

# CALAVERAS COUNCIL OF GOVERNMENTS

## Unlawful Discrimination and Harassment Policy (including Sexual Harassment)

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*The Calaveras Council of Governments maintains that all employees shall be treated in a fair and nondiscriminatory manner. The CCOG maintains a zero tolerance for unlawful discrimination and harassment.*

*The CCOG denounces verbal, visual and/or physical discrimination and harassment of an employee on the basis of race, religion, color, religious creed, national origin, age, sex (including pregnancy, childbirth or related medical conditions), marital status, sexual orientation (heterosexuality, homosexuality, bisexuality and gender identity), medical condition (cancer and genetic information including family medical history), or disability (medical, mental and physical, including HIV and AIDS), and denial of family medical care leave and pregnancy leave.*

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### **INTRODUCTION**

*Some workplace problems may stem from actions motivated by interpersonal issues, distrust of or demands of superiors or peers, disputes over wages, hours, and working conditions, or the exercise of management rights. Depending on the circumstances, these actions are not necessarily illegal under Federal and State discrimination and harassment laws. Relevant Memoranda of Understanding (MOU's) may provide recourse through grievance procedures for some grievances or problems not illegal per se under Federal and State laws.*

*On the other hand, Federal and State Law makes illegal various forms of discrimination, often manifested through harassment, based on race, religion, color, religious creed, national origin, age, sex (including pregnancy, childbirth or related medical conditions), marital status, sexual orientation (heterosexuality, homosexuality, bisexuality and gender identity), medical condition (cancer and genetic information including family medical history), or disability (medical, mental and physical, including HIV and AIDS), and denial of family medical care leave and pregnancy leave.*

*The focus and coverage of the language that follows is on conduct that is clearly illegal in the workplace under Federal and State Discrimination Laws.*

### **POLICY**

*It is the policy of the County of Calaveras that all employees shall be treated in a fair and nondiscriminatory manner. The County maintains a zero tolerance for unlawful discrimination and harassment. Unlawful discrimination and harassment undermines the policies of the County and the rights guaranteed to employees under both Federal and State laws. The County denounces verbal, visual and/or physical discrimination and harassment of an employee on the basis of race, religion, color, religious creed, national origin, age, sex (including pregnancy, childbirth or related medical conditions), marital status, sexual orientation (heterosexuality, homosexuality, bisexuality and gender identity), medical condition (cancer and genetic information including family medical history), or disability (medical, mental and physical, including HIV and AIDS), and denial of family medical care leave and pregnancy leave. Any County officer or employee who violates this Policy shall be subject to sanctions or discipline, up to and including the possibility of dismissal to the extent permitted by law, including the provisions of Chapter 2.64 of the Calaveras County Code, the County's Personnel Ordinance.*

*This Policy reaffirms Calaveras County Code subsection 2.64.535 but also is designed to supplant and supersede all previous County policies and resolutions purporting to address the issue of unlawful discrimination or sexual harassment.*

## **DEFINITIONS**

A. *Unlawful discrimination and/or harassment means and includes but is not limited to the following conduct when motivated by, based upon, reflecting, or concerning race, religion, color, religious creed, national origin, age, sex (including pregnancy, childbirth or related medical conditions), marital status, sexual orientation (heterosexuality, homosexuality, bisexuality and gender identity), medical condition (cancer and genetic information including family medical history), or disability (medical, mental and physical, including HIV and AIDS), and denial of family medical care leave and pregnancy leave.*

1. *Making or using derogatory, degrading, or condescending comments, slurs, jokes or epithets; or*
2. *Assaulting, touching, impeding, or blocking movement, making derogatory gestures, any physical interferences with normal work movement; or*
3. *Displaying derogatory, degrading, condescending, or offensive posters, letters, poems, graffiti, cartoons, or drawings; or*
4. *Jokes or derogatory, disparaging, derisive or offensive comments, or inappropriate/unprofessional use of slang or foul language which can be heard by those in the vicinity; or*
5. *Persistent or frequent questions or comments without excuse or justification delving into an employee's private life which are reasonably viewed as invading the employee's privacy; or degrading, condescending or impudent comments about an employee's appearance, dress or anatomy; or*
6. *Circulating material by any method which tends to ridicule, or other forms of ridicule or insults, regardless of whether the ridicule is directed at specific individuals; or*
7. *Retaliation or retaliatory action directed against an unlawful harassment complainant or one who facilitates the investigation of unlawful discrimination/harassment.*

B. *Sexual discrimination or harassment means and includes but is not limited to:*

1. *All of the conduct described in A(1)-(7), above, when it is of a sexual nature or related to gender or a sexual harassment complaint;*

2. *Deliberate, repeated, or unwelcome sexual advances, offering employment benefits in exchange for sexual favors, or making or threatening reprisals after a negative response to sexual advances;*
3. *Conversations with sexual innuendo such as sexually suggestive comments or jokes or comments of a sexual nature, or vulgar, derogatory or insensitive comments about gender or anatomy, which can be heard by those in the vicinity where the conversation takes place;*
4. *Persistent or frequent questions without excuse of justification delving into an employee's private life which are reasonably viewed as invading the employee's privacy or as appealing to one's prurient interests; requests for sexual favors; or degrading, condescending or impudent comments about an employee's appearance, dress or anatomy;*
5. *Repeated social invitation when the invitee has previously indicated that he or she is not interested in accepting such invitations;*
6. *Circulating material by any method which ridicules gender or which is sexually suggestive, or which ridicules or insults sex or gender, regardless of whether the conduct is directed at specific individuals;*
7. *Undesired intentional physical contact (e.g., embracing, touching, pinching), or any threats or suggestions of undesired contact;*
8. *Display of sexually suggestive calendars, objects, cartoons, computer applications or similar displays;*
9. *Continued abuse of familiarities, diminutives, or inappropriate behavior such as whistling, catcalls, offensive gestures or leering;*
10. *The awarding of favorable ratings, promotions or salary considerations based on sexual favors or acceptance of sexually motivated social invitations, regardless of whether the employee welcomes the invitations.*

**C. COMPLAINT** means:

*A CCOG employee or officer who alleges he/she has been subjected to any of the conduct falling within or described in section A or B above.*

**D. HARASSER** means:

*A CCOG employee or officer accused of engaging in unlawful discrimination and/or harassment or sexual discrimination and/or harassment.*

## **OCCURRENCE OF DISCRIMINATION OR HARASSMENT**

*Unlawful discrimination or harassment occurs when an individual's conduct is motivated by another individual's race, religion, color, religious creed, national origin, age, sex (including pregnancy, childbirth or related medical conditions), marital status, sexual orientation (heterosexuality, homosexuality, bisexuality and gender identity), medical condition (cancer and genetic information including family medical history), or disability (medical, mental and physical, including HIV and AIDS) and that conduct:*

- 1. Unreasonably interferes with another individual's work performance; or creates an intimidating, hostile, or offensive working environment; or*
- 2. Influences or affects another individual's career (salary, employment conditions, position, or other aspects of career development).*

## **TAKING STEPS TO STOP THE PROBLEM/SELF-HELP**

*Some discrimination and/or harassment may be stopped by the complainant taking the initiative and telling or informing the harasser to stop the unwanted conduct. This process is known as "self-help." Nevertheless, no complainant should engage in self-help if doing so could result in an unacceptable level of tension or a physical altercation, or the threat of either one.*

*Discrimination and harassment are serious matters. No one is expected to tolerate it. However, some people who engage in harassment are unaware that their conduct is offensive and will stop if told to do so. Therefore, whenever it is reasonably possible under the circumstances, a complainant should tell the harasser in person, in clear and unambiguous words, that the conduct is offensive and ask the harasser to stop. If, under the circumstances, it is not possible to do this in person, then the complainant should do so in writing.*

*In either case, as an aid to any future investigation, the complainant is strongly encouraged to inform his or her Executive Director or Sr. Administrative Analyst (who would forward complaint to the Council Chair) that he or she had to engage in self-help. Failure to do so could limit the options available to management in assisting the complainant should the need arise in the future.*

## **COMPLAINT PROCEDURE**

1. *If a complainant who has a complaint about unlawful harassment, including sexual harassment, is not able to satisfactorily resolve the complaint using the self-help procedures (or if the self-help procedures are not appropriate under the circumstances), that person shall then file a formal complaint with the Executive Director. The name, address and telephone number of the Executive Director and any designee(s) for receipt of unlawful harassment complaints shall be posted in the CCOG office.*
2. *All filings must be made as soon as possible after the date of the alleged incident of unlawful harassment. Also, if employees keep a written record of alleged harassment/discrimination or sexual harassment, they also must notify the Sr. Administrative Analyst or other appropriate manager of the facts and of their efforts at self-help, if any. Otherwise, the CCOG cannot take steps to protect the employee as a "complainant" and the CCOG's ability to respond to the complaint and/or take any corrective action may be hampered.*
4. *The Sr. Administrative Analyst shall provide model complaint forms, which complainants are encouraged but are not required to use. (A copy of the complaint form is attached to this policy). However, should a complainant feel more comfortable reporting the matter to the Sr. Administrative Analyst (or designee) by letter or orally in person or by telephone, then the complainant should and is encouraged to do so. However, regardless of the form the complaint takes, in order to properly investigate the matter, the following information, at a minimum, will need to be provided as soon as possible after the alleged incident:*
  - a. *The name and job title of the complainant.*
  - b. *The name of the harasser or person who is the alleged cause of the unlawful harassment and a specific description of the incident.*
  - c. *A clear and complete description of the specific act(s) or omission(s) which are alleged to have caused the unlawful harassment.*
  - d. *A clear and complete statement of the relief or corrective action being sought.*
  - e. *The name of all witnesses, employees, or other persons, if any, who saw or heard the unlawful discrimination/harassment or sexual harassment.*
5. *Any employee must lodge a complaint with the Executive Director (or CCOG Counsel, if appropriate) if they witness or are apprised of an incident reportable under this Policy. Any employee who witnesses any incident of unlawful harassment is **strongly** encouraged to report the matter to the Executive Director*

*by lodging an unlawful harassment complaint. Failure to do so may impair a proper and satisfactory resolution of the problem.*

- 6. The CCOG shall strive to conduct an investigation promptly. Every investigation shall be undertaken by the Executive Director or other designee. At a minimum, the Executive Director or designee shall meet with the complainant, alleged harasser, and other witnesses. Before completion of the investigation, the Executive Director or designee shall meet with the complainant to discuss the preliminary findings and preliminary disposition.*
- 7. After completing the investigation, the Executive Director or a designee shall issue a written, final disposition with specific recommendations to all parties involved.*
- 8. The final disposition and recommendations shall be mailed or delivered to the complainant.*
- 9. If the final disposition reflects a finding of no harassment, or a finding that is inconclusive, no documentation relating to the investigation shall be placed into the personnel file of the alleged harasser. However, the CCOG reserves the right to reaffirm this policy with the alleged harasser and/or warn the alleged harasser in writing that subsequent accusations may not be without consequences. Such written reaffirmations or warnings shall not become part of the alleged harasser's personnel file but shall be filed separately and kept confidential by the Executive Director.*
- 10. Any officer or employee who if found, after investigation, to have engaged in unlawful harassment will be subject to appropriate sanctions depending on the circumstances – from a Counseling Memo up to and including termination. Final documentation of such sanctions shall become part of the officer's or employee's personnel file.*
- 11. Generally Applicable Conditions:*
  - a. All documents, communications, and records dealing with the processing of a complaint shall be filed in a separate complaint file and shall not become part of a personnel file of the complainant. Such documentation will not become part of the file of an alleged harasser unless the harasser is disciplined, upon which the harasser is entitled to all documentation relied upon as a basis for discipline. Certain communications and documentation may be covered by attorney-client privilege or work-product rules, and therefore, are not subject to disclosure.*

*b. The complaint procedure described above shall be in force as of the effective date of this policy. Complaints of unlawful discrimination/harassment or sexual harassment should be filed under this Policy before resorting to other existing procedures. Failure to do so can only hamper or delay the CCOG's ability to take corrective action, if necessary, it is the CCOG's intent to process complaints of unlawful discrimination/harassment or sexual harassment exclusively under this policy, although such process and outcome may be relevant and/or utilized in other forums chosen by a complainant.*

*c. All verbal and written communications by a complainant, harasser, and/or witness with that Director of Human Resources (or designee) in connection with an investigation shall be treated with respect and discretion in order to avoid undue embarrassment or distraction; however, there should be no expectation of secrecy or privacy in connection with such communications because of their potential relevance in current or future internal, administrative, or judicial proceedings.*

*12. Within a reasonable period of time (considering the nature of and circumstances surrounding the complaint) following the disposition of the unlawful harassment complaint, the Executive Director (or designee) shall inquire into the status of any corrective action taken and report the status of the matter to the CCOG Chair.*

## **COMPLIANCE**

*The CCOG may be held liable for unlawful discrimination/harassment, including sexual harassment, if its management or supervising officers knew, or should have known, of such unlawful discrimination and/or harassment and failed to take immediate and appropriate corrective action to end the unlawful conduct. Therefore, all CCOG officers and employees shall comply with the provisions of this Policy. Any violation of this Policy shall be cause for imposition of discipline, up to and including the possibility of dismissal to the extent permitted by law.*

## **PREVENTION OF HARASSMENT**

*1. Prevention is the best method for avoiding discrimination and harassment, including sexual harassment. The Sr. Administrative Analyst shall disseminate this Policy to all employees. Records of acknowledgement shall be maintained by the Sr. Administrative Analyst.*



2. The CCOG shall strive to provide continual guidance, training, and assistance to department heads and to management, supervisors and employees for dealing with unlawful discrimination/harassment, including sexual harassment.

### **INDEPENDENT CONTRACTORS**

*This Policy shall also apply to persons employed to do work for the CCOG as independent contractors, and to CCOG vendors and suppliers. Persons who believe they have been harassed by such an independent contractor, vendor or supplier should utilize the procedures described in this Policy to resolve such complaints.*

### **STATE AND FEDERAL PROCEDURES**

*In addition to the procedures described in this Policy an employee or complainant may direct complaints about discrimination/harassment or sexual harassment to the California Department of Fair Employment and Housing (DFEH), California Labor Commissioner, or the Equal Employment Opportunity Commission (EEOC). Please note, however, that reporting incidents of harassment to these outside agencies does not relieve officers and supervisors from their obligations under this Policy. Moreover, an employee's reporting an alleged incident of unlawful harassment to an outside agency, but not following the complaint procedures under this Policy, can result in impairment or delay in taking corrective action on the part of the CCOG to the detriment of the complainant, for which the CCOG will not be responsible.*

### **PRIVATE CONTRACT OR OUTSIDE AGENT INVESTIGATION AUTHORITY**

*If a complainant involves the Executive Director or CCOG Council, the complainant procedures described above also shall apply. However, investigation of the matter will occur through private contractor or outside agency.*

**CALAVERAS COUNCIL OF GOVERNMENTS**  
**Discrimination/Harassment Complaint Form**

1. \_\_\_\_\_  
*Complainant's Full Name*

\_\_\_\_\_  
*Job Title*

\_\_\_\_\_  
*Department, Address, Work Phone*

2. \_\_\_\_\_  
*Name of the person who is accused of causing the harassment.*

\_\_\_\_\_  
*Date on which the alleged harassment took place. Month Day Year*

*Check all that apply below for the basis you believe you were harassed:*

- |                                                                |                                                               |                                                    |
|----------------------------------------------------------------|---------------------------------------------------------------|----------------------------------------------------|
| <input type="checkbox"/> <i>Race</i>                           | <input type="checkbox"/> <i>Ancestry</i>                      | <input type="checkbox"/> <i>Sex</i>                |
| <input type="checkbox"/> <i>Religion</i>                       | <input type="checkbox"/> <i>Physical or Mental Disability</i> | <input type="checkbox"/> <i>Sexual Orientation</i> |
| <input type="checkbox"/> <i>Color</i>                          | <input type="checkbox"/> <i>Medical Condition</i>             | <input type="checkbox"/> <i>Age</i>                |
| <input type="checkbox"/> <i>National Origin</i>                | <input type="checkbox"/> <i>Marital Status</i>                |                                                    |
| <input type="checkbox"/> <i>Denial of Family Medical Leave</i> |                                                               |                                                    |

3. *Explain how you believe the harassment towards you took place. (Attach any additional sheets if necessary).* \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. *Note Date(s), Time(s), and Location(s) of incident(s).* \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

5. *Name(s) of witnesses, if any.* \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

6. *What corrective action or remedy you are seeking?* \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**WAIVER OF CONFIDENTIALITY**

I, \_\_\_\_\_, have read Paragraph 11(c) and consent to the release of information by the CCOG only as it deems necessary to investigate and prosecute any disciplinary proceedings.

\_\_\_\_\_  
*Signature* \_\_\_\_\_  
*Date*

*When completed, please return to the CCOG Executive Director or designee for receipt of unlawful harassment complaints (see posting in CCOG Office).*

**ACKNOWLEDGEMENT**

*I have received the Unlawful Discrimination/Harassment Policy, read and understand its contents and am aware that copies of CCOG policies regarding unlawful discrimination and harassment are available from the CCOG Office and that if I have any questions, I may contact the Executive Director.*

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Print Name**