

TITLE 10

SPECIAL ORDINANCES, REGULATIONS, RULES, POLICIES, AND BARGAINING AGREEMENTS

SUBTITLE 3 — POLICIES

POLICY 46

POLICY PROHIBITING DISCRIMINATION, HARASSMENT & BULLYING IN THE WORKPLACE

its employees, volunteers, vendors, or contractors. This Policy outlines the different types of discriminatory and harassing conduct and the procedures for reporting and investigating it.

[Adopted 20-292 eff 09/29/20; amd 21-097 eff 04/20/21]

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46.100 Purpose

Linn County as an employer is committed to maintaining a work environment free of discrimination, workplace harassment, workplace bullying, sexual harassment, and sexual assault, and it will not tolerate this conduct by or against any of

46.200 Definitions

As used in this policy, the term:

(A) “**Board**” means the Linn County Board of Commissioners.

(B) “**Collective bargaining agreement**” or “**CBA**” means a written agreement between the County and a labor union. References to CBAs contained in this policy are applicable only to employees covered by a CBA.

(C) “**Complainant**” means a person (or persons) allegedly subjected to, or who witnessed or observed, discrimination, workplace harassment, workplace bullying, or sexual harassment and who files a complaint with designated individual.

(D) “**Contractor**” means an individual or business with whom the County has entered into an agreement or contract to provide goods or services.

(E) “**County**” means Linn County.

(F) “**Designated complaint taker**” means an individual designated by the County as being responsible for receiving reports of prohibited conduct and engaging in investigations of such complaints. For the purposes of this Policy 46, the Linn County Administrative Officer, or a designee thereof, is the County’s designated complaint taker. In the event that the Linn County Administrative Officer is involved in the prohibited conduct, the Chairperson of the Linn County Board of

Commissioners, or a designee thereof, shall be the County's designated complaint taker.

(G) "**Department head**" means the person to whom the Board has given the responsibility of administering a department of Linn County government.

(H) "**Discrimination**" means making employment decisions related to hiring, firing, transferring, promoting, demoting, benefits, compensation, and other terms and conditions of employment, based on or because of an employee's protected class status. (See also "workplace harassment".)

(I) "**Elected official**" means any of the following, individually or collectively: the Assessor, the Clerk, the District Attorney, the Sheriff, the Surveyor, the Treasurer, and Justice of the Peace.

(J) "**Employee**" means any person employed by the County. This definition includes Board members, elected officials, temporary employees, interns, and volunteers.

(K) "**Non-disclosure provision**" means a provision in an agreement between the County and an employee that prevents the employee from disclosing information related to complaints or personnel actions filed under this Policy.

(L) "**Non-disparagement provision**" means a provision in an agreement between the County and an employee that prevents the employee from making negative statements about the County in relation to complaints or personnel actions filed under this Policy.

(M) "**Protected class status**" means a group of people sharing a common trait who are legally protected from being discriminated against on the basis of race; color; national origin; sex (includes pregnancy-related conditions); religion; age (18 and older); physical or mental disability; injured worker; a person who uses leave covered by the Federal Family and Medical Leave Act or the Oregon Family Leave Act; a person who uses military leave; a person who associates with a protected class; marital status; family relationship; sexual orientation; whistleblower; expunged

juvenile record; and any other protected class as defined by state or federal law.

(N) "**Prohibited conduct**" means conduct that results in discrimination, workplace harassment, workplace bullying, sexual harassment, and/or sexual assault.

(O) "**Sexual assault**" means unwanted conduct of a sexual nature that is inflicted upon a person or compelled through the use of physical force, manipulation, threat or intimidation; or a sexual offense has been threatened or committed as described in ORS 163.305 to 163.467 or 163.525. (See also "workplace harassment".)

(P) "**Sexual harassment**" means unwelcome, unwanted, or offensive sexual advances, requests for sexual favors, and other verbal, visual, and physical conduct of a sexual nature whenever:

(i.) submission to the conduct is made an explicit or implicit condition of employment;

(ii.) submission to or rejection of the conduct is used as the basis for an employment decision affecting the harassed employee; or

(iii.) the harassing conduct unreasonably interferes with an employee's work performance or creates an intimidating, hostile, or offensive working environment.

(Q) "**Workplace harassment**" means conduct that constitutes discrimination prohibited by ORS 659A.030, including conduct that constitutes sexual assault or that constitutes conduct prohibited by ORS 659A.082 or 659A.112.

(R) "**Workplace bullying**" means a pattern of repeated abusive, intimidating, threatening, humiliating, or violent conduct that is sufficiently severe or pervasive as to have the purpose or effect of unreasonably interfering with an employee's work performance or conditions of employment. Workplace bullying does not include the normal exercise of supervisory responsibilities, including performance reviews, direction, counseling, and disciplinary action where required, provided that they are conducted in a respectful, professional manner.

(S) "**Volunteer**" means any individual who is performing work on behalf of the County and is

not paid for their service. This may include interns and other categories of unpaid workers.

[Adopted 20-292 eff 09/29/20; amd 21-097 eff 04/20/21]

46.300 Applicability

Except as otherwise mandated by law, the prohibition against discrimination, workplace harassment, workplace bullying, sexual harassment, or sexual assault applies to everyone conducting business on behalf of the County, including, but not limited to, all employees, contractors, vendors, and prospective employees unless this Policy conflicts with an applicable collective bargaining agreement.

[Adopted 20-292 eff 09/29/20; amd 21-097 eff 04/20/21]

46.350 Discrimination, Workplace Harassment, Workplace Bullying, Sexual Harassment, and Sexual Assault Prohibited

(A) The County provides a work environment free from discrimination, workplace harassment, workplace bullying, sexual harassment, and sexual assault.

(B) All employees, including temporary employees and contractors, must conduct themselves in a business-like and professional manner at all times and not engage in any form of discrimination, workplace harassment, workplace bullying, sexual assault, or sexual harassment.

[Adopted 20-292 eff 09/29/20; amd 21-097 eff 04/20/21]

46.400 Reporting Prohibited Conduct

(A) Anyone who is subject to or aware of what they believe to be prohibited conduct, or who has knowledge related to employment or settlement agreements containing prohibited provisions, should report that behavior or conduct to the designated complaint taker.

(B) A report of prohibited conduct is considered a complaint.

(C) A complaint may be either oral or in writing, and it should contain all of the following information:

(i.) The name of the complainant and the name of the person that was subjected to the

prohibited conduct if they are not the same person;

(ii.) The names of all parties involved, including witnesses; and

(iii.) A specific and detailed description of the conduct or action the employee believes constitutes discrimination, workplace harassment, workplace bullying, sexual harassment, and/or sexual assault.

(D) Upon receipt of a complaint of prohibited conduct, the designated complaint taker shall provide a copy of this Policy to the complainant.

(E) All County employees should report any incident of prohibited conduct they may observe, even if they are not the target or victim of such prohibited conduct.

(F) When a contractor, vendor, or other person not employed by the County is found to have engaged in prohibited conduct while performing work on behalf of the County against a County employee, the County shall advise the person and his or her employer of the County's policy against such conduct and shall take such other action as appropriate.

(G) A report of prohibited conduct should be made to a designated individual complaint taker within five (5) years of the occurrence; however, failure to report within five years does not remove the County's ability to conduct an investigation and engage in discipline as provided herein.

(H) Nothing in this Policy prevents any person from filing a formal grievance in accordance with a CBA, or a formal complaint with the Bureau of Labor and Industries (BOLI) and/or the Equal Employment Opportunity Commission (EEOC), or, if applicable, the U.S. Department of Labor (USDOL) Civil Rights Center.

(i.) A complaint filed with BOLI alleging an unlawful employment practice as described in ORS 659A.030, 659A.082 to 659A.865, 659A.112 or section 2 of SB726 (2019) must be filed no later than five years after the occurrence of the alleged unlawful employment practice.

(ii.) An employee whose department receives federal financial assistance from the U.S. Department of Labor under the Workforce Inno-

vation and Opportunity Act, Mine Safety and Health Administration, Occupational Safety and Health Administration, or Veterans' Employment and Training Service, may file a complaint with the State of Oregon Equal Opportunity Officer or directly through the USDOL Civil Rights Center. The complaint must be written, signed and filed within 180 days of when the alleged discrimination or harassment occurred.

(I) Nothing in this Policy prevents a person from seeking remedy under any other available law, whether civil or criminal.

(J) An employee or claimant must provide advance notice of claim against the County as required by ORS 30.275.

[Adopted 20-292 eff 09/29/20; amd 21-097 eff 04/20/21]

46.500 Investigation and Discipline

(A) All complaints and reports of prohibited conduct shall be taken seriously, and the designated complaint taker shall initiate an investigation as quickly as possible.

(B) The designated complaint taker shall notify the complainant and the accused when the investigation is concluded. If a complaint is substantiated, immediate and appropriate disciplinary action will be taken against the party engaging in the prohibited conduct, up to and including termination. The County will also take appropriate action to deter further prohibited conduct and to remedy any loss caused by the prohibited conduct.

(C) All complainants shall be advised of the results of the investigation and the action(s) taken by the County, if any, to ensure the safety and well-being of the complainant and/or affected parties. However, a complainant shall not be provided with the specifics of any disciplinary action taken against an employee.

(D) To the fullest extent practicable, the County shall keep complaints and reports of prohibited conduct and their resolution discreet and confidential; however, the County cannot guarantee complete confidentiality in all circumstances.

(E) All parties are expected to cooperate with the investigation and keep information regarding the investigation confidential.

[Adopted 20-292 eff 09/29/20; amd 21-097 eff 04/20/21]

46.550 Documentation Required

(A) Any employee who observes or experiences what they believe to be incidents of prohibited conduct should document such incidents whenever possible.

(B) The designated complaint taker must maintain adequate records of complaints of prohibited conduct, including, but not limited to:

(i.) The date of the incident;

(ii.) The date the complaint was received by the designated complaint taker;

(iii.) The dates the investigation was started and closed;

(iv.) All relevant facts obtained during the investigation;

(v.) The outcome of the investigation and any actions taken by the County; and

(vi.) The dates the County followed up with the victim, or a signed waiver of the County's responsibility to conduct follow up contacts with the victim.

[Adopted 20-292 eff 09/29/20; amd 21-097 eff 04/20/21]

46.600 Retaliation Prohibited

The County prohibits retaliation of any kind against anyone for reporting or complaining about prohibited conduct and will not tolerate retaliation by supervisors, managers, co-workers, department heads, and/or contractors. Any employee who believes they have been subjected to any form of retaliation should immediately report that conduct to their immediate supervisor or the Linn County Administrative Officer.

[Adopted 20-292 eff 09/29/20]

46.650 Follow-up Required

Unless the complainant has signed a waiver of the County's responsibility to conduct follow up contacts with the complainant, the designated complaint taker shall follow up with the complainant once every three months for the calendar year following the date on which the County first

received a report of prohibited conduct to determine whether the prohibited conduct has stopped or if the complainant has experienced retaliation.
[Adopted 20-292 eff 09/29/20; amd 21-097 eff 04/20/21]

46.700 Prohibited Employment or Settlement Agreements

(A) The County may not require, coerce, or enter into an agreement with an employee or prospective employee, as a condition of employment, continued employment, promotion, compensation or the receipt of benefits, that contains a non-disclosure provision, a non-disparagement provision, or any other provision that has the purpose or effect of preventing the employee from disclosing or discussing prohibited conduct that:

(i.) Occurred between employees, contractors, vendors, and/or prospective employees, either in the workplace or at a work-related event that is off the employment premises and coordinated by or through the County; or

(ii.) Occurred between employees, contractors, vendors, and/or prospective employees, off the employment premises.

(B) The County may enter into a settlement, separation, or severance agreement that includes one or more of the following provisions only when an employee claiming to be aggrieved by prohibited conduct requests to enter into the agreement:

(i.) A provision described in subsection (A) of this Section;

(ii.) A provision that prevents the disclosure of factual information relating to a claim of prohibited conduct; or

(iii.) A no-rehire provision that prohibits the employee from seeking re-employment with the County as a term or condition of the agreement.

(C) An agreement entered into under subsection (B) of this Section must provide the employee at least seven (7) days after executing the agreement to revoke the agreement. Such an agreement may not become effective until after the revocation period has expired.

(D) If the County makes a good faith determination that an employee has engaged in prohibited conduct, the County may enter into a settlement, separation, or severance agreement with that employee that includes one or more of the following:

(i.) A provision described in subsection (A) of this Section;

(ii.) A provision that prevents the disclosure of factual information that relates to a complaint of prohibited conduct; or

(iii.) A no-rehire provision that prohibits the employee from seeking re-employment with the County as a term or condition of the agreement.

(E) For violations that occur after October 1, 2020, an employee may file a complaint under ORS 659A.820 for violations of this Section and may bring a civil action under ORS 659A.885 and recover relief as provided by ORS 659A.885(1) to (3).

(F) This Section does not apply to an employee who is tasked by law to receive confidential or privileged reports of discrimination, sexual assault, or harassment.

[Adopted 20-292 eff 09/29/20]

46.710 Voluntary Disclosure Permitted

A victim of prohibited conduct may voluntarily disclose information regarding an incident of prohibited conduct that involves the victim.

[Adopted 20-292 eff 09/29/20; amd 21-097 eff 04/20/21]

46.720 Victim Resources

Individuals who believe they are the victim of prohibited conduct should contact their immediate supervisor, another manager, their department head, the designated complaint taker, or the Linn County Administrative Officer for information related to legal resources, counseling, and support services, including the employee assistance program.

[Adopted 20-292 eff 09/29/20; amd 21-097 eff 04/20/21]

46.810 Policy Notifications

(A) The County shall:

(i.) Make this Policy available to all employees within the workplace; and

(ii.) Provide a copy of this Policy to each employee at the time of hire and in any orientation materials provided to the employee at the time of hire.

(B) If an employee discloses any concerns about prohibited conduct to a County supervisor, or to the designated complaint taker, the supervisor or designated complaint taker shall, at the time of the disclosure, provide to the employee a copy of this Policy.

[Adopted 20-292 eff 09/29/20; amd 21-097 eff 04/20/21]

Statutory References and Other Authorities:

ORS 243, ORS 659A

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