

BEFORE
THE BOARD OF SUPERVISORS
OF THE COUNTY OF MADERA
STATE OF CALIFORNIA

In the Matter of) Resolution No.: 2019 - 128
)
POLICY AND GUIDELINES ON) A RESOLUTION ADOPTING POLICY
DISCRIMINATION AND HARASSMENT) AND GUIDELINES ON DISCRIMINATION
) AND HARASSMENT
)
)
)
_____)

WHEREAS, every person is entitled to be treated equally by his or her employer or prospective employer, and to be evaluated unbiasedly on the basis of his or her individual skill set, knowledge base and/or abilities, rather than on the basis of his or her race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, transgender status, gender, gender identity, gender expression, age, sexual orientation or military and veteran status.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Madera, a political subdivision of the State of California, that the attached document, Exhibit "A" entitled "Policy and Guidelines on Discrimination and Harassment (2019 revision)" shall be implemented and is hereby adopted.

BE IT FURTHER RESOLVED that this Resolution and Exhibit "A" shall be distributed to, and posted in, every Department of the County of Madera, and that copies of this Resolution and Exhibit "A" shall be available to any person upon request from the Deputy CAO – HR/Operations or designee.

BE IT FURTHER RESOLVED that the policy set forth in Exhibit "A" does not supersede, impair or affect any affirmative defenses to employment decisions made by the County, as provided for by law.

BE IT FURTHER RESOLVED that nothing in this Resolution or Exhibit "A" shall be construed as imposing a mandatory duty upon any worker or officer of the County of Madera to protect others against the risk of injury arising from any acts of discrimination, harassment or retaliation.

BE IT FURTHER RESOLVED that this Resolution and Exhibit "A" supersede Resolution No. 2016-284 and the Exhibit/Policies adopted therein.

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The foregoing Resolution was adopted this 20th day of August,

2019, by the following vote:

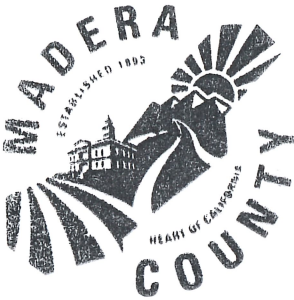
Supervisor Frazier voted: YES

Supervisor Rogers voted: YES

Supervisor Poythress voted: YES

Supervisor Rodriguez voted: YES

Supervisor Wheeler voted: YES



Brett Long
Chairman, Board of Supervisors

ATTEST:

Shonda M. Cargill
Clerk, Board of Supervisors

Approved as to Legal Form:
COUNTY COUNSEL

By Meera H. Bhatt
Digitally signed by: Meera H. Bhatt
DN: CN = Meera H. Bhatt email =
mbhatt@lozanosmith.com C = US
Date: 2019.08.12 11:46:45 -07'00'

Exhibit "A"

**Policy and Guidelines on Discrimination and Harassment
(2019 Revision)**

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POLICY AND GUIDELINES ON
DISCRIMINATION AND HARASSMENT

- I. Policies of the County of Madera: The Board of Supervisors believes that all employees, paid and unpaid interns, and volunteers (collectively “workers”) are entitled to work in an environment free of discrimination and harassment and that all prospective employees are entitled to be evaluated in an environment free of discrimination and harassment. Therefore, the Board of Supervisors has adopted the following policies:
- A. Every appointing authority, manager, supervisor and worker is responsible for conducting themselves in the spirit of this policy. The goal of this policy is to create and maintain a work environment that is free from discrimination and harassment. This includes, but is not limited to, conduct that is unlawfully discriminatory or harassing, whether or not such conduct is or is not offensive to any given individual or worker. All such conduct is strictly prohibited.
 - B. Every worker and prospective worker of the County of Madera is entitled to be treated equally by every worker and officer of the County of Madera and to be evaluated on the basis of his or her individual skills, knowledge and abilities.
 - C. Every worker and prospective worker of the County of Madera is entitled to not be discriminated against by any worker or officer of the County of Madera because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, transgender status, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status (collectively “protected categories”).
 - D. Every worker and prospective worker of the County of Madera is entitled to not be harassed by any worker or officer of the County of Madera on the basis of one or more of the protected categories.
 - E. Every worker and prospective worker of the County of Madera is entitled to be free from abusive conduct by any worker or officer of the County of Madera.
 - F. Every worker and prospective worker who believes that he or she has been discriminated against, harassed, subject to abusive conduct, or treated contrary to these policies, shall be permitted to complain of the discrimination, harassment, abusive conduct, or violation of this policy without any fear of retaliation by any employee or officer of the County of Madera.

II. Discrimination, Harassment and Abusive Conduct Defined:

- A. Discrimination is when an employer unlawfully abridges the right and opportunity of all persons to seek, obtain, and hold employment, whether intentionally or unintentionally, where no reasonable distinction can be found between those favored and those not favored. In the employment setting, discrimination may exist where an employer subjects a person to terms, conditions or privileges of employment not imposed on others, because of one or more of the employee's protected categories. Discrimination may include disparate treatment based on one or more protected categories. As allowed by law, any discriminatory remark, even if not made directly in the context of an employment decision and/or if uttered by a non-decision maker may be relevant, circumstantial evidence of discrimination.
- B. Harassment is a form of discrimination and includes, but is not limited to:
1. verbal harassment such as epithets, derogatory comments, taunting, heckling or slurs, whether or not made in the presence of a worker based on one or more of the worker's protected categories;
 2. physical harassment such as offensive touching, assault, impeding or blocking movement, gestures or physical interference with normal work or movement when directed at a worker based on one or more of the worker's protected categories;
 3. visual harassment such as photographs, posters, cartoons, drawings and physical objects which are derogatory of a person based on one or more of the person's/worker's protected categories; and
 4. unwanted sexual advances which condition an employment benefit upon an exchange of sexual favors.
- C. Abusive Conduct is conduct of an employer or worker in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interest, and does not need to be based on a protected category/class. Abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, bullying, or the gratuitous sabotage or undermining of a person's work performance.

III. Discrimination and Harassment Prohibited. Discrimination and harassment, as defined herein, are prohibited by these policies and guidelines, by the California Fair Employment and Housing Act (Government Code Section 12900 et seq.), Title VII of the 1964 Civil Rights Act (42 U.S.C. Section 2000 et seq.), and other applicable state and federal laws.

- A. Civil Service Employees: These policies and guidelines do not supersede or impair Civil Service Rules. Pursuant to Rule 10 of the Civil Service Rules (Madera County Code Section 2.57.130), acts of discrimination, harassment, or abusive conduct by an employee subject to Civil Service Rules may constitute, but are not limited to, “immoral conduct” [Rule 10-2(f)], “discourteous or offensive treatment of fellow employees” [Rule 10-2(g)], and “conduct unbecoming an employee in the county service” [Rule 10-2(r)].
- B. Merit System Employees: These policies and guidelines do not supersede or impair the right of an employee subject to the Interagency Merit System to appeal any disciplinary action taken against him or her to the State Personnel Board or Civil Service Commission.
- C. These policies and procedures do not supersede any internal grievance or complaint procedure adopted by the County of Madera pursuant to the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794), pertaining to handicap or disability discrimination.

IV. The Right to Complain About Discrimination, Harassment and Abusive Conduct.

- A. The County’s complaint procedure, set out below, is intended to ensure that complaints receive: a timely response; impartial and timely investigations by qualified personnel; documentation and tracking for reasonable progress; appropriate options for remedial actions and resolutions; and timely closures. Confidentiality will be kept to the extent possible. Remedial action will be taken if any misconduct is found.
- B. The Right to Complain. Every worker shall have the right to complain about acts of discrimination, harassment, abusive conduct or violation of this policy committed against him or her, as provided herein.
- C. Retaliation Prohibited. Every worker, including the complaining worker’s co-workers, supervisor, department head, and every other officer of the County of Madera, is prohibited from retaliating against a complaining employee and any other employee who testifies, assists, or participates in any manner in the investigation, order for disciplinary action, or the discipline hearing.
 - 1. Examples of prohibited retaliatory acts. Acts of retaliation include, but are not limited to, verbal or written threats, physical threats, demotion, suspension, failure to give equal consideration in making employment decisions, failure to treat impartially in the context of any recommendations for subsequent employment, the imposition of adverse working conditions not encountered by other workers similarly situated, and/or the denial of any employment benefit.

V. Complaint Procedure.

A. Complaint Against Co-worker or Supervisor/Manager. An employee complaining against a co-worker or a supervisor/manager may initially make a verbal complaint to his or her department head. Thereafter, the employee complaining about a co-worker or a supervisor/manager shall submit a complaint in writing to his or her department head, with a copy to the Deputy CAO – Human Resources/Operations (Deputy CAO), who will notify and provide a copy of the complaint to County Counsel. In the event an employee’s complaint involves his or her department head, the employee may file the complaint with the Clerk of the Board of Supervisors as provided in Paragraph V.B., located below. A complaint may be filed by an employee and/or his or her representative.

1. Contents of Complaint. The complaint should contain the following information:

- a. the complaining worker’s name;
- b. the name of the co-worker or supervisor who committed the alleged acts of discrimination, harassment, or abusive conduct;
- c. the date(s) the alleged acts were committed;
- d. a brief statement of the alleged acts; and
- e. the basis of the alleged discrimination, harassment, or abusive conduct (e.g. race, color, religion, etc).

2. Investigation Procedure. Investigations will be conducted in a fair, complete and timely manner. When a department head or other investigating party receives a complaint, he or she shall commence the investigation as soon as reasonably possible, and shall make a concerted effort to have all of the following completed in a reasonable time, not to exceed one hundred twenty (120) working days unless the circumstances reasonably warrant a longer time:

- a. notify the Deputy CAO and verify that the complaining employee distributed copies of the complaint to the Deputy CAO;
- b. determine whether it is the best interest of the accused and/or complaining worker to immediately reassign or relocate him or her to minimize contact between the co-worker or supervisor/manager and the complaining worker, and determine whether the accused co-worker or supervisor/manager should be immediately placed on administrative leave;

- c. interview the complaining worker to:
 - (i) obtain a comprehensive understanding of the facts;
 - (ii) ascertain the names of all witnesses to the alleged acts or omissions;
 - (iii) ascertain the existence of and/or obtain all documents/evidence including, but not limited to, all notes, letters, photographs, drawings and posters relevant to the alleged acts.
- d. interview the co-worker or supervisor/manager who committed the alleged acts of discrimination, harassment or abusive conduct to:
 - (i) provide the co-worker or supervisor with a copy of the worker's complaint and advise the co-worker or supervisor that he or she may respond to the complaint in writing, within five (5) working days;
 - (ii) prepare a written statement of the co-worker or supervisor's response to the alleged acts;
 - (iii) ascertain the names of all witnesses to the alleged acts; and
 - (iv) ascertain the existence of and/or obtain all documents/evidence, including, but not limited to, all notes, letters, photographs, drawings, and posters relevant to the alleged acts.
- e. interview all witnesses to the alleged acts and prepare a written summary of each interview;
- f. consult with the County Counsel, or his or her designee, and the Deputy CAO, or his or her designee, and review all written statements, all interview summaries, and all other evidence;
- g. determine the merit of the complaint;
- h. if the complaint is determined to have merit:
 - (i) serve a written "Notice of Intended Order for Disciplinary Action" with an "Order for Disciplinary Action" attached, upon the co-worker or supervisor/manager;

- (ii) consult with the complaining worker and determine whether he or she should be relocated within the office to minimize or eliminate personal contact with the co-worker or supervisor/manager and/or be reassigned to a different supervisor in cases where the discriminating or harassing person is the worker's supervisor; and
 - (iii) advise the complaining worker that he or she may wish to seek counseling to better enable him or her to handle the psychological impact of the discrimination or harassment.
 - i. if the complaint is determined not to have merit:
 - (i) inform the complaining worker and the co-worker or supervisor/manager in writing that it has been determined that the complaint is without merit, and the reasons supporting the determination; and
 - (ii) inform the complaining worker in writing that he or she may seek any other legal or administrative remedy provided by the law, including but not limited to filing complaints with the EEOC and/or DFEH.
- 3. Discipline: Appropriate measures will be taken as soon as practicable to discipline the discriminatory, harassing, or abusive acts of a co-worker or supervisor/manager and to redress harm incurred by the worker, by taking appropriate actions under the circumstances.
 - a. Forms of Discipline.
 - (i) under Civil Service Rules, the department head may dismiss, suspend without pay for up to thirty (30) days, or reduce the rank or salary of the co-worker or supervisor/manager;
 - (ii) the department head may instead serve a written reprimand upon the co-worker or supervisor/manager, which orders the co-worker or supervisor/manager to cease and desist his or her unlawful acts of harassment and/or discrimination, or instruct the co-worker or supervisor/manager to not speak to or have contact with the complaining worker, or to take other appropriate actions under the circumstances.
 - b. Determining Discipline. To determine which discipline will be imposed, the department head should consider the severity of the discrimination or harassment, its effect upon the complaining

worker and the office environment, the potential for its reoccurrence, and whether the co-worker or supervisor/manager has committed similar acts in the past.

c. Cumulative Discipline. The forms of discipline are cumulative, not exclusive, i.e., they may be combined as the department head may deem appropriate. It is intended that the progressive nature of discipline will be followed as may be applicable.

4. Right of Appeal and Hearing Not Superseded or Affected. These policies and guidelines do not supersede or affect the right of any worker or supervisor/manager within the Civil Service System or the Merit System to appeal any disciplinary action taken against him or her, as provided in Civil Service or Merit Systems rules.

5. Duty of Department Head. The duties of the department head should not be delegated to his or her assistant. This does not mean that he/she cannot obtain the assistance of subordinate employees, other departments, agencies or private individuals to fulfill the requirements of this policy.

B. Complaint Against Department Head. Employees complaining against a department head shall submit a complaint in writing to the Clerk of the Board of Supervisors. A complaint may be filed by a worker and/or his or her representative.

1. Contents of Complaint. The complaint should contain the following information:

- a. the complaining worker's name;
- b. the name of the party who committed the alleged acts of discrimination, harassment or violation of the policy;
- c. the date(s) the alleged act(s) were committed;
- d. a brief statement of the alleged acts; and
- e. the basis of the alleged discrimination, harassment, abusive conduct or violation of the policy (e.g., race, color, religion, etc.).

2. Investigation.

- a. Clerk of the Board of Supervisors. When the Clerk of the Board of Supervisors receives a complaint, he or she shall:

- (i) distribute copies of the complaint to the Deputy CAO, County Counsel, and the department head;
 - (ii) schedule a consideration of the matter at the next available regular meeting of the Board of Supervisors, as allowed by law
- b. Deputy CAO. Upon receipt of the complaint, the Deputy CAO shall commence the investigation as soon as reasonably possible, and shall make a concerted effort to have all of the following completed in a reasonable time, not to exceed one hundred twenty (120) working days, unless the circumstances reasonably warrant a longer time:
- (i) obtain a comprehensive understanding of the facts;
 - (ii) ascertain the names of all witnesses to the alleged acts;
 - (iii) ascertain the existence of and/or obtain all documents/evidence including, but not limited to, all notes, letters, photographs, drawings and posters relevant to alleged acts;
 - (iv) interview all witnesses to the alleged acts;
 - (v) review all documents/evidence, relevant to the alleged acts;
 - (vi) consult with County Counsel, or his or her designee, and review the complaint, interview notes, and documents.
3. Hearing. The Board of Supervisors shall consider the complaint, the summary prepared by the Deputy CAO, and any response by the department head in Closed Session of a regular or special meeting of the Board of Supervisors. The complainant and/or non-elected department head shall be given Notice of the hearing before the Board of Supervisors and shall have the right to present witnesses and evidence, to cross-examine witnesses, to be represented by Counsel or other representative of his or her choice at his or her own expense, and to compel the attendance of witnesses. Consistent with Government Code section 54957 and any other applicable law, as may be amended from time to time, no elected department head, member of a legislative body of the County, and/or independent contractor (unless such independent contractor functions as an officer or employee of the County), shall have the right to such a hearing for purposes of section "B" of this Policy ("Complaint against Department Head").

4. Discipline for Appointed Department Heads. If discrimination, harassment, abusive conduct or violation of this policy is found, forceful and appropriate measures will be taken to address the discriminatory or harassing and/or abusive acts of an appointed department head.
 - a. Forms of Discipline for Appointed Department Heads. Forms of discipline for appointed department heads include, but are not limited to, dismissal, suspension without pay, reduction of salary, verbal or written reprimand, order to the department head to cease and desist his or her unlawful acts, or ordering the department head to undergo appropriate counseling/training.
 - b. Determining Discipline. To determine which discipline will be imposed, the Board of Supervisors should consider the severity and nature of the discrimination, harassment or violation of the policy, its effect upon the complaining worker and the office environment, the potential for its reoccurrence, and whether the department head has committed similar acts in the past.
 - c. Cumulative Discipline. The forms of discipline are cumulative, not exclusive, i.e., they may be combined as the Board of Supervisors deems appropriate.

5. Non-Disciplinary Action for Elected Department Heads. If discrimination, harassment, abusive conduct, or violation of this policy is found, appropriate measures will be taken to address and/or express disapproval of the discriminatory, harassing, and/or abusive acts of an elected department head, to the extent allowed by law.
 - a. Forms of Non-Disciplinary Action. The Board of Supervisors may take any non-disciplinary action against elected department heads, to the extent allowed by law, including but not limited to: issuing a verbal or written censure formally disapproving of the inappropriate or unlawful conduct and/or formally requesting the elected department head to cease and desist such conduct; referral to any regulatory agency, law enforcement agency, professional licensing and/or certification agency, and/or any other appropriate agency having authority over the functions of their department; formally requesting the elected Department Head to undergo appropriate counseling/training; and/or seeking any appropriate and available legal remedy.
 - b. Determining Non-Disciplinary Action. To determine which action will be imposed, the Board of Supervisors should consider the severity and nature of the discrimination, harassment or violation of the policy, its effect upon the complaining worker and the office

environment, the potential for its reoccurrence, and whether the department head has committed similar acts in the past.

- c. Cumulative Action. The forms of non-disciplinary actions are cumulative, not exclusive, i.e., they may be combined as the Board of Supervisors deems appropriate. It is intended that the progressive nature of discipline will be followed as may be applicable

C. Complaint Involving Contractor, Vendor or Supplier.

All contractors, vendors or suppliers doing business with the County shall be responsible for conducting themselves in a manner wherein the work environment is free of discrimination and harassment and abusive conduct in accordance with this Policy and for cooperating fully with all investigations.

Complaints of discrimination or harassment raised by workers against employees, agents, or representatives of contractors, vendors or suppliers doing business with the County shall be promptly reported in accordance with the procedures set forth in Section V(A) (“Complaint Against Co-Worker or Supervisor/Manager”) of this Policy. The complaint shall be investigated in accordance with the procedures set forth in section V(A)(2) (“Investigation Procedure”) of the Policy.

If the complaint is determined to have merit, contractor(s), vendor(s) or supplier(s) doing business with the County determined to have committed acts of discrimination, harassment, or abusive conduct and/or violated this Policy in the course of doing business with the County may be subject to: termination of contract, suspension of services, and/or to any other measures deemed appropriate by the CAO (or designee), County Counsel, and/or the Board of Supervisors.

D. Complaint Involving Member of the Public.

Department management will take whatever precautions are necessary to protect employees from members of the public who have committed acts of discrimination, harassment, or abusive conduct in the course of doing business with the County.

VI. Program to Prevent Discrimination, Harassment and Abusive Conduct.

- A. Purpose. The objectives of the policies of the County of Madera regarding discrimination, harassment, and abusive conduct can best be achieved if County workers and officers are sensitized and trained to recognize and address problems of discrimination, harassment and abusive conduct.
- B. Program. The Deputy CAO shall conduct at least two (2) hours of training on a biennial basis to sensitize and train department heads and supervisors/managers to recognize and address problems of discrimination and harassment within their

departments. This training shall also include the prevention of abusive conduct. The training may be conducted by the Deputy CAO, other certified county staff, a certified, independent contractor or with the assistance of a consultant from the Department of Fair Employment and Housing. All managers and supervisors shall be provided with this training within six (6) months of assuming their manager or supervisor position. Additionally, and to the extent required by law, the Deputy CAO shall conduct at least one (1) hour of sexual harassment training on a biennial basis to all non-supervisory employees. This training may be conducted by the Deputy CAO, other certified county staff, a certified, independent contractor or with the assistance of a consultant from the Department of Fair Employment and Housing. All non-supervisory employees shall be provided with this training within six (6) months of assuming their non-supervisory positions.

VII. Miscellaneous.

- A. These policies and guidelines do not supersede, impair, or affect any affirmative defenses to employment discrimination provided by law.
- B. These policies and guidelines shall not be construed as imposing a mandatory duty upon any worker or officer of the County of Madera to physically protect themselves and/or others against the risk of injury arising from any acts of discrimination, harassment, retaliation or violation of this policy.
- C. All persons involved in the investigation, review and resolution of a discrimination and/or harassment complaint shall endeavor to preserve the privacy and confidentiality rights of all parties and witnesses, except as the necessity for full resolution or redress of the complaint may otherwise require.
- D. Complaints of discrimination, harassment or abusive conduct against the Deputy CAO shall be submitted directly to the CAO, who shall follow the procedures outlined in Section (V)(A) above.