

COUNTY OF SANTA CLARA'S POLICY ON SEXUAL HARASSMENT
WHY THIS ISSUE IS IMPORTANT TO US IN THE COUNTY OF SANTA CLARA

Santa Clara County's workforce is becoming increasingly diverse and the number of women in the workplace is steadily increasing. Each employee in the County workforce deserves and shall have the respect of other employees. We want employees to come to work in the County as individuals assured that they will not face discrimination or favoritism based on sex or any factor other than qualifications and performance. We encourage and hope to have collegial supportive, relationship between employees of both genders. This can exist only if there is mutual respect. Sexual harassment denies mutual respect and is an obstacle to collegial, supportive relationships.

The Law

The primary legal basis in the area of sexual harassment, is Section 703 of Title VII of the 1964 Civil Rights Act (as amended), which prohibits discrimination on the basis of sex in employment and provides legal authority for the following guidelines:

Unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment,
- (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or
- (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

The guidelines impose absolute liability on employers for the acts of supervisors regardless of whether the conduct was known to, or authorized, or forbidden by the particular employer. Similarly, under the guidelines, an employer may be liable for acts in the workplace committed by fellow employees if the employer knew or should have known of the conduct and failed to take immediate and appropriate action. The employer may also be responsible for the conduct of non-employees who sexually harass employees in the workplace.

In addition to establishing standards for imposing liability, the guidelines make employers responsible for developing programs to prevent sexual misconduct in the workplace. Under the guidelines, an employer must also thoroughly investigate all complaints alleging sexual harassment and all instances potentially constituting harassment that come to the employer's attention through means other than formal complaints. Following an investigation, an employer is required to take immediate and appropriate corrective action to remedy any illegality detected and prevent its recurrence. Failure to do so constitutes a violation of Title VII as interpreted by the Equal Employment Opportunity Commission.

THE POLICY

It is County policy to maintain a discrimination-free work environment for all employees. Part of maintaining a good working atmosphere includes freedom from sexual harassment as well as a workplace free of harassment based on sex, age, race, color, national origin, creed, religion, disability, political beliefs, organizational affiliation or sexual orientation. The following describes and expands on the Policy on Sexual Harassment:

- A To not tolerate sexual harassment as a form of behavior in the work environment.
- B To dissuade such practices through communication, training and other appropriate methods that will sensitize the population to sexual harassment issues.
- C To investigate all observed or reported instances, and take corrective action. Where a clear infringement of the rights of others and policy violations is determined, appropriate discipline may range from counseling, reprimand, pay reduction, demotion, through discharge in cases of gross misconduct or repeated offenses.
- D To base all decisions pertaining to hiring, promotion, training, layoffs and other personnel practices on uniformly applied standards of ability, training, experience, past performance, and other job-related factors and to maintain such standards at a consistently high level.

- E. To provide processes for employees who experience or witness a violation of the Sexual Harassment Policy which will protect their confidentiality, shield the individual from retaliation, and allow for corrective action to be instituted.
- F. To not inhibit or restrict the relationships of women and men employees within appropriate modes of behavior - but rather to welcome, encourage and support teamwork and mutual respect among all employees.

This policy prohibits discrimination for or against an employee on the basis of conduct not related to work performance, such as the taking or refusal to take a personnel action, including promotion of employees who submit to sexual advances or refusal to promote employees who resist or protest sexual overtures.

Any violation of this policy will receive prompt and appropriate action. Any employee or prospective employee who experiences sexual harassment should immediately contact her/his supervisor, a higher level manager, the Departmental Affirmative Action Advisor, the County Equal Opportunity at Division (408) 299-5195, the Coordinator of Women's Programs at (408) 299-5195, a union representative, the Department of Fair Employment and Housing, the Equal Employment Opportunity Commission, or a private attorney.

Definitions

A. Sexual Attraction

Attraction between individuals - whether one way or mutual — is a fact of life. Flirtation, signaling an attraction and seeking to advance a relationship, takes many courses. Sexual attraction can show itself along a wide range of experiences from a simple feeling of appreciation to falling in love. Throughout that range, sexual attraction can be a straightforward natural exchange between two people. What characterizes sexual attraction is consent and increased self-esteem on the part of both individuals. People who experience such attraction should pay particular attention to:

- appropriate public behavior
- the perception that other employees may have of the attraction
- whether any resulting behavior or relationship is likely to be disruptive to the productivity of the organization.

If you feel attraction for someone in the workplace, be sure the attraction is mutual and consider the power of your position. Relationships within the "chain of command" are inappropriate since the subordinate does not have clear freedom of choice and therefore mutuality is undermined.

B. Sexual Harassment

All employees must be allowed to work in an environment free from unsolicited and unwelcome sexual overtures. Sexual harassment is a form of employee misconduct which is demeaning to another person and undermines the integrity of the employment relationship. Sexual harassment is differentiated from attraction and flirtation and can be generally defined as follows:

Sexual harassment is an unwelcome sexual attention which causes the recipient distress and results in an inability on the part of the recipient to function effectively in the performance of job requirements. It can be often characterized by a component of abuse of power. Sexual harassment does not refer to occasional compliments. It refers to behavior which is not welcome, which is personally offensive, which debilitates morale, or which interferes with the work effectiveness of its recipient. Sexual harassment may occur between employees regardless of their relationship.

It is not limited to supervisor/subordinate relationships. The initiator (harasser) and the recipient (victim) may be a woman or a man. The recipient does not have to be of the opposite sex. The recipient does not have to be the person harassed, but could be anyone affected by the offensive conduct. Sexual harassment may include actions such as:

- displaying sexually suggestive materials or objects.
- leering or making sexual gestures.
- sex-oriented verbal "kidding" or abuse, sexual jokes, comments about a person's body.
- subtle pressure for sexual activity, repeated flirtation or propositions.
- physical contact such as patting, pinching or constant brushing against another's body.
- demands for sexual favors, accompanied by implied or overt promises of preferential treatment or threats concerning an individual's status.

Responsibilities

A. All Employees

All employees are responsible for assuring that sexual harassment does not occur in the Santa Clara County workforce.

B. Supervisors and Managers

1. Supervisors and Managers are responsible for prevention and correction of sexual harassment occurrences in their areas of responsibility.
2. Supervisors and managers at all levels are responsible for making sure employees in their areas of responsibility are aware of this policy; for assuring all personnel decisions in their areas are in accordance with this policy; and for initiating corrective action when offenses merit such.

C. Union Representatives

Union representatives must abide by County guidelines while on County property. All unions have contracts with the County and/or their County ordinance statements and are required to enforce those provisions.

D. Employees who have experienced or witnessed a violation of the Sexual Harassment Policy

Any employee who believes that she or he has been the recipient of sexual harassment or who is aware of an occurrence of sexual harassment has an obligation and a duty to report the potential policy violation to their supervisor, manager, or a County Equal Opportunity representative so appropriate corrective action may be taken. Such individuals are also encouraged to confront the person who allegedly is doing the harassment, unless employees feel such confrontation could lead to retaliation or greater harassment.

E. The Equal Opportunity Division

1. Equal Opportunity Division is responsible for the following:
 - a. Educating management and employees and informing them of their rights and responsibilities under this policy.
 - b. Developing processes for conducting investigations of alleged violations and advising management on corrective action when violations merit such.
 - c. Informing each employee of her/his responsibility to report violations.
 - d. When warranted to counsel employees and provide assistance in addressing real or perceived violations of the Sexual Harassment Policy.
2. In all cases where sexual harassment has been determined, Equal Opportunity Division will review the proposed corrective action before such action is taken.
3. In cases where sexual harassment has been determined, Equal Opportunity Division will maintain all records. These records will be considered confidential.
4. Equal Opportunity Division will be available for consultation with supervisors, managers, union representatives, and other employees regarding the Sexual Harassment Policy.