

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, including physical characteristics that are historically associated with race (including but not limited to natural hair, hair texture, hair type and protective hairstyles), 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, genetic information, pregnancy, pregnancy-related limitations, status as a uniformed service member, status as a victim of sexual assault or domestic violence, 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 [659A.112](#). Workplace harassment and discrimination is also prohibited based on association with a member of a protected class. Prohibited harassment and discrimination based on disability includes perceived disability and record of a disability.

Harassment and discrimination is unacceptable in the workplace, in any work-related setting outside the workplace, when wearing a uniform or insignia that identifies the individual as a County employee, 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. Managers and Human Resources staff are required to report violations of this rule. This rule 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

Discrimination: To discriminate means to make a distinction between individuals or groups based on common characteristics, real or perceived. Certain kinds of discrimination are unlawful. Oregon civil rights laws generally prohibit making adverse decisions in employment, housing, places of public accommodation, and career schools because an individual is a member of a class protected by these statutes.

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 person 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, including physical characteristics that are historically associated with race (including but not limited to natural hair, hair texture, hair type, and protective hairstyles), 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, status as a victim of sexual assault or domestic violence, 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; or
- 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.

Pervasive Behavior: An action that occurs frequently, regularly, or consistently; not an isolated incident or act.

Protected Class: Race (including physical characteristics that are historically associated with race, including but not limited to natural hair, hair texture, hair type and protective hairstyles), color, sex, age (18 and over), religion, national origin (including accent), political affiliation, marital status, sexual orientation, gender identity, gender expression, source of income, familial status, physical or mental disability (including perception of or record of a disability), invocation of protected leave, genetic information, pregnancy and pregnancy-related limitations, status as a uniformed service member, status as a victim of sexual assault or domestic violence, an expunged juvenile record, or other protected status in any personnel action and in accordance with applicable law, including [ORS 659.030 and ORS 659A.112](#).

Protective Hairstyles: A hairstyle, hair color, or manner of wearing hair that includes, but is not limited to, braids, regardless of whether the braids are created with extensions or styled with adornments, locs, and twists.

Retaliation: An adverse action against an employee for engaging in protected activity. An adverse action is an action that would dissuade a reasonable employee from raising a concern about a possible policy violation or engaging in other related protected activity. An incident of retaliation requires showing that the action might deter a reasonable person from opposing discrimination or participating in a complaint process.

Severe Behavior: An action, either isolated or repetitive, that a reasonable person would see as seriously or extremely offensive, based on the totality of the circumstances.

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; or

- 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 physical conduct of a sexual nature that is inflicted upon a person or compelled through the use of physical force, manipulation, threat or intimidation.

Workplace: Any job site, work-related setting outside the workplace, or location while using County-owned equipment, including vehicles and electronic devices such as computers, telephones, photocopiers, and faxes.

§ 3-40-040 Prohibited Conduct

A. Verbal or Physical Conduct

1. Use of epithets or slurs because of protected class (defined above), 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 protected class (defined above), 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, 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 protected class (defined above), 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 email, text messaging, fax, or downloading them from the internet.

§ 3-40-050 Retaliation Prohibited

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 include intimidating behavior, disrupting work, refusing to interact, or excluding the subject of retaliation.

§ 3-40-060 County Reporting Requirements

- A. Managers and Human Resources staff are required to promptly report and document suspected violations of this rule to the [Complaints Investigation Unit \(CIU\)](#). Other employees are strongly encouraged to report suspected violations of this rule.
- B. Reports 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 reporting party may also include a suggested method of resolution. A manager who receives a report, Human Resources staff, and members of the CIU are each responsible for providing a copy of this rule to a reporting party at the time of a report.
- C. Behavior which may be in violation of these rules may be reported to any of the following individuals who is responsible for providing a copy of this rule to a reporting party at the time of a report:
 - 1. The County's [Complaints Investigations Unit](#); or
 - 2. Department Human Resources Manager or staff; or
 - 3. Department Equity Manager; or
 - 4. Multnomah County Chief Human Resources Officer (CHRO); or
 - 5. [Office of Diversity and Equity \(ODE\)](#); or
 - 6. Any County manager.

Department Directors will inform their employees of the names of additional department staff who employees may contact to file a report alleging workplace discrimination, harassment, or retaliation. Department Directors may also establish additional procedures that are consistent with this rule for handling reports.

- D. The individual who receives the report may, but is not required to, discuss options for informally resolving the issue with the reporting party. They must still report the allegations to CIU and any informal resolution will be conducted with CIU oversight.
- E. All reports will be thoroughly and promptly addressed, whether through a formal investigation, voluntary restorative process, or other form of alternative dispute

resolution if the facts and parties allow. The County will maintain confidentiality to the extent permitted by the circumstances; however a person who experienced prohibited harassment or discrimination may voluntarily disclose information about an incident covered by this rule that involves them.

- F. Employees will cooperate and assist in investigations of reports of workplace discrimination and harassment.
- G. The individual making the report and the accused will be notified of the results of the investigation and whether action will be taken. Corrective action will be taken in situations where prohibited harassment or discrimination occurred.
- H. The County will follow up with anyone reported to have experienced workplace harassment or discrimination at least once every three (3) months for one (1) year following the date of the report. The purpose of this outreach is to gather information as to whether the alleged harassment or discrimination has stopped or if the reporting party has experienced retaliation. This follow-up will continue for twelve (12) months, unless and until the person who experienced the alleged harassment or discrimination objects to the follow-up in writing.
- I. Records of workplace harassment and discrimination 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.
- J. Employees who have experienced harassment or discrimination are able to access support through the County's Employee Assistance Program (EAP), including counseling and referral to legal resources. Additional support may be available through the Central Human Resources [Organizational Learning 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 rule, 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 is within 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, non-disparagement, 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) calendar days to revoke the agreement.
- C. Any employee who pursues legal action related to alleged discrimination or harassment prohibited under [ORS 243.323](#), [659A.030](#), [659A.082](#), or [659A.112](#) must commence action no later than five (5) years from the date on which the alleged discrimination or harassment occurred.

REFERENCES

[ORS 243.323](#)

[ORS 659.030](#)

[ORS 659A](#)

MCPR 2-70 Compliance with American with Disability Act (ADA) and State Disability Laws

MCPR 3-42 Gender Identity and Gender Expression Harassment and Discrimination Free Workplace

MCPR 5-65 Records Management