

## PREVENTING DISCRIMINATION AND HARASSMENT #300

**1.0 PURPOSE** – To ensure the working environment for all Davis County employees is safe and free from prohibited discrimination and harassment. Davis County prohibits actions which disadvantage a person because of their inclusion in a protected class, as defined by applicable law.

**2.0 - DEFINITIONS** – The following definitions are applicable to this policy:

**Complaint** - A written, signed complaint which sets forth allegations of prohibited discrimination and/or harassment. The statement should include a description of the conduct, the date of the conduct and the name of the individual who has allegedly engaged in the conduct. Human Resources (HR recognizes it is sometimes difficult to thoroughly articulate the nature of a specific concern. Accordingly, HR representatives will meet with an individual to hear a concern and facilitate the preparation of a written complaint.

**Complainant** – The individual bringing a complaint about alleged discrimination and/or harassment.

**Consent** – Affirmative, unambiguous and voluntary agreement.

**Discrimination** - Means treating someone differently or disadvantaging a person based on their inclusion in a protected class when:

- Such conduct adversely affects a condition of an individual's employment;
- The person's inclusion in a protected class is used as a basis for or a factor in decisions affecting their employment.

**Harassment** – In accordance with applicable law, harassment is a form of discrimination. Harassment means unwelcome or offensive conduct which has the purpose or effect of interfering with a person's work or creating an intimidating, hostile, offensive or otherwise adverse working environment when such conduct is based on an individual's inclusion in a protected class. Harassment in violation of this policy may occur outside the workplace in work related settings or when the conduct may potentially create disruption in the workplace.

Harassment can include, but not be limited to: joking remarks, abusive conduct (including verbal, non-verbal or physical conduct), demeaning remarks, hostility, epithets, slurs, derogatory comments, intimidation, negative stereotyping, threats, assaults or physical interference with an employee's work which is directed at the individual employee, or their family, friends and associates. Harassment may also include written, email or graphic material

which is displayed or circulated in work or work-related settings which demeans or demonstrates aversion to an individual or group based on the characteristics of a protected class. A supervisor's critical remarks about an employee's performance – whether verbal, in writing or in disciplinary documents – which are not based on their inclusion in a protected class, are not considered harassment.

**Nonconsensual Sexual Contact** – Means any physical contact with another person of a sexual nature without that person's consent. Touching a person's intimate parts (such as genitalia, groin, breast, buttocks, mouth or the clothing covering the same; touching a person with one's own intimate parts or forcing a person to touch another's intimate parts would be a violation of this policy if they occur without consent.

**Protected Class** – In accordance with applicable law, an individual who is a member of a class with the following attributes: race, color, national origin, sex (including pregnancy, religion, age (40 or older, disability, genetic information, sexual orientation, gender identity or any other legally defined class. The rights of veterans are also secured under this policy.

**Respondent** – The person(s) alleged to have engaged in prohibited discrimination and/or harassment.

**Responsible Employee** – Any Davis County employee – supervisor, employee or Administrative Officer - who has the duty to act on reports or observations of alleged violations of this policy by reporting the alleged violations to HR.

**Sex Discrimination** – Means treating or disadvantaging someone on the basis of their gender, sex, sexual orientation, gender identity or gender expression when:

- Such conduct adversely affects a condition of an individual's employment;
- The person's inclusion in a protected class is used as a basis for or a factor in decisions affecting their employment.

**Sexual Exploitation** – Means taking sexual advantage of another person and includes, without limitation: indecent exposure, causing the incapacitation of another person in order to gain a sexual advantage of her or him, causing the prostitution of another person; recording, photographing or transmitting images of private sexual activity and/or intimate parts of another person without consent; allowing third parties to observe private sexual acts without consent; engaging in voyeurism without consent or knowingly exposing another person to a significant risk of sexually transmitted infection, including HIV.

**Sexual or Gender-Based Harassment** – Means unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature based on an individual’s sex, sexual orientation, gender, gender identity or gender expression when:

- Submission to such conduct is made explicitly or implicitly a term or condition of the person’s employment;
- Submission to or rejection of such conduct by an individual is used as the basis for or a factor in decisions affecting that person’s employment;
- Such conduct has the purpose or effect of interfering with an individual’s employment or creating an intimidating, hostile or offensive environment for the individual’s employment.

Conduct constituting sexual harassment may include, without limitation, the following:

- Intentional physical conduct that is sexual in nature, such as touching, staring, blocking, pinching, kissing, grabbing or brushing against another’s body when it is unwelcome or non-consensual;
- Physical assaults of a sexual nature, such as rape, sexual battery, molestation or an attempt to commit these assaults;
- Making unwanted sexual advances, propositions, sexual comments, making unwelcome or persistent requests for social contact, making comments about a person’s body, sexuality or sexual experience or other sexually oriented or demeaning jokes and comments;
- Using obscene, demeaning or insulting terms related to gender;
- Displaying or circulating in the workplace materials or emails of sexually oriented displays, publications, pictures, posters, cartoons, calendars, graffiti, objects, jokes, stories or other similar material.

Sexual harassment in violation of this policy may occur outside the workplace in work related settings or when the conduct may potentially create disruption in the workplace.

**Third Party Harassment** – Can occur when a third party is offended by the sexual conduct or communication of a sexual nature between others when it occurs in the workplace. One employee may disapprove of another employee’s conduct outside the workplace. However, in and of itself, an employee’s disapproval does not constitute a violation of this policy unless there is demonstrable impact on the workplace.

**3.0 POLICY** – In accordance with applicable law, Davis County prohibits discrimination and/or harassment based on a person’s protected status. This policy applies to all County employees - whether full-time, part-time, temporary, seasonal or other – as well as to individuals who perform volunteer work for the County. Employees who violate this policy may be disciplined - up to and including termination.

Davis County employees are entitled to a work environment free from any form of harassment. Davis County will not tolerate any form of harassment whether directed at an employee, a vendor or a member of the public. Employment decisions (including promotions, performance evaluations, pay adjustments, disciplinary actions or work assignments cannot be based on a person’s membership in a protected class.

This policy prohibits retaliation against individuals who make complaints about violations of this policy or against anyone who participates in any manner in a subsequent investigation. Failure or refusal to cooperate in an investigation of a complaint of discrimination and/or harassment, or interference in an investigation, is also a violation of this policy. A responsible employee who knows, or should have known, a violation of this policy has occurred and fails to appropriately report this knowledge has violated this policy and may be subject to disciplinary action. Further, a responsible employee who fails to take disciplinary action and/or implement remedial measures arising from an investigation has also violated this policy.

**Duty to Notify** – Any Davis County administrator – lead worker, supervisor, manager, Administrative Officer or Commissioner - has the duty to notify a HR representative, or other designated County entity, when they are made aware of a potential discrimination and/or harassment issue. Once informed of a possible incident of prohibited conduct, the responsible employee should immediately inform a representative in HR.

**Dismissing a Complaint** - A complaint may be dismissed after an initial review by the HR Director, in consultation with the County Attorney’s Office, for failing to state a claim of discrimination and/or harassment or if the claim is too old (more than 180 days) to be effectively investigated. (See Timeliness, below).

**Filing a Complaint** – Any individual who believes they have been subjected to discrimination and/or harassment in the workplace by anyone (including but not limited to supervisors, coworkers, contractors or vendors) should report the concern. A complaint may be brought to any of the following: Any supervisor in the employee’s departmental structure, an HR Generalist, the HR Director, any employee in HR, a Civil Attorney or a County Commissioner. A complaint of alleged misconduct may be filed by an individual who believes they have been

subjected to discrimination OR by an administrator acting on behalf of Davis County. It is a violation of this policy to file false or frivolous complaints of a violation of this policy.

**Timeliness** – An investigation can be more effectively completed when addressing current events. A complaint is timely if it is filed within 180 days of the last alleged discriminatory act. A complaint that is not timely may be dismissed by HR, in consultation with the County Attorney’s Office, after an initial review. However, at the discretion of the HR Director, and for good cause – particularly in cases alleging sexual misconduct - a complaint that is not timely may be accepted and investigated.

**4.0 INVESTIGATION** – A complaint into alleged acts of discrimination and/or harassment will be reviewed for timeliness and to determine if the complaint constitutes a violation of this policy. Complaints which do not meet timeliness or applicability requirements may be dismissed. An investigation will be initiated as appropriate. Investigations will be conducted as quickly as possible given the circumstances of each case and to allow for a thorough, complete investigation into the allegations. The investigation – including who is interviewed, the order of interviews, the information considered and subsequent notification – is determined at the sole discretion of the investigator. The appropriate parties will be notified of the findings of an investigation and a report outlining the findings of the investigation will be sent to the applicable Administrative Officer and County Commissioner.

**Addressing the Findings** – Once an Administrative Officer has been notified of the findings of the investigation, they must notify the HR Director or the HR Generalist assigned to the department of the remedial action they intend to take in response to the findings. If the Administrative Officer fails to provide notification or fails to take timely action, the County Commissioners, acting upon the recommendation of the HR Director, will take the necessary steps to address the matter, which may include discipline up to and including termination.

**Confidentiality** – The privacy of all parties involved in a complaint process shall be respected insofar as it does not interfere with Davis County’s legal obligation to investigate allegations of misconduct, to take appropriate disciplinary action, to participate effectively in a potential appeal or as otherwise provided by law.

**External Investigation** – If, in consultation with the County Attorney’s Office, the HR Director determines a conflict exists for HR staff to conduct an investigation, they may appoint a qualified external entity to conduct the investigation.

**Retaliation** – Employees may bring good faith complaints of violations of this policy without fear of retaliation. Davis County strictly prohibits retaliation against individuals for engaging in

protected activities, such as filing a discrimination complaint or a harassment complaint or participating in an investigation. Retaliatory conduct includes confronting an individual who has participated in the complaint or investigation process. Allegations of retaliation are subject to the same investigatory process and the same disciplinary sanctions.

**Working Hours** – An individual who is asked to participate in an investigation does so as working time and will be compensated for their time.

**5.0 TRAINING** – As a condition of employment, new employees will receive training about preventing discrimination and harassment in the workplace during New Employee Orientation. Additionally, all employees must attend subsequent training on the subject every two years. Failure to attend the required training may result in disciplinary action.