



LEWIS AND CLARK COUNTY POLICY

Subject: Complaint Procedures: Employee Grievances and Unlawful Discrimination Complaints	Policy No: 1.2.12
Approved:	Effective Date: Aug. 1, 2015 Revised Date: 05/31/17

I. Policy Statement

Employees, job applicants and citizens have certain rights that are protected by state and federal statutes. In order to ensure that these rights are honored and protected, the County has established procedures to resolve complaints.

II. Applicability

All Lewis and Clark County employees.

III. Definitions

None.

IV. Directives

A. Employee Complaint Procedures – General

1. The purpose of this section is to establish a uniform County procedure for the adjudication of complaints for the following:
 - a. Any employee may initiate an inquiry or complaint over the application, meaning or interpretation of this Personnel Policy Manual. Layoffs and dismissals or terminations may be considered appropriate subjects for inquiries or complaints.
 - b. Any employee or applicant may initiate an inquiry or complaint over alleged unlawful discrimination or sexual harassment in recruitment or employment.
 - c. Any employee, applicant or visitor may initiate an inquiry or complaint over alleged unlawful discrimination or denial of access to County facilities and programs due to a mental or physical disability.

2. Nothing in this complaint procedure is intended to take the place of any rights an employee may have under terms and conditions of a ratified collective bargaining agreement.
3. Retaliation: No County employee will be subjected to demotion, termination, dismissal or any other form of punishment or harassment as a result of initiating an inquiry or complaint under this procedure.
4. The Human Resource Director or Chief Administrative Officer may attempt to resolve the grievance informally at any time within the specified time limits.
5. Alternative Staffing Arrangements for Complaints.
 - a. Upon request by a charging party, the Chief Administrative Officer, County Attorney (or designee) may perform any of the informal or formal complaint procedure duties designated for the Human Resource Director, Equal Employment Opportunity (EEO) Officer or Americans with Disabilities Act (ADA) Coordinator.
 - b. The Chief Administrative Officer, County Attorney (or designee) will perform any of the informal or formal duties designated for the Human Resource Director, Equal Employment Opportunity (EEO) Officer or Americans with Disabilities Act (ADA) Coordinator in the following situations:
 - i. When the charging party demonstrates that the Human Resource Director, Equal Employment Opportunity (EEO) Officer or Americans with Disabilities Act (ADA) Coordinator is a party to the complaint.
 - ii. When the Human Resource Director, EEO Officer or ADA Coordinator originates the complaint.
6. **Human Resource Director:** The Human Resource Director will have the following responsibilities:
 - a. To receive complaints and conduct informal inquiries under the Informal Complaint Procedure described below:
 - b. To act as staff to the Board of County Commissioners and prepare an agenda and documentation setting forth a formal complaint to be acted upon by the Board of County Commissioners.
 - c. To call meetings of the Board of County Commissioners. Meetings will be held at the convenience of the Commission members and any other personnel appearing before the Committee.
 - d. To detail the agenda topics, arrange for the appearance of witnesses, assemble relevant documentation and other related materials necessary for conducting the hearing. He/She will not “defend” or “prosecute” complaints but rather gather and supply information necessary for the Board of County Commissioners to conduct its investigation.
 - e. To communicate the recommendations of the Board of County Commissioners to the affected charging party and respondent. The Human Resource Director will also be responsible for carrying through the actions directed by the Board of County Commissioners.
 - f. To maintain all files and records relating to the complaints filed.
 - g. The Equal Employment Opportunity Officer will assume the Human Resource Director’s role for complaints about unlawful discrimination or sexual harassment in recruitment or employment, except that the Americans with Disabilities Act

Coordinator will assume the Human Resource Director's role for complaints about alleged unlawful discrimination or denial of access to County facilities and programs due to a mental or physical disability.

7. Informal Complaint Procedure:

- a. The Human Resource Director or Chief Administrative Officer may attempt to resolve the grievance informally at any time within the specified time limits.
- b. An employee who initiates an inquiry or complaint over the application, meaning or interpretation of this Personnel Policy Manual will present the complaint to the employee's immediate supervisor or elected official/department director within ten (10) working days of the incident resulting in the complaint. If the supervisor and employee are unable to resolve the grievance to the latter's satisfaction within five (5) working days after presentation of the grievance, the charging party may proceed with the formal grievance procedure.
- c. Any employee or applicant may initiate an inquiry or complaint over alleged unlawful discrimination or sexual harassment in recruitment or employment. Charging party will present the complaint to the Equal Employment Opportunity Officer within ten (10) working days of the incident resulting in the complaint. If the EEO Officer is unable to resolve the grievance to the latter's satisfaction within five (5) working days after presentation of the grievance, the charging party may proceed with the formal grievance procedure.
- d. Any employee, applicant or visitor may initiate an inquiry or complaint over alleged unlawful discrimination or denial of access to County facilities and programs due to a mental or physical disability. Charging party will present the complaint to the Americans with Disabilities Act Coordinator within ten (10) working days of the incident resulting in the complaint. If the ADA Coordinator is unable to resolve the grievance to the latter's satisfaction within five (5) working days after presentation of the grievance, the charging party may proceed with the formal grievance procedure.

8. Formal Complaint Procedure:

a. Appeal from the Informal Procedure to the Formal Procedure:

- i. **Written Appeal.** If the charging party chooses to appeal the recommendation from an informal procedure, the charging party will file a written request for a hearing before the Board of County Commissioners within five (5) working days of receipt of the decision from the informal procedure. The request for a hearing must be filed with the Human Resource Director, EEO Officer or ADA Coordinator.
- ii. **Notice of Hearing.** Within ten (10) working days of receipt of the written request for a hearing, the Human Resource Director, EEO Officer or ADA Coordinator will notify the charging party and the respondent of the time and place of the formal hearing before the Board of County Commissioners. The hearing will be scheduled within thirty (30) calendar days of receipt of the written appeal.

b. Preparation for the Hearing

- i. **Charging party's Statement.** At least fifteen (15) working days prior to the hearing the charging party must submit to the Human Resource Director, EEO Officer or ADA Coordinator the following information (where applicable):
 - A. Concise statement of facts relevant to the grievance.

- B. The names of all supervisory personnel and staff with whom the complaint has been discussed and the results of the discussions.
 - C. The remedy sought by the charging party.
 - D. The names of witnesses or persons who can speak on behalf of the charging party.
 - E. Copies of any documents and descriptions of any physical evidence that may be used to support the charging party's position.
 - F. In addition, the charging party will supply any additional materials the charging party wishes the Committee to consider fifteen (15) working days prior to the hearing.
- ii. **Respondent's Statement.** At least ten (10) working days prior to the hearing the person(s) named as respondent(s) to the complaint will submit to the Human Resource Director, EEO Officer or ADA Coordinator the following:
 - A. A statement of facts relevant to the charging party's allegations.
 - B. Names and addresses of witnesses.
 - C. A summary of testimony; copies of documents or other materials to be submitted in response to the complaint.
- c. **The Hearing.** The formal hearing before the Board of County Commissioners will be presided over by the Chair of Board. The hearing will be a non-adversarial proceeding, and strict rules of evidence will not be applied. The Chair will be the final arbiter of all matters of procedure. In the absence of a compelling public interest, preference will be given to the charging party's and respondent's request for an open or closed hearing.
 - d. **The Recommendation.** Within ten (10) working days of the conclusion of the formal hearing or receipt of the hearing transcript, if a transcript is deemed necessary, the Board of County Commissioners will provide a written decision to the charging party. The decision will contain the following:
 - i. A summary of the allegations of the charging party.
 - ii. A statement of the relief sought by the charging party.
 - iii. Specific citations of any policies, laws or regulations alleged to be violated.
 - iv. A statement of the findings of fact and conclusions of the board regarding whether the evidence substantiated the allegations of the charging party.
 - v. Remedy, if any, for the charging party's grievance as well as any applicable policy or procedural changes to the case under review.
 - e. **Signed Acceptance of Resolution.** Prior to implementation of any remedial action approved by the Human Resource Director, EEO Officer or ADA Coordinator, the charging party will be asked to sign a release indicating acceptance of the proposed remedial action as complete satisfaction for any and all claims or causes of action relative to the complaint.
 - f. Employees or job applicants bringing a unlawful discrimination claim will be informed by the Human Resource Director, EEO Officer or ADA Coordinator that he/she may file a complaint with the Montana Human Rights Commission and/or the Equal Employment Opportunity Commission.

B. Unlawful Discrimination and Sexual Harassment Claims

- 1. Reporting and investigation of unlawful discrimination and harassment. The purpose of the following section is to establish uniform guidelines for reporting and investigating unlawful discrimination and harassment claims. The procedures set forth in this section will apply to all job applicants, County employees and disabled

persons who feel they have been unlawfully discriminated against or harassed in the admission or access to, treatment of, or employment in, the programs or activities of Lewis and Clark County.

- a. Definition of an unlawful discrimination claim: Any claim by an employee, applicant or visitor, who believes that he or she has been discriminated against based upon the individual's race, color, religion, sex, national origin, age, disability, sexual partner preference, receipt of public assistance, political belief and/or ex-offender status.
 - b. Definition of a sexual harassment claim: Any claim made by an employee, who believes that he or she has been the recipient of unwelcome verbal, physical contact or behavior of a sexual nature that created a hostile, offensive or intimidating work environment which unreasonably interferes with, or negatively impacts the individual's work performance; or any claim made by an employee, applicant or program participant who believes that the basis of an employment decision, benefit or program access was based on the individual's sex.
 - c. Unwelcome advances that may be sexual in nature, requests for sexual favors or verbal comments or physical contact of an intimidating or sexual nature constitute examples of sexual harassment when:
 - i. Submission to the conduct is made either explicitly or implicitly a term or condition of an individual's employment (*quid pro quo*).
 - ii. Submission to or rejection of the conduct by an individual is used as the basis for employment decisions affecting the individual (*quid pro quo*).
 - iii. The conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment (unwanted sexually oriented jokes, innuendoes, obscenities, pictures or any action with a sexual connotation that makes an employee feel uncomfortable in the workplace or any aggressive, harassing behavior in the workplace or that affects the workplace, whether or not sexual in connotation, is directed toward an employee, applicant or visitor based on the employee's sex, such as, hazing which includes daring or asking an employee to engage in unsafe work practices or activities.) (*Hostile work environment*).
 - d. Employees, applicants or visitors that believe they have been subjected to unlawful discrimination or harassment should contact the Equal Employment Opportunity Officer for Lewis and Clark County. All complaints will be investigated in a timely and confidential manner.
 - e. Unlawful discrimination and harassment claims are subject to the Complaint Procedures described above in this policy.
 - f. Any employee found to have unlawfully discriminated against, harassed, or who has participated in the unlawful discrimination or harassment of another employee, applicant or visitor will be subject to disciplinary action, up to and including dismissal. Retaliation against persons who file complaints is also a violation of laws prohibiting unlawful discrimination and harassment and will result in disciplinary action to the offenders up to and including dismissal.
 - g. Supervisors who knowingly condone or knowingly fail to report incidents of unlawful discrimination or harassment will be subject to disciplinary action up to and including dismissal.
2. Prevention and reporting of unlawful discrimination and harassment:
 - a. All Lewis and Clark County supervisory personnel are required to:

- i. Inform employees of their right to work in an environment free of unlawful discrimination and harassment.
- ii. Provide training to all department employees regarding the prevention and reporting of unlawful discrimination and harassment.
- iii. Express strong disapproval of any type of unlawful discrimination and harassment.
- iv. Make it clear to employees that anyone who engages in unlawful discrimination and/or harassment will be subject to disciplinary action and that victims and informers will be protected from retaliation.
- v. Be aware of activities in the workplace that may result in unlawful discrimination and or harassment and take immediate corrective action if unlawful discrimination or harassment occurs.
- b. Employees have a responsibility to:
 - i. Report all incidents or actions of unlawful discrimination and/or harassment as soon as possible after the alleged incident occurs to their supervisor, elected official/department director or Equal Employment Opportunity Officer.
 - ii. Make it known to the harasser, if possible, that the behavior in question is unwelcome, offensive, or inappropriate and request that the behavior stop immediately.
 - iii. Keep written records of the dates and facts of all sexual harassment and the names of witnesses.
- 3. Employees may file a complaint through the County Equal Employment Opportunity Officer, through the complaint procedure outlined in this Personnel Policy Manual or through the Human Rights Bureau, Department of Labor and Industry, Helena, Montana.

C. Mental or Physical Disability Discrimination Claims

1. The purpose of this section is to establish uniform guidelines for the investigation and resolution of complaints regarding access or alleged discrimination under the Montana Human Rights Act and the Americans with Disabilities Act. The guidelines set forth in this section will apply to all job applicants, County employees, and disabled persons who feel they have been discriminated against in the admission or access to, or treatment or employment in, the programs or activities of the County.
 - a. Definition of Mental or Physical Disability Discrimination Claim-A mental or physical disability discrimination claim is defined as any claim filed by an employee, job applicant, or disabled person who believes he/she has been discriminated against on the basis of mental or physical disability, who believes that unlawful discrimination has occurred due to a perception of a mental or physical disability, or who believes that access to a particular County facility, program or service has been obstructed by a removable barrier or obstruction.
 - b. Disability discrimination claims are subject to the Complaint Procedures described above in this policy.
 - c. Employees, applicants or visitors that believe they have been subjected to unlawful disability discrimination contact the Americans with Disabilities Act (ADA) Coordinator for Lewis and Clark County. All complaints will be investigated in a timely and confidential manner.

V. **Closing**

Provisions of this policy will be followed unless they conflict with negotiated labor contracts which will take precedence to the extent applicable.

Questions concerning this policy should be directed to the Human Resource Department.

VI. **References**

None

VII. **Attachments**

None