



## **PERSONNEL POLICY**

### **SUBJECT: DISCRIMINATION COMPLAINT PROCEDURE**

DATE: January 1, 2017

Number: 101-16

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#### **I. Statement of the Policy**

It is the policy of Fulton County to provide employees with a Discrimination Complaint Procedure through which employees can raise complaints and concerns without fear of retaliation.

#### **II. Establishment and Implementation of Procedure**

The County Manager, in consultation with the Chief Human Resources Officer and the County Attorney, is authorized to establish and modify, as needed, a procedure for implementing this policy.



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#### I. Purpose, Scope and Effect of the Procedure

##### A. Purpose

The purpose of the Discrimination Complaint Procedure (“Complaint Procedure”) is to promote equal employment opportunities for Fulton County employees by providing a means for the internal resolution of complaints alleging discrimination on the basis of race, color, religion, sex, pregnancy (including childbirth, lactation or related medical conditions), sexual orientation, gender identity or expression, age (40 and over), national origin or ancestry, physical or mental disability, genetic information (including testing and characteristics), veteran status, uniformed service-member status, or any other consideration protected by federal, state or local law. This procedure should also be followed when investigating an external Charge of Discrimination filed with the United States Equal Employment Opportunity Commission (“EEOC Charge”).

##### B. Scope

The Complaint Procedure may be used by any covered individual, including an employee, applicant for employment, or former employee of Fulton County who believes that he/she has been subjected to discrimination as defined in this Procedure.

Citizens doing business with Fulton County who believe they have been subjected to discrimination or harassment on the basis of any of the protected traits outlined above may also file an Internal Discrimination Complaint.

##### C. Application of Other Internal Complaint Procedures and External Discrimination Complaint Procedures

The Complaint Procedure, in appropriate instances, may be used in conjunction with other applicable internal or external discrimination complaint procedures, including any procedure administered by the United States Equal Employment Opportunity

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Commission (“EEOC”). Employees are advised that while they may simultaneously pursue complaints internally with the Office of Diversity and Civil Rights Compliance (DCRC) and externally with the EEOC, they are not required to do so. Employees may proceed directly to the EEOC without filing an internal complaint under this procedure. Further, employees are advised that the EEOC has strict deadlines for filing charges, and that filing an internal complaint under this procedure does not stay those deadlines. Employees who wish to file a charge with the EEOC should contact the EEOC for further information, including information regarding filing deadlines.

## **II. Definitions**

For the purpose of this procedure, the terms delineated below shall have the following meanings ascribed to them:

Alleged Violator – the County official or employee named in an Internal Discrimination Complaint as having taken the action(s) which form the basis for the complaint.

Charging Party – an individual or group of individuals who file an Internal Discrimination Complaint or EEOC Charge.

Compliance Review – an investigation that is initiated at the discretion of the DCRC upon the receipt of written notice from an Appointing Authority or his/her designee of a possible violation of the Equal Employment Opportunity and Prejudicial Acts Policy..

Director – the Director of the Office of Diversity and Civil Rights Compliance (DCRC) or the Director's designated representative.

Discrimination – conduct motivated by the animus toward a protected trait, including race, color, religion, sex, pregnancy (including childbirth, lactation or related medical conditions), sexual orientation, gender identity or expression, age (40 and over), national origin or ancestry, physical or mental disability, genetic information (including testing and characteristics), veteran status, uniformed service-member status, or any other consideration protected by federal, state or local law.

EEOC Charge – a Charge of Discrimination filed with the United States Equal Employment Opportunity Commission.

Harassment – unwelcome conduct that is based on race, color, religion, sex, pregnancy (including childbirth, lactation or related medical conditions), sexual orientation, gender identity or expression, age (40 and over), national origin or ancestry, physical or mental disability, genetic information (including testing and characteristics), veteran status, uniformed service-member status, or any other consideration protected by federal, state or local law. Such conduct violates County policy where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would

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consider intimidating, hostile, or abusive. Offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures and interference with work performance. However, petty slights, annoyances, or isolated incidents (unless the isolated incident is extremely serious) will not rise to the level of a violation of this policy.

Internal Discrimination Complaint – a written and signed statement by a specifically identified applicant, employee, former employee or other covered individual: 1) alleging that he or she has suffered direct injury as a result of an action by a County official or employee, which is intended to, or has the effect of, discriminating against the individual on the basis of race, color, religion, sex, pregnancy (including childbirth, lactation or related medical conditions), sexual orientation, gender identity or expression, age (40 and over), national origin or ancestry, physical or mental disability, genetic information (including testing and characteristics), veteran status, uniformed service-member status, or any other status protected by federal, state or local law, and 2) requesting that the DCRC take action to resolve the discrimination. Complaints filed that raise employment concerns, but which do not allege discrimination based on any status protected by law may be referred to another County entity such as the HR Operations Division of the Department of Human Resources Management.

Prejudicial Act – any action designed to frighten, harm, injure, intimidate or harass an individual, in whole or in part because of a biased motivation against the actual or perceived race, color, religion, citizenship, national origin, gender, age (40 and over), disability, ethnic background, sexual/gender identity or genetic information of the individual(s).

Sexual harassment – unwelcome and unwanted conduct of a sexual nature including, but not limited to physical assault, sexual advances, or comments, requests for sex or sexual activities related to one's employment or advancement. Such conduct may qualify as sexual harassment even when it is unaccompanied by promises or threats that have the purpose or effect of interfering with an individual's work performance, if it is severe and pervasive enough to create an objectively intimidating, hostile or offensive work environment. In the case of citizens, examples of such conduct may include, but is not limited to, sexual advances or comments or requests for sex or sexual activities concerning the receipt of or access to government services or benefits by Fulton County Employees.

Respondent – generally, the Appointing Authority of the department in which the Alleged Violator works.

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### **III. Administration of this Procedure**

#### **A. Responsibility for Administration**

The Complaint Procedure will be administered by the Director of the Office of Diversity and Civil Rights Compliance (DCRC) ("Director"), and all records resulting from use of the Complaint Procedure will be maintained by the Director with the exception of medical records protected under state and federal laws, which shall be forwarded to the Department of Human Resources Management for retention in the employee's medical file. The Director is responsible for determining compliance with all aspects of this procedure and providing information concerning the procedure specifically requested by users of this policy.

#### **B. Time Periods**

Unless specifically stated otherwise, the time periods within this procedure refer to business days.

#### **C. Compliance Review**

Upon the receipt of written notice from an Appointing Authority or his/her designee of an alleged violation of the Equal Employment Opportunity and Prejudicial Acts policy, the DCRC shall have the discretion to initiate a compliance review of such conduct.

### **IV. Discrimination Complaint Process**

#### **A. Initiation of Investigation**

##### **1) Filing an Internal Discrimination Complaint**

Employees do not have to report discrimination to their immediate supervisor or go through their supervisory chain of command before notifying the DCRC. In fact, employees are specifically authorized to bypass their supervisors (and chain of command) and report the incident directly to the DCRC. If the employee files an Internal Discrimination Complaint during working hours, the employee must notify his/her supervisor or a designee that s/he is leaving the office. In those instances where an employee is not comfortable with their ability to write a complaint to file with the DCRC, the DCRC will lend whatever assistance is necessary to formalize the complaint.

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A covered individual under this policy who believes he/she is experiencing or has experienced discrimination, may file an acceptable written statement with DCRC by completing a Discrimination Complaint Form to be provided by DCRC. DCRC immediately will evaluate the written information provided to determine whether it has sufficient information to consider the complaint as complete.

Covered individuals choosing to utilize this procedure are responsible for providing DCRC with any and all requested information to enable DCRC to proceed with Internal Discrimination Complaint evaluation and investigation and/or resolution attempts.

(a) Time for Filing an Internal Discrimination Complaint

In order to be timely, an Internal Discrimination Complaint must be filed within thirty (30) business days of the last date on which the action described in the complaint occurred. The filing date of a complaint shall be the date that is stamped on the complaint upon receipt by DCRC.

(b) Waivers

If an Internal Discrimination Complaint is not filed in a timely manner, DCRC will notify the Charging Party of the opportunity to request a waiver. The Director may grant a waiver of the 30 day filing requirement under any of the following circumstances:

- The Charging Party reasonably could not be expected to know the act was discriminatory within the timeframes prescribed by this procedure;
- The Charging Party was unable to file an Internal Discrimination Complaint because of illness or other incapacitating circumstances during the timeframes prescribed by this procedure;
- Unique circumstances created by the department's or Alleged Violator's action have adversely affected the Charging Party's ability to file the Internal Discrimination Complaint; and/or
- Other circumstances which, within the sole discretion of the Director, warrant granting the waiver.

An Internal Discrimination Complaint will be confidential to the degree possible during the investigation.

**2) Receipt of an EEOC Charge of Discrimination**

Upon receipt of an EEOC Charge filed against Fulton County or a Fulton County employee, DCRC will proceed with an evaluation and investigation of the allegations contained in the EEOC Charge. Employees should refer to the EEOC for guidelines regarding timeliness of EEOC Charges.

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All communications from the EEOC that are received by any Department Head or County employee shall be forwarded immediately to the Director of DCRC. The following types of charges will be considered exceptions to this policy and will be reviewed by the Director of DCRC in conjunction with the County Attorney and the County Manager to determine the best course of action: (1) charges filed by employees of the County Manager's Office; (2) cases in which there is pending litigation involving the same set of facts underlying the EEOC Charge; (3) charges filed by one Department Head against another Department Head; and (4) other charges as determined by the Director of DCRC.

**B. Notice of Internal Discrimination Complaint and EEOC Charge of Discrimination Filing and Obligation to Respond**

When the Director receives an EEOC Charge or a complete and timely filed Internal Discrimination Complaint, within five (5) business days of receipt of the Internal Discrimination Complaint or EEOC Charge, the Director will notify the Respondent, the Alleged Violator and, in cases involving an EEOC Charge, the County Attorney and County Manager).

**C. Administrative Closures**

In a variety of circumstances, DCRC may determine that an investigation should be closed administratively. Examples of such circumstances may include but are limited to: 1) the Charging Party's failure to cooperate in the processing of the evaluation, investigation and/or resolution of the Internal Discrimination Complaint or EEOC Charge; 2) the Charging Party's decision to withdraw his/her complaint; 3) the death of the Charging Party, making it impossible for DCRC to investigate the allegations fully; 4) the Internal Discrimination Complaint or EEOC Charge is a continuation of a pattern of previously filed complaints involving the same or similar allegations against the same Respondent, which repeatedly have been found factually unsubstantiated by DCRC; and/or 5) DCRC's receipt of information at any time confirming that the allegations raised by the Charging Party have been resolved.

**D. Evaluation and Investigation**

Generally, DCRC will issue a data request letter (DRL) to the Respondent, Alleged Violator, seeking information and documents relevant to the investigation, or, if appropriate, request a written response to the Internal Discrimination Complaint or EEOC Charge and any other relevant questions specific to the allegations, to include supporting documentation setting forth all known details concerning the Charging Party's allegation(s). A response to any DRL or request for response issued by DCRC in connection with the Internal Discrimination Complaint or EEOC Charge must be in writing. The written response generally must be received by the Director within ten (10) business days of receipt of the DRL or request for response. Extensions will be granted

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at the discretion of the Director and should be given when warranted based on the amount of information sought and priority of other operations.

The Director of DCRC generally will delegate the handling of certain aspects of an EEOC case to an Equal Employment Officer or other designee.

If requested to do so by the Director of DCRC, the Department of Human Resources Management and/or any other County department or division, shall collect and report any personnel or related information necessary to facilitate DCRC's investigation of the allegations contained in the Internal Discrimination Complaint or EEOC Charge.

If the Director of DCRC or the County Attorney determines that it is not appropriate for DCRC to conduct an investigation, the Director of DCRC will immediately forward a copy of the Internal Complaint or EEOC Charge to the County Attorney who may either retain an outside investigator to conduct an independent investigation or prepare an Investigative Report and/or Statement of Position on behalf of the County.

#### **E. Completion of Investigation**

Evaluation and investigation of an Internal Discrimination Complaint or EEOC Charge generally will be completed within 90 business days from the date the investigation is initiated. When additional time is required, a letter may be sent by the Director notifying the Charging Party and Respondent of the new time frames by which DCRC anticipates completing its evaluation and/or investigation.

Upon completion of any investigation, the Director shall prepare an Investigative Report detailing the factual findings related to the Internal Discrimination Complaint or EEOC Charge.

If the investigation only involves an Internal Discrimination Complaint, then upon completion of the complaint evaluation and investigation, the DCRC shall issue an Investigative Report that shall contain sufficient documentation to support its findings and conclusions. All involved parties will be notified of the DCRC's determination.

If the investigation involves an EEOC Charge, the Investigative Report shall not contain any conclusions regarding the allegations and shall be forwarded to the Office of the County Attorney for review. The County Attorney's Office will either recommend settlement of the EEOC Charge to the County Manager or develop a Statement of Position on behalf of the County.

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## **V. Resolution**

Every effort shall be made to obtain early resolution of an Internal Discrimination Complaint at the lowest level possible. With respect to an Internal Discrimination Complaint, the DCRC will utilize alternate dispute resolution strategies with affected parties, as appropriate, at any stage in the process. DCRC shall attempt to resolve the Charging Party's allegations of discrimination promptly and appropriately. .

### **A. Internal Discrimination Complaint**

If an Internal Discrimination Complaint is resolved during the evaluation and investigation process prior to the completion of an Investigative Report, the complaint resolution letter to all parties should contain:

- the basis for the complaint (*i.e.*, the protected status as set forth in Section I, above);
- a brief statement of the allegations;
- an explanation of the basis for DCRC's determination that the complaint has been resolved; and
- a copy of any signed, written agreement that has been reached.

#### **1) When the Alleged Violator is not the Department Head**

Where the Director finds that there is reasonable cause to believe that discrimination has occurred, the Director may determine a remedy that the department head is responsible for implementing. In the event the department head disagrees with the proposed remedy, the department head shall have the right to appeal the remedy, but not the determination, made by the Director. Such appeal shall be made in writing to the County Manager within three (3) business days of the issuance of the Investigative Report. Within ten (10) business days, the County Manager shall make a final decision regarding the remedy, based on a review of the findings and supporting documentation. After the County Manager makes a decision, there will be no further County review of the complaint.

#### **2) When the Alleged Violator is the Department Head**

Where the Director finds that there is reasonable cause to believe that discrimination has occurred and the Alleged Violator is a department head, the Director may recommend a remedy to the County Manager. Within ten (10) business days, the County Manager will make a final decision regarding the remedy in the matter, based on a review of the findings and recommendations. This decision shall be issued in writing to each of the concerned parties as well as the Director.

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## **B. EEOC Charge of Discrimination**

Upon receipt of an Investigative Report, the County Attorney's Office will either recommend settlement of the EEOC Charge to the County Manager or develop a Statement of Position on behalf of the County. In the event that a settlement or resolution of an EEOC Charge is recommended by the County Attorney, a copy of the recommendation shall be forwarded to the County Manager.

When a settlement or resolution of an EEOC Charge is agreed to by the County Manager and County Attorney, the County Attorney is authorized to formally advise all parties of the actions necessary to conclude the EEOC action and to recommend settlement payments, if any, to the Board of Commissioners.

No written settlement agreement shall be entered into without the approval of the County Attorney, and if payment is required, the settlement agreement must be submitted by the County Attorney to the Board of Commissioners for approval. All such agreements will contain appropriate release and waiver provisions.

The Director of DCRC or his/her designee and representatives of the County Attorney's Office, shall attend all EEOC mediations, fact-finding conferences, conciliation conferences or other such meetings, and shall participate in all discussions with the EEOC.

In the event that the EEOC makes a cause finding, the Director of DCRC shall advise the County Manager, the Office of the County Attorney, and the affected department head of the same by memorandum. Additionally, the case file will be transferred to the County Attorney for further handling.

## **VI. Disciplinary Action**

All disciplinary actions for violation of this policy shall be taken by the County Manager or Appointing Authority, and shall be governed by the guidelines set forth in Fulton County's Discipline for Classified Employees Policy and Procedure, as applicable. Appeals of disciplinary actions by permanent classified employees may be made to the Fulton County Personnel Board. Officials appointed by the Board of Commissioners of Fulton County may seek redress for any disciplinary action before the Board.

While the County encourages any employee to raise any question or concern he/she may have regarding misconduct in accordance with these procedures, the County also recognizes that intentional or malicious false accusations alleging misconduct can have a serious effect on innocent men and women. Individuals who intentionally accuse another falsely of misconduct will be disciplined up to, and including, termination of employment.

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## **VII. Strict Prohibition Against Retaliation**

Fulton County strictly prohibits retaliation against: 1) any employee or citizen who opposes any act or practice they perceive to violate this policy; or 2) any employee who has made a charge, testified, cooperated, assisted or participated (in any manner) in any DCRC-related investigation, proceeding or hearing. Retaliation is a separate violation, distinct from the initial, underlying discrimination allegation. DCRC will investigate all complaints of retaliation using the procedures set forth above. Individuals found to have engaged in retaliation shall be subject to discipline without regard to whether there has been a finding of cause in connection with the underlying, initial complaint. Any employee who feels they have been subjected to retaliation should contact DCRC immediately.

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