

DISCRIMINATION COMPLAINT PROCEDURES

SECTION 1: PURPOSE AND SCOPE

The purpose of these procedures is to provide a process to resolve allegations of violations of the County's policies against unlawful discrimination, harassment, or retaliation in employment against the County of Monterey or its employees or officers.

These procedures cover all claims of unlawful discrimination in recruitment, appointment, training, promotion, retention, discipline, or any other aspect of employment, based on race, religion, color, sex, sexual orientation, disability, medical condition, marital status, age, national origin or ancestry and other legally protected classifications. These procedures also cover claims of retaliation for making complaints of unlawful discrimination and/or harassment.

Discrimination complaints shall be filed, investigated and resolved in accordance with the applicable procedure(s) set forth herein. Discrimination complaints may be filed against an elected or appointed official, manager, supervisor, employee, contractor or agent of the County of Monterey.

For ease of reference in these procedures, the term "employees" includes current elected or appointed official, manager, supervisor, employees of the County. The term "applicant" includes persons seeking employment from the County. The term "contractor" includes persons or entities that perform services for the County but are not employees. The term "recipient of County services" includes persons who deal with County employees or County contractors in receiving services from the County, including individuals who are inmates of the Monterey County Jail facilities. The term "Equal Opportunity Officer" includes the Officer's duly authorized designee.

SECTION 2: LIMITATIONS

For all employees this discrimination complaint procedure shall be the exclusive internal mechanism for pursuing claims of unlawful discrimination, or retaliation for complaining of unlawful discrimination, in any aspect of County employment.

This procedure is not intended to prohibit employees or applicants from filing complaints with the California Department of Fair Employment and Housing (DFEH) or the federal Equal Employment Opportunity Commission (EEOC) or to prevent them from pursuing other available judicial remedies.

These procedures do not and cannot apply to persons and entities outside of the contractual control or legal obligation of the County.

SECTION 3: OBLIGATION TO REPORT AND COOPERATE

- 1. Important Notice to All Employees:** Employees who have experienced conduct they believe is contrary to the County's discrimination and harassment policies have an

obligation to take advantage of this complaint procedure. An employee's failure to fulfill this obligation could affect her/his other rights. Every employee shares responsibility for bringing to the County's attention conduct that interferes with providing a work environment free of unlawful discrimination, harassment, and retaliation. Every employee also shares responsibility in cooperating with the investigation of these claims.

- 2. Important Notice to Managerial and Supervisory Employees:** Managers and supervisors shall address potential issues of discrimination once discovered, even in circumstances where they are not the direct manager or supervisor of the victim or the alleged harasser.

Any manager or supervisor who learns of any act(s) of sexual harassment or violent harassment by a County employee or contractor directed against a County employee, an applicant for County employment and/or promotion, a bidder or contractor who seeks to do or does business with the County, or recipient of County services has an obligation to report such information within two (2) working days to the Equal Opportunity Officer.

SECTION 4: COUNTY COMPLAINT PROCESS

Employees, applicants, contractors or recipients of County services who believe they are or may have been victims of unlawful discrimination, harassment, or retaliation, may initiate either the informal complaint procedures or file a formal complaint.

- 1. Informal Complaint Procedures:** The intent of the informal complaint procedures is to provide for early intervention and resolution of discrimination complaints in an informal manner at the departmental level. Employees are encouraged to discuss concerns with her/his immediate supervisor. The supervisor to whom the complaint is made shall inform the employee of the County's complaint procedures, including the employee's right to immediately file a formal complaint with the County and the right to be assisted in the complaint process by a person of her/his choice, and the right to file charges of discrimination with the appropriate federal and state agencies. Every effort shall be made to resolve the issue(s) quickly and informally and this process shall remain as confidential as possible.

If the employee does not feel comfortable discussing the concerns with her/his immediate supervisors, the employee may contact:

- Any supervisor or manager within or outside of the department; or
- Any Department Head; or
- The Human Resources Director; or
- The Equal Opportunity Officer.

Any supervisor, manager, or Department Head who witnesses or receives a discrimination complaint shall immediately notify the Equal Opportunity Officer.

2. Formal Complaint Procedures:

Who May File a Formal Complaint: Employees, applicants for employment, and contractors of the County of Monterey, the Monterey County Water Resources Agency, and other entities governed by the Board of Supervisors who have unlawful discrimination, harassment, or retaliation complaints may file a complaint in accordance with these procedures. Recipients of county services and bidders for County contracts may also file a complaint in accordance with these procedures.

3. Where to File a Complaint: Employees may file a formal complaint with the following:

- Their immediate supervisor; or
- Any supervisor or manager within or outside of the department; or
- Human Resources Director; or
- Any Department Head; or
- The Equal Opportunity Officer.

A non-County employee such as an applicant, a recipient of County services, a bidder or a contractor may contact the specific department where the alleged unlawful discrimination occurred or file a complaint with the County's Equal Opportunity Office. If such complaint is filed by a non-County employee with a County department, it shall be promptly referred to the Equal Opportunity Officer for investigation and resolution in accordance with these procedures.

4. Time for Filing a Complaint: To be timely, a Complainant must submit a complaint no later than sixty (60) calendar days after the alleged discriminatory incident(s) took place or the complainant first had knowledge of the alleged discriminatory act(s), so the Equal Opportunity Officer can effectively investigate the allegation(s) made, and resolve the problem(s) in an efficient and timely manner.

5. Requirements of a Complaint: The Equal Opportunity Office has prepared a complaint form to be completed, although use of the form is not required. Each complaint shall include the following:

- 1) The full name, address, and telephone number of the Complainant;
- 2) The name of person(s) alleged to have committed the discriminatory act(s);
- 3) A clear and concise written statement of the facts that constitute the discriminatory act(s), pertinent dates and sufficient information to identify any other individuals who may provide information during the course of an investigation conducted under these procedures;
- 4) The basis of the alleged discrimination, e.g. race, color, or religion;
- 5) A statement by Complainant verifying that the information supporting the allegations of unlawful discrimination is true and accurate to the best of the Complainant's knowledge;
- 6) Complainant's signature;
- 7) The date of submission of the Complainant; and

8) A statement of what remedy the Complainant is seeking as a result of the complaint.

- 6. Intake Interview:** At or after the time the Complainant initiates a Complaint, a representative from the Equal Opportunity Office shall conduct an interview with the Complainant. During the interview, the representative will discuss with the Complainant Complainant's rights, responsibilities and options for resolving the problem(s) alleged. This shall include advice as to the right of the Complainant to file charges of discrimination with the United States Equal Employment Opportunity Commission "EEOC" and the California Department of Fair Employment and Housing "DFEH."
- 7. Preliminary Review of Complaint:** The Equal Opportunity Officer, or designee, shall conduct a preliminary review to determine if there is an apparent basis, or prima facie case for the complaint. The initial review may include talking with people other than the Complainant or Respondent, but the purpose of the review is not to determine the ultimate facts or the merits of the complaint. Instead, its purpose is to determine whether there is a basis for proceeding with an investigation. The Equal Opportunity Officer shall make a written record of the disposition of review and shall make every effort to complete the Preliminary Review within thirty (30) working days.

If the Equal Opportunity Officer, or designee, determines that the Complaint does not present unlawful discrimination, s/he shall present his/her conclusion to the Complainant. The Equal Opportunity Officer shall take no further action.

- 8. Notice Regarding Complaint:** If the Equal Opportunity Officer, or designee, determines that the Complaint does present potential unlawful discrimination, s/he shall notify the Complainant, the Respondent and the Respondent's Department Head within ten (10) working days from the date of the determination by the Equal Opportunity Office. In the event the Department Head is the Respondent, the County Administrative Officer and County Counsel will also be notified.
- 9. Investigation of Allegations in Complaint:** Following the filing of a complaint and a determination of potential unlawful discrimination, the Equal Opportunity Officer, or designee, will act as a neutral fact-finder. The investigation shall assemble statements, documents and other relevant evidence, and interview witnesses and other identified individuals who have or may have information concerning the allegations set forth in the Complaint.

All County employees are required to, and shall, cooperate fully with the investigation. Department Heads shall coordinate with the Equal Opportunity Officer to make employees available during the work day to be interviewed, at no expense (i.e., required use of the sick leave, vacation time) to the employee.

Departmental personnel shall make records available to the Equal Opportunity Officer or designee, but shall comply with Privacy Rights and Confidentiality of Records Laws.

Department Heads shall make all requested files, documents, information, and data available in a timely manner. Nothing contained herein shall relieve any department of its responsibilities to comply with applicable federal, state or local laws and regulations protecting individual rights of privacy and confidentiality of records.

The complaint investigation will be completed within ninety (90) working days from the determination of potential unlawful discrimination, when possible.

- 10. Status Reports Regarding the Investigation:** Complainant, upon inquiry and during the course of an investigation, shall be advised of the status of the investigation.
- 11. Report of Findings of Fact:** Upon completion of the investigation, the investigator will make findings of fact regarding the allegation(s), which s/he shall reduce to an investigative report.
- 12. Finding of “Cause” or “No Cause”:** After review of the investigative report, the Equal Opportunity Officer shall evaluate the evidence in accordance with County policies related to unlawful discrimination, harassment, and retaliation, and shall make a Finding based on the preponderance of evidence of “Cause” or “No Cause” regarding each allegation(s).
- 13. Notice of Finding:** The Equal Opportunity Officer, or designee, shall notify Complainant and Respondent in writing of the Finding of “Cause” or “No Cause.” A “Cause” determination means that, based on the evidence gathered during the investigation, the Equal Opportunity Officer has concluded that it is more likely than not that the unlawful discrimination complained of did in fact occur. “No Cause” means there is insufficient evidence that the unlawful discrimination complained of occurred.
- 14. Corrective Action:** If the Equal Opportunity Officer finds “Cause,” s/he shall also issue recommendation(s) for prompt and effective resolution of the complaint.
- 15. Confidentiality:** All information received in connection with inquiries, or with the filing, investigation, and resolution of workplace harassment, discrimination, and retaliation complaints is treated as highly sensitive. Employees authorized by the County to receive and investigate complaints are required to maintain confidentiality to the extent possible and permitted by law. It is expected and anticipated that all parties involved in complaint investigations will observe the same standard of sensitivity. An individual who is interviewed during the course of an investigation is prohibited from discussing the substance of the interview. Any individual who discusses the content of an investigatory interview may be subject to discipline or other appropriate sanctions. It is emphasized that confidentiality is in the best interest of all parties; however, absolute confidentiality cannot be guaranteed. The County may release information to support a disciplinary action, to take remedial action, to defend itself in adversarial proceedings, or to comply with the law or court order.

16. Protection from Retaliation: Individuals, including but not limited to complainants and witnesses, shall be free from harassment, coercion, retaliation, or reprisal in connection with any complaint. Any adverse action taken because an applicant, employee, recipient of County services or contractor has reported harassment or discrimination, or has participated in the complaint and investigation process described herein, is prohibited.

SECTION 5: DISCRIMINATION COMPLAINTS INITIATED BY THE EQUAL OPPORTUNITY OFFICER

The Equal Opportunity Officer may initiate an investigation on her/his own if there are reasonable grounds to believe that discriminatory incident(s) and/or behavior(s) may have occurred or the County's non-discrimination policies have been violated.

SECTION 6: COMPLAINTS AGAINST ELECTED & APPOINTED OFFICIALS

Complaints against elected and appointed County officials should be submitted to the Equal Opportunity Officer. In addition, the County Administrative Officer, or the County Counsel may also receive complaints against elected and appointed County officials and shall refer such complaints to the Equal Opportunity Officer within five (5) working days, except as provided below in Section 8. The Equal Opportunity Officer shall authorize and supervise the investigation of the complaint and/or investigate the complaint.

Complaints against elected and appointed County officials will be processed in accordance with the procedure herein except that in addition: 1) County Counsel and the County Administrative Officer shall be notified within ten (10) working days of the complaint being filed and 2) the respondent shall be notified of the outcome of the investigation, if any, conducted pursuant to Section 5, within five (5) working days after the Equal Opportunity Officer has (a) completed the investigation and (b) consulted with the County Counsel, the County Administrative Officer, and the Board of Supervisors regarding the investigative findings, determination and recommendation(s).

SECTION 7: COMPLAINTS AGAINST THE COUNTY ADMINISTRATIVE OFFICER & COUNTY COUNSEL

Complaints against the County Administrative Officer and County Counsel should be submitted to the Equal Opportunity Officer or a member of the Board of Supervisors.

The Equal Opportunity Officer or an independent review officer designated by the Board of Supervisors shall process complaints against the County Administrative Officer and County Counsel in accordance with the procedure herein except that in addition: 1) the Chair of the Board of Supervisors shall be notified within ten (10) working days of the complaint being filed and 2) the respondent shall be notified of the outcome of the investigation, if any, conducted pursuant to Section 5, within five (5) working days after the Equal Opportunity Officer or

independent review officer has (a) completed the investigation and (b) consulted with the Board of Supervisors regarding the investigative findings, determination and recommendation(s).

SECTION 8: COMPLAINTS AGAINST THE EQUAL OPPORTUNITY OFFICER

Complaints against the Equal Opportunity Officer should be submitted to the County Administrative Officer or the County Counsel.

The County Counsel shall determine how the complaint shall be processed and, if appropriate, investigated. The general format for complaint investigations set forth for elected and appointed officials shall be followed, including time frames.

Complaints against County Equal Opportunity Office employees shall be referred to the Office of the County Counsel for processing, investigation and appropriate action in accordance with the procedures set forth herein.

SECTION 9: COMPLAINTS AGAINST MERIT SYSTEM EMPLOYEES

Any department covered by Merit System Services shall establish a procedure which is in accordance with Local Agency Personnel Standards (LAPS) to investigate discrimination complaints against persons whom they employ. A written description of such procedures shall be filed with the County Administrative Officer, the County Counsel, and the Equal Opportunity Officer, and shall be made available to County employees and the general public upon request.

Departments utilizing a LAPS compatible procedure to investigate and resolve discrimination complaints shall keep the Equal Opportunity Officer fully advised of the investigative status of such complaints.

A Merit System employee may also file a discrimination complaint with the Equal Opportunity Officer directly. The complaint shall be processed in accordance with the procedures described herein.

SECTION 10: COMPLAINTS AGAINST PUBLIC SAFETY OFFICERS

The Equal Opportunity Office shall establish a procedure which complies with the Public Safety Officers' Procedural Bill of Rights and other applicable laws and regulations for those County departments that employ peace officers, to investigate fully and thoroughly complaints of discrimination against the peace officers.

A Public Safety employee may also file a discrimination complaint with the Equal Opportunity Officer directly. The complaint shall be processed in accordance with the procedures described herein to the extent permitted by applicable law and regulations.

Department Heads in County departments that employ peace officers shall direct their internal affairs investigator, management staff, peace officers and other personnel to cooperate fully with the County's Equal Opportunity Officer, consistent with applicable law and regulations, during

discrimination complaint investigations, conciliation meetings, settlement negotiations and/or complaint resolution.

SECTION 11: COMPLAINTS FROM RECIPIENTS OF COUNTY SERVICES, BIDDERS, & CONTRACTORS

Recipients of County Services, bidders, and contractors may file a discrimination complaint directly with the Equal Opportunity Officer. The Equal Opportunity Officer shall notify the appropriate Department Head of such complaints. Any such complaint filed with a County department by a recipient of County Services, bidder, or contractor shall be promptly referred to the Equal Opportunity Officer by the receiving department.

Recipients of County Services includes those members of the public who have official contact with the County of Monterey in order to receive services from the County, including such things as permits, licenses, approvals, funds, users of County facilities (e.g., parks, libraries), etc., which are received by the recipient pursuant to individual application, separate from and in addition to those services generally received by the taxpayers of the County. The term also includes individuals who are inmates of the Monterey County Jail facilities.

SECTION 12: NEGOTIATED SETTLEMENTS/CONCILIATION

The Equal Opportunity Officer shall make every effort to resolve the discrimination complaint. The Equal Opportunity Officer, in consultation with County Counsel, may hold conciliation sessions in an effort to facilitate a resolution.

SECTION 13: WITHDRAWAL OF COMPLAINT

A complainant may withdraw a complaint at any time. However, the withdrawal of a complaint does not preclude the County from proceeding with an investigation, in order to meet its legal obligations.