ORANGE COUNTY SOCIAL SERVICES AGENCY
ADMINISTRATIVE POLICIES AND PROCEDURES MANUAL

Subject: Equal Employment Opportunity (EEO) Implementation **Number: C 17**
Approved: **Date: 02/07/08**

I. PURPOSE

To provide guidelines for ensuring full realization of non-discrimination and equal employment opportunity by selecting, training, and promoting employees based on their ability and job performance, and to provide equal opportunities in all aspects of employment without regard to sex, race, color, ethnicity, national origin, ancestry, religion, pregnancy, age, sexual orientation, physical or mental disability, medical condition, marital status, veterans status, citizenship, or any other protected group status.

II. POLICY

All Social Services Agency (SSA) managers, supervisors, and employees are responsible for pledging full support and commitment to a policy of non-discrimination and equal employment opportunity. This policy is intended to comply with all Federal and State non-discrimination laws, including, but not limited to, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act, the California Fair Employment and Housing Act (FEHA), the California Civil Rights Initiative, and Federal and State leave of absence laws.

Equal employment opportunity will be achieved through leadership and aggressive implementation of an equal employment opportunity program. All employment-related decisions will be based on merit. SSA is responsible for ensuring that it does not illegally discriminate, harass or retaliate in any policy, practice or procedure on the basis of any non-merit factor that is prohibited by Federal and/or State non-discrimination law and other statutes or mandates.

Unlawful discrimination, harassment and retaliation based on a person's legally protected status under Federal and State laws, or in any form, will not be tolerated.

Harassment in the form of retaliation for complaints of discrimination will likewise not be tolerated. SSA will not tolerate harassing conduct that affects tangible job benefits, interferes unreasonably with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

An employer may not fire, demote, harass or otherwise “retaliate” against an individual for filing a charge of discrimination, participating in a discrimination proceeding, or otherwise opposing discrimination. The same laws that prohibit discrimination based on race, color, sex, religion, national origin, age, and disability, as well as wage differences between men and women performing substantially equal work, also prohibit retaliation against individuals who oppose unlawful discrimination or participate in an employment discrimination proceeding.

In addition to the protections against retaliation that are included in all of the laws enforced by the Department of Fair Employment and Housing (DFEH), Equal Employment Opportunity Commission (EEOC), the ADA also protects individuals from coercion, intimidation, threat, harassment, or interference in their exercise of their own rights or their encouragement of someone else’s exercise of rights granted by the ADA.

III. DEFINITIONS

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Disability: A person with a disability is one who has a physical or mental impairment, a medical condition that limits one or more major life functions/activities, has a past history of such impairment, or is treated as if (s)he has such impairment.

Discrimination: An act against any employment-related policy, practice, procedure or decision based on a person's status such as sex, race, color, national origin, ancestry, ethnicity, religion, pregnancy, age, sexual orientation, physical or mental disability, medical condition, marital status, veteran status, citizenship status or other protected group status, rather than on merit. Claims for retaliation may also arise, please see Administrative Services Division Policy and Procedure C18 Harassment, and the term “Retaliation” in this section.

Equal Employment Opportunity Commission (EEOC): Is the Federal agency charged with enforcing Federal anti-discrimination, harassment and retaliation laws.

Department of Fair Employment and Housing (DFEH): The agency in the State of California charged with enforcing State of California anti-discrimination, harassment and retaliation laws.

Harassment: An act that consists of unwelcome conduct, whether verbal, physical or visual, that is based on a person's actual or perceived status such as sex, race, color, national origin, ancestry, ethnicity, religion, pregnancy, age, sexual orientation, physical or mental disability, medical condition, marital status, veteran status, citizenship status, or other protected group status.
Harassment based on a person's sex includes, but is not limited to:

- Unwelcome sexual advances, which explicitly or implicitly condition employment benefit on an exchange of sexual favors;
- Any threat of demotion, termination, or change in employment conditions, denial of training opportunities or projects, or an absence of job detriment if requested sexual favors are not given;
- Making or threatening reprisals after a negative response to sexual advances or propositioning an individual, harassment that is so severe or pervasive that a reasonable person would conclude the conduct creates a hostile or abusive work environment, or the conduct involves a concerted pattern of harassment of a repeated, routine or generalized nature.
- Sexual harassment may include same sex, as well as opposite sex misconduct, where it is based on the person's gender.

Retaliation: An **adverse action** by the employer, employment agency, or labor practice organization against a **covered individual** because (s)he engaged in a **protected** activity.

Adverse Action: An action taken to try to keep someone from opposing a discriminatory practice, or from participating in an employment discrimination proceeding. Examples of adverse actions include:

- Employment actions such as termination, refusal to hire, and denial of promotion;
- Other actions affecting employment such as threats, unjustified negative evaluations, unjustified negative references, or increased surveillance; and,
- Any other action such as an assault or unfounded civil or criminal charges that are likely to deter reasonable people from pursuing their rights.

Adverse actions do not include petty slights and annoyances, such as stray negative comments in an otherwise positive or neutral evaluation, "snubbing" a colleague, or negative comments that are justified by an employee's poor work performance or history.
Even if the prior protected activity alleged wrongdoing by a different employer, retaliatory adverse actions s are unlawful. For example, it is unlawful for a worker's current employer to retaliate against him/her for pursuing an EEO charge against a former employer.
Employees are not excused from continuing to perform their jobs or follow their company's legitimate workplace rules just because they have filed a complaint with the EEOC or opposed discrimination.

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Covered Individuals: Individuals who have opposed unlawful practices, participated in proceedings, or requested accommodations related to employment discrimination based on race, color, sex, religion, national origin, age, disability or other protected status. Individuals who have a close association with someone who has engaged in such protected activity are also covered individuals. For example, it is illegal to terminate an employee because his/her spouse participated in employment discrimination litigation.
Individuals who have brought attention to violations of law other than employment discrimination are NOT covered individuals for purposes of anti-discrimination retaliation laws. For example,"whistle blowers" who raise ethical, financial, or other concerns unrelated to employment discrimination are not protected by the DFEH/EEOC enforced laws.

Protected Activity: Activity that includes opposition to a practice believed to be unlawful discrimination. Opposition is when as an employee informs his/her employer that (s)he believes the employer is engaging in prohibited discrimination. Opposition is protected from retaliation as long as it is based on a reasonable, good-faith belief that the complained-of-practice violates anti-discrimination law; and the manner of the opposition is reasonable. Examples of a protected opposition include:

- Complaining to anyone about alleged discrimination against oneself or others;
- Threatening to file a charge of discrimination;
- Picketing in opposition to discrimination; or,
- Refusing to obey an order reasonably believed to be discriminatory.

Examples of activities that are NOT a protected opposition include:

- Actions that interfere with job performance so as to render the employee ineffective; or,
- Unlawful activities such as acts or threats of violence.

Participation in an Employment Discrimination Proceeding: Means taking part in an employment discrimination proceeding. This is a protected activity even if the proceeding involved claims that ultimately were found to be invalid.
Examples of participation include:

- Filing a charge of employment discrimination;
- Cooperating with an internal investigation of alleged discriminatory practices; or,
- Serving as a witness in an EEO/DFEH investigation or litigation.

A protected activity can also include requesting a reasonable accommodation based on religion or disability.

IV. PROCEDURE

A. Assisting Persons with a Disability

To insure that persons protected by the ADA and the California FEHA are considered on the basis of merit, all employment-related decisions shall be based upon neutral criteria in the determination of each candidate’s ability to perform the essential functions of a position with or without reasonable accommodation.

1. An individual with a disability is responsible for making his/her supervisor or recruiter aware of his/her need for an accommodation. When the need for an accommodation has been identified, the supervisor or recruiter is responsible for entering into an interactive process with the individual and for taking the following steps:
    a. Identifying the essential functions of the job based upon the job description, job announcement, polices and procedures;
    b. Consulting with the individual who requested the accommodation to identify which duties are affected by the individual’s disability and what accommodations could enable the individual to perform those duties or those of another vacant position;

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c. Conferring with the Social Services Agency Human Resources and Career Development (SSA HRCD) Analyst to evaluate the whether or not the requested accommodation is reasonable and/or to identify alternate accommodations on a case-by-case basis. SSA HRCD and CEO EEO Access Office shall provide support and assistance in determining whether or not an accommodation is reasonable;

d. Giving a qualified applicant with a disability, who is able to perform the essential functions of the position, an equal opportunity to compete for the position; and,

e. Implementing those reasonable accommodations that allow an employee to perform the essential functions of his/her position.

B. Reporting Incident or Allegation of Discrimination or Harassment

Whenever an employee alleges discrimination or harassment, or at any time where it is believed that discrimination or harassment is taking place, SSA will act promptly to investigate and take swift and appropriate remedial action in dealing with those found in violation of the SSA EEO policy.

1. Any employee or applicant for employment who believes (s)he has been the victim of unlawful discrimination, harassment or retaliation, should report the incident immediately to his/her supervisor or manager. If the incident or allegation involves direct supervisor or manager, the employee should report the incident or allegation to the SSA HRCD Analyst or the EEO Access Office. The Harassment/Discrimination Complaint Form (F063-01-71-Attachment A) shall be used to file a complaint.

2. When the supervisor or manager receives the report from the alleged victim, (s)he shall work with SSA HRCD Analyst, or the EEO Access Office to investigate the allegation promptly. Complaints will be kept as confidential as possible.

3. If the allegation is sustained, prompt and appropriate remedial action shall be taken.

Note: Occasional, isolated, sporadic or trivial acts that are simply annoying in nature may not constitute harassment. Nonetheless, SSA is expected to investigate and remedy promptly any seemingly minor acts of harassment to avoid the development of a hostile work environment. Please see SSA Administrative Services Division Policy and Procedure C 18 Harassment for additional information.

C. Compliance Reporting

Each calendar year, SSA is responsible for preparing and submitting a Certification of Compliance and/or Equal Employment Opportunity Plan to the EEO Access Office. Under the provisions of State or Federal contracts or grants, SSA is required to prepare an Equal Employment Opportunity Plan, and it must do so by preparing it timely, updating its existing plan, and contacting the EEO Access Office for assistance as needed.
The SSA HRCD office will use workforce statistics received from the EEO Access Office to ensure that employment-related decisions are made in compliance with Federal and State non-discrimination law and this policy. The compliance program will include the periodic and systematic review of recruitment, selection and promotional practices, attention to upward mobility, periodic training and educational opportunities and audits of progress through a review of statistics and annual Certificates of Compliance and/or Equal Employment Opportunity Plans.

D. Responsibilities

1. The SSA HRCD office shall be charged with the responsibility of administering this EEO Implementation Policy and Procedure, and it may act with the County Executive Office as necessary to carry it out.

2. SSA HRCD will appoint an EEO Coordinator who will facilitate and administer this policy within the Agency. The EEO Coordinator in consultation with the Agency Director shall submit a Certificate of Compliance to Equal Employment Opportunity annually in a timely manner.

V. REFERENCES

Administrative Services Division Policy and Procedure C 18 Harassment

Administrative Services Division Policy and Procedure C 25 Equal Employment Opportunity Plan

Equal Employment Opportunity Commission

Department of Fair Employment Housing Commission

VI. ATTACHMENTS

A Harassment/Discrimination Complaint Form

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