

 <p>Sedgwick County... working for you</p>	<p>Workplace Discrimination</p> <p><i>Adopted: 12/12/2007</i></p>
<p>Last Revision Date: 03/09/2022</p>	<p>Policy No. 4.506</p>
<p>Last Enabling Resolution:</p> <p>039-2022/902-2022</p>	<p>Developer/Reviewer:</p> <p>Chief Human Resources Officer</p>

1. Purpose

Sedgwick County is committed to providing a work environment where all individuals can work together productively and free of unlawful discrimination, including discriminatory harassment, e.g., sexual harassment. It is the purpose of this policy to define discrimination; confirm the County’s commitment to prohibiting unlawful discrimination in hiring and employment; confirm the County’s commitment to prohibiting retaliation for asserting rights protected by this policy and laws referred to herein; and provide a process for reporting, investigating and resolving complaints of discrimination, including allegations of discriminatory harassment and retaliation.

In addition to being a violation of the personnel policies of Sedgwick County, discrimination based upon race, color, sex, including gender identity and sexual orientation, age, national origin, ancestry or citizenship, marital status, religious or political affiliation, genetic information, disability, status as a member of the uniformed services, opposition to prohibited discrimination, participation in a discrimination complaint process, and other categories specifically protected by the State of Kansas and Federal Law is illegal. Discrimination is a violation of Title VII of the Civil Rights Act of 1964; Vietnam-Era Veterans Readjustment Act of 1974; Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Americans with Disabilities Act Amendments Act of 2008; the Age Discrimination in Employment Act of 1967; Executive Order 11141; the Equal Pay Act; the Kansas Acts Against Discrimination, and other applicable statutes, ordinances, resolutions and regulations. This policy is intended to comply with the prohibitions stated in all anti-discrimination laws.

2. Scope

This policy applies to all Sedgwick County employees, with the exception of the District Attorney’s Office.

3. Policy Statement

Sedgwick County is committed to maintaining a work environment that is free of discriminatory, conduct, as defined herein. The County prohibits and will not tolerate discrimination toward applicants, employees, or former employees by any supervisor, co-worker, vendor, client, or customer of Sedgwick County, in the provision of employment opportunities, benefits, or privileges. The County prohibits and will not tolerate retaliation against anyone in response to filing or responding to a bona fide complaint of discrimination, appearing as a witness in the investigation of a complaint, or serving as an investigator of a complaint.

Sedgwick County will recruit, hire, train, employ, discipline, promote, and discharge individuals in all job classifications without regard to protected status. Sedgwick County will ensure that all personnel actions, including compensation, benefits, transfers, reduction-in-force (RIF), return from RIF, County-sponsored training, educational and tuition assistance, and employee social and recreational programs will be administered without regard to an individual's protected status. This policy also applies to behavior conducted electronically, including online, via e-mail, or any other electronic form.

4. Definitions

A. **Protected Status** – For purposes of this policy, shall include:

Race, color, sex, including gender identity and sexual orientation, age, national origin, ancestry or citizenship, marital status, religious or political affiliation, genetic information, disability, status as a member of the uniformed services, opposition to prohibited discrimination, participation in a discrimination complaint process, or any other category protected by Kansas or Federal law.

B. **Discrimination** – As used in this policy is defined to include, but is not limited to:

1. **Adverse Treatment:** Treating an applicant, employee, or former employee differently with regard to any aspect of employment because of their protected status, or their opposition to discrimination in the workplace. This adverse treatment is defined to include employment decisions or adverse employment actions that might dissuade a reasonable worker from making or supporting a charge of discrimination (e.g., failure to hire or promote, discipline, terminate, etc.).
2. **Retaliation:** Taking adverse action against an applicant, employee, or former employee with regard to any aspect of employment based on the report of alleged discrimination or participation in an investigation of discrimination.
3. **Discriminatory Harassment:** Engaging in severe and/or pervasive harassment based upon protected status, as more specifically defined as:
 - a. Using speech, such as epithets, derogatory comments, or slurs on the basis of one's protected status. Prohibited speech may include inappropriate comments, stories, and jokes, the use of insulting or demeaning language, or other forms of communication which unreasonably interfere with an individual's work performance, terms or conditions of employment, or creates an intimidating, hostile, or offensive working environment where such conduct or communication is based upon one's protected status.
 - b. Engaging in visual insults, such as derogatory posters, cartoons, computer images, or drawings related to protected status.
 - c. Engaging in physical acts, such as assault, impeding or blocking movement, offensive touching, or physical interference with normal work or movement when directed at an individual based on protected status.
 - d. Engaging in sexual harassment which exists in two (2) forms:
 - i. Unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to, or rejection of, such conduct is used as the basis for employment decisions (quid pro quo).

- ii. Unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature which has the purpose or effect of creating an intimidating, hostile, or offensive working environment. Sexual harassment may exist irrespective of: the sexes of the harasser and the victim; and the positions (employee, supervisor, co-worker, and non-employee) of the harasser and the victim.
- e. If the following conduct is unwelcomed and it explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive work environment, sexual harassment may occur:
 - i. Communicating sexually oriented jokes, stories, or "kidding";
 - ii. Physical contact such as patting, pinching, or purposely rubbing up against another person's body;
 - iii. Demands or requests for sexual favors tied to promises of better treatment or threats concerning employment;
 - iv. Treating an employee differently for refusing demands or requests for sexual favors;
 - v. Making sexually oriented comments on appearance, including dress or physical features;
 - vi. Leering and making sexual gestures;
 - vii. Displaying sexually explicit or pornographic material, regardless of how or where it is displayed;
 - viii. Sexual assaults occurring on the job committed by supervisors, fellow employees, or non-employees; or
 - ix. Rewarding or granting favor to a person who submits to demands or requests for sexual favors.

5. Procedures

A. Placement of Discrimination Complaints

Any employee who believes they may have been discriminated against in violation of this policy, or who observes such conduct, is encouraged to file a complaint.

Complaints must be made within one hundred eighty (180) calendar days of the most recent incident. This limitation begins at the time of the incident, or in the case of a series of incidents, the most recent incident. Any employee who believes they have or are being subjected to discrimination, including harassment, sexual harassment or retaliation, should immediately contact one of the persons identified in subsection one (1) below.

1. Complaints may be made verbally or in writing to:

- a. The employee's immediate supervisor, Division/ Department Director, or Elected/Appointed Official;
- b. The Division of Human Resources Employee Relations Specialist or another HR staff member; or
- c. An Assistant County Manager, Deputy County Manager, or County Manager.

When making a complaint of discrimination, employees may bypass the chain of command. The person receiving the initial complaint shall document as much information as possible and immediately forward the information to the Chief Human Resources Officer (CHRO) who will immediately assign it to an investigator(s).

B. Investigation of Discrimination Complaints

1. Investigating Complaints: If for any reason the Chief Human Resources Officer determines there is a conflict of interest that would taint an investigation in any manner, outside legal counsel or a 3rd party vendor may be retained to investigate the matter. The Chief Human Resources Officer and/or County Counselor will arrange for and initiate an outside investigation.
 - a. Investigations shall be conducted within sixty (60) calendar days after the receipt of the complaint in the Human Resources Division. If needed, the CHRO may request a time extension from the County Manager. The CHRO may assign an additional investigator(s) to the matter from within County government as long as the investigator has received proper training for this type of investigation. No County employee within the Division/Department of the complainant or respondent should take part as an investigator.
 - b. The assigned investigator(s) shall make and keep a written and/or auditory record of the investigation, including notes of verbal responses made to the investigator by the complaining party, by witnesses interviewed during the investigation, by the person against whom the complaint of discrimination was made, and by any other person contacted by the investigator in connection with the investigation.
 - c. During the period of investigation:
 - i. Employees participating in complaints may be placed on relief of duty with pay at the discretion of the Chief Human Resources Officer.
 - ii. If the County Manager is the subject of the complaint, the Board of County Commissioners (BOCC) will be notified by the Chief Human Resources Officer and County Counselor.
2. Findings and Determinations: In determining if the allegations are founded, the investigator(s) shall look at the record as a whole and the totality of circumstances, including but not limited to the nature of the conduct in question; the context in which the conduct occurred; and the conduct of the complaining party. The determination of whether violations of this policy occurred will be made on a case-by-case basis. Allegations will be reviewed in relation to the extent they are found to be severe and/or, pervasive and create a hostile work environment.
 - a. Unsubstantiated Complaints

Complaints that are investigated and are not substantiated will be closed by sending a letter to the complainant and the respondent. In these instances, the Division/Department or office of the Elected/Appointed Official will not be notified.
 - b. Substantiated Complaints

After the completion of the investigation, a written report stating that the policy violation was substantiated will be submitted to the County Manager, except in cases where the County Manager is the accused person. The County Manager will review the investigative summary, along with the conclusions and recommendations. The County Manager will convey to the Division/Department Director or Elected/Appointed Official the recommended remedial action. The County Manager will advise the employees in writing of the conclusions of the investigation within ten (10) business days after the receipt of the report from the investigator(s).

3. Corrective Action:
 - a. If the investigator determines a violation of this policy occurred, the County Manager and the Division/Department Director, or Elected/Appointed Official shall take immediate and appropriate disciplinary action against the employee found to have committed the violations in a manner which is consistent with their legal authority.
 - b. The disciplinary action shall also be commensurate with the nature and severity of the policy violation.
4. Documentation of Action:
 - a. A written record of any disciplinary action taken shall be kept in the respondent's official personnel file. Results of the investigation shall be given to both the complainant and the respondent.
 - b. The complainant will be notified that filing of a complaint is not a waiver of any other rights or privileges they may have against the respondent.
5. Separate Investigations:

Complaints against the Chief Human Resources Officer, County Manager, or an Elected/Appointed Official will be investigated by outside legal counsel or a 3rd party vendor.

 - a. When an investigation concerning the County Manager is complete, it shall be submitted, within a reasonable time, to the Board of County Commissioners (BOCC) in a closed executive session. If the BOCC determines that the complaint of violation is founded, it may discipline the County Manager consistent with its legal authority to do so. The disciplinary action shall be consistent with the nature and severity of the offense. A determination of the level of disciplinary action shall be made on a case-by-case basis. Other corrective action may be taken at the discretion of the BOCC.
 - b. When an investigation concerning the Chief Human Resources Officer is completed by the investigator(s), it shall be submitted to the County Manager who may discipline the CHRO consistent with the Manager's legal authority. The disciplinary action shall also be consistent with the nature and severity of the policy violation. A determination of the level of disciplinary action shall be made on a case-by-case basis. Other corrective action may be taken at the discretion of the County Manager.
 - c. For complaints against an Elected/Appointed Official, the summary of the investigation completed by the outside investigator shall be submitted to the BOCC. Should any legal claims be brought as a result of the Elected/Appointed Official's conduct, the BOCC may choose to disclose the existence of the claims.
6. Complaints against Non-Employees:

If a violation of this policy is committed by a non-employee against a County employee in the workplace, the Chief Human Resources Officer, or designee, shall take steps to ensure that the behavior is brought to an immediate end.

C. Confidentiality:

1. Complaints of violation of this policy, the ensuing reports, investigation, determination of policy violations, and resulting disciplinary action are not open public records.
2. They will be treated as confidential records and will not be disclosed except as necessary and consistent with the goals of this policy and with the laws on disclosure of such documents.
3. During an investigation, all witnesses will be advised that the investigation is to be kept confidential to the extent possible.

D. Obligation of Employees:

1. Employees are encouraged to report violations of this policy because the behavior is a detriment to the work environment and such behavior exposes the County to liability.
2. Employees shall be honest, forthright and cooperate fully with all investigations of violations of this policy and the implementation of remedial measures. Employees are prohibited from retaliating against complainants, witnesses, respondents or other employees who conducted or assisted with the investigation.
3. All employees covered by this policy are expected to comply with its provisions and to refrain from conduct prohibited by this policy. Appropriate disciplinary action, commensurate with the offense, will be taken against any employee who violates this policy.

E. Obligations of Supervisors and Managers:

1. Managers and supervisors must promote the concepts set forth herein in all work-related actions and are responsible for the enforcement of this policy.
2. Managers and supervisors who knowingly allow or tolerate discrimination, including harassment or retaliation in violation of this policy, including the failure to immediately report such misconduct as set forth herein, are in violation of this policy and subject to discipline.

F. Training:

The Human Resources Division shall make trainings on this policy and the maintenance of a work environment which is free of discrimination regularly available to all employees.

G. Employee Acknowledgement:

At least once each calendar year, every employee shall sign a written form confirming receipt of this policy and acknowledging the content thereof. The Human Resources Division shall deliver, receive, and permanently retain the acknowledgment form.

H. Prohibition Against Retaliation:

Retaliating against a person using or being involved in the Sedgwick County Complaint Process is prohibited by this policy and will be subject to disciplinary action up to and including termination.