

## Rule #3-40

### Discrimination and Harassment-Free Workplace

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#### § 3-40-010 Purpose

The county is committed to providing its employees with a workplace that is free of illegal bias, prejudice, discrimination, harassment or retaliatory conduct. It is committed to creating and maintaining an environment in which each person is respected and valued without regard to protected status.

Volunteers and interns (paid or unpaid) and elected officials are also covered by this policy.

#### § 3-40-020 Policy

The county's policy is to prohibit workplace harassment and discrimination on the basis of race, color, sex including sexual assault, age, religion, national origin, political affiliation, marital status, sexual orientation, gender identity, gender expression, source of income, familial status, physical or mental disability, genetic information, pregnancy, pregnancy-related limitations, status as a uniformed service member, an expunged juvenile record, or other protected status in any personnel action and in accordance with applicable law, including Oregon Revised Statutes (ORS) 659.030 and ORS 649A.112. Workplace harassment and discrimination is also prohibited based on association with a person in one of the classes listed in this paragraph. Prohibited harassment and discrimination based on disability includes perceived disability and record of a disability.

Prohibited workplace harassment and discrimination is unacceptable in the workplace, in any work-related setting outside the workplace and when using county owned equipment including vehicles and electronic devices such as computers, telephones, photocopiers and faxes.

Employees who violate this rule are subject to disciplinary action, up to and including discharge.

Every employee shares the responsibility for promptly bringing to the county's attention conduct that interferes with providing a work environment free of illegal discrimination and harassment. This policy will be readily available to all employees and will be provided to

employees at the time of hire and when an employee makes a report of a violation of this rule (see 3-40-060).

Prohibited workplace harassment, discrimination and retaliation on the basis of gender identity and gender expression are described further in Multnomah County Personnel Rule (MCPR) 3-42. Prohibited discrimination including denial of reasonable accommodation for a physical or mental disability or pregnancy-related limitations are described further in MCPR 2-70. MCPR 2-70 describes the reasonable accommodation process and compliance standards.

### **§ 3-40-030 Definitions**

**Genetic Information:** Includes information about an individual's or individual's family member's genetic tests; family medical history; an individual's request for, or receipt of, genetic services or participation in clinical research that includes genetic services; or genetic information of a fetus of a pregnant woman or family member, or embryo with respect to an individual using assisted reproductive technology.

**Harassment:** Verbal or physical conduct that is derogatory or shows hostility towards an employee because of race, color, sex, age, religion, national origin, political affiliation, marital status, sexual orientation, gender identity, gender expression, source of income, familial status, physical or mental disability, pregnancy, pregnancy-related limitations, status as a uniformed service member, an expunged juvenile record, or other protected status in accordance with applicable law, and

- A. Has the purpose or effect of creating an intimidating, hostile or offensive work environment;
- B. Has the purpose or effect of unreasonably interfering with an employee's work performance; or
- C. Otherwise substantially and adversely affects an employee's employment opportunities

**Non-Disclosure Agreement:** Also referred to as a confidentiality agreement, a legal contract between two parties that outlines confidential material, knowledge or information that the parties agree to not share with third parties.

**Non-Disparagement Agreement:** A contract between two parties that prohibits one or both parties from criticizing the other.

**No-Rehire Agreement:** A contract between an employee and an employer that prohibits the employee from seeking reemployment with the employer.

**Sexual Harassment:** Any unwelcome conduct including but not limited to sexual assault, sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when, for example:

- A. Submission to such conduct is made either explicitly or implicitly a term or condition of employee's employment;
- B. Submission to or rejection of such conduct by an employee is used as the basis for personnel actions affecting such employee; or
- C. Such conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile or offensive working environment.
- D. Sexual Assault is defined as unwanted conduct of a sexual nature that is inflicted upon a person or compelled through the use of physical force, manipulation, threat or intimidation.

### **§ 3-40-040 Prohibited Conduct**

#### **A. Verbal or Physical Conduct**

1. Use of epithets or slurs because of race, color, sex, age, religion, national origin, political affiliation, marital status, sexual orientation, gender identity, gender expression, source of income, familial status, or physical or mental disability, pregnancy, pregnancy-related limitations, status as a uniformed service member, an expunged juvenile record, or other protected status in accordance with applicable law, such as racial slurs or derogatory remarks based on national origin or ethnicity.
  2. Jokes, pranks or other banter that are derogatory or show hostility because of race, color, sex, age, religion, national origin, political affiliation, marital status, sexual orientation, gender identity, gender expression, source of income, familial status, or physical or mental disability, pregnancy, pregnancy-related limitations, status as a uniformed service member, an expunged juvenile record, or other protected status in accordance with applicable law, such as making fun of or telling jokes about physical or mental disabilities or sexual orientation; or stereotyping.
  3. Unwelcome physical touching or contact, such as pinching, grabbing, patting or touching, hugging; threatening, intimidating, or hostile acts, including sexual assault.
- B. Written or Graphic Material: Material that is disparaging of or displays hostility on the basis of race, color, sex, age, religion, national origin, political affiliation, marital status, sexual orientation, gender identity, gender expression, source of income, familial status, or physical or mental disability, pregnancy, pregnancy-related limitations, status as a uniformed service member, an expunged juvenile record, or other protected status in accordance with applicable law and is placed on walls or elsewhere on the employer's premises or circulated in the workplace; including sending inappropriate jokes or other

written or graphic materials via e-mail, the internet or by fax, or downloading them from the internet.

### **§ 3-40-050 Retaliation**

The county will not tolerate retaliation against any individual who reports discrimination or harassment, or testifies, assists, or participates in any manner in such an investigation, proceeding, or hearing, regardless of the outcome of the harassment complaint. Examples of retaliation include, but are not limited to, demotion, suspension, failing to hire or consider hiring, failing to treat impartially when making employment related decisions, and assigning the individual the least desirable jobs. Examples of prohibited retaliation from managers or co-workers includes intimidating behavior, disrupting work, refusing to interact or excluding the subject of retaliation.

### **§ 3-40-060 County Reporting**

- A. Managers and employees are expected to promptly report and document suspected violations of this rule.
- B. Complaints may be submitted orally or in writing within four (4) years from the date on which the alleged discrimination or harassment occurred under ORS 243.32 or within five (5) years from the date on which the alleged discrimination or harassment occurred under ORS 659A.875, whichever is greater. A complainant may also include a suggested method of resolution. A manager who receives a complaint, Human Resources staff and members of the County's Complaint Investigations Unit are each responsible for providing a copy of this policy to a complainant at the time of a complaint.
- C. A violation of these rules may be reported to any of the following individuals who is responsible for providing a copy of this policy to a complainant at the time of a complaint:
  - 1. The County's Complaint Investigations Manager; or Investigators (Primary); or
  - 2. Department Human Resources Manager or staff (Secondary); or
  - 3. Department Equity Manager (alternate); or
  - 4. Multnomah County Chief Human Resources Officer (CHRO) (alternate); or
  - 5. Office of Diversity and Equity (ODE) (alternate); or
  - 6. Any County manager (alternate).

Department Directors will inform their employees of the names of additional department staff who employees may contact, to file a workplace discrimination,

harassment, or retaliation complaint. Department Directors may also establish additional procedures that are consistent with this Rule for handling complaints.

- D. The individual who receives the complaint may, but is not required to, discuss options for informally resolving the complaint with the complainant.
- E. All complaints will be thoroughly and promptly investigated. The County will maintain confidentiality to the extent permitted by the circumstances, however a victim of prohibited harassment or discrimination may voluntarily disclose information about an incident covered by this policy that involves them.
- F. The individual making the complaint and the accused will be notified of the results of the investigation and whether action will be taken. Immediate action will be taken in situations where prohibited harassment or discrimination occurred.
- G. The County will follow-up with the victim of alleged harassment at least once every three months of the calendar year following the date a report of prohibited harassment is received, for the purpose of determining if the alleged harassment has stopped or if retaliation has been experienced. This follow-up will continue unless and until the victim of alleged harassment objects to the follow-up in writing.
- H. Records of workplace harassment will be maintained in accordance with Multnomah County Personnel Rule 5-65 Records Management and in compliance with applicable laws and statute of limitations periods described in 3-40-070.
- I. Employees who have experienced harassment may be able to access support through the County's Employee Assistance Program, including counseling and referral to legal resources. Additional support may be available through Central Human Resources Organizational Development unit, the County's Office of Diversity and Equity, and department equity managers.

### **§ 3-40-070 Legal Remedies**

- A. In addition to the County reporting alternatives and resources outlined in this policy, an employee alleging prohibited harassment or discrimination has the right to seek redress through administrative and civil or criminal processes. These include the Oregon Bureau of Labor and Industries (BOLI), the federal Equal Employment Opportunity Commission (EEOC), law enforcement, and state and federal courts. Each process may have different, specified time periods (statutes of limitations) in which to file, or other preconditions. For example, the period in which to file a charge with the Oregon Bureau of Labor and Industries has been expanded from one (1) to five (5) years of the alleged incident of covered discrimination or harassment. A lawsuit in state court for injury (tort) must be preceded by a tort claims notice filed within one-hundred eighty (180) days of the alleged harassment or discrimination.

B. The County may not require or coerce an employee to enter into a nondisclosure or non-disparagement agreement, or a no-rehire agreement (defined in 3-40-030 above) in resolution of the employee's claim of discrimination or harassment. However, an employee may voluntarily request to enter into an agreement with the County that contains a non-disclosure or non-disparagement provision, or a provision that they are not eligible for rehire with the County. An employee who voluntarily enters into such an agreement has seven (7) days to revoke the agreement.