

Washtenaw County Sheriff's Office

Rule and Regulation

Harassment and Discrimination

Reference Number: 2.06 RR



Jerry L. Clayton, Sheriff

Subject:	Harassment and Discrimination
Chapter:	Professional Standards
Status:	Revised
Compliance:	Class 1
Supersedes:	2.06 Discrimination in Employment
Standards Reference:	CALEA 26.1.3, ACA 4-ALDF-7E-01
Prepared by:	Mark Ptaszek, J. Eric Waddell
Reviewed by:	Sheriff's Office Executive Team, Risk Management, Sheriff's Office Staff
Issued by:	Mark Ptaszek, Undersheriff
Issuing Authority:	Jerry L. Clayton, Sheriff
Date of Issue:	01-17-19
Public Facing:	Yes

I. PREAMBLE

The Sheriff's Office believes that all persons are entitled to work in a safe atmosphere and environment characterized by dignity, respect, recognition of individual worth, and free from all forms of harassment and discriminatory conduct. This is essential to the effective operation of the Office in accordance with its mission, values, and operational philosophies.

Sexual and gender-based harassment, in particular, are forms of employee misconduct that undermine the integrity of the employment relationship and negatively impact upon the morale and ability of the Sheriff's Office to accomplish its mission and our employees to perform their duties. It can take many forms that involve verbal or non-verbal behavior and may be subtle in nature, thus difficult to recognize. While no conscious intent to harass may be involved, behavior acceptable in a social setting may be inappropriate in the workplace.

This policy prohibits harassment and discrimination of any kind. Among its goals is to comply with and, where possible, exceed the responsibilities defined in Title VII of the Civil Rights Act of 1964 to assure the provision of a safe and productive work environment for our employees, volunteers, interns, and visitors.

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Special Note: The Civil Rights Act of 1964 is a civil rights and labor law that, in part, prohibits discrimination based upon race, color, religion, sex, or national origin. In a June 2020 ruling, *Bostock v. Clayton County*, the United States Supreme Court (USSC) held that Title VII of the Civil Rights Act of 1964 also protects employees against discrimination because of their sexual orientation or gender identity. The Sheriff's Office has long held this position as it applies to harassment as expressed in the Gender-Based Harassment definition within this policy (See IV., F.). Thus, in addition to a policy violation, this type of conduct is now illegal as sexual orientation and gender identity are protected categories.

II. PURPOSE

The purpose of this policy and procedure is to:

- A. Promote and ensure a safe work environment free from harassing or discriminatory conduct including but not limited to sexual and gender-based harassment and discrimination.
- B. Provide procedures for reporting, investigating and resolving complaints of harassment and discrimination.

III. SCOPE

This general order applies to:

- A. All full-time, part-time paid and unpaid employees of the Sheriff's Office, including volunteers and interns.
- B. Employees of contract service partners of the Sheriff's Office including, by way of example but not limitation, food service providers, medical service providers, etc.
- C. Anyone who works or serves at Sheriff's Office facilities.

IV. DEFINITIONS

- A. Context of Employment: Any action undertaken by an employee affecting or intended to affect the employment of another within the Sheriff's Office.
- B. Employee: For the purposes of this policy and procedure, "employee" means all individuals described in the scope section (III. Scope) of this policy and procedure

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- C. Discrimination: An act, practice or pattern of behavior based upon an individual's race, color, religion, sex, national origin, age, disability, veteran status, or political affiliation which has an adverse impact on an identifiable group compared to the impact of the majority group. One incident may be enough to sustain a complaint.
1. In a June 2020 court ruling (*Bostock v. Clayton County*), the United States Supreme Court (USSC) held that Title VII of the Civil Rights Act of 1964 also protects employees against discrimination because of their sexual orientation or gender identity.
- D. Harassment: Any conduct based on an individual's race, color, religion, sex, national origin, age, disability, sexual orientation, veteran status, or political affiliation that has the purpose or effect of unreasonably interfering with an individual's work performance or that creates an intimidating, hostile or offensive work environments.
1. Harassment does not have to be expressly directed at an intended target to constitute harassment and be subject to corrective action. For example, when harassing statements and actions are done within sight or hearing distance of an intended individual, the individual is still being harassed.
- E. Sexual Harassment: Any unwelcome sexual advance, request for sexual favors, or other unwanted conduct of a sexual nature, whether verbal, non-verbal, graphic, physical or otherwise when:
1. Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of a person's employment, program participation, promotion and/or job assignment.
 2. Submission to or rejection of such conduct is used as the basis for employment decisions affecting the individual whether a paid employee, volunteer, or intern.
 3. Such conduct interferes with an employee's work performance or creates an intimidating, hostile or offensive work environment.
 4. Examples of sexual harassment include but are not limited to:
 - a) Deliberate, repeated, unsolicited verbal comments, gestures or physical contact or actions of a sexual nature (i.e. touching, pinching, patting, etc.).

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- b) Conduct and/or sexually explicit material such as jokes, pinups, calendars, graffiti, vulgar statements, abusive language, innuendoes and references to sexual activity, regardless of whether transmitted verbally, written or via electronic means.
 - c) Explicit or implicit promise of career advancement, training, awards, lax time-keeping or lower standards of performance in return for sexual favors.
 - d) Explicit or implicit threats that if the sexual demands are rejected, the victim will not be promoted, receive poor performance appraisal or be reassigned to a less desirable position/location.
- F. Gender-Based Harassment: Any harassment based on actual or perceived gender, sexual orientation, gender identity, gender expression, or gender questioning which may include acts of aggression, intimidation or hostility, whether verbal, non-verbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature when:
- 1. Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of a person's employment, program participation, promotion and/or job assignment.
 - 2. Submission to or rejection of such conduct is used as the basis for employment decisions affecting the individual whether a paid employee, volunteer, or intern.
 - 3. Such conduct interferes with an employee's work performance or creates an intimidating, hostile or offensive work environment.
- Commentary: Although harassment that creates a sexual or gender-based hostile environment is generally the result of a series of incidents, a sufficiently severe single incident, even if isolated, can be enough. For example, a single instance of sexual assault may constitute sexual harassment.
- G. Hostile Work Environment: Another employee's conduct interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment. A hostile work environment may exist when the conduct is:

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1. Sufficiently severe, persistent, or pervasive that it reasonably interferes, limits or deprives an employee from completing job related tasks, participating in work related programs and activities.
 2. Deemed severe, persistent or pervasive from both a subjective and an objective perspective.
 3. When determining whether a hostile work environment may exist, considerations include but may not be limited to:
 - a) Nature of the conduct or behavior.
 - b) Whether the conduct is verbal, physical or both.
 - c) Frequency, intensity, location, context, and duration of the conduct.
 - d) Whether the alleged harasser is a co-worker or serves in a supervisory capacity.
 - e) Whether others joined in perpetrating the prohibited acts.
 - f) Whether the harassment was directed at other individuals in addition to the complainant.
- H. Sexual Assault: As defined under Michigan Compiled Laws (MCL), sexual assault includes but may not be limited to such behaviors as touching of a sexual nature; all forms of sexual penetration; or other sexual contact that occurs without consent.
- Sexual contact includes by way of example but not limitation:
1. Intentional touching of the breasts, buttocks, groin, or genitals, whether clothed or unclothed, or intentionally touching another with any of these body parts.
 2. Making an individual touch another person or themselves with or on any of these body parts.
- I. Protective Measures: Any directive, verbal or written, that requires employee compliance in accordance with specific conduct to help protect individuals who have reported alleged prohibited conduct, are witnesses of alleged prohibited conduct, or others from potential retaliatory actions and to preserve the integrity and confidentiality of an administrative, internal, or other investigation.

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1. For example, an order directing an employee not to have contact with other employees who may be an alleged victim or witness of improper conduct during an investigation.
- J. Retaliation: Any adverse action taken by individuals or groups against a person for making a good faith report, intervening, assisting, or participating in the reporting, investigation, or resolution of any form of harassment and discrimination including sexual assault.
 1. Retaliation may include but is not limited to:
 - a) intimidation,
 - b) threats,
 - c) coercion,
 - d) harassment, or
 - e) adverse employment actions that would discourage a reasonable person from engaging in activity protected under this policy.
 2. Good faith supervision, management, or the pursuit by an involved party of administrative (e.g., corrective disciplinary action), civil, criminal or other legal action does not constitute retaliation.

V. POLICY

It is the policy of the Sheriff's Office that:

- A. Harassment and discrimination of others of any kind will not be tolerated and is considered serious employee misconduct.
- B. All employees:
 1. Are expected to treat each other with dignity and respect, deal fairly and honestly with one another, and to respect the rights, privacy and integrity of all persons.
 2. Have the right to work in an environment free from harassment and/or discrimination of any kind.
 3. Are responsible for supporting and assisting the Office in the prevention of harassment and/or discrimination of any kind.

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- C. No employee shall:
 - 1. Engage in any activity that discriminates against another employee in the context of his/her employment with the Sheriff's Office on the basis of race, religion, color, national origin, age, sex, height, weight, marital status, or handicap.
 - 2. Allow non-employees who conduct business with the Sheriff's Office to engage in any harassing or discriminatory activity as defined within this policy and procedure.
 - 3. Engage in any conduct designated or tending to be in retaliation for a complaint made in accordance with this or related policy and procedure.
 - D. In support of each other and the agency, employees are encouraged to raise concerns of harassment or discrimination with confidence that they will be appropriately addressed and without fear of retaliation.
 - E. Each employee has an affirmative duty to:
 - 1. Refrain from participating in or encouraging actions that could be perceived as harassment or discrimination.
 - 2. Report violations of this Policy which they have witnessed, been subjected to, or have other credible information regarding such violation(s).
 - 3. Encourage any employee who confides that they are being harassed or discriminated against to appropriately report the actions.
 - F. All command officers and supervisors of any rank shall take direct appropriate action to stop any activity that comes to their attention that may constitute harassment or discrimination against employees in the context of their employment with the Sheriff's Office.

VI. PROVIDING NOTICE

- A. Employees encountering harassing or discriminatory activity are encouraged to inform offending employee(s) that their actions or behaviors are unwelcome, offensive and should stop.
- B. This extends to employees who are not directly involved in the harassment or discrimination but have witnessed the action or behavior.

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1. Research provides that bystanders who observe harassment incidents have the greatest opportunity to make a positive impact in mitigating the harassment at the time as well as future harassing or discriminatory conduct.

VII. PROCEDURE

A. Reporting and Investigation

1. Employees are encouraged to report any perceived instances of harassment or illegal discrimination, including sexual or gender-based harassment, as soon as possible so that steps may be taken to:
 - a) Protect the employee from further harassment or illegal discrimination.
 - b) Initiate any appropriate investigative or corrective disciplinary action measures.
2. As potential violations of this policy and procedure may involve supervisory personnel, fear of retaliation, etc., such violations shall be reported directly to the Undersheriff or, in his absence, the Chief Deputy, who will take steps to:
 - a) Protect involved employees from further harassment, discrimination or offending behavior.
 - b) Cause appropriate investigative activity to occur.
3. Basic Reporting: Complaints should include a sufficient amount of information necessary to conduct an appropriate investigation and take supporting action, for example:
 - a) name(s) of alleged offender(s),
 - b) nature and description of the alleged act(s),
 - c) date(s) that acts occurred, and the
 - d) name(s) of any witnesses.
4. Alternative Reporting: At times, the standard complaint process may not always be sufficient or viable for making complaints of harassment or illegal discrimination. Understanding this, employees may use alternative reporting options that make sense to them at the time. This includes, for example:

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- a) Notifying a trusted supervisor, manager, commander or director of the problem.
 - b) Reporting the problem directly to Office of Professional Responsibility within the Sheriff's Office.
 - c) Making an anonymous confidential report.
 - (1) Such reports will be accepted and evaluated to determine the appropriateness and extent of investigation required.
5. Investigations will be thorough, unbiased, and documented in accordance with Sheriff's Office policy and procedure.
- a) Subsequent actions may include but not be limited to corrective action as may be appropriate.
6. Considering the nature of complaints of sexual and gender-based harassment, to the degree possible:
- a) Investigations shall be done in such a manner to limit or restrict the disclosure of the investigation or its information to persons who are not a part of the investigation.
 - b) The confidentiality of all parties' alleged involvement will be maintained throughout the investigatory and corrective action process to the extent practical and appropriate under the circumstances.
 - c) Protections will be put in place to monitor and limit the likelihood of further harassment, discrimination, or potential retaliation during and after a matter's investigation and resolution as appropriate to the circumstances.
7. If the complaint involves conduct by the Undersheriff, the employee shall report the conduct to the Sheriff.
8. If the complaint involves conduct by the Sheriff, the employee shall report the conduct to the County's Office of Corporation Counsel.

Commentary: Understanding that circumstances may vary, this policy and procedure endeavors to provide the requisite flexibility to modify reporting and other process elements to assure compliance with the policy's intent and overall goal of providing a safe and productive workplace.

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VIII. SUPERVISORY RESPONSIBILITIES

- A. Supervisors have key responsibility for preventing acts of harassment and discrimination including sexual or gender-based harassment. Responsibilities include but may not be limited to:
1. Monitoring the work environment for any signs of harassment, discrimination, or other offensive behavior or displays.
 2. Directly intervening and stopping any observed acts of alleged harassment, discrimination, or other offensive behavior or displays.
 3. Reporting any alleged acts of sexual or gender-based harassment or discrimination.
 4. Assisting and supporting any employee who comes to their supervisor with a complaint of harassment or discrimination by documenting the complaint in a report to the Undersheriff or, in his absence, the Chief Deputy.
 5. Taking or implementing immediate action to monitor and oversee work contact between employees where there have been complaints of harassment or there is a pending or on-going investigation.
 6. Coaching and counseling employees on appropriate behavior and procedures for reporting and resolving complaints.
- B. Failing to take any of the above actions to prevent the occurrence of or stop known harassment or discrimination may be grounds for corrective disciplinary action.

IX. RETALIATION

- A. Retaliation against any employee for filing a harassment or discrimination complaint, or for assisting, testifying, participating in, or supporting in any other manner the investigation and resolution of such a complaint is prohibited.
- B. As a form of employee misconduct, any evidence of retaliation may be considered and addressed as a separate violation(s) of this or other Sheriff's Office policy and procedure.

X. MODIFICATION

The Sheriff or Undersheriff may modify the provisions of this policy and procedure.

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XI. COMPLIANCE

- A. All employees shall comply with all provisions of this policy and procedure. A violation of any section of this policy is a Class 1 offense and may result in corrective discipline up to and including discharge.
- B. A violation of this policy and procedure, including the failure to comply with any protective measures, may also be a violation of other Sheriff's Office standards of professional conduct, which may result in corrective disciplinary action up to and including discharge.