

SECTION 7.2

NON-RETALIATION POLICY

Jefferson County is committed to protecting employees from interference with making a protected disclosure or retaliation for having made a protected disclosure or for having refused an illegal order as defined in this policy. This policy is derived from various Federal Laws such as Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans Disabilities Act, the Whistleblower Act, and Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA). Pursuant to these laws, a Jefferson County employee, including elected or appointed officials, may not: 1) retaliate against an employee who has made a protected disclosure or who has refused to obey an illegal order, nor 2) directly or indirectly use or attempt to use the official authority or influence of his or her position or office for the purpose of interfering with the right of an employee to make a protected disclosure to the employee's immediate supervisor, department head, elected official or the Human Resources Department. Retaliatory conduct will not be tolerated and will result in disciplinary action up to and including termination.

A. Purpose

1. No hardship, no loss or benefit, and no penalty may be imposed on an employee as punishment for:
 - a. Filing or responding to a bona fide complaint of discrimination or harassment;
 - b. Appearing as a witness in the investigation of a complaint; or
 - c. Serving as an investigator.
2. Ensure that all employees, including elected or appointed officials, know and understand that the County prohibits retaliation of any kind.
3. Ensure that employees, including elected or appointed officials, know what measures will be taken when retaliation is observed or reported.
4. Ensure that employees who make complaints of retaliation or provide information related to such complaints is aware this action is considered a protected activity.

B. Definitions

1. Retaliation – taking any adverse action against an employee concerning their employment because that employee has engaged in some form of “protected activity.”
2. Protected Activity – a good faith disclosure opposing an unlawful practice prohibited by employment discrimination laws; participating in any way in an investigation, proceeding or Hearing of an Equal Employment Opportunity Charge.
3. Good Faith Disclosure – means disclosure of County-related misconduct made with a belief in the truth of the disclosure by an employee based upon facts. A disclosure is not in good faith if made with reckless disregard for or willful ignorance of facts that would disprove the disclosure.

4. County-related Misconduct – includes any activity by a County department or by an employee that is undertaken in the performance of the employee’s official duties, whether or not such action is within the scope of the individual’s employment, and that is in violation of any state or federal law or regulation or County policy, including but not limited to corruption, bribery, theft of County property, fraudulent claims, fraud, coercion, conversion, discrimination, sexual harassment, civil rights violations, misuse of County property and facilities, or willful failure to perform duty.
5. Genetic information - includes any information about: (1) an employee's genetic tests as well as the genetic tests of their family members; (2) an employee’s family medical history; and (3) an employee’s, or their family member’s, participation in genetic research. A *genetic test* is an analysis of human DNA, RNA, chromosomes, or proteins that detects genotypes, mutations, or chromosomal changes. It does not include tests that reveal gender or age, tests for certain viruses or bacteria, alcohol or drug testing, or common medical tests such as blood counts or cholesterol analyses.

C. Examples of Retaliation/Adverse Employment Actions

Includes but may not be limited to:

1. Promotion or denial of promotion;
2. Refusal to hire;
3. Threats or reprimands;
4. Negative job performance evaluations;
5. Harassment;
6. Adverse treatment, suspension, or a discharge;
7. Poor work assignments.

D. Examples of Protected Activity

Includes but may not be limited to:

1. Complained/reported a problem with discrimination, including sexual harassment and all other categories (race, color, sex, national origin, age, disability, veteran status (disabled), genetic information, sexual orientation, gender identity or expression, political affiliation, and religion)
2. Complained/reported safety issues
3. Requested accommodations of a disability
4. Filed workers compensation claim
5. Served as a witness at an unemployment hearing
6. Were a whistleblower
7. Refused to violate the law or a code of ethics
8. Sued the County under certain laws such as the discrimination laws, whistleblower laws and benefit-related laws
9. Any good faith communication that discloses or demonstrates an intention to disclose information that may evidence either 1) an improper governmental activity or 2) any condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition.

E. Scope of Policy

No employee, including elected or appointed officials, of the County shall engage in retaliation in response to a protected disclosure or to the filing of a complaint. Actions are considered retaliatory if they are in response to a good faith disclosure or real or perceived County-related misconduct and the actions have a materially adverse effect on the working conditions of the employee, or if the employee can no longer carry out his or her County responsibilities.

The County will make every reasonable effort to stop retaliation immediately, to conduct a complete and thorough investigation of alleged acts of retaliation in a timely manner, to provide remedies to victims of retaliation, and to sanction the perpetrators of retaliation as appropriate. The act of a good faith disclosure of County-related misconduct shall not be used to make any decision to the employee's detriment, or to subject the employee to harassment such that it creates a hostile work environment.

To encourage and protect employees, it is County policy that no reference to the good faith disclosure of County-related misconduct shall be made in personnel files, letters of recommendation, performance appraisals, or any other permanent evaluative documents without the concurrence of the employee.

Reports of alleged County-related misconduct that are not made in good faith or an employee who intentionally files a false report of wrongdoing are not protected under this policy. Those who make disclosures not in good faith will be disciplined up to and including termination. Irrespective of the origin or the intent of the allegations, in the event the allegations are not substantiated, the County in consultation with the accused shall take all reasonable steps within the control of the County to restore the reputation of the accused to the extent that it was damaged by the investigation and proceedings, for example, expunging all references to the allegations in the personnel records of the accused.

F. Sanctions

Anyone who violates the non-retaliation policy is subject to disciplinary action. Following an appropriate investigation and subject to the procedures which are part of the policies governing the County, an employee, supervisor, department head, may be subject to sanctions, including:

1. Reprimand,
2. Probation,
3. Suspension,
4. Demotion,
5. Reassignment, or
6. Termination

G. Procedures

Note that the confidentiality of the employee making the good faith disclosure will be maintained, unless it becomes necessary to disclose the identity to conduct a thorough investigation, to comply with the laws and to provide the accused individual(s) their legal rights of defense.

All reports of illegal and dishonest activities should be promptly submitted to the supervisor, department head, elected official or Human Resources Department.

Employees with complaints of retaliation should utilize the procedures available under the Harassment and Sexual Harassment Policy, Section 7.1, C, of this Manual. At any time before the complaint is fully resolved, the complainant may submit a request to the responsible supervisor, department head, elected official, human resources department to take interim actions to protect the complainant against any adverse action. The Human Resources Department is responsible for investigating and coordinating any Corrective action.