



EASTERN JACKSON COUNTY WORKFORCE DEVELOPMENT BOARD



Serving Eastern Jackson County Mo. including:
Independence, Blue Springs, Lee's Summit, Grandview, Raytown,
Sugar Creek, Buckner, Grain Valley, Oak Grove, Lone Jack, and other municipalities.

The Full Employment Council, Inc. (FEC) is the fiscal
agent and workforce support organization for the
Eastern Jackson County Workforce Development Board.

Workforce Innovation and Opportunity Act (WIOA) Policy

HARASSMENT, DISCRIMINATION, AND RETALIATION POLICY; ACCOMODATION POLICY

POLICY NUMBER: 2017-004, Modification 1

EFFECTIVE DATE: 6-30-2017

MODIFICATION DATE: 6-26-2018

APPROVED BY

Clyde McQueen, President/CEO
Full Employment Council, Inc.,
Managing Entity/Fiscal Agent
Eastern Jackson County Workforce Development Board

INQUIRIES

Questions about this Issuance should be addressed by email to Andrea Robins, Managing Director of Planning at arobins@feckc.org, who shall disseminate the agency response after consulting with Full Employment Council Officers.

PURPOSE

This Issuance provides guidelines and legal bases addressing adverse actions associated with harassment, discrimination and retaliation. This policy also addresses accommodations. This Issuance is based upon Missouri Office of Workforce Development (OWD) Issuance 33-2017, and replaces Issuance No. 2017-004, Harassment, Discrimination, and Retaliation Policy; Accommodation Policy.

BACKGROUND

The nondiscrimination and equal opportunity (EO) provisions of WIOA prohibit discrimination against applicants, beneficiaries, and employees because of race, color, religion, sex, national origin, age, disability, and political affiliation or belief, and, for beneficiaries only, citizenship or participation in a WIOA Title I financially assisted program or activity. The regulations that implement these provisions are published at WIOA Section 1 88 and 29 CFR Part 38, and further prohibit intimidation of, or retaliation against, complainants. Additionally, the rules mandate reasonable accommodations and reasonable modifications for individuals with disabilities. The Part 38 rules require the Full Employment Council to ensure that (1) policies on WIOA Title I nondiscrimination and/or EO issues are developed and implemented in a timely manner; and (2) WIOA recipients provide reasonable modifications of policies, practices, and procedures as required.

POLICY

The Full Employment Council (FEC) is committed to providing a work environment free from sexual harassment and discrimination. The purpose of this policy is to define and prohibit such behavior. FEC will promptly address all complaints rendered under this policy in a timely fashion and take appropriate disciplinary action, including dismissal, against those who violate this policy. The complaint process will remain confidential to the maximum extent possible.

Pursuant to this policy, both employees and non-employees are prohibited from harassing or discriminating against staff, customers, and partner employees, whether or not the incidents of harassment or discrimination occur on employer premises or during work hours. Employees and partners of FEC will treat one another and all those with whom they come into contact during the course of business equitably and fairly regardless of age, ancestry, color, disability, genetic information, military/veteran status, national origin, pregnancy, race, religion, sex, sexual orientation and gender identity. Depending upon the circumstances, this policy may extend beyond normal work hours and cover employee conduct at conferences, meetings, or other events. This policy also includes actions through social media, during normal or beyond normal work hours. Please be advised that this policy applies to all employee conduct, regardless of intent. Policies regarding harassment, discrimination, retaliation and accommodation herein also pertain to persons working as interns.

I. DEFINITIONS

The following definitions are for general reference purposes only and are not intended as a substitute for any legal definitions.

A. **Hostile Work Environment:** When discriminatory or harassing conduct creates a work environment that would be intimidating, abusive, hostile, or offensive to reasonable people, or has the purpose or effect of unreasonably interfering with an individual's employment. Most instances of hostile work environment involve pervasive harassment that has a cumulative effect. **Intimate Relationships:** Intimate relationships are those that involve dating, sexual activity and/or romantic involvement.

B. Power-differentiated Working Relationship: Any work relationship in which one employee supervises or manages (directly or indirectly) another employee OR makes decisions concerning another employee's terms, conditions or privileges of employment

Protected Categories: Categories of individuals protected by law and/or executive order from any form of discrimination such as: Age, ancestry, color, disability, genetic information, military/veteran status, national origin, pregnancy, race, religion, sex, sexual orientation and gender identity.

C. Retaliation: Occurs when an employer takes an action or makes an adverse employment decision because an employee reports an incident of harassment or discrimination, or who participates in a related investigation.

D. Unwelcome Conduct: Conduct may be considered unwelcome if the employee did not solicit or invite it or the employee regarded it as undesirable or offensive.

II. DISCRIMINATORY HARASSMENT

Discriminatory harassment occurs when one individual disparages or shows hostility toward another on the basis of a protected category. Protected categories include age, ancestry, color, disability, genetic information, military/veteran status, national origin, pregnancy, race, religion, sex, sexual orientation and gender identity. Discriminatory harassment is against the law if it is sufficiently severe, pervasive, or persistent so as to interfere with an employee's work performance or employment opportunities, or create an intimidating, hostile, or offensive environment. Discriminatory harassment might include verbal, non-verbal, physical, or visual harassment based on or related to an individual's protected category.

The following is a non-exclusive list of behaviors that are inappropriate and, depending on the circumstances, may in and of themselves meet the definition of discriminatory harassment: □ Epithets, "jokes," or offensive or derogatory comments based upon an individual's sex, race, color, religion, national origin, age, disability, sexual orientation

- Ethnic slurs, workplace graffiti, or any offensive conduct directed towards an individual's birthplace, ethnicity, culture, or foreign accent
- Negatively stereotyping an individual based upon a one of the protected categories listed in this policy
- Making, posting, e-mailing or circulating written or graphic material in the workplace that denigrates or shows hostility towards an individual based upon his or her protected status
- Any other threatening or intimidating act that relates to race, gender, sex, color, religion, national origin, age or disability

Individuals, who engage in discriminatory harassment, as defined by this policy, will be subject to disciplinary action, up to and including termination from employment. FEC will determine, with proper regard for all surrounding circumstances, whether a specific act violates this policy.

III. SEXUAL HARASSMENT

Sexual harassment is unwelcome verbal, non-verbal, or physical conduct of a sexual nature that affects an employment decision, unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or abusive work environment.

Certain behaviors, such as conditioning promotions, discharge, performance evaluation, pay adjustment, discipline, assignments, or any other condition of employment or career development on submission to unwelcome actions of a sexual nature, always constitutes sexual harassment. This is considered quid pro quo sexual harassment.

The following is a non-exclusive list of examples of behaviors that are inappropriate and, depending upon the circumstances, may in and of themselves meet the definition of sexual harassment or contribute to a hostile work environment. The following behaviors will not be tolerated under any circumstances, whether or not the behaviors alone constitute sexual harassment or create a hostile work environment:

- Sexual advances and propositions
- Requests for sexual favors
- Sexual "jokes," comments, suggestions or innuendo
- Foul or obscene gestures or language
- Display of foul, obscene or offensive printed or visual material
- Physical contact such as patting, pinching, hugging or brushing against another individual's body; or
- Any other unwelcome verbal, physical or visual conduct of a sexual nature

A victim of sexual harassment can be male or female. The victim can be of the same sex as the harasser. Although sexual harassment typically involves a power-differentiated working relationship, individuals in positions of lesser or equal authority can also harass.

Sexual harassment can be physical and/or psychological in nature. It can occur in one instance or as an aggregation of a series of incidents even if one of the incidents considered on its own would not rise to the level of harassment. Sexual harassment does not typically include occasional compliments of a socially acceptable nature.

Individuals who engage in sexual harassment, as defined by this policy, will be subject to disciplinary action, up to and including termination from employment. Employees who are found to have subjected another employee to unwelcome conduct of a sexual nature, whether such behavior meets the legal definition of sexual harassment or not, will be subject to discipline or other action appropriate to the circumstances.

Individuals who engage in sexual harassment, as defined by this policy, will be subject to disciplinary action, up to and including termination from employment. FEC will determine, with proper regard for all surrounding circumstances, whether a specific act violates this policy.

Employees who FEC finds have subjected another employee to unwelcome conduct of a sexual nature, whether such behavior meets the legal definition of sexual harassment or not, will be subject to discipline or other action appropriate to the circumstances.

IV. RETALIATION: HARASSMENT AND DISCRIMINATION

1. Any employee who reports an incident of harassment or discrimination, or who participates in a related investigation, shall not experience retaliation as a result.
2. Any employee who believes they have been retaliated against should immediately inform his/her supervisor or Human Resources.
3. Any employee who retaliates against another employee for filing a complaint or participating in an investigation of harassment or discrimination shall be subject to disciplinary action.

V. REPORTING HARASSMENT, DISCRIMINATION OR RETALIATION

Employees who feel they have witnessed or been subject to conduct prohibited by this policy in connection with their employment with FEC, or who have questions or concerns about discriminatory harassment, sexual harassment, or retaliation should immediately contact Human Resources in accordance with the following:

A. Employee Rights and Responsibilities:

1. Employees may report any incident of discriminatory harassment, sexual harassment, or retaliation to the designated human resources coordinator, human resources manager, employee supervisor, or employee manager.
2. Employees are also encouraged to make their unease and/or disapproval directly and immediately known to the offending party. Employees may be able to stop or prevent harassment by informing the offending person that such conduct is unwelcome and offensive and must stop.
3. If an employee does not wish to communicate directly with the offending person, or if such communication has been ineffective, the employee may report the incident immediately.
4. To initiate a formal investigation into an alleged violation of this policy, employees may file a Harassment, Discrimination, and Retaliation Complaint Form (Complaint Form) with the human resources manager or Equal Opportunity Officer. Human Resources is available to assist the complainant in completing the Complaint Form. To ensure a prompt and thorough investigation, the complainant should provide as many details as possible.
5. If possible, employees should make a written record of the date(s), time(s), witness(es) to and nature of any incident(s) that may violate this policy.
6. An employee who finds himself or herself involved in an intimate relationship with his or her supervisor or manager is responsible for reporting that involvement to Human Resources. FEC will take appropriate action to remove any power differentiation from the relationship.
7. Employees shall discourage discrimination by treating others respectfully and not initiating or participating in conversations or “jokes” about the protected categories listed in this policy.
8. Employees also have the responsibility to discourage sexual harassment by not participating in “jokes” or conversations of a sexual nature and not engaging in or supporting any unwelcome conduct.
9. Employees who make false (not including complaints that, even if erroneous, are made in good faith) and/or malicious complaints of harassment, discrimination, or retaliation shall be subject to disciplinary action, up to and including termination.

B. Management Responsibilities:

1. Immediately report all incidents of harassment or discrimination to the designated human resources coordinator or Equal Opportunity Officer, whether or not the victim of the harassment or discrimination has filed a written complaint.
2. Cultivate and maintain a work environment free from harassment and discrimination and take immediate and appropriate corrective action if incidents or harassment or discrimination occur.
3. Supervisors/managers who knowingly allow or tolerate any form of harassment and/or discrimination are in violation of this policy and are subject to disciplinary action.
4. Supervisors/managers participating in an intimate relationship with subordinate employee(s) or with others where a power-differentiated relationship exists are in violation of this policy and may be disciplined for such conduct, up to and including termination.

C. Human Resources Responsibilities:

1. Upon receipt of the Complaint Form, the designated Equal Opportunity Officer, will review the complaint and meet with appropriate personnel to obtain all pertinent information.
2. In cases where there is a conflict of interest or perceived conflict of interest, a designee will be assigned to conduct the investigation.
3. Equal Opportunity Officer will ensure that both the complainant and respondent are aware of the gravity of the allegations.
4. Equal Opportunity Officer will explain the Harassment, Discrimination and Retaliation Policy and complaint investigation procedures to both the complainant and the respondent.
5. Equal Opportunity Officer will explore informal means of resolving the complaint, depending on the seriousness of the conduct alleged.
6. Equal Opportunity Officer will notify the appropriate law enforcement agency if the complaint includes allegations of criminal violations.
7. Equal Opportunity Officer will notify the complainant in writing of its findings. However, Equal Opportunity Officer will not disclose details about the nature or extent of any disciplinary or corrective actions to the complainant(s) and/or witness(es) without compelling reason, such as the complainant's personal safety.

VI. CONFIDENTIALITY

1. All inquiries, complaints, and investigations related to this policy are confidential unless legally required to be disclosed. Information is revealed strictly on a need-to-know basis. FEC protects the confidentiality of information contained in formal complaints and maintains such complaints in a secure file, separate from the employee's personnel file.

VII. REMEDIAL ACTION AND POLICY VIOLATIONS

1. FEC will take appropriate remedial action to stop all forms of harassment, discrimination, or retaliation.
2. Employees who are interviewed during an investigation are required to comply with the investigation process to the fullest extent possible. Employees who hinder the investigation

process or provide false information are subject to disciplinary action, up to and including termination.

3. Violations of this policy are subject to disciplinary action, up to and including termination.

VIII. RESOURCES REGARDING DISCRIMINATION

The reader is referred to the following resources for additional information:

- Title VII of the Civil Rights Act of 1964
- The Missouri Human Rights Act, Chapter 213, RSMo
- Missouri Executive Order 10-24
- FEC Personnel Handbook

IX. ACCOMODATION

The Full Employment Council (FEC) complies with the Americans with Disabilities Act (ADA) and is committed to the fair and equal employment of people with disabilities. FEC does not discriminate against qualified job applicants or employees with disabilities with regard to job application procedures, hiring, employee compensation, advancement, training, discharge or other terms, conditions and privileges of employment.

Qualified job applicants and employees with disabilities shall be provided reasonable employment-related accommodations when necessary, unless the accommodation would impose an undue hardship. This policy provides guidelines for employees and job applicants who wish to apply for reasonable accommodations with FEC and prescribes the steps employees and job applicants should take if he or she is the victim of discrimination or retaliation in his or her request for an accommodation.

X. ACCOMODATION DEFINITIONS

A. Disability: An individual with a disability has:

A physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or is regarded as having such an impairment.

B. Essential Functions: The fundamental job duties that an employee must be able to perform with or without the help of a reasonable accommodation. The term "essential functions" does not include the marginal functions of the position.

C. Major Life Activities: Functions including, but not limited to:

Caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, eating, sleeping, reading, concentrating, thinking, communicating and working.

Impairments that are episodic or in remission if it would substantially limit a major life activity when active. Operations of major bodily functions, including but not limited to functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.

D. **Qualified individual or applicant with a disability:** A person who meets legitimate skill, experience, education, or other requirements of an employment position that he or she holds or seeks, and who can perform the essential functions of the position with or without reasonable accommodation.

E. **Reasonable accommodation:** Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or Modifications or adjustments that enable a covered entity's qualified employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities.

F. **Undue hardship:** An undue hardship exists if an accommodation: Would cause an employer to incur significant difficulty or expense, in comparison to the financial resources available to the employer. Is overly extensive, substantial, or disruptive or would alter the nature or operation of the business. An employer is not obligated to make an accommodation that would cause an "undue hardship."

G. **Service animal:**

Service animal: Any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Service animals are working animals, not pets. The work or tasks performed by a service animal must be directly related to the individual's disability. Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the Americans with Disabilities Act (ADA). A service animal must not display behavior that infringes upon another individual's well-being or participation in services.

XI. RELIGIOUS ACCOMODATION GUIDELINES

1. Employees and job applicants may request an accommodation by FEC Accommodation Request Form and submit it, along with supporting documentation, if applicable, to Human Resources.

2. In an effort to determine if the request is based upon religious beliefs or practices sincerely held, Human Resources may:

- Discuss the employee or job applicant's stated religious beliefs or practices with the employee, job applicant and/or spiritual leader (if applicable).
- Identify/evaluate potential accommodations and assess the effectiveness each would have in allowing the individual observe his/her stated religious beliefs or practices.

- Through discussion with the Manager of Human Resources and/or Officer, assess whether the accommodation request presents an undue hardship.
3. Human Resources has the right to deny the accommodation request if it is determined that the employee or job applicant is not fully cooperating with Human Resources during the process.

XII. MAKING ACCOMODATION REQUESTS

1. Employees may request an accommodation by completing FEC Accommodation Request Form and submitting it, along with supporting medical documentation, if applicable, to Human Resources. Employees may request accommodations verbally or in writing; however, Human Resources requests that, whenever possible, employees utilize the Accommodation Request Form.
2. In an effort to determine if the employee is a qualified individual with a disability and evaluate whether the request for an accommodation presents an undue hardship, Human Resources may: Discuss the requested accommodation with the employee. Discuss the purpose and essential functions of the particular job involved with the supervisor/manager and the employee. Identify/evaluate potential accommodations and assess the effectiveness each would have in allowing the individual to perform the essential functions of the job. While an individual's preference will be given consideration, FEC is free to choose among equally effective accommodations and may choose the one that is less expensive or easier to provide through discussion with the Director, assess whether the accommodation presents an undue hardship.
3. Human Resources has a right to seek medical verification of the disability, work restrictions, and medical need for accommodation.
4. If the disability or need for accommodation is not obvious, FEC may ask the employee to provide supporting documents showing that the employee has a disability within the meaning of the ADA and applicable state or local laws, and that the disability necessitates a reasonable accommodation. If the information provided in response to this request is insufficient, FEC may seek further clarification from the employee's medical provider, with permission from employee, or ask that the employee see a healthcare professional of FEC's choosing, at FEC's expense.
5. Human Resources has the right to deny the accommodation request if it is determined by FEC that the employee is not fully cooperating with Human Resources during the process.

XIII. ACCOMODATION REQUEST PROCEDURES FOR JOB APPLICANTS

1. The job applicant shall inform Human Resources of the need for an accommodation, preferably in writing in order to participate in the interview and or testing process.
2. Human Resources will discuss the requested accommodation and possible alternatives with the applicant.
3. Human Resources will discuss the interview and/or testing accommodation request with staff when applicable to determine if the accommodation request presents an undue hardship.

4. Human Resources will make a decision regarding the interview and/or testing request for accommodation and, if approved, take the necessary steps to see that the accommodation is provided.
5. If offered a position, the job applicant shall inform Human Resources of the need for an employment accommodation, preferably in writing in order to perform the essential job responsibilities.
6. Human Resources will discuss the requested employment accommodation and possible alternatives with the applicant.
7. Human Resources will discuss the employment accommodation request with staff and assess the impact to the essential job functions and determine if the accommodation creates an undue hardship.

XIV. RESOURCES REGARDING ACCOMODATION

- U. S. Equal Employment Opportunity Commission, Chapter XIV – Part 1630 – Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act: <http://www.eeoc.gov>
- Job Accommodation Network (JAN): Website available for questions related to workplace accommodations or the Americans with Disabilities Act (ADA) - www.askjan.org
- The Civil Rights Act of 1964, as amended
- FEC Harassment and Discrimination Policy

XV. RETALIATION: ACCOMODATIONS

Retaliation occurs when an employer takes an adverse action against a covered individual because he or she engaged in a protected activity. FEC prohibits retaliation against a job applicant or employee from exercising his/her right to request an accommodation. The following is a non-exclusive list of actions that may be retaliation: termination, refusal to hire, denial of promotion, intimidation, harassment, threat(s), withholding of employment benefits and/or opportunities.

If a job applicant or employee believes he or she is the victim of retaliation, he or she may file a complaint with the Equal Opportunity Officer, the Missouri Commission on Human Rights or the U.S. Equal Employment Opportunity Commission.

XVI. FINAL DECISION

- Human Resources will provide a decision regarding the employee's request for a reasonable accommodation as quickly as reasonably possible.
- If an employee believes that a decision regarding reasonable accommodation has been reached for discriminatory reasons, he or she may file a complaint with the Missouri Commission on Human Rights or the U.S. Equal Employment Opportunity Commission.