

PATIENT RESTRICTED

Coalinga State Hospital

OPERATING MANUAL

SECTION – HUMAN RESOURCES
ADMINISTRATIVE DIRECTIVE NO. 909
(Replaces AD 909 dated 10/6/2005)

Effective Date: September 7, 2006

SUBJECT: DISCRIMINATION POLICY

I. PURPOSE

To protect the right of every applicant, employee, and non-employee (e.g., contractor, vendor, individual served, volunteer, visitor, and customer) to a work environment free from unlawful discrimination by prohibiting any employee conduct that is discriminatory; and to ensure prompt investigation of complaints of discrimination through the discrimination complaint process.

II. AUTHORITY

Department of Mental Health Special Order No 413.03; Title VII of the Federal Civil Rights Act of 1964; Federal Rehabilitation Act of 1973; Americans with Disabilities Act of 1990, as amended; Civil Rights Act of 1991; Executive Order 5-6-04; Government Code Sections 12940.

III. POLICY

- A. Discrimination based upon race, color, sex/pregnancy, age (40 and above), religion, marital status, national origin, ancestry, disability (mental and physical including HIV/AIDS), medical condition (i.e., cancer or genetic characteristics), political affiliation, or sexual orientation in any aspect of personnel policies and procedures, or in the advancement or treatment of employees is strictly prohibited.
- B. In addition to sexual harassment, Coalinga State Hospital (CSH) also recognizes harassment of any member of the above defined protected group as discriminatory. Harassment is defined as offensive conduct occurring within the scope of employment directed at an employee because of that person's protected status.
- C. Retaliation, also recognized as a violation of this policy, exists when a disparate impact occurs because an employee has filed a complaint, testified, or assisted in any proceeding relating to a discriminatory complaint.

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IV. METHOD

Management maintains the right to pursue any allegations of discrimination/harassment through the management inquiry process as deemed necessary to ensure a discrimination/harassment free work environment.

A. Manager/Supervisor Responsibility:

Each manager and supervisor has a legal obligation and responsibility to take immediate action to protect all employees from discrimination. Managers and supervisors are also responsible for taking direct, effective action to stop discrimination of which they are aware, and for taking proactive steps to identify and prevent discrimination of which they should be aware.

1. All allegations (including rumors and/or third party complaints) and observations should be immediately reported to the EEO Office.
2. The supervisor shall be responsible for notifying the EEO Office of all allegations of discrimination.
3. The supervisor shall record and document the complaint and conduct an immediate preliminary inquiry to determine the validity of the allegations.
4. The supervisor shall provide a copy of the reports of inquiry to the EEO Office regardless of the supervisor's findings.

Under this policy, ignorance is not necessarily an acceptable defense for inaction of a manager or supervisor, who, through reasonable care, should have been aware of the problem.

Corrective measures that are taken in response to discrimination must effectively stop the discrimination and ensure that the workplace will remain free of discrimination. If warranted under the circumstances, supervisors and managers may be subject to disciplinary action for failing to carry out their duties to enforce this policy even if they have not personally engaged in discrimination.

Failure to promptly report incidents or claims of discrimination may be regarded as a violation of this policy and may subject a supervisor and/or manager to disciplinary action in appropriate cases.

The Executive Director and/or his/her designees shall ensure that all employees are familiar with CSH's Discrimination Complaint Policy. This policy shall be distributed as part of all new employee orientations, when related training is conducted, and when the policy is revised.

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B. Employee Responsibility:

1. Employees and non-employees are personally liable for prohibitive harassment regardless of whether a manager or supervisor fails to take appropriate action.
2. Employees have the responsibility to fully cooperate in the inquiry and investigation processes and/or the resolution of a complaint. This obligation is part of his/her responsibility as an employee of the Hospital.

V. RIGHTS

All individuals are assured of the following rights regarding complaints of discrimination:

- A. The right to file a discrimination complaint, freedom from influence to refrain from filing a complaint, and freedom from reprisal for filing a complaint.
- B. The right to a reasonable amount of work time to make an informal presentation of a complaint to an Equal Employment Opportunity (EEO) Counselor. Consistent with immediate needs, this right shall not be abridged or its execution delayed by any supervisor.
- C. The right to keep their complaint confidential until such time as:
 1. Appropriate action must be taken to resolve the situation; or
 2. A formal, written complaint is filed with the EEO Officer. When issues involve criminal activity (assault, abuse, rape, property damage, etc.), they are to be immediately referred through the EEO Officer to the Office of the Special Investigator and/or appropriate departmental authority. The complainant should be aware that complete confidentiality cannot be assured because of the legal obligation to take immediate and corrective action.
- D. The right to a full, impartial, and prompt investigation by a trained EEO Investigator.
- E. The right to appeal the Hospital's decision on the complaint with the Department of Mental Health and the Department's decision with the State Personnel Board.
- F. The right to file concurrent complaints with the Equal Employment Opportunity Commission, Department of Fair Employment and Housing, other appropriate state and federal compliance agencies, or to file a civil action in the appropriate court.
- G. The right to be informed of the status of the investigation through all stages of the formal complaint process.

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- H. The right to discontinue a complaint at any point if it is resolved to the complainant's satisfaction or the complainant chooses to drop the matter. Notice of request to discontinue the complaint shall be submitted in writing by the complainant

VI. PROCEDURES FOR FILING DISCRIMINATION COMPLAINTS

Any CSH applicant, employee, and non-employee (e.g. contractor, vendor, client, volunteer, visitor, and customer) who believe he/she has been discriminated against have the right to file a complaint with the Hospital. All complaints must be filed within 365 calendar days from the date of the alleged discriminatory action. The filing period may be extended up to an additional 90 calendar days if the complainant first obtained knowledge of the alleged discrimination after one year from the date of its occurrence. A formal complaint must be resolved within 180 calendar days from the date of filing with the Hospital. Time frames at any level of the process may be extended by mutual agreement. The following process shall be used to file a discrimination complaint with CSH.

A. First Level:

Individuals who believe they have been unlawfully discriminated against are encouraged to discuss the matter with their supervisor. They may also discuss the issue with an EEO Counselor who is trained and designated to address discrimination complaints. The EEO Counselor will review the complaint and inform the complainant of his or her appeal rights, the applicable provisions, and confidentiality requirements. If the complainant chooses to accept the EEO Counselor's services, the EEO Counselor will attempt to seek resolution through mediation of the matter within 30 calendar days from the date the complaint is filed. The EEO Counselor is responsible for providing complainants with a written report of inquiry within 30 calendar days of initial contact.

B. Second Level:

A complainant who is not satisfied with the EEO Counselor's inquiry or the informal process may file a formal, written complaint with the EEO Officer. The EEO Officer will assign a trained EEO Investigator to conduct an investigation into the allegations. The EEO Investigator will submit a written report of findings to the EEO Officer. The Executive Director will review the report of findings and will issue a letter of determination, which contains the Executive Director's decision on the complaint. The letter of determination shall include the complainant's appeal rights.

C. Third Level:

A complainant who is not satisfied with the Executive Director's decision may file an appeal with the Department Director or the Office of Human Rights (OHR) within 15 working days of receipt of the decision. The OHR shall review and/or investigate and issue a Report of Findings, which will include the results

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of the investigation, the recommended action (upholding, amending, or overruling the Executive Director's decision) and suggest remedies as appropriate. The Chief, OHR, or designee will submit the Department's findings to the complainant. If not satisfied with the OHR's findings, the complainant may forward the complaint to the Appeals Section of the State Personnel Board within 30 days from receipt of the departmental findings.

D. Additional Filing Options:

The departmental discrimination complaint process does not preclude the complainant who believes he/she has been discriminated against from simultaneously filing a complaint with the Equal Employment Opportunity Commission (EEOC), and/or the Department of Fair Employment and Housing (DFEH). Complaints filed with the DFEH must be submitted within 365 calendar days of the alleged discriminatory act. Complaints filed with the EEOC must be submitted within 300 calendar days of the alleged discriminatory action. All claims of employment discrimination must be related to one or more of the bases described under "Policy" on page 1.

Employees may have the option of filing a discrimination grievance as identified in their respective bargaining unit contracts. Employees should refer to these contracts to determine if this additional option is available.

For more detailed information about the discrimination complaint process, contact the EEO Officer



W. T. VOSS
Executive Director

Cross Reference(s):

A.D. No. 907 Sexual Harassment
DMH Special Order 413.03 Discrimination Policy