting sexual favors, accompanied by implied or overt threats concerning an individual's employment status or benefits or promise of preferential treatment with regard to an individual's employment status or benefits
- C. A third form of sexual harassment, sexual assault or battery, is prohibited by this policy and may constitute a crime. Substantiated allegations of sexual assault or battery constitute grounds for disciplinary action, including immediate leave without pay of the alleged harasser pending investigation. A finding of sexual assault or battery constitutes grounds for immediate dismissal. (Sexual assault or battery may include but is not limited to: Unwanted kissing, grabbing, pressing against or fondling of the intimate parts of another's body or rape or forcing another to touch the intimate parts of one's body.)

IV. ENFORCEMENT PROCEDURE

- A. **Complaint Procedure** – Any person covered by the policy who is being subjected to sexual harassment should tell the offender to stop the behavior unless they are uncomfortable doing so. If they are unable to tell the offender to stop or if the conduct reoccurs after the offender has been told to stop, the person shall make a complaint to their supervisor, department director/office administrator or HR.

If a complaint is not made within 300 days of the sexually harassing incident, the County is not obligated to investigate but may do so if, due to the nature of the complaint or the position of the alleged offender, the County concludes that an investigation will further the County's sexual harassment policy. However, if the complainant alleges an incident against an alleged harasser that occurred within 300 days and other incidents that occurred over 300 days ago, then all such incidents shall be considered by the investigator in determining the outcome of the complaint.

If a complaint is made against a person who is not in the complainant's department, then the complainant's supervisor or department director/office administrator shall contact and notify HR, which shall notify the alleged harasser's department director/office administrator and initiate an investigation.

- B. **HR Notification** – The department director/office administrator, supervisor (or other person to whom a sexual harassment complaint is made) shall immediately notify HR concerning a sexual harassment or sexual assault/battery complaint, regardless of whether they believe the complaint is valid, in all cases.

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If the complaint is made against an employee in the HR Department, the department director/office administrator, supervisor (or other person to whom a sexual harassment complaint is made) shall contact the County Attorney's Office for guidance. The County Attorney's Office shall evaluate the complaint and, in consultation with the County Executive, refer the complaint to an appropriate investigator for further action.

- C. **Previous Complaints** – If a department director/office administrator, supervisor or other person receives a complaint from an individual who previously complained about sexual harassment, whether or not the new allegations are against the same person, or if the complaint is against a person who has previously been accused of harassment, then HR shall be notified. If the person who receives the complaint is unsure whether a person has previously complained or previously been accused, he shall contact HR.
- D. **Complaint Involving Non-Employee** – If a complaint is filed by or against a contractor or vendor or against a customer or citizen, the department involved shall immediately notify HR. If the complaint is founded against a nonemployee, the investigator shall take appropriate action to ensure that the harassment ceases.
- E. **HR Investigation** – Upon notice to HR that a complaint of sexual harassment has been filed or received, the following procedures shall be followed:

Within five (5) calendar days of receipt of the complaint, HR will issue a Notice of Complaint to the alleged harasser.

One or more HR representatives shall conduct confidential, in-depth interviews with the complainant, witnesses, co-workers and the alleged harasser to gather all relevant information. After interviewing all relevant parties, the HR representative(s), in conjunction with the County Attorney's office, shall determine whether or not sexual harassment has occurred based on the evidence gathered during the investigation. The HR representative(s) shall suggest appropriate disciplinary actions in writing, if necessary, (i) to the alleged harasser's department director if the alleged harasser is subordinate to a department director; (ii) to the appropriate assistant county executive if the alleged harasser is a department director or (iii) to the County Executive if the alleged harasser is an assistant county executive or other County official who reports directly to the County Executive. HR shall also inform the complainant of the final outcome of the investigation. The complaint shall be resolved within 60 days if practicable. HR shall maintain all documents regarding sexual harassment in a confidential manner and advise the County Attorney's Office of the results of the investigation once it has been concluded.

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- F. **Accused Rights** – If accused of an act of sexual harassment, an individual: (1) shall be notified of the complaint as soon as possible, (2) shall be entitled to respond to the complaint; (3) shall receive discipline in conformance with the County's Personnel Policies and Procedures if the charges are substantiated; and (4) shall be entitled to utilize the County's Employee Grievance Procedure if the employee disagrees with the disciplinary action, if the employee is eligible to file a grievance and if the action is grievable.
- G. **Cooperation** – All County employees are required to cooperate in sexual harassment investigations.
- H. **Impeding Investigations** – Impeding an investigation or otherwise covering up a violation is prohibited.
- I. **Confidentiality** – All participants in the investigation, including the complainant and the alleged harasser, shall be required to keep the details and results of any investigation confidential, unless otherwise directed under this policy. However, this requirement shall not prevent communications with legal counsel or other legally protected communications, and shall not in any way interfere with rights protected under state or federal law.
- J. **Violation/Discipline** – In determining whether a violation of the policy has occurred, the investigator shall consider the totality of the circumstances, the nature of the act and the context in which the incident occurred. HR will make recommendations on situationally appropriate discipline. HR and the County Attorney's office shall be consulted if the department considers discipline that is different than the original recommendation. All violations of this policy, including violation of the retaliation, confidentiality, cooperation, impeding investigations and false/vindictive claims provisions, shall result in disciplinary action up to and including termination in accordance with the County's Personnel Policies and Procedures. Any employee who fails to report a sexual harassment incident to HR pursuant to this procedure or who allows sexual harassment to continue or fails to take appropriate corrective action or retaliates or discriminates against the complainant, or any other individual who cooperates in the investigation, shall be subject to discipline, up to and including termination. A complainant should report such a violation to HR for investigation.
- K. **Interim Remedial Measures** – After a complaint is received, interim remedial measures may be taken to protect the individuals involved and/or to protect the interests of the County. Any remedial measure may be reversed or modified pending final resolution of a complaint.
- L. **Follow-up** – Once a complaint has been resolved, HR will follow-up with the complainant periodically to ensure that the harassment has ceased and/or no retaliation is occurring.
- M. **Files** – The supervisor or department director/office administrator shall ensure that all documents and files regarding a sexual harassment investigation are maintained

in a confidential manner and that access to such files is restricted. Sexual harassment files shall be maintained separate and apart from any other files containing employee information. At the time that a supervisor or department director/office administrator leaves their position, all departmental files maintained pursuant to this section shall be delivered to HR.

For investigations conducted by HR, all documents, files and final reports shall be maintained in a confidential location in HR. Copies will be forwarded to the County Attorney's office. Upon request, the department director/office administrator and appropriate departmental leadership will be permitted to come to HR to review the report.

- N. **Grievance** – Eligible employees may use the County's Employee Grievance Procedure for relief from acts of sexual harassment that are not resolved to the satisfaction of the complainant. The Grievance Procedure time limits shall begin to run after the initial investigation is completed and the complainant is notified of the results.
- O. **Title VII** – Individuals may also consult with the Equal Employment Opportunity Commission concerning their rights under Title VII.

Legal References:

Civil Rights Act of 1964, as amended in 1972, Title VI, Title VII; 42 U.S.C. 2000e-z, 29 C.F.R. 1604.11 (1987); Executive Order 11246, 1965, as amended by E.O. 11375; Equal Employment Opportunity Act of 1972, Title VII; Education Amendments of 1872, Title IX (P.L. 92-318); 45 C.F.R., Parts 81, 86 (Federal Register June 4, 1975, August 11, 1975); rehabilitation Act of 1973; Age Discrimination in Employment Act, P.L. 95-256; Constitution of Virginia

Amended: August 4, 1993; January 3, 2007