

NEZ PERCE COUNTY
DISCRIMINATORY WORKPLACE HARASSMENT POLICY AND COMPLAINT PROCEDURE
December 12, 2011

A. PURPOSE

The purpose of this Harassment Policy is to clearly establish the County's commitment to work to provide a work environment free from unlawful harassment, to define discriminatory harassment, and to set forth the procedures for investigating and resolving internal complaints of harassment. Because of the importance of a workplace free from unlawful harassment, this policy should be reviewed with each employee on a regular basis.

It is important that all employees treat all other employees and members of the public with decency and respect. It is the responsibility of each and every employee, supervisor and Department Head and Elected Official to prevent inappropriate behavior in the workplace. Inappropriate behavior which impacts the workplace, or has the potential to impact the workplace, will **not** be tolerated.

This Policy applies to all terms and conditions of employment, including but not limited to, hiring, placement, job retention, promotion, disciplinary action, layoff, reinstatement, transfer, leave of absence, compensation and training.

Whenever an action is contemplated by this policy and described as that action "should" be taken, it is the intent of this policy that the action will be taken unless in the opinion of the Prosecutor extraordinary circumstances exist that make such action inappropriate.

B. POLICY

Harassment of an applicant for employment, a member of the public, or an employee by any employee of the County on the basis of race, color, religion, national origin, sex, age (40 and over) and disability is in violation of State and/or Federal law and will not be tolerated by **Nez Perce County**.

Employees found to be participating in any form of employment-related unlawful harassment or retaliating against another employee for filing a complaint or cooperating with an investigation shall be subject to disciplinary action up to and including termination of employment.

C. RESPONSIBILITIES

The County: It is the responsibility of the County to develop this policy, provide training on this policy, keep it up to date, and to ensure that any violation of this policy brought to its attention is dealt with as required by law and according to this Policy.

Supervisors, Department Heads and Elected Officials: It is the responsibility of supervisors, Department Heads and Elected Officials to enforce the policy, to train new employees on the policy, to make a regular review with all employees to ensure they know the policy and to regularly check the workplace to make sure the policy is being followed.

If a supervisor observes that unlawful discrimination, harassment or retaliation is occurring, he/she should take immediate action to address the problem. Such action should include, but is not limited to, speaking directly with the affected person, developing a specific account of the actions, omissions or occurrences that are deemed discriminatory, consulting with the supervisor, or a Department Head and/or Elected Official and taking corrective or disciplinary action as appropriate. If the alleged discrimination, harassment or retaliation is not within the supervisor's area of responsibility or oversight, he/she should notify the Department Head or other appropriate management employee, who should then take prompt steps to address the allegation.

If unlawful harassment is reported or alleged, it must be followed up. If a supervisor receives information that discrimination, unlawful harassment or retaliation might be occurring, he/she should follow the Complaint Procedure as set out in this policy below.

Employees: It is the responsibility of each and every employee to know this policy and to follow it. All County employees share the responsibility of understanding and preventing unlawful discrimination and harassment. But, ultimately, no satisfactory investigation or resolution of complaints can occur without the initiative and continued cooperation of the affected person. Individuals who believe they have been discriminated against or unlawfully harassed have the primary obligation of informing their supervisor, Department Head, Elected Official or legal counsel for the County of the act of discrimination, unlawful harassment or retaliation, recounting specific actions or occurrences whenever possible. It is imperative that every employee treat every other employee and members of the public with decency and respect so as to facilitate a sound professional work environment.

D. DEFINITIONS

For purposes of clarification unlawful harassment includes, but is not limited to, the following behaviors:

1. **Verbal Harassment** – Epithets, derogatory comments, slurs, propositioning, or otherwise offensive words or comments on the basis of race, color, religion, national origin, sex, age (40 and over) and disability whether made in general, directed to an individual, or directed to a group of people regardless of whether the behavior was intended to harass. This includes, but is not limited to, inappropriate sexually-oriented comments including dress or physical features, sexual rumors, code words, and race-oriented stories, as well as jokes of a sexual or discriminatory nature or "kidding" which is oriented towards a prohibited form of harassment.
2. **Physical Harassment** – Assault, impeding or blocking movement, leering, or the physical interference with normal work, privacy or movement when directed at an individual on the basis of race, color, religion, national origin, sex, age (40 and over) and disability. This includes pinching, patting, grabbing, inappropriate behavior in or near bathrooms, sleeping facilities and eating areas, or making explicit or implied threats or promises in return for submission to physical acts.
3. **Visual Forms of Harassment** – Derogatory, prejudicial, stereotypical or otherwise offensive posters, photographs, cartoons, e-mails, notes, bulletins, drawings or pictures on the basis of race, color, religion, national origin, sex, age (40 and over) and

disability. This applies to both posted material and material maintained in or on **Nez Perce County** equipment or personal property in the workplace.

4. **Sexual Harassment** – Any act which is sexual in nature and is made explicitly or implicitly a term or condition of employment, is used as the basis of an employment decision, unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment.

There are basically two types of sexual harassment:

- i) "Quid pro quo" harassment, where submission to unlawful harassment is used as the basis for employment decisions.

Employee benefits such as raises, promotions, better working hours, job retention, etc., are directly linked to compliance with sexual advances. Therefore, only someone in a supervisory capacity (with the authority to grant such benefits) can engage in quid pro quo harassment. Example: A supervisor promising an employee a raise if she goes on a date with him; a manager telling an employee she will fire him if he does not have sex with her.

- ii) "Hostile work environment," where the unlawful harassment creates an offensive and unpleasant working environment.

Hostile work environment can be created by anyone in the work environment, whether it be supervisors, other employees, or the public. Hostile environment harassment consists of verbiage of a sexual nature, unwelcome sexual materials, or even unwelcome physical contact as a regular part of the work environment. Cartoons or posters of a sexual nature, vulgar or lewd comments or jokes, or unwanted touching or fondling all fall into this category.

E. COMPLAINT PROCEDURE

The following complaint procedure will be followed in order to address a complaint regarding harassment, discrimination, or retaliation:

1. A person who believes he/she has been unlawfully harassed, discriminated or retaliated against should report it to their supervisor, Department Head, Elected Official, or legal counsel for the County. If a supervisor becomes aware that unlawful harassment or discrimination is occurring in any County department as a result of an employee coming forward, the supervisor should immediately report it to the Prosecuting Attorney pursuant to this policy. Once a complaint of unlawful harassment, discrimination or retaliation has been made, the complaint cannot be withdrawn by the complainant without the approval of the Prosecutor.
2. Promptly upon receiving the complaint, the Prosecuting Attorney should initiate the investigation to determine whether there is a reasonable basis for believing that an alleged violation of this Policy occurred.

3. Upon receiving the complaint, or being advised by a supervisor that violation of this policy may be occurring, the Prosecuting Attorney should review the complaint with Board of County Commissioners.
4. The Prosecuting Attorney should engage an appropriate person to investigate the complaint. The investigator should be a neutral party.
5. The investigator will interview the complainant, the respondent, and any relevant witnesses to determine whether the conduct occurred.
6. As soon as practical, the investigator will conclude the investigation and submit a report of his or her findings to the Prosecuting Attorney, who then will route it as appropriate.
7. If it is determined that unlawful harassment or discrimination in violation of the County's policy has occurred, the appropriate official will recommend the appropriate course of action to be taken by the County. The appropriate action will depend on the following factors:
 - (i) The severity, frequency and pervasiveness of the conduct;
 - (ii) Prior complaints made by the complainant;
 - (iii) Prior complaints made against the respondent; and
 - (iv) The quality of the evidence (firsthand knowledge, credible corroboration etc.).
8. If the investigation is inconclusive or it is determined that there has been no unlawful harassment or discrimination in violation of this Policy, but some potentially problematic conduct is revealed, corrective action may be taken.
9. Promptly after the investigation is concluded, the investigator, the Elected Official and the Prosecutor will meet with the complainant and the respondent separately in order to notify them in person of the findings of the investigation.
10. The complainant and the respondent may submit statements to the investigator, the Elected Official and the Prosecutor challenging the factual basis of the findings. Any such statement must be submitted no later than five (5) working days after the meeting with the investigator, the Elected Official and the Prosecutor in which the findings of the investigation is discussed.
11. Promptly after the investigator, the Elected Official and the Prosecutor have met with both parties and reviewed the documentation, he or she will decide, after consultation with legal counsel, what action, if any, should be taken.

F. DISCIPLINARY ACTION

If unlawful harassment is determined to have occurred, the appropriate superior should take prompt and effective remedial action against the harasser. The action should be commensurate with the severity of the offense, up to and including termination of employment.

G. RETALIATION

Retaliation in any manner against a person for filing an harassment charge or initiating a harassment complaint, testifying in an investigation, providing information or assisting in an investigation, is expressly prohibited and subject to disciplinary action **up to and including termination**. The supervisor, Department Head and Elected Official should take reasonable steps to protect the victim and other potential victims from further harassment or related consequences.

H. CONFIDENTIALITY

Confidentiality will be maintained to the fullest extent possible in accordance with applicable Federal, State and local law. However, a complete and thorough investigation of the allegations will require the investigator to inform witnesses of certain aspects of the complaint in order to obtain an accurate account of the actions of the parties involved.

I. FALSE COMPLAINTS

Any complaint made by an employee of the County regarding employment-based harassment which is conclusively proven to be false, should result in discipline. This discipline may include termination of employment. This section is not intended to discourage employees from making complaints regarding employment-based harassment. However, false complaints adversely impact the workplace and the career of the accused, even when disproved, and will not be tolerated.

J. DISTRIBUTION

Access to this policy shall be provided to all employees, supervisors and Elected Officials of the County either by paper or electronic copy. Any questions, concerns or comments related to this policy should be directed to the Department Head, or Elected Official or legal counsel for the county.