

## Rule # 3-42

# Gender Identity and Gender Expression Harassment and Discrimination Free Workplace

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### § 3-42-010 Purpose

The County is committed to maintaining a workplace that is free of discrimination, harassment, or retaliatory conduct on the basis of gender identity or gender expression. It is committed to creating and maintaining an environment in which each person is respected and valued without regard to protected status.

This policy addresses conduct in the workplace and seeks to ensure appropriate workplace behavior so that all employees may perform their jobs free from discrimination, harassment, or retaliatory conduct. Volunteers and interns (paid or unpaid) are also covered by this policy.

### § 3-42-020 Policy

Multnomah County prohibits workplace discrimination, harassment, or retaliation on the basis of gender identity or gender expression 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 may be subject to disciplinary action, up to and including termination.

Every employee shares the responsibility for promptly bringing to the County's attention conduct that interferes with providing a work environment free of discrimination, harassment, and retaliation on the basis of gender identity or gender expression.

### § 3-42-030 Definitions

- **Cisgender:** A person whose gender identity aligns with the sex they were assigned at birth.
- **Gender:** Various traits, characteristics, and roles that a culture associates with or assigns to sex.
- **Gender Identity:** Every individual's internal, deeply held sense of one's gender, which may be the same or different from one's sex assigned at birth. One's gender identity may be male, female, neither, or another gender, e.g., gender non-conforming or gender expansive. Gender identity is distinct from gender expression and from sexual orientation.
- **Gender Expression:** The representation of gender, as expressed through means such as one's name, gender pronouns such as "she, he, they, etc.", appearance, dress, haircut, behavior, mannerisms, voice, speech patterns, or body characteristics. Gender expression may not be distinctly male or female, may be perceived as masculine, feminine, neither, or both, and may not conform to traditional gender-based stereotypes presumed of specific gender identities.
- **Gender Non-Binary:** Having or being perceived to have a gender identity, gender expression, gender characteristics, and/or behaviors that do not conform to the traditional notions of societal expectations of the male and female gender binary. Non-binary people may or may not identify as transgender.
- **Gender Non-Conforming and Gender Expansive:** Individuals whose gender expression differs from traditional gender-based stereotypes. Gender non-conforming or gender expansive individuals may or may not identify as transgender, and vice-versa.
- **Transgender:** Individuals whose gender identity or gender expression is not that traditionally associated with their sex assigned at birth. This term is used to describe people with a broad range of identities or expressions. In addition to individuals who identify as transgender men or transmasculine, or transgender women or transfeminine, individuals who identify as androgynous, gender queer, non-binary, gender non-conforming, or other identities may also consider themselves to be transgender. Some individuals described by this definition don't consider themselves transgender, and may use other words, or may identify simply as a man or woman.
- **Transgender Man:** A person who identifies as male, but was assigned female at birth.

- **Transgender Woman:** A person who identifies as female, but was assigned male at birth.
- **Transitioning Employee:** An employee who is in the process of beginning to live as the gender with which they identify rather than the sex they were assigned at birth. There are many different ways to transition; for some people, it is a complex process that takes place over a long period of time, while for others it is a process that happens more quickly. Transition may include "coming out" (telling family, friends, and coworkers); changing one's name and/or sex on legal documents; and, for many transgender people, accessing medical treatment such as hormones and surgery.

### **§ 3-42-040 Prohibited Conduct and Material**

#### A. Verbal or Physical Conduct:

1. Consistent, frequent, regular, or deliberate failure or refusal to use an employee's declared name and/or pronoun;
2. Use of epithets or slurs because of gender identity and/or gender expression;
3. Jokes, pranks or other banter that is derogatory or hostile because of gender identity and/or gender expression;
4. Unwelcome physical touching or contact such as pinching, grabbing, patting or touching, or hugging;
5. Threatening, intimidating, or engaging in hostile acts because of gender identity and/or gender expression.

B. Written or Graphic Material: Material that is disparaging or displays hostility on the basis of gender identity and/or gender expression, and is visible on the employer's premises or circulated in the workplace. This includes sending prohibited jokes or other written or graphic materials via email, fax, or text messaging, or downloading such material from the internet.

### **§ 3-42-050 Name/pronouns**

County employees are entitled to be referred to by their declared name and pronouns. If an employee indicates a declared name and/or pronouns to their supervisor and/or Human Resources, all County employees are expected to address the employee by their declared name/pronouns. Consistent or deliberate failure or refusal to use an employee's declared name and/or pronouns can be considered harassment based on a protected class.

### **§ 3-42-060 Gender Specific Facilities**

Discrimination, harassment, or retaliation against a transgender, gender non-conforming, or gender expansive individual in their use of gender-specific facilities corresponding to their

gender identity or gender expression is prohibited. Employees are entitled to use a bathroom facility that corresponds to their gender identity and/or gender expression.

Departments will make reasonable efforts to provide private shower and changing areas in locker rooms and other similar facilities using stalls or curtains. If private changing areas are not possible, departments will make reasonable efforts to identify alternative accommodations that maintain the respect and dignity of the employee.

### **§ 3-42-070 Gender Specific Workplace Assignments and Duties**

For gender-specific job assignments (including sleeping arrangements), transgender, gender non-conforming, and gender expansive employees will be classified and assigned in a manner consistent with their gender identity and/or gender expression, not their sex assigned at birth. Employees are entitled to use facilities and shared spaces which correspond to their gender identity and/or gender expression. Reasonable efforts will be made to provide access to facilities to ensure an employee's privacy, dignity, and respect.

### **§ 3-42-080 Appearance and Attire**

An employee's appearance and attire must be appropriate and suitable for their work at the County. This may vary between departments or work areas, depending on the nature of the work, environment, and interaction with the public and customers. Employees are permitted to dress consistent with the appearance and attire standards for their department, division, work areas, and/or partner organizations (e.g. state Circuit Court) that correspond with their gender identity and/or gender expression.

### **§ 3-42-090 Privacy**

Transgender, gender non-conforming, and gender expansive employees have the right to discuss their gender identity and/or gender expression openly, or to keep that information private. Employees typically should not discuss another employee's gender identity and/or gender expression with others at work. A person's gender identity is private medical information that may be protected under federal laws, such as the [Health Insurance Portability and Accountability Act \(HIPAA\)](#).

### **§ 3-42-100 Official Records**

The County will, in a timely manner, change an employee's official record to reflect a change in name or sex upon request from the employee. Certain types of records, such as those relating to payroll and retirement accounts, may require a legal name change before the employee's official name of record can be changed.

The County will, in a timely manner, make reasonable efforts to update any photographs, ID documents, directories, email accounts and public facing materials associated with a transitioning employee's workplace so that the transitioning employee's gender identity and/or expression are represented accurately.

### **§ 3-42-110 Sick and Medical Leave**

Employees receiving medical treatment as part of a gender transition may use otherwise-qualifying sick leave under the applicable collective bargaining agreement or the Personnel Rules. Eligible employees who qualify under the [Family Medical Leave Act \(FMLA\)](#) and/or the [Oregon Family Leave Act \(OFLA\)](#) may be entitled to take medical leave for transition-related needs of themselves or their families.

### **§ 3-42-120 Transition**

Some employees elect to transition from living and working as one gender to another gender. Some of these individuals may seek medical treatment such as counseling, hormone therapy, electrolysis, and/or gender confirmation surgery; others, however, may choose not to pursue any form of medical treatment. Not all transgender, gender non-conforming, and gender expansive individuals follow the same path/pattern, but all are entitled to respectful treatment as they undertake the transition steps deemed appropriate by them. Employees who transition on the job may expect the support of management and human resources staff; human resources staff will work with each transitioning employee individually to facilitate their workplace transition.

### **§ 3-42-130 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 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.

### **§ 3-42-140 Reporting**

- A. Managers and Human Resources staff are required to promptly report perceived violations of this rule. Other employees are strongly encouraged to report suspected or perceived violations of this rule.
- B. Complaints may be submitted orally or in writing. A complainant may also include a suggested method of resolution.
- C. A violation of these rules may be reported to:
  1. The County's [Complaint Investigations Unit](#); or
  2. Department Human Resources Unit; 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 workplace discrimination, harassment, or retaliation complaint. Department Directors may also establish additional procedures that are consistent with this Rule for the handling of such 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 addressed. While complete confidentiality cannot be maintained, privacy will be maintained to the extent permitted by the circumstances.
- F. Employees will cooperate and assist in investigations of reports of workplace discrimination and harassment.
- G. The individual making the complaint and the responding party will be notified of the results of the investigation, and whether action will be taken. Immediate action will be taken in situations where safety is an issue or the severity of the alleged bad acts would require immediate intervention.

## **REFERENCES**

[Health Insurance Portability and Accountability Act \(HIPAA\)](#)

[Family Medical Leave Act \(FMLA\)](#)

[Oregon Family Leave Act \(OFLA\)](#)