

FREQUENTLY ASKED QUESTIONS REGARDING RETALIATION
IN VIOLATION OF THE COUNTY'S POLICY AGAINST DISCRIMINATION, HARASSMENT, AND
RETALIATION

FOR EMPLOYEES

1. What is retaliation?

Under the County of Santa Clara's Policy Against Discrimination, Harassment, and Retaliation (Board of Supervisors Policy 3.8), retaliation is an *adverse action* against any person because of their participation in *protected activity*. A person participates in a protected activity when they speak up about, make known their opposition to, complain within the County, or complain to a local, state, or federal agency about, conduct they reasonably believe to be discrimination, harassment, or retaliation relating to the County's Equal Opportunity Policies. This includes and is not limited to participating or testifying in a workplace investigation or a legal proceeding regarding these things, or requests for a reasonable accommodation based on a disability or religious practice, regardless of whether the request was granted. Federal and state law, and County policies prohibit retaliation. See FAQ number 3 for additional examples of what may be protected activities and what may be adverse actions, depending on the specific facts and circumstances.

2. Who is protected from retaliation?

County job applicants, employees, interns, and volunteers may not be subjected to retaliation—in any aspect of recruitment or employment with the County—because they participated in a protected activity.

The protections against retaliation apply regardless of whether the individual works full-time, part-time, or reduced time or whether the individual is permanent, provisional, probationary, extra-help, seasonal, and temporary in their role with the County.

These protections also apply regardless of an individual's citizenship or work authorization status.

3. What are some examples of protected activity and what may be retaliation under the County's Policy Against Discrimination, Harassment, and Retaliation?

Protected activity can take many forms. Good faith participation in the County's internal equal opportunity complaint ("EO Complaint") process is protected from retaliation in all cases. Other actions opposing discrimination are generally protected if the individual was acting on a reasonable belief that something in the workplace may violate equal opportunity laws, the County's Policy Against Discrimination, Harassment, and Retaliation, or the County's Policy on Sexual Harassment—even if the individual did not use legal terminology to describe the issue.

For example, it is against County policy to retaliate against applicants, employees, interns, or volunteers for:

- Taking part in an internal or external investigation of an EO Complaint, including answering questions as a witness in the investigation;
- Filing or being a witness in an administrative charge or lawsuit alleging discrimination or harassment;
- Telling a supervisor or manager about perceived discrimination or harassment that the individual reasonably believes occurred;
- Refusing to follow orders that would result in discrimination;
- Resisting sexual harassment, or intervening to protect others from sexual harassment;
- Taking a protected leave of absence;
- Requesting a reasonable accommodation based on a disability, religious belief, practice, or observance, or other legal basis for a reasonable accommodation; or
- Having an EO Complaint against a prior employer.

A violation of County policy may occur even if the retaliation did not involve formal discipline, demotion, or termination of the individual who engaged in protected activity. For example, depending on the specific facts involved, it may be retaliation for a manager or supervisor to do any of the following as punishment for an individual making an EO Complaint or engaging in other protected activity:

- Threaten to report the individual to authorities (such as the police or immigration authorities) without a lawful reason for making such a report;
- Reprimand an individual or give them a negative performance evaluation that is not supported by the facts of the employee's work performance;
- Transfer the individual to a less desirable position without a legitimate, non-retaliatory reason for the transfer;
- Verbally abuse or bully the individual;
- Increase scrutiny of the individual's work performance without an objective business reason to do so;
- Spread false rumors about the individual or their friends or family;
- Make the individual's work more difficult, such as purposefully changing their work schedule to conflict with family responsibilities;
- Give the individual the "silent treatment";
- Exclude the individual from meetings that the individual would otherwise be typically included in; or
- Give a false or negative job reference to punish a former employee, intern, or volunteer for engaging in protected activity while they were with the County.

4. What are examples of state and federal laws that prohibit retaliation??

Some examples include: Title VII of the Civil Rights Act of 1991; the Americans with Disabilities Act of 1990 (ADA); the California Fair Employment and Housing Act (FEHA); the Family and Medical Leave Act (FMLA); and the California Family Rights Act (CFRA). Individuals may consult with an attorney or other representative of their choosing to learn about laws prohibiting retaliation in the workplace.

5. How can someone report retaliation?

An individual who believes they have been retaliated against for engaging in protected activity—or who believes someone else has been the victim of retaliation—may tell a supervisor, manager, or department [Equal Opportunity Liaison](#). The applicant, employee, intern, or volunteer can also file a complaint in person with the **County EOD** at one of the following EOD locations:

2310 North First Street, Suite 101, San Jose, CA 95131
333 West Julian Street, 2nd Floor, San Jose, CA 95110
700 Empey Way, Suite 100, San Jose CA, 95128

They may also email EOD at EOD@eod.sccgov.org or call EOD at 408-993-4840. EOD's public website, which includes quick links explaining the complaint process, is www.equalopportunity.sccgov.org.

EOD will determine whether sufficient evidence exists to find retaliation occurred in violation of the County's Policy Against Discrimination, Harassment, and Retaliation. A sustained finding by EOD of retaliation is not a finding that the alleged conduct is a violation of applicable law.

Persons who wish to complain about retaliation may also contact the following agencies:

California Civil Rights Department (formerly the Department of Fair Employment and Housing (DFEH)), 2218 Klausen Drive, Suite 100, Elk Grove, CA 95758, (800) 884-1684, or online at calcivilrights.ca.gov.

United States Equal Employment Opportunity Commission, 96 N. Third Street, Suite 250, San Jose, CA 95112, (800) 669-4000, or online at eeoc.gov/filing-charge-discrimination.

Persons who believe they have been retaliated against may also contact an attorney or other representative of their choosing.