

Section 10.04 Complaints of Unlawful Workplace Harassment and/or Discrimination

I. PURPOSE

- a. To establish procedures for the reporting and investigation of discriminatory incidents in the workplace; to emphasize that discrimination, harassment, and retaliation will not be tolerated in the workplace.

II. REFERENCE

- a. Age Discrimination in Employment Act of 1967, as amended (ADEA), 29 U.S.C. '621 et seq.
- b. Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. '12111 et seq.
- c. Code of Federal Regulations Title 29, Part 1605.1
- d. Pregnancy Discrimination Act (PDA)
- e. Title VII of the Civil Rights Act of 1964, as amended (Title VII), 42 U.S.C. '2000e et seq.
- f. Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. '4301 et seq.

III. GENERAL

It is the policy of Burke County to comply with all applicable federal and state laws, rules, regulations, and guidelines regarding employment discrimination and retaliation.

Discrimination or harassment against employees and applicants due to race, color, religion, sex, gender identity, national origin, disability, age, or military status is illegal.

It is unlawful for any person to discriminate in any manner against any other person because that person has opposed any unlawful discrimination practice. It is also unlawful to retaliate against any person who has made a charge of employment discrimination, testified, assisted or participated in any manner in an investigation, proceeding, or hearing.

Burke County encourages all employees to assist in the effort to achieve equal opportunity in the workplace. Violations of this policy may be cause for disciplinary action, including termination.

All existing Burke County employees and newly hired employees will receive a copy of this policy and will sign an acknowledgement that they have received this policy.

This policy shall be posted throughout county buildings and will be available on the Burke County website www.co.burke.nc.us.

IV. DEFINITIONS

- a. Age Discrimination means discrimination or harassment based on years of age (40 years or over.)

- b. Color Discrimination means discrimination or harassment based on skin-tone. Equal opportunity cannot be denied to any person based on his or her racial group or perceived racial group, his or her race linked characteristics (e.g. hair texture, color, facial features), or because of his or her marriage to, or association with, someone of a particular race or color.
- c. Disability Discrimination means discrimination or harassment based on a physical or mental impairment that substantially limits one or more major life activities or the individual including having a record of such impairment or being regarded as having such impairment, (42 U.S.C `12102(2).)
- d. EEOC is the abbreviation for the U.S. Equal Employment Opportunity Commission.
- e. Gender Identity means the gender a person associates with him or herself, regardless of the gender others might attribute to that person.
- f. National Origin Discrimination means discrimination or harassment based on birthplace, ancestral, cultural, family descent or lineage; linguistic characteristics common to a specific nationality; marriage or association with a person of a national origin group; membership or association with organizations identified with or promoting the interests of a national origin group, attendance or participating in schools, churches, temples, or mosques generally associated with a national origin group; or a surname associated with a national origin group.
- g. Race Discrimination means discrimination or harassment based on physical, tribal, ancestral, cultural, geographical or linguistic characteristics common to a specific ethnic group or stock including but not limited to persons having origins in any of the original people of the Americas, Europe, Africa, Australia, Antarctic, or Asia.
- h. Religion Discrimination means discrimination or harassment based on all aspects of religious observance and practice, as well as belief (C.F.R. Title 29, Part 1605.1.) Religious practices include moral or ethical beliefs as to what is right or wrong, which are sincerely held with the strength of traditional religious views.
- i. Sex Discrimination means discrimination or harassment against any employee or applicant for employment because of his or her sex in regard to hiring, termination, promotion, compensation, job training, or any other term, condition, or privilege of employment. Decisions based on stereotypes and assumptions about abilities, traits, or the performance of individuals on the basis or pregnancy, childbirth, or related medical

conditions constitutes unlawful sex discrimination under the Pregnancy Discrimination Act, which is an amendment to Title VII.

- j. Military Status Discrimination means discrimination or harassment based on service in the uniformed services which is defined as performance of a duty, on a voluntary or involuntary basis, in a uniformed service under competent authority. This includes active duty, active duty for training, initial active duty for training, inactive duty for training, full-time national guard, the commissioned corps of the public health service, and any other category of persons designated by the president of the United States in time of war or emergency, performance of duty or training by a member of an organized militia, and the period of time for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any duty in a uniformed service. USERRA prohibits discrimination on the basis of an individual's past, current, or future military status in hiring, promotion, tenure, discharge, pay, fringe benefits, job training, classification, referral, terms, conditions and privileges of employment, or any other matter directly or indirectly related to employment. USERRA similarly prohibits discrimination based on military status or service, and provides certain reemployment rights for service members returning from training or active duty.

- k. Protected Class means those classes of individuals protected by law including those classes listed in (a), (b), (c), (e), (f), (g), (h), (i), (j), and (k) above.

V. PROCEDURE

a. Reporting Discrimination, Harassment or Retaliation:

Any employee or applicant for employment who believes that he or she is a victim of discrimination, harassment or retaliation should report the incident with the employee's Department Head, the Human Resources Director or the County Manager.

In filing a complaint, the following steps should be taken:

1. Notification of an act of discrimination, harassment or retaliation, should be made within thirty (30) days of the alleged act. The complaint may be made orally to the employee's Department Head, Human Resources Director (828)439-4357 or County Manager (828)439-4340. The employee also has the option to complete and submit an EEOC Discrimination Form which can be found on the Burke County Human Resources website (www.co.burke.nc.us) This form should be completed and submitted to the employee's Department Head, Human Resources Director or County Manager within thirty (30) days of the alleged act. Any Department Head or County Manager who receives a complaint of harassment or discrimination shall report the matter to the Human Resources Director immediately, unless the complaint directly involves the Human Resources Department. If the complaint

directly involves the Human Resources Department, the employee should notify and file a complaint directly with their Department Head and County Manager. If the complaint directly involves the employee's Department Head or Supervisor, the complaint should be filed directly with the Human Resources Director and County Manager. If the complaint directly involves the County Manager, the complaint should be filed with the employee's Department Head and the Human Resources Director.

2. A Thorough investigation of the complaint shall be conducted. This investigation shall be conducted by the Human Resources Director, or designee, and when appropriate, with the Department Head. If the complaint of harassment or discrimination directly involves the employee's Department Head, the Human Resources Director and County Manager will conduct the investigation. The County Manager or his/her designee shall investigate complaints involving the Human Resources Department. The Human Resources Director or his/her designee shall investigate complaints involving the County Manager. Confidentiality and the dignity of those involved in a complaint are important. Considering the sensitive nature of these complaints, every effort will be made to keep the complaint and the name of the employee(s) confidential and on a need to know basis. However, due to the importance of conducting a thorough investigation, confidentiality cannot be guaranteed. Employees involved in an investigation, whether as a complainant, alleged harasser, witness or investigator, should keep all discussions or communications confidential.
3. The County has sixty (60) days to take remedial action, if any, in response to the complaint.
4. The decision referenced in (a)(3) above ends the complaint process and is the final and binding decision of the County, except for those employees subject to the State Personnel Act (See section 10.05.)
5. Employees can file complaints directly with the Equal Employment Opportunity Commission (EEOC) within one hundred and eighty (180) days of the last act of discrimination.

VI. SUPERVISORY/MANAGEMENT REPORTING REQUIREMENTS

When a supervisor or management employee witnesses, is notified of, or otherwise becomes aware of offensive conduct that is based on membership in a protected class as defined by this policy, the supervisor or manager must report the conduct to the Human Resources Director. Reporting under this requirement is mandatory, not discretionary, and full disclosure of all information known to the supervisor or management employee about the incident is required.

VII. INVESTIGATIVE PROCESS

The Human Resources Director will conduct a formal investigation of the complaint. In most circumstances, the Human Resources Director will render a decision within thirty (30) days of

the filing of the complaint whether probable cause exists to believe that an act of discrimination, harassment, or retaliation occurred.

The complainant may request a hearing within fifteen days (15) calendar days of receipt of the findings through the County Manager, if he or she is not satisfied with the Human Resources Director's decision.

The County Manager will schedule a time to meet with the complainant, review the case and render a decision on the case.

VIII. ENFORCEMENT

Acts of discrimination, harassment, and retaliation in the workplace are inappropriate and will not be tolerated. Acts of discrimination, harassment and retaliation may be cause for disciplinary action, up to and including termination.

Section 10.05 Employees Subject to the State Personnel Act

- (a) Employees subject to the State Personnel Act must exhaust the County grievance procedure contained in this Article before appealing to the Office of State Personnel except for complaints alleging harassment or discrimination.
- (b) In harassment or discrimination cases, the employee may avail them self of the County complaint procedure outlined in Section 10.04 of this Article or may appeal directly to the Office of Administrative Hearings within thirty (30) days of the alleged harassing or discriminatory act.
- (c) All decisions by the State Personnel Commission, other than cases of harassment or discrimination, shall be advisory to the local appointing authority as defined by statute.
- (d) Copies of the grievances/complaints filed under this Section must also be sent to the Department Head, the Human Resources Director, and the County Manager.

Section 10.06 Maintenance of Records

- (a) The Human Resources Director shall keep a record of all grievances and complaints filed. If a grievance/complaint is withdrawn, the record shall include any statement from the complainant indicating the reason for withdrawal.
- (b) Investigation files shall remain separate and apart from personnel files. Neither the complainant, nor the alleged harasser has a right to the contents of these files. Any personnel action, such as discipline, resulting from an investigation, shall be filed in the employee's personnel file.
- (c) The records above shall be retained by the Human Resources Director for a minimum of three (3) years.