

EQUAL EMPLOYMENT OPPORTUNITY DISCRIMINATION COMPLAINT PROCEDURE FOR THE COUNTY OF SONOMA

I. Purpose and Scope

The purpose of this procedure is to provide an internal system to resolve allegations of unlawful discrimination or retaliation for complaining of unlawful discrimination in employment against the County of Sonoma or its employees or officers.

Applicants for employment and employees of the County of Sonoma, the Sonoma County Water Agency, and the Northern Sonoma County Air Pollution Control District, and other entities governed by the Board of Supervisors who have discrimination claims are encouraged to pursue this complaint resolution process.

This procedure covers 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. It also covers claims of retaliation for making complaints of unlawful discrimination.

II. Limitations

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.

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.

III. County Affirmative Action Coordinator

The County has designated an Affirmative Action Coordinator to counsel employees and investigate complaints of unlawful discrimination or retaliation. The Coordinator is located in the Human Resources Department, Equal Employment Opportunity Division, 2300 County Center Drive, Suite 167B, Santa Rosa, California, 95403, (707) 565-3572.

IV. Right to Representation

Employees and applicants who complain of unlawful discrimination have the right to be represented by a person of their choosing.

V. Protection from Retaliation

All persons, including but not limited to complainants and witnesses, shall be free from harassment, coercion, retaliation, or reprisal in connection with any complaint.

VI. Maintenance of Performance Standards by Complainants

An employee who makes a complaint of discrimination is in no manner excused or exempt from the same performance standards to which other employees performing the same or similar work are held accountable. All job performance standards will be maintained throughout and following any investigation undertaken as a result of this procedure. Failure to meet job-related performance standards may be grounds for disciplinary action.

VII. Distribution

The Personnel Department shall make a copy of this procedure available to each employee organization and to each employee or applicant upon request. A copy of the procedure shall also be posted on an employee bulletin board in each department and on the Personnel Department public information board.

VIII. Complaint Process

Employees are encouraged to discuss any complaints of unlawful discrimination or retaliation with their immediate supervisor or their appointing authority. Employees may instead discuss any such complaints with the Affirmative Action Coordinator if they prefer. If such discussion produces no satisfactory result or if the employee perceives such discussion would be fruitless or harmful, the following procedure is recommended:

A. Informal Pre-complaint Counseling

1. All applicants and employees are encouraged to discuss their claims of discrimination informally with the County Affirmative Action Coordinator as soon as possible after the occurrence of the alleged discriminatory incident. At the initial meeting, the Affirmative Action Coordinator shall inform the complainant of the opportunity to file a formal complaint with the County or with the DFEH and EEOC and shall attempt to resolve the complaint. Such informal discussion shall remain confidential to the extent possible, except for statistical purposes, unless the complainant takes some further County, State or Federal action.
2. Where resolution is not immediately obtainable and the complainant requests further investigation, the Affirmative Action Coordinator shall conduct an informal inquiry of all relevant parties including the department head in order to resolve the claim to the satisfaction of the complainant and the County. The Affirmative Action Coordinator shall have thirty (30) County business days to complete this inquiry, discuss his/her findings with the complainant, and inform the complainant of his/her right to file a written complaint if dissatisfied with the proposed resolution.

(NOTE: Reference to "County business day" shall mean Mondays through Fridays, from 8 a.m. to 5 p.m., but excluding formal County holidays or weekends.)

B. Formal Complaint of Employment Discrimination

1. As soon as possible and in no case more than two hundred sixty (260) County business days after an alleged discriminatory action or incident, an applicant or employee may file a written complaint with the Affirmative Action Coordinator by completing a copy of the County of Sonoma Discrimination Complaint form available at the Personnel Department. The complaint shall state the facts upon which the allegation of discrimination is based, any resulting adverse employment action, and any remedy sought. The Affirmative Action

Coordinator shall discuss the complaint, review the complaint procedure, time limitations, and appeal process with the complainant.

All parties shall cooperate fully with the Affirmative Action Coordinator who shall have access to any records necessary for completion of the investigation. When all relevant parties cannot be reached within thirty (30) County business days, or for other good cause stated, the Affirmative Action Coordinator may extend the time period sufficiently to allow completion of the investigation and recommendation.

2. Upon receipt of a formal discrimination complaint, the Affirmative Action Coordinator shall have thirty (30) County business days to complete the following:
 - a. Notify all relevant parties, including the appropriate department head, of the complaint.
 - b. Investigate the allegations.
 - c. Draft a written report setting forth a statement of the allegations, factual findings and recommended disposition.
 - d. Discuss the recommended disposition with relevant parties and attempt to conciliate a resolution. If a resolution is agreed upon that differs from his/her recommendation, the Affirmative Action Coordinator shall modify the written recommendation accordingly.
 - e. Provide a copy of the final report to the complainant and department head. Notify the complainant of his/her right to appeal an unsatisfactory recommendation to the Civil Service Commission within seven (7) County business days from the date of receipt of the Affirmative Action Coordinator's final report.
3. Where the final recommendation of the Affirmative Action Coordinator favors the complainant, the department head shall determine whether to implement the recommended action and notify the complainant of his/her decision within twenty (20) County business days from the date of receipt of the Affirmative Action Coordinator's final report and recommendation. The employee shall have seven (7) County business days from receipt of the department head's decision to appeal to the Civil Service Commission.

C. Appeal

1. The complainant may appeal to the Civil Service Commission if he/she disagrees with the final recommendation of the Affirmative Action Coordinator or if the department head fails to implement the Affirmative Action Coordinator's final recommendation. The complainant shall file with the Director of Personnel and Employee Relations a written notice of appeal stating the specific nature of the appeal and reasons why the appellant believes the appeal should be granted. The Director of Personnel and Employee Relations will inform the Civil Service Commission that the request has been received and forward the notices of appeal to the Commission. Only official reports shall be made available to the Chairperson of the Civil Service Commission.

2. Hearing

Hearings on appeal shall be conducted in accordance with procedural rules adopted by the Civil Service Commission for use in appeals from disciplinary actions, with the following exceptions:

- (1) The burden of proof shall be on the complainant to show by a preponderance of the evidence that the adverse employment action was discriminatorily motivated. The complainant shall introduce facts upon which a prima facie claim of unlawful discrimination can be made and which would support an inference that an employment action adverse to the complainant was caused by such discrimination. The department may present evidence of a legitimate nondiscriminatory reason for the action taken. Thereafter, each side may present rebuttal evidence. The complainant may present the opening argument, the department may present its argument and the complainant may present a closing argument.
- (2) The Commission shall consider the recommendation of the Affirmative Action Coordinator in its deliberations. Upon reaching its decision, the Commission shall issue written findings setting forth reasons therefore. Where the complaint is sustained in whole or part, the Civil Service Commission shall order such remedial actions it deems appropriate, which may include, but are not limited to, issuing cease and desist orders, ordering reinstatement, or ordering appointment or promotion to the next available position for which the complainant is qualified. The decision of the Commission is final.

D. Consolidation of Disciplinary and Discrimination Appeals

Permanent classified employees, who are entitled to a hearing before the Civil Service Commission for dismissal, suspension, reduction in rank or compensation under County of Sonoma Civil Service Ordinance, Section 12A, and Civil Service Rule 10.5 must raise their discrimination claims at that hearing as an affirmative defense to the disciplinary action. The burden of proof on the issue of discrimination shall be as specified above (VIII C.2 (1)).

With regard to such claims of discrimination, attempted resolution with the Affirmative Action Coordinator is a prerequisite to a hearing on appeal to the Civil Service Commission. The disciplined employee alleging discrimination, who has not done so prior to the disciplinary action, shall file a written complaint with the Affirmative Action Coordinator at least thirty (30) County business days prior to the Civil Service hearing date, so that the Affirmative Action Coordinator may complete his/her investigation and issue a written recommendation for consideration by the Commission. Such recommendation shall be received into evidence by the Civil Service Commission. The Affirmative Action Coordinator shall expedite his/her investigation to meet the hearing time limitations. If necessary, the Affirmative Action Coordinator may request the Commission to extend the hearing date for an additional thirty (30) County business days, pending completion of the Affirmative Action Coordinator's investigation and written recommendation.

If the affected employee does not file such a written complaint at least thirty (30) County business days prior to the Civil Service hearing date, the employee shall forfeit the right to file a discrimination complaint and the disciplinary hearing will proceed as scheduled.