

COUNTY OF ALBEMARLE
PERSONNEL POLICY

§P-21 EQUAL EMPLOYMENT OPPORTUNITY, INCLUSION, AND PROHIBITION
AGAINST DISCRIMINATION, HARASSMENT, BULLYING, AND RETALIATION

I. Purpose

Albemarle County is an Equal Opportunity Employer committed to providing an atmosphere of non-discrimination, inclusion, and equal opportunity within the County government. This includes maintaining a workplace that is free from discrimination, harassment, bullying, and retaliation.

The Albemarle County Board of Supervisors prohibits discrimination, harassment, bullying, the creation, maintenance, or tolerance of a hostile work environment, and retaliation of any kind. This includes but is not limited to discrimination, harassment, bullying, or retaliation on the basis of race, color, religion, sex, gender identity, sexual orientation, pregnancy, marital status, parental status, national origin, age, disability (physical or mental), family medical history or genetic information, political affiliation, military service, or any non-merit factors. Non-merit-based factors include non-job-related conduct that does not adversely affect the performance or work environment of an employee or job applicant.

These protections extend to all management practices and decisions, including recruitment and hiring practices, appraisal systems, promotions, training, and career development programs. All personnel decisions shall be based on merit and the ability to perform the essential functions of the job with or without reasonable accommodation. The Board has designated the Director of Human Resources to receive all complaints and inquiries regarding the nondiscrimination provisions of Titles VI and VII of the Civil Rights Act of 1964, as amended, Title IX of the Education Amendments of 1972, the Age Discrimination Act, the Age Discrimination in Employment Act, Title II of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973 with respect to any employment issues, and the Virginia Human Rights Act.

All employees of Albemarle County must be tactful in their relationships with their peers and the public and shall treat them with respect and courtesy. Any instances of verbal or physical harassment will be investigated and addressed through appropriate disciplinary action. Instances of physical or verbal harassment will be considered standard of conduct violations subject to discipline up to and including termination of employment.

II. Notice of Policy

The statement, “Albemarle County is an Equal Opportunity Employer,” shall be placed on all employment application forms and shall be disseminated throughout Albemarle County.

III. Accommodations

The County will reasonably accommodate changes to work requirements and conditions for employee who need them for disability or religious reasons as required by law. See also § P-91 Americans with Disabilities Act.

IV. Prohibited Conduct

A. Generally

Physical or verbal conduct, or a combination thereof, which may include use of cell phones, social media, messaging apps, or other internet mediums, is prohibited when it:

- creates an intimidating, hostile, or offensive working environment;
- interferes with another's work;
- constitutes an adverse employment action; or
- otherwise is sufficiently serious to limit another employee's employment opportunities.

Behavior that is not civilly or criminally unlawful or does not constitute illegal or actionable harassment, discrimination, bullying, or retaliation may nevertheless be unacceptable for the workplace. Demeaning, derogatory, offensive, or otherwise harmful actions are prohibited. Such conduct not directed at an employee but performed under circumstances reasonably foreseeable that the employee will overhear, see, witness, or indirectly learn of such conduct is also considered prohibited under this policy.

Aggressive and unwanted behavior that is intended to harm, intimidate or humiliate the victim; involves a real or perceived power imbalance between the aggressor or aggressors and victim; and is repeated over time or causes identifiable/significant emotional trauma/distress is also prohibited and violates this policy.

Whether conduct is prohibited and violates this policy is based upon a reasonable manager/employer standard.

Examples of prohibited conduct which violate this policy include but are not limited to:

- written or graphic material containing offensive language, including offensive material shared via social media, messaging apps, or other digital platforms
- written or graphic material which is posted or circulated and which intimidates or threatens individuals including offensive material shared via social media, messaging apps, or other digital platforms
- name calling, offensive/unwelcome nicknames, demeaning/inappropriate terms, jokes or rumors
- offensive/threatening non-verbal or physical gestures/actions (i.e. slicing a finger across one's own throat, etc.)
- verbal or physical acts of aggression against a person or the person's property, insults, ridicule, acts of intimidation, or abuse
- encouraging others to make inappropriate jokes, comments or advances

- stalking an individual by following them, making repeated telephone calls, etc., whether during or after work hours
- a pattern or practice of offensive behavior (i.e. repeatedly rolling eyes/loud dramatic sighs whenever target of behavior enters a room, “flipping the bird”/showing middle finger, etc.)

Prohibited physical or verbal conduct may occur between any two or more persons; it may occur by or against an employee, contractor or vendor; it may occur at the workplace, or away from the workplace, and may occur during or after work hours. The employee need not suffer any physical injury to have experienced a prohibited action pursuant to this policy.

Violations of this policy may also constitute violations of other policies such as but not limited to § P-25 Standards of Conduct. Conduct brought to a supervisor’s attention pursuant to this policy that does not rise to the level of harassment, bullying, discrimination, or retaliation may be held to violate other policies pertaining to professional behavior and acceptable performance such as but not limited to § P-25 Standards of Conduct.

B. Prohibited Conduct Based on Sex, Sexual Orientation, Gender Identity

Sexual harassment, discrimination, and retaliation are absolutely prohibited. It is deemed to have occurred when physical or verbal conduct, or a combination thereof, meets the general definition above and is of a sexual, sex-based or gender identity-based nature.

Examples of conduct which may constitute sexual harassment include but are not limited to:

- attempts to coerce or force an individual to submit to unwelcome sexual advances, requests for sexual favors, unwelcome pressure to date or engage in sexual activities
- unwelcome verbal, physical, or written conduct of a sexual nature including but not limited to offensive material/conduct shared via social media, messaging apps, or other digital platforms
- unwanted, intentional touching (i.e., patting, massaging, rubbing, hugging or pinching)
- sexual or suggestive remarks about a person’s weight, body, clothing, make-up, appearance, smell, or hairstyle
- subjecting members of one sex or gender identity to disadvantageous terms or conditions of employment to which members of the other sex or gender identity are not subjected
- telling, displaying, or distributing sexually suggestive calendars, magazines, pin-ups, graffiti, pictures, cartoons, posters, software, e-mail or jokes including those with sexual innuendo or comments with a double meaning
- displaying, fondling, or grabbing one’s own intimate parts in another person’s presence

- making facial expressions such as throwing kisses, winking, licking lips or whistling at another person in a sexually suggestive manner
- asking intimate or sexually probing questions
- requesting sexual favors during work
- requesting sexual favors at any time accompanied by implied or overt threats concerning another person's employment status or benefits or promise of preferential treatment with regard to an individual's employment status or benefits

Sexual discrimination occurs when an adverse employment action is taken against a person based upon the person's sex, sexual orientation, or gender identity. Adverse employment actions affect the terms and conditions of employment including, but are not limited to, the failure to hire, termination, demotion, decrease in pay or benefits, loss of job title or supervisory responsibilities, or reduced opportunities for promotion.

Sexual retaliation occurs when an individual engages in an activity protected by County policy or law (i.e. reporting harassment or bullying or filing a claim with the EEOC or a court) and an employee retaliates with harassment or discrimination based on sex, sexual orientation, or gender identity.

Consensual Relationships – Employees involved in consensual relationships, including friendships outside of the workplace, should notify the other party that continued non-work-related contact is unwelcome before filing a complaint.

Supervisor/Subordinate Romantic/Dating Relationships – Supervisors must report to their department head/designee and the Human Resources Director/designee if they wish to pursue a consensual romantic/intimate/dating relationship between the supervisor and a subordinate prior to initiating such a relationship. One or both employees will be transferred to eliminate, or minimize the risk of occurrence if elimination is not reasonably possible, any conflicts that may arise from a supervisory relationship. The County will strive to have any such transfer be to a similar position of equivalent pay and benefits taking into consideration position availability and the transferring employee's knowledge, skills, and abilities. Consensual romantic/intimate/dating relationships that are not properly reported will be treated as non-consensual and will result in disciplinary action against the supervisor.

V. Supervisor Expectations and Duties

A. Generally

Supervisors/department heads are duty bound to create and maintain a safe environment that is free of discrimination, harassment, bullying and retaliation of any kind from other employees, residents, customers, contractors, or vendors.

If a supervisor/department head knows or reasonably should know that such impermissible behavior is occurring, they must take quick and reasonably necessary measures to stop such behavior through this policy and/or the disciplinary process.

Supervisors/department heads ‘reasonably should know’ when reported actions or statements would lead a reasonable supervisor to know or investigate whether impermissible behavior is occurring.

Supervisors/department heads are also required to take appropriate steps even when the reporting employee is from a different department. Supervisors/department heads must report discrimination, harassment, bullying, and retaliation complaints to and consult with their Human Resources Generalist/Human Resources Director/designee for guidance.

B. Additional Liability

In addition to facing disciplinary action from the County, employees who engage in or permit discrimination, harassment, bullying, or retaliation including supervisors who know or reasonably should know that such misconduct is occurring in their workplace and fails to report as required by County policy, may face personal civil liability under federal anti-discrimination laws, such as Title VII of the Civil Rights Act (“Title VII”).

VI. Complaint Procedure

A. Direct the Harasser to Stop

Any person who is being subjected to discrimination, harassment, bullying, or retaliation should direct the offender to stop the behavior. If the employee is not able to direct the offender to stop, if the employee feels uncomfortable directing the offender to stop, or if the conduct reoccurs after the offender has been told to stop, the employee should report the behavior as outlined below.

B. Report to Supervisor or Department Head/Designee

Employees are encouraged to report situations even when resolved on their own to their immediate supervisor/department head/designee so that the supervisor/department head/designee can identify any patterns.

The County supports site-based management and empowers department heads to solve problems at their level of the organization. The department head/designee may take whatever personnel actions are deemed necessary to protect employees, customers, contractors, vendors, and the public and to preserve orderly departmental operations consistent with County objectives. If the complaint indicates a severe or pervasive on-going issue, the department head/designee must take immediate action to protect the aggrieved party and separate or remove the aggressor, which includes using administrative leave during the investigation.

C. Report to Human Resources Department (HR)

Employees are encouraged to report situations even when resolved on their own to their Human Resources Generalist or the Director of Human Resources/designee so that Human Resources can identify any patterns. HR is responsible for notifying the County

Executive's Office as needed to ensure appropriate policy application and maintain consistency across departments.

If an employee is not satisfied that a complaint has been resolved, or if the employee feels uncomfortable reporting the problem to their immediate supervisor or department head/designee, they should report the problem to their Human Resources Generalist or the Director of Human Resources/designee.

The problem should be reported as soon as possible. The County encourages reports to be made within twenty (20) calendar days of the occurrence or lack of resolution to promote and protect employee and customer welfare and safety, to facilitate prompt, thorough, and impartial investigations, and to allow the imposition of immediate and proportionate corrective action if discrimination, harassment, bullying, or retaliation is determined to have occurred.

Reports to HR or appointments to make a report can be made at: 434-296-5827.

If any person covered by this policy is not satisfied that a complaint has been resolved in accordance with the County's personnel policies, the person should report the matter to the County Executive's Office as provided below.

D. Report to County Executive's Office

If the complaint is made against an employee in HR, the person to whom a complaint is made shall contact the County Executive's Office for further action.

Reports to the County Executive's Office or appointments to make a report can be made at: 434-296-5841.

E. Duty to Investigate

HR is primarily responsible to investigate complaints promptly, thoroughly, and impartially subject to its standard operating procedures. HR may utilize other departments' resources to assist in the investigation. The County Executive/designee is authorized to request the County Attorney/designee or procure qualified outside professional organizations to investigate under appropriate circumstances.

The investigation shall be completed as soon as practicable, which generally should be not later than 14 business days after receipt of the complaint by the Human Resources Generalist or the Director of Human Resources/designee. Upon receiving the complaint, the Human Resources Generalist or Director of Human Resources/designee shall acknowledge receipt of the complaint by giving written notice that the complaint has been received to the person complaining of harassment. Also, upon receiving the complaint, HR shall determine whether interim measures should be taken pending the outcome of the investigation. Such interim measures may include, but are not limited to, separating the alleged harasser and the complainant and, in cases involving potential criminal conduct, determining whether law enforcement officials should be notified. If HR determines that more than 14 business days will be required to investigate the

complaint, the complainant shall be notified of the reason for the extended investigation and of the date by which the investigation will be concluded.

VII. Refusal to Disclose

The County is not obligated to force an alleged victim/survivor of discrimination, harassment, bullying, or retaliation to reveal the name of their harasser if the victim refuses to disclose the name because the victim has talked with the harasser, resolved the matter to their satisfaction and represented in writing that they do not want the County to further investigate the incident. However, the way the County handles these situations will be determined only after interviewing the victim and analyzing the facts and circumstances of each case. If the County concludes the circumstances are serious, aggravated, or present as a potentially continued risk to the safety and welfare of its workforce or customers, then the County may require disclosure of the harasser's identity.

VIII. Duty to Cooperate

All County employees are required to cooperate fully in investigations. Impeding an investigation or otherwise covering up a violation is prohibited. Refusal to cooperate, whether by act or omission, is subject to disciplinary action.

IX. Confidentiality

To promote an impartial, accurate, and thorough investigation, all participants in the investigation, including the complainant, the alleged harasser, and witnesses must keep the details and results of any investigation confidential to the extent possible, or unless otherwise directed. Communications with personal legal counsel or communications that are otherwise legally protected as a privileged communication are permitted. Communications protected under state or federal law are also permitted.

X. Prohibition Against Retaliation

Albemarle County does not tolerate retaliation, which includes any adverse employment action, harassment, reprisal, punishment, or other form of retaliation against an employee because that employee filed a complaint of discrimination or harassment, participated in a complaint-related investigation, are perceived to have participated in a complaint-related investigation, or otherwise opposed discrimination, harassment, bullying, or retaliation. Employees who believe they have been subject to retaliation in violation of this policy should immediately contact their Human Resources Generalist or the Director of Human Resources/designee. Any employee, including any member of management, who violates this policy will be subject to discipline, up to and including termination of employment.

XI. Right to Legal Remedies

Nothing in this policy shall deny the right of any individual to pursue other avenues of recourse to address concerns relating to prohibited discrimination, harassment, bullying,

or retaliation including initiating civil action, filing a complaint with outside agencies or seeking redress under state or federal law. This may include but is not limited to the employee contacting and communicating with the federal Equal Employment Opportunity Commission or the state Virginia Division of Human Rights.

XII. False Charges

Employees who knowingly, maliciously, or recklessly make false charges of discrimination, harassment, bullying, or retaliation shall be subject to discipline up to and including termination of employment.

XIII. Prevention and Notice of Policy

Training to prevent discrimination, harassment, bullying, and retaliation are included in new employee orientation as well as continuing employee in-service training.

The ultimate responsibility for compliance with this policy rests with the County Executive as the chief administrative officer of the County. Responsibility for administration and dissemination of the Policy is delegated to the Director of Human Resources.

To assist the Director of Human Resources, each department head will be responsible for ensuring that the Equal Employment Opportunity and Inclusion Policy is carried out within their respective department.

This responsibility will include, but not be limited to, the following:

- Train and counsel management concerning the need for their personal attention to the requirements of this policy to create, provide, and maintain non-discrimination, inclusion, and equal opportunity within the County government.
- Undertake efforts to recruit, appoint and retain qualified diversity at all levels of employment.

Legal References:

Civil Rights Act of 1964, as amended in 1972, Title VI, Title VII; 42 U.S.C. 2000e-z, 29 C.F.R. 1604.11 (1987); Executive Order 11246, 1965, as amended by E.O. 11375; Equal Employment Opportunity Act of 1972, Title VII; Education Amendments of 1972, Title IX (P.L. 92-318); 45 C.F.R., Parts 81, 86 (Federal Register June 4, 1975, August 11, 1975); Rehabilitation Act of 1973; Age Discrimination in Employment Act, P.L. 95-256; Constitution of Virginia

Amended: August 4, 1993; January 3, 2007; August 5, 2020