

SECTION 403: DISCRIMINATION, HARASSMENT AND RETALIATION POLICY

403.1 POLICY: It is the policy of Black Hawk County that all employees are entitled to a work environment in which all individuals are treated with courtesy and respect, free of discrimination and harassment. Each individual has the right to work in a professional atmosphere that promotes equal employment opportunities and prohibits discriminatory practices, including harassment. Therefore, Black Hawk County expects that all relationships between individuals in the workplace will be business-like and free of bias, prejudice and harassment. Any employee found to have engaged in harassing behavior will be disciplined up to and including discharge.

Discrimination, harassment and retaliation are prohibited by federal, state, and local laws¹. This policy addresses discrimination and harassment based upon race, creed, color, national origin, citizenship status, religion, age, sex (whether or not of a sexual nature), pregnancy, mental or physical disability, military or veteran status, sexual orientation, gender identity, or any other characteristic or activity protected by law. Black Hawk County prohibits its employees from discriminating against or harassing any other employee, applicant, customer, vendor or visitor. Allegations of discrimination or harassment will be investigated and dealt with in a fair, unbiased and timely manner. Corrective action will be taken as warranted by the facts. Black Hawk County prohibits retaliation against any individual who reports discrimination or harassment or participates in an investigation of such a report.

403.2 SCOPE: This policy applies to all Black Hawk County employees, to non-employees who have business contact with County employees, and to all individuals conducting business on behalf of or representing Black Hawk County. Conduct prohibited by these policies is unacceptable in the workplace and in any work-related setting outside the workplace such as during business trips, business meetings, and business-related social events. These policies prohibit discrimination, harassment and retaliation whether engaged in by fellow employees, by a supervisor or manager, or by someone not directly connected to Black Hawk County (e.g., an outside vendor, contractor, consultant or customer).

Whenever the provisions of this policy are in conflict with federal or state laws or regulations, or with a current collective bargaining agreement between the County and a certified bargaining unit, the provisions of the collective bargaining agreement and/or the laws or regulations shall prevail.

403.3 DEFINITIONS:

A. **DISCRIMINATION:** It is a violation of this policy to discriminate in the provision of employment opportunities, benefits, or privileges, to create discriminatory work conditions, or to use discriminatory evaluative standards in

¹ Title VII of the Civil Rights Act of 1964; Civil Rights Act of 1991; Age Discrimination in Employment Act; Pregnancy Discrimination Act; Americans with Disabilities Act; Executive Order No. 11246; Uniformed Services Employment and Reemployment Rights Act; Immigration Reform & Control Act; Code of Iowa Chapters 29A, 216, and 729; and City of Waterloo Human Rights Ordinance 4064.

employment if the basis of that discriminatory treatment is, in whole or in part, the person's race, creed, color, national origin, citizenship status, religion, age, sex, pregnancy, mental or physical disability, military or veteran status, sexual orientation, gender identity, or any other characteristic or activity protected by law.

B. **HARASSMENT:** Harassment is a form of discrimination and includes conduct towards another individual or identifiable group of individuals including, but not limited to, unwelcome comments or other conduct that unreasonably interferes with an individual's work or creates an intimidating, hostile, or offensive working environment.

1. Sexual harassment is defined in the Equal Employment Opportunity Commission Guidelines as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when, for example:

- (1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- (2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- (3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Sexual harassment may include a range of subtle and not so subtle behaviors and may involve individuals of the same or different gender. Depending upon the circumstances, these behaviors may include, but are not limited to: unwanted sexual advances or requests for sexual favors; sexual jokes and innuendo; verbal abuse of a sexual nature; commentary about an individual's body, sexual prowess or sexual deficiencies; leering, catcalls or touching; insulting or obscene comments or gestures; display or circulation in the workplace of sexually suggestive objects or pictures (including through e-mail); and other physical, verbal or visual conduct of a sexual nature. Sex-based harassment—that is, harassment not involving sexual activity or language (e.g., male manager yells only at female employees and not males)—may also constitute discrimination if it is severe or pervasive and directed at employees because of their sex.

Sexual harassment does not refer to behavior or occasional compliments of a socially acceptable nature. It refers to behavior that is unwelcome or personally offensive to the recipient, and that lowers morale and therefore interferes with work effectiveness.

2. Harassment on the basis of any other protected characteristic or activity is also strictly prohibited. Under this policy, harassment is verbal or physical conduct that denigrates or shows hostility or aversion towards an individual because of his/her race, creed, color, national origin, citizenship status, religion, age, mental or physical disability, military or veteran status, sexual

orientation, gender identity, or any other characteristic or activity protected by law or that of his/her relatives, friends, or associates, and that:

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

Harassing conduct includes, but is not limited to: epithets, slurs or negative stereotyping; threatening, intimidating or hostile acts; denigrating jokes and display or circulation in the workplace of written or graphic material that denigrates or shows hostility or aversion toward an individual or group (including through e-mail).

C. RETALIATION: Retaliation against an individual for reporting harassment or discrimination, or for participating in an investigation of a claim of harassment or discrimination, is a serious violation of this policy and, like harassment or discrimination itself, will be subject to disciplinary action up to and including termination.

403.4 RESPONSIBILITIES:

A. EMPLOYEES: Each employee is responsible for considering the potential impact of his/her actions. For the purpose of this policy, employees will be held accountable for their behavior, not for the intent of their behavior.

An employee who feels harassed should point out the behavior to the harasser and ask that the behavior stops. Failure to do this does not preclude an employee from filing a complaint.

If an employee wishes to make an internal complaint, the procedure in Section 403.5 below should be used. Any employee witnessing harassment should report the harassment to a supervisor, Department Head, or the Human Resources Department.

B. SUPERVISORS: A supervisor witnessing or otherwise possessing knowledge of harassment shall timely report it to his/her Department Head or the Human Resources Department, or the Chair of the Board of Supervisors if the Department Head or Human Resources Department is the alleged offender. A supervisor who fails to appropriately address incidents of harassment shall be subject to discipline up to and including discharge.

C. DEPARTMENT HEADS: Department Heads (including elected officials) are responsible for disseminating the provisions of this policy to employees, notifying the Human Resources Department of reported incidents, and conducting preliminary investigations of reported incidents.

D. HUMAN RESOURCES DEPARTMENT: The Human Resources Department is responsible for overseeing preliminary investigations of reported incidents conducted by Department Heads, arranging for or facilitating mediation or other informal problem resolution measures between the parties when deemed appropriate, and conducting investigations of formal complaints made under paragraph B(2) below. The Human Resources Department is also responsible for updating and disseminating harassment information to Department Heads and for conducting or arranging harassment training when deemed necessary.

403.5 REPORTING AND COMPLAINT PROCEDURES: Early reporting and intervention have proven to be the most effective method of resolving actual or perceived incidents of harassment. Therefore, while no fixed reporting period has been established, the County requires the prompt reporting of complaints or concerns so that rapid and corrective action can be taken. Black Hawk County will make every effort to stop alleged harassment before it becomes severe or pervasive, but can only do so with the cooperation of its employees.

A. The availability of a complaint procedure does not preclude individuals who believe they are being subjected to harassing conduct from promptly advising the offender that his or her behavior is unwelcome and requesting that it stop. Persons so told should comply immediately and graciously with such requests.

B. An employee who encounters harassment, discrimination or retaliation may elect to make either an informal or formal complaint to the County. The type of complaint made will determine the resolution procedure to be followed, as summarized in subparagraphs (1) and (2) below. If a complainant initially chooses to make an informal complaint and is subsequently dissatisfied with the process, he/she may initiate a formal complaint at any time.

1. County's Informal Complaint and Resolution Procedure. Incidents of harassment, discrimination, or retaliation should be promptly reported to the employee's supervisor, Department Head or the Human Resources Department. Either the Department Head or the Human Resources Department may conduct a preliminary investigation of the complaint. In many cases, an informal warning to an alleged offender, combined with appropriate follow-up supervision and monitoring of the employee's behavior may be sufficient to prevent or stop the offensive conduct. If a supervisor or Department Head receives the complaint, he/she shall make note of the complaint and promptly forward it to the Human Resources Department.

Alternatively, some complaints may be resolved through informal mediation between the two parties. If appropriate, the Human Resources Department will arrange for or facilitate mediation between the parties or coordinate other informal problem resolution measures. If mediation is successful, a written settlement agreement will be prepared and signed by both parties with the Human Resources Department's approval. Generally, a mediation agreement includes:

- 1) A pledge by the respondent not to engage in any behavior that could be construed as in violation of this policy;
- 2) A promise by the respondent not to retaliate against the complainant;
- 3) The restoration of any employment terms, conditions, or opportunities the complainant lost or was denied because of the alleged harassment, discrimination or retaliation; and
- 4) Procedures for monitoring compliance with the agreement.

2. County's Formal Complaint and Resolution Procedure. The Human Resources Department or his/her designee will investigate any reported allegations of harassment, discrimination or retaliation promptly, thoroughly and impartially. If the alleged harasser is the Human Resources Department, the complaint may be filed with the Chair of the Board of Supervisors, who will then conduct (or designate an appropriate representative to conduct) the investigation.

The investigation to determine whether there is a reasonable basis for believing that an alleged violation of this policy occurred may include individual interviews with the parties involved and, where necessary, with individuals who may have observed the alleged conduct or who may have other relevant knowledge. If during the investigation it is found that others may have aided or compelled an individual in conducting the alleged offense, they will be required to respond to the allegations as well.

Following the investigation, the Human Resources Department or his/her designee will make a written report and recommendation to the alleged offender's Department Head and the Board of Supervisors. Based upon the results of the investigation, the investigator may recommend remedial measures or disciplinary action up to and including termination to the alleged offender's Department Head, or to the Board of Supervisors in the event the alleged offender is a Department Head. The Department Head or Board of Supervisors, as appropriate, shall consider the recommendation and make the final determination as to any corrective action taken.

If the investigation is inconclusive or it is determined that there has been no harassment or discrimination in violation of this policy, but some potentially problematic conduct is revealed, preventative action may be taken.

After the investigation is concluded, the Department Head and/or the Human Resources Department (or Board of Supervisors Chair or his/her designee in the event the complaint concerned a Department Head or the Human Resources Department) shall meet with the alleged offender and the complainant separately to notify them in person of the overall findings of the investigation.

3. External Complaint Procedure. Any employee who feels he/she has encountered discrimination, harassment, or retaliation may file a complaint with

the Iowa Civil Rights Commission or any other state or federal agency with jurisdiction over these matters.

C. Upon receipt of a formal complaint, the Human Resources Department will discuss the allegations with the alleged offender's Department Head, or a member of the governing Board in the event the alleged harasser is a Department Head. If the initial evidence warrants, the alleged offender may be placed on investigatory suspension pending a final determination of the complaint. In the event the allegations are not substantiated, the alleged offender will return to work with pay retroactive to the date of suspension.

D. Black Hawk County shall deal with misconduct constituting harassment, discrimination or retaliation promptly and appropriately. Responsive action may include, for example, training, referral to counseling, monitoring of the offender, and/or disciplinary action such as an oral or written warning, reassignment, demotion, temporary suspension without pay, or termination, as deemed appropriate under the circumstances.

E. Investigations and their determinations are confidential. To conduct an effective formal investigation, however, it may be necessary to reveal information regarding the complaint to the alleged offender and potential witnesses. During the investigation process, any notes or documents written by or received by the investigator will be kept confidential to the extent not violative of any existing federal or state law.

Disclosure of information without permission of the Human Resources Department shall be subject to disciplinary action. The Human Resources Department will disclose such information according to the provisions of this policy.

403.6 RETALIATION, REPRISALS, AND FALSE ACCUSATIONS: Retaliation and reprisal against any complainant and/or witness are prohibited. Employees or supervisors found to have participated in acts of retaliation and reprisal will be subject to discipline up to and including discharge. The County considers harassment to be a very serious offense, and recognizes the significance that a complaint and subsequent investigation can have upon employees. Filing false accusations are, therefore, a violation of work rules subject to disciplinary action up to and including discharge.