

RESOLUTION 2008-24

A RESOLUTION AMENDING PERSONNEL POLICIES AND PROCEDURES SECTION 20, SEXUAL HARASSMENT

WHEREAS, the Tooele County Commission finds it necessary to revise Personnel Policies and Procedures Section 20, Sexual Harassment, to incorporate best practices as recommended by UCIP and to promote the health, welfare, and safety of County employees.

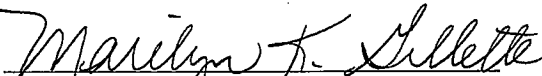
NOW, THEREFORE, BE IT RESOLVED BY THE TOOEELE COUNTY COMMISSION that Personnel Policies and Procedures Section 20, Sexual Harassment, is hereby amended to read as attached hereto, which attachment is, by this reference, made a part hereof.

EFFECTIVE DATE: This resolution shall take effect immediately upon passage.

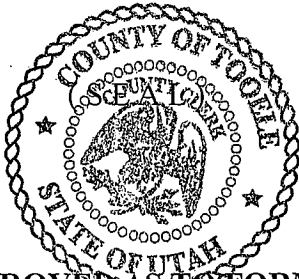
DATED this 25th day of November 2008.

ATTEST:

TOOELE COUNTY COMMISSION:


MARILYN K. GILLETTE, Clerk


COLLEEN S. JOHNSON, Chairman



Commissioner Johnson voted aye
Commissioner Clegg voted aye
Commissioner Hurst voted aye

APPROVED AS TO FORM:


DOUG HOGAN
Tooele County Attorney

SECTION 20 SEXUAL HARASSMENT

- A. **PURPOSE:** To provide an informal and formal process to all County employees for addressing discrimination complaints. All employees of Tooele County are guaranteed a work environment free from sexual harassment, harassment, discrimination, or reprisal. All individuals making application for employment or conducting business with the County must be allowed to do so in an environment free from sexual harassment, harassment, discrimination, or reprisal.
- B. **POLICY:** It is the policy of Tooele County, an equal employment opportunity employer, to provide all employees with a working atmosphere free of sexual harassment, harassment, discrimination or reprisal. It is the firm and express policy of Tooele County that discrimination based upon race, color, national origin, gender, sexual orientation, marital status, religion, age, or disability shall not be tolerated under any circumstances. County administrators and supervisory personnel are admonished to do all within their power to ensure that sexual harassment, harassment, discrimination, or reprisal is altogether prevented, insofar as is possible, and if it does occur is immediately investigated and remedied with appropriate disciplinary action taken against any County employee who engages in such behavior. The County expects the prompt reporting of instances of such behavior and will ensure that reporting employees' rights are protected.
- C. **DEFINITIONS:**

As used in this section:

1. "Sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment; (2) submission to or rejection of such conduct by such individual is used as the basis for employment decisions affecting such individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
2. "Discrimination" means any adverse action taken against an employee because of race, color, national origin, gender, sexual orientation, marital status, religion, age, or disability.
3. "Harassment" means pervasive, unwelcome, demeaning, ridiculing, derisive, or coercive conduct toward an employee or applicant based on factors of race, color, national origin, gender, sexual orientation, marital status, religion, age, or disability that (1) creates an intimidating, hostile, or offensive work environment; (2) unreasonably interferes with a person's work performance; or (3) otherwise adversely and unreasonably affects an individual's employment.

4. "Informal Review" means a process wherein a supervisor or manager receives and reviews allegations, meets with the complaining party and accused harasser separately, and attempts to resolve the issues.
5. "Administrative Investigation" means a process wherein the Department Head or Elected Official or designee interviews the complaining party, requests the complaint in writing, interviews and requests a response in writing from the accused, interviews any and all witnesses, and makes a determination whether sexual harassment, harassment, discrimination, or reprisal occurred or did not occur.

D. PROCEDURE:

1. Discrimination, including harassment, based on extraneous factors such as race, color, national origin, gender, sexual orientation, marital status, religion, age, or disability shall not be tolerated. Individuals in these "protected classes" shall be assured of fair and equitable treatment in areas of recruitment, testing, hiring, training, compensation, classification, working conditions, benefits, promotions, demotions, transfers, disciplinary actions, terminations, and all other factors within the employment process. **Note: This policy is not intended to require additional employee benefits related to family, marital, co-habitant, or dependent status unless provided for by state or Federal law or by contract.**
2. Sexual harassment is an unlawful activity which violates merit principles and is prohibited as a form of gender discrimination under Title VII of the Civil Rights Act of 1964, as amended. Any employee who engages in such activity shall be subject to corrective or disciplinary action.
3. Sexual relationships which are used as the basis for employment decisions not based on merit are prohibited and may be subject to corrective or disciplinary action.
4. All County employees, regardless of merit status, have the right to file a grievance on matters related to sexual harassment, harassment, or discrimination and may do so without fear of reprisal.
5. Employees who are subjected to, or are otherwise aware of, sexual harassment, harassment, or discrimination by or against a County employee are expected to report such harassment as soon as possible.
6. Employees may, at their choice, make a report of sexual harassment, harassment, or discrimination to any of the following:
 - a. any supervisor in the employee's chain of command;
 - b. the County Human Resources Director;
 - c. the County Attorney; or

- d. any County Commissioner or their designee.
7. All Departments and Elected Offices with non-standard work schedules shall designate a representative to take sexual harassment, harassment, or discrimination complaints during the non-standard hours of the shift. This may be a supervisor or designee who is not on-duty but is available by phone. Employees working those shifts shall be notified who the representative is and how to contact that person. A copy of the notice shall be forwarded to the Human Resources Director.
 8. Complaints may be submitted by any individual through either verbal or written notification. Malicious or frivolous complaints of sexual harassment, harassment, or discrimination shall result in corrective or disciplinary action taken against the accuser.
 9. An initial complaint of sexual harassment, harassment, or discrimination by the specific person subjected to the offensive behavior need not be in writing, but complainants are encouraged to document the occurrence(s).
 10. Complaints filed by individuals other than the specific person subjected to the offensive behavior must be submitted in writing.
 11. Sexual harassment, harassment, or discrimination complaints may be filed regardless of whether the behavior occurred on or off-duty, if it results in work-related sexual harassment, harassment, or discrimination.
 12. Any employee who believes he or she has been subjected to any act of reprisal for filing a grievance or appeal or any employee who believes he or she has been sexually harassed, harassed, or retaliated against for having opposed a discriminatory practice shall have the right to file a complaint. This complaint must be filed separately and shall be initiated at the next supervisory level not involved in the alleged reprisal. The line of appeal shall proceed as outlined in Section 25, Grievances and Appeals, of Personnel Policies and Procedures.
 13. Employees may bring complaints without any fear of reprisal, intimidation, coercion, or retaliation. Confidentiality will, to the extent practical under the law and under the necessities of disciplinary action, be protected.
 14. Any act of reprisal toward the complainant or witnesses will subject the person who retaliated to corrective or disciplinary action. The accused employee shall not contact the complainant regarding allegations of sexual harassment, harassment, or discrimination once a complaint has been filed. However, contact can be made in a formal appeal situation.
 15. Any supervisor receiving a complaint of sexual harassment, harassment, or discrimination shall immediately inform the Department Head or Elected Official of the department in which the alleged act occurred. Supervisors who knew or should have known that sexual harassment, harassment, or discrimination was occurring on-duty, or were made aware of such behavior occurring off-duty, which resulted in a hostile work environment and did not take timely action to correct the situation shall be subject to corrective or disciplinary action.

16. After receipt of a complaint, the Department Head or Elected Official may take immediate and appropriate action.
17. The Department Head or Elected Official shall contact the County Human Resources Director designee within two working days to report the incident.
18. Informal Review: The Department Head or Elected Official shall attempt to resolve the issues by receiving and reviewing allegations, meeting with the complaining party and accused party and documenting actions taken. The Department Head or Elected Official may issue discipline if deemed appropriate.
 - a. If the Informal Review indicates no further action is necessary, a brief written memorandum shall be prepared and a copy shall be forwarded to the Human Resource Director, the complainant, and the accused.
 - b. If the Department Head or Elected Official is unable to resolve the sexual harassment, harassment, or discrimination claims or if the facts are in dispute, the matter must be referred for Formal Investigation.
 - c. In cases where an Elected Official or Department Head has been accused, the matter shall be immediately referred to the County Commissioners. The Human Resources Director may be assigned to conduct the Informal Review if necessary.
 - d. Any complaining or accused employee dissatisfied with the response by the Department Head or Elected Official should report their concerns to the Human Resources Director who shall review that response for compliance with County policies and procedures.
 - e. If the review results in findings of a bad faith or false claim, the person filing such shall be subject to corrective or disciplinary action.
19. Formal Investigation:
 - a. The primary responsibility for conducting an investigation and acting upon it shall be with the County Attorney's Office.
 - i. The County Attorney or designee shall interview the complaining party, request the complaint in writing, interview and request a response in writing from the accused party, and interview any and all witnesses to determine whether sexual harassment, harassment, or discrimination occurred or did not occur.
 - ii. In the event the complaining party or accused party declines to submit a written statement, the Department Head or Elected Official shall document in writing a complete record of the verbal complaint and/or the response. The employees shall receive a copy of the Department Head or Elected Official's record of the verbal complaint.

- b. Formal Investigations shall be conducted and completed within thirty (30) calendar days following the receipt of the written complaint or the Department Head or Elected Official's written record of the complaint. The time limit in which to complete the investigation may be waived by the County Human Resource Director based upon a written request.
- c. Individuals who investigate sexual harassment, harassment, or discrimination complaints shall prepare a written report and submit it to the Department Head or Elected Official and to the County Human Resources Director. This written report is classified as a protected record and shall be retained as such by the County Human Resources Director.
- d. Anyone conducting an investigation shall protect the rights of both the person complaining and the person accused. Confidentiality will be protected to the extent possible under the law.
- e. If a Department Director or Elected Official is accused of sexual harassment, harassment, or discrimination, an administrative investigation shall be instituted by the County Commissioners or their designee if the Informal Review indicates an investigation is appropriate.
- f. Any act of reprisal toward the complainant or witnesses shall be subject to separate corrective or disciplinary action.
- g. Anyone conducting an investigation of sexual harassment, harassment, or discrimination shall provide a copy of this policy to the person making the harassment complaint and the accused.
- h. After completion of the Formal Investigation, the County Attorney shall provide the complainant, the accused, and the Human Resources Director a letter outlining the case's final disposition and summary of findings.
- i. If it is determined a violation of policy has occurred, the Department Head or Elected Official may issue discipline as appropriate. If it is determined a violation of policy has occurred by a Department Head or Elected Official, the County Commissioners may issue discipline as appropriate.
- j. If an investigation reveals evidence of criminal conduct in sexual harassment, harassment, or discrimination allegations, the matter shall be handled by the County Attorney.
- k. If the investigation reveals that the accusations are unfounded, this information shall be documented, the investigation terminated, and all parties involved notified.
- l. If the investigation results in findings of a malicious, frivolous, bad faith, or false claim, the individual filing the claim shall be subject to corrective or disciplinary action by the Department Head.

20. Discipline:

- a. If the person conducting the Informal Review or Formal Investigation determines that sexual harassment, harassment, or discrimination as described in this policy has occurred, appropriate disciplinary action shall be taken against the harasser.
 - b. No disciplinary action shall be taken against an employee accused of sexual harassment, harassment, or discrimination until an Informal Review or Formal Investigation has been conducted and the findings document the allegations. Disciplinary action shall then be imposed pursuant to the County's policies and procedures. Department Heads, Elected Officials, Directors, Managers, or Supervisors may take immediate corrective action when witnessing inappropriate conduct.
 - c. If the Informal Review or Formal Investigation reveals that disciplinary action is warranted, discipline shall be imposed based upon the employee's level of responsibility within the organization as well as the pervasiveness, frequency, duration, and severity of behavior. Department Heads or Elected Officials are encouraged to confer with the Human Resources Director and the County Attorney's Office regarding the degree of discipline to be imposed.
 - d. A Department Head, Elected Official, Director, Manager, or Supervisor who knew that work-related sexual harassment, harassment, or discrimination was occurring within his or her chain of command and failed to take timely action or any person who has responsibility under this policy to act on a sexual harassment, harassment, or discrimination complaint and fails to act, shall be subject to corrective or disciplinary action.
 - e. A Department Head, Elected Official, Director, Manager, or Supervisor who engages in behavior in violation of this policy shall be held to a higher standard of discipline. This may include deviation from the usual sequence of discipline to the extent that intermediate steps in the discipline process may be by-passed.
21. If the complainant or accused employee is not in agreement with the County Attorney's letter outlining the case's final disposition or summary of findings, the employee may then file a grievance at the next highest level of review following the procedure outlined in Section 25, Grievances and Appeals, of Personnel Policies and Procedures.
22. The Human Resources Director shall institute a training program, including posted notices, written notices to employees, periodic training programs, and maintenance of records of attendees, to fully inform County employees and supervisory personnel of County policy and the law regarding sexual harassment, encourage employees to report it, remedy harassment as soon as possible through a fair investigation and appropriate disciplinary action, and inform all employees of their rights under the law to be free from sexual harassment, harassment, and discrimination.

23. Records:

- a. A separate confidential record of all sexual harassment, harassment, or discrimination complaints shall be maintained and stored in the Human Resources Office. Records shall be kept for:
 - i. a minimum of one year following successful resolution of a complaint processed through the preliminary review; and
 - ii. a minimum of three years following successful resolution of a formal administrative or investigative proceeding.
- b. Separate files related to sexual harassment, harassment, or discrimination complaints shall not be kept by supervisors.
- c. All information contained in the complaint file shall be classified as confidential.
- d. Information contained in the sexual harassment, harassment, or discrimination confidential file shall only be released by the Human Resources Director.
- e. Participants in any sexual harassment, harassment, or discrimination proceeding shall treat all information as confidential.
- f. Final disposition of sexual harassment, harassment, or discrimination cases shall be disseminated in writing to all parties involved.