

# CMWD POLICY 04-2020

## Policy Against Discrimination, Harassment, and Retaliation; Complaint Procedure

*Once adopted by the Board of Directors all previous policies, handbook references, or MOU references will be null and void and replaced by this updated policy. All policy changes will be presented to the SEIU Union and will be bargained, to impasse, if necessary prior to being brought forth for adoption by the Board of Directors.*

### 04.1 Purpose

Casitas has a strong commitment to prohibiting and preventing discrimination, harassment and retaliation in the workplace. Casitas has zero tolerance for any conduct that violates this policy. Conduct need not arise to the level of a violation of state or federal law to violate this Policy. Instead a single act can violate this Policy and provide grounds for discipline or other appropriate sanctions. This Policy establishes a complaint procedure for investigating and resolving internal complaints of discrimination, harassment and retaliation. Casitas encourages all covered individuals to report any conduct they believe violates this Policy as soon as possible. Any retaliation against an employee because they filed or supported a complaint or because they participated in the complaint resolution process is prohibited. Individuals found to have retaliated in violation of this Policy will be subject to appropriate sanction or disciplinary action, up to and including termination.

### 04.2 Covered Individuals and Scope of Policy

The individuals covered by this Policy are: applicants, employees regardless of rank or title, elected or appointed officials, interns, volunteers, and contractors. This Policy applies to all terms and conditions of employment, internships, and volunteer opportunities, including, but not limited to, selection, hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, compensation, and training.

### 04-3 Definitions - Protected Classification

This Policy prohibits harassment, discrimination or retaliation because of an individual's protected classification. "Protected Classification" includes race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age (40 and over), sexual orientation, or military and veteran status, or any other basis protected by law. (Gov. Code § 12940(a).) This Policy prohibits discrimination, harassment or retaliation because: 1) of an individual's protected classification; 2) the perception that an individual has a protected classification; or 3) the individual associates with a person who has or is perceived to have a protected classification.

## **04-4 Definitions - Protected Activity**

This Policy prohibits discrimination, harassment or retaliation because of an individual's protected activity. Protected activity includes: making a request for or receiving an accommodation for a disability; making a request for or receiving accommodation for religious beliefs or practices; making or supporting a complaint under this Policy; opposing violations of this Policy; or participating in an investigation pursuant to this Policy.

## **04.5 Definitions – Discrimination**

This Policy prohibits treating covered individuals differently and adversely because of the individual's protected classification, actual or perceived; because the individual associates with a person who is member of a protected classification, actual or perceived; or because the individual participates in a protected activity as defined in this Policy. (Gov. Code § 12926(o).)

## **04.6 Definitions - Harassment**

Harassment includes, but is not limited to, the following types of behavior that are taken because of a covered individual's actual or perceived protected classification:

- A. Speech, such as epithets, derogatory comments or slurs, and propositioning on the basis of a protected classification. This includes inappropriate comments about appearance, dress, physical features, gender identification, or race, ethnic or sexually-oriented stories and jokes.
- B. Physical acts, such as assault, impeding or blocking movement, offensive touching, or physical interference with normal work or movement. This includes pinching, grabbing, patting, or making explicit or implied job threats or promises in return for submission to physical acts.
- C. Visual acts, such as derogatory gestures, posters, cartoons, emails, pictures or drawings related to a protected classification.
- D. Sexual advances, requests for sexual favors and other acts of a sexual nature, where submission is made a term or condition of employment, where submission to or rejection of the conduct is used as the basis for employment decisions, or where the conduct is intended to or actually does unreasonably interfere with an individual's work performance or create an intimidating, hostile, or offensive working environment. (Gov. Code § 12940(j); 2 Cal.Code Regs § 11091(b)(1).)

## 04.07 Guidelines for Identifying Harassment

Harassment includes any conduct which would be unwelcome or unwanted to an individual of the recipient's same protected classification. The following guidelines to determine if conduct is unwelcome or unwanted should be followed:

- A. It is no defense that the recipient "appears" to have consented to the conduct at issue by failing to protest about the conduct. A recipient may not protest for many legitimate reasons, including the need to avoid being insubordinate or to avoid being ostracized or subjected to retaliation.
- B. Simply because no one has complained about a joke, gesture, picture, physical contact, or comment does not mean that the conduct is welcome. Harassment can evolve over time. Small, isolated incidents might be tolerated up to a point. The fact that no one has yet complained does not preclude someone from complaining if the conduct is repeated in the future.
- C. Even visual, verbal, or physical conduct between two people who appear to welcome the conduct can constitute harassment of a third person who witnesses the conduct or learns about the conduct later. Conduct can constitute harassment even if it is not explicitly or specifically directed at a particular individual.
- D. Conduct can constitute harassment even if the individual has no intention to harass. Even well-intentioned conduct can violate this Policy if the conduct is directed at, or implicates a protected classification, and if an individual would find it offensive (e.g., gifts, over-attention, endearing nicknames, hugs).

## 04.08 Definitions - Retaliation

Retaliation occurs when adverse conduct is taken against a covered individual because of the individual's protected activity as defined in this Policy. "Adverse conduct" may include but is not limited to: disciplinary action, counseling, taking sides because an individual has reported harassment or discrimination; spreading rumors about a complainant or about someone who supports or assists the complainant; shunning or avoiding an individual who reports harassment or discrimination; or making real or implied threats of intimidation to prevent or deter an individual from reporting harassment or discrimination.

## 04.09 Proactive Approach

Casitas takes a proactive approach to potential Policy violations and will conduct an investigation if its supervisory or management employees become aware that harassment, discrimination or retaliation may be occurring, regardless of whether the recipient or third party reports a potential violation.

## 04.10 Complaint Procedure

A covered individual who believes he or she has been subjected to discrimination, harassment or retaliation may make a complaint -- orally or in writing -- to any supervisor or manager, without regard to any chain of command. Any supervisory or management employee who receives a harassment complaint should immediately notify the Human Resources Manager. Upon receiving notification of a harassment complaint, the Human Resources Manager will complete and/or delegate the following steps. If the Human Resources Manager is accused, or a witness to the events at issue, an individual with higher authority will complete and/or delegate the following steps.

- A. Authorize and supervise the investigation of the complaint and/or investigate the complaint. The investigation will usually include interviews with: 1) the complainant; 2) the accused; and 3) other persons who have relevant knowledge concerning the allegations in the complaint.
- B. Review the factual information gathered through the investigation to determine whether the alleged conduct violates the Policy giving consideration to all factual information, the totality of the circumstances, including the nature of the conduct, and the context in which the alleged incidents occurred.
- C. Report a summary of the determination as to whether this Policy has been violated to appropriate persons. If discipline or sanctions are imposed, the level of discipline or sanctions will not be communicated to the complainant.
- D. If conduct in violation of this Policy occurred, take or recommend to the appointing authority prompt and effective remedial action. The remedial action will be commensurate with the severity of the offense.
- E. Take reasonable steps to protect the complainant from further harassment, discrimination or retaliation.

## 04.11 Option to Report to Outside Administrative Agencies

An individual has the option to report harassment, discrimination or retaliation to the U.S. Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing (DFEH). These administrative agencies offer legal remedies and a complaint process. The nearest offices are listed on the Internet, in the government section of the telephone book or employees can check the posters that are located on Casitas bulletin boards for office locations and telephone numbers.

## 04.12 Confidentiality

Every effort will be made to assure the confidentiality of complaints made under this Policy to the greatest extent allowed by law. Complete confidentiality cannot occur, however, due to the need to fully investigate and the duty to take effective remedial action. An employee who is interviewed during the course of an investigation is prohibited from attempting to influence any potential witness while the investigation is ongoing. An employee may discuss his or her interview with a designated representative. Casitas will not disclose a completed investigation report except as it deems necessary to support a disciplinary action, to take remedial action, to defend itself in adversarial proceedings, or to comply with the law or court order.

## 04.13 Responsibilities

1. Each non-manager or non-supervisor is responsible for:
  - A. Treating all individuals in the workplace or on worksites with respect and consideration.
  - B. Modeling behavior that conforms to this Policy.
  - C. Participating in periodic training.
  - D. Cooperating with Casitas investigations by responding fully and truthfully to all questions posed during the investigation.
  - E. Taking no actions to influence any potential witness while the investigation is ongoing.
  - F. Reporting any act he or she believes in good faith constitutes harassment, discrimination, or retaliation as defined in this Policy, to his or her immediate supervisor, or manager or Human Resources Officer.
2. In addition to the responsibilities listed above, each manager and supervisor is responsible for:
  - A. Informing employees of this Policy.
  - B. Taking all steps necessary to prevent harassment, discrimination and, retaliation from occurring, including monitoring the work environment and taking immediate appropriate action to stop potential violations, such as removing inappropriate pictures or correcting inappropriate language.
  - C. Receiving complaints in a fair and serious manner, and documenting steps taken to resolve complaints.

- D. Following up with those who have complained to ensure that the behavior has stopped and that there are no reprisals.
  - E. Informing those who complain of harassment or discrimination of his or her option to contact the EEOC or DFEH regarding alleged Policy violations.
  - F. Assisting, advising, or consulting with employees and the Human Resources Manager regarding this Policy.
  - G. Assisting in the investigation of complaints involving employee(s) in their departments and, when appropriate, if the complaint is substantiated, recommending appropriate corrective or disciplinary action in accordance with these Policies, up to and including termination.
  - H. Implementing appropriate disciplinary and remedial actions.
  - I. Reporting potential violations of this Policy of which he or she becomes aware to the Human Resources Manager, regardless of whether a complaint has been submitted.
3. Participating in periodic training and scheduling employees for training.