

SECTION 5. EQUAL EMPLOYMENT OPPORTUNITY

(As amended October 21, 2008 and June 30, 2015)

5-1. Definitions.

- (a) **EEO complaint:** A verbal or written report or charge of employment discrimination or harassment.
- (b) **EEO Officer:** An employee whose primary function, as delegated by the CAO, is the development of the County's equal employment opportunity policy and the administration and oversight of related programs.
- (c) **Employment discrimination:** A policy, practice, or procedure that limits or adversely affects employment, promotion, transfer opportunities, or other working conditions on the basis of race, color, religion, national origin, ancestry, sex, marital status, age, disability, sexual orientation, or genetic status.
- (d) **Harassment:** Inappropriate written, verbal, or physical conduct, including the dissemination or display of written or graphic material, based on one's race, color, religion, national origin, ancestry, sex, sexual orientation, marital status, age, disability, or genetic status, that unreasonably interferes with one's work performance or creates an intimidating, hostile, or offensive working environment. This includes sexual harassment, which may include:
 - (1) an unwelcome sexual advance;
 - (2) a request for physical conduct of a sexual nature; or
 - (3) written, verbal, or physical conduct of a sexual nature or conduct based on one's gender, including gender stereotyping or animus, when:
 - (A) submission to the conduct is explicitly or implicitly a term or condition of an individual's employment;
 - (B) submission to or rejection of the conduct by an individual is a basis for employment decisions affecting the individual; or
 - (C) the conduct unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive working environment.
- (e) **Retaliation:** A form of sanction or adverse treatment against a person because that person:

- (1) asserted or assisted another person to assert a discrimination complaint in either a formal or informal manner with the County or with a State or Federal enforcement agency; or
- (2) testified, assisted, or participated in an investigation or proceeding related to a discrimination complaint.

5-2. Policy on equal employment opportunity.

- (a) Montgomery County is an equal employment opportunity employer committed to workforce diversity.
- (b) Montgomery County must:
 - (1) enforce Federal, State, and local laws that prohibit employment discrimination in the workplace;
 - (2) conduct all employment activities in a manner that ensures equal employment opportunity for all persons without regard to race, color, religion, national origin, ancestry, sex, marital status, age, disability, sexual orientation, or genetic status; and
 - (3) fairly and expeditiously investigate and resolve complaints.
- (c) Supervisors and managers must ensure that employees are provided with a work environment free from discrimination and harassment of any kind.
- (d) Each County supervisor must attend training on the County's equal employment opportunity policy.
- (e) An employee must not:
 - (1) discriminate against or harass another employee on the basis of race, color, religion, national origin, ancestry, sex, marital status, age, disability, sexual orientation, or genetic status;
 - (2) subject another employee, contractor, consultant, citizen, applicant, customer, or client to harassment on the basis of any of the causes listed in (1) above; or
 - (3) retaliate against a complainant or other person who has testified, assisted, or participated in any manner in an investigation under this policy.
- (f) The County may take disciplinary action up to and including dismissal against an employee who discriminates, harasses, retaliates, or engages in behavior that tends to create a hostile working environment.

5-3. Applicability of equal employment opportunity policy.

- (a) This policy applies to:
 - (1) all individuals currently employed by the County, seeking County employment, or conducting business with the County; and
 - (2) all employment practices including recruitment, hiring, promotion, demotion, transfer, reduction-in-force, termination, compensation, classification, benefits, training, or other working conditions.
- (b) A supervisor or manager must ensure that employees are informed of and comply with the policy.

5-4. EEO complaints.

- (a) An individual who believes that he or she has been subjected to employment discrimination or harassment in violation of this policy, or any person acting on behalf of such an individual, may file a complaint with one or more of the following:
 - (1) the individual's supervisor or department director, if the individual is a County employee;
 - (2) the County's EEO Officer;
 - (3) the Office of Human Rights; or
 - (4) a State or Federal enforcement agency.
- (b)
 - (1) An individual who believes this policy has been violated may not file a grievance under Section 34 of these Regulations or an appeal under Section 35, unless the alleged violation is related to a disciplinary action, termination, or involuntary resignation.
 - (2) If an individual files an EEO complaint and a grievance over the same action, such as an involuntary transfer or failure to be promoted, but the grievance does not allege discrimination or harassment in violation of this Section, the OHR Director must ensure that:
 - (A) the complaint is processed first; and
 - (B) the grievance is held and processed only after the complaint is investigated and decided by the EEO Officer or County Attorney's Office.

- (c) The County encourages employees to seek administrative remedies provided through the County EEO Officer.
- (d) An individual should file a complaint as soon as possible after the event that gives rise to the complaint. An individual who files a complaint with the County EEO Officer must file the complaint within a year of the most recent act that is alleged to have violated the County's policy stated in Section 5-2 of these Regulations.
- (e) The County EEO Officer must establish and administer a complaint-processing procedure, conduct investigations, and issue findings.
- (f) The complaint processes of the Office of Human Rights and of State and Federal enforcement agencies are independent of the County EEO Officer's complaint process. Complaints filed with the County EEO Officer are not automatically filed with the County Office of Human Rights or State or Federal enforcement agencies. An employee who wishes to file a complaint with the Office of Human Rights or a State or Federal enforcement agency must file a separate complaint with one of these agencies, in addition to any complaint filed with the County's EEO Officer.
- (g) Time limits for filing a complaint with the Office of Human Rights or with a State or Federal enforcement agency are not extended or suspended while the EEO Officer investigates a complaint under subsection (e).
- (h) Records of EEO investigations are confidential. The County EEO Officer must treat a complaint investigation with discretion to protect the privacy of those involved, as required by law.
- (i) The County EEO Officer may forward a complaint filed by an individual against the OHR Director or OHR staff to the County Attorney's Office for investigation.
- (j) The County EEO Officer's decision on an EEO complaint is final and an employee may not file an appeal of the decision with the MSPB. An investigation or decision by the EEO Officer does not affect an employee's right to file a complaint on the same matter with the Office of Human Rights or a State or Federal enforcement agency.

5-5. Equal Employment Opportunity and Diversity Action Plan. The CAO must develop, as necessary, a plan to achieve and maintain equal employment opportunity and to promote diversity. The plan may include:

- (a) a statement of purpose;
- (b) a method to identify problem areas and factors to be used in determining whether a racial, ethnic, or gender group is significantly underutilized in an occupational group;

- (c) the development of action-oriented programs designed to correct identified problems, to assure equal employment opportunity for all members of the available labor pool, and to promote upward mobility for employees;
- (d) the criteria for establishment of goals and timetables; and
- (e) designation of responsibility for dissemination, implementation, compliance and audit of the plan.

Editor’s note – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

Bargaining unit	Articles of current agreements with references to equal employment opportunity
Firefighter/Rescuer	None
OPT/SLT	38, Non-discrimination
Police	26, Non-discrimination