



RESOLUTION No. 23-138

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

RESOLUTION AMENDING NEVADA COUNTY PERSONNEL CODE

WHEREAS, the County adopted a comprehensive revised Personnel Code at their December 11, 2018 meeting, per Resolution 18-591; and

WHEREAS, the County adopted subsequent revisions to the Personnel Code by Resolutions 19-602, 20-264, 20-439, 21-111, 21-494 and 22-012; and

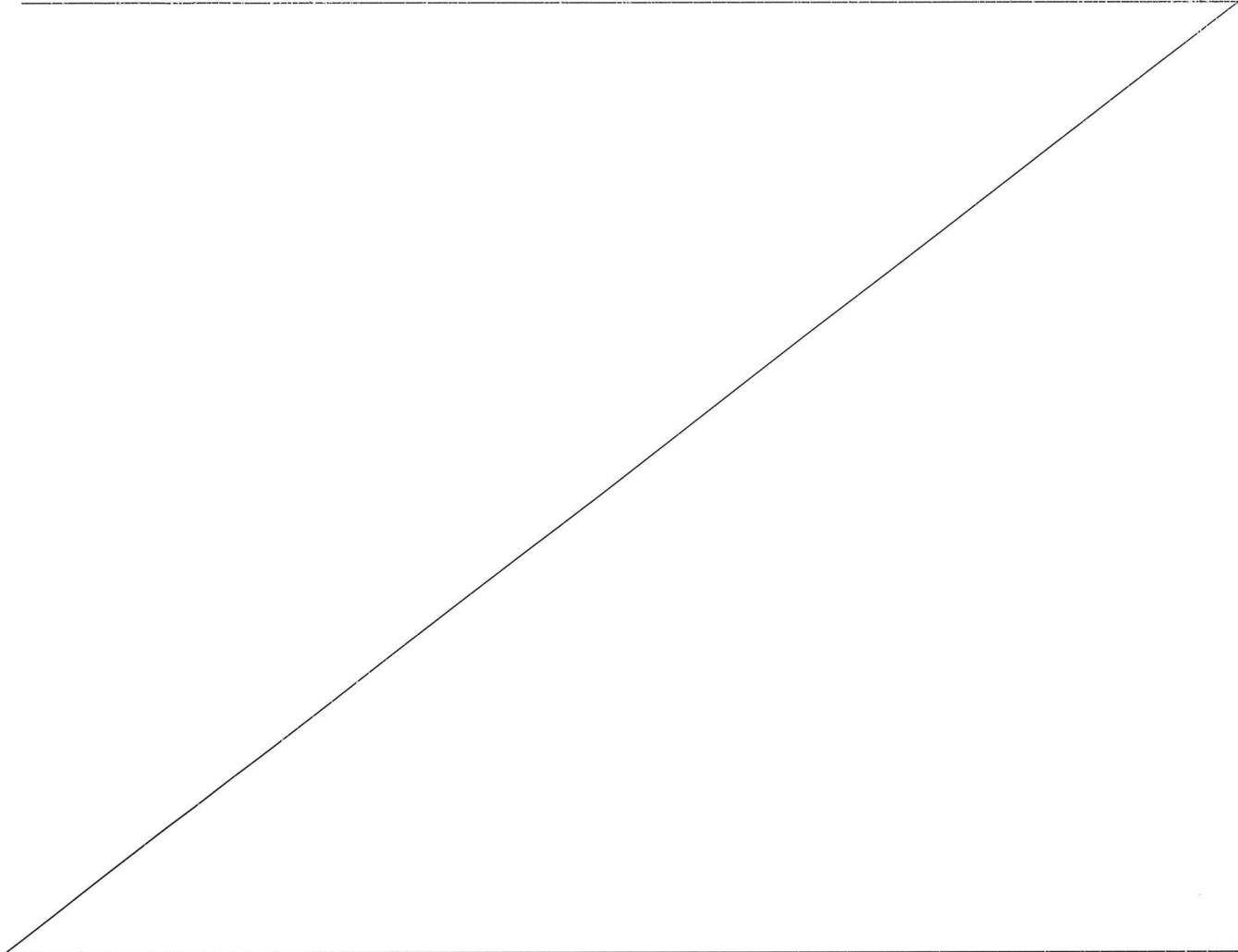
WHEREAS, the County is interested in maintaining effective human resources policies and procedures that comply with federal and state regulations that meet the service needs of the County; and

WHEREAS, the County is committed to providing employees with fair and understandable policies and rules; and

WHEREAS, employees and bargaining unit representatives have provided feedback through the meet and confer process to the updating of the Nevada County Personnel Code Sections 6.1, 7.2, 9.2, 9.3, 10.1, 10.2, 21.7, 23.3, Appendix P-1, Appendix P-2, Appendix P-3, Appendix P-11, and by adding Section 5.4, thereby necessitating these revisions by way of Resolution; and

WHEREAS, redline versions of the policies identify changes as provided in Exhibit A.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Board of Supervisors of the County of Nevada, State of California, that the revision to the Nevada County Personnel Code, effective March 28, 2023, is approved in substantially the same form as attached hereto in Exhibit B.



PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 28th day of March, 2023, by the following vote of said Board:

Ayes: Supervisors Heidi Hall, Edward C. Scofield, Lisa Swarthout, Susan Hoek and Hardy Bullock.

Noes: None.

Absent: None.

Abstain: None.

ATTEST:

JULIE PATTERSON HUNTER
Clerk of the Board of Supervisors

By: 


Edward C. Scofield, Chair

3/28/2023 cc: HR*
Dept. Heads*

EXHIBIT B
COUNTY OF NEVADA PERSONNEL CODE REVISIONS
******First policy revision: Payroll Errors******

5.4 PAYROLL ERRORS

For any payroll error resulting in incorrect payment of employee's wages; overtime; leave accruals, balance or usages, the County shall adjust such compensation to the correct amount on the following paycheck and give written notice to the employee.

Payroll errors must be brought to the attention of the Auditor-Controller's Office or Human Resources as soon as they are discovered. In no event will retroactive payroll error corrections be made beyond the statute of limitations of the Fair Labor Standards Act.

Payroll errors resulting in an overpayment of wages shall be reimbursed to the County through one of the following options:

- A lump sum payment through payroll (repayments that cannot be processed in one pay period will be divided)
- A one-time deduction from usable accruals (all accrual balances except for sick leave), equivalent to the overpayment at the employee's current hourly rate
- A repayment schedule through payroll deductions over the same number of pay periods in which the error occurred and not to exceed 52 pay periods
- Other means, as may be mutually agreed upon between the County and the employee

If an employee terminates County employment prior to completing their repayment schedule, any amounts still owed to the County will be deducted from the employee's final paycheck.

******Second policy revision: Recruitment******

RECRUITMENT

6.1 GENERAL

The County's Human Resources Director will be responsible for the recruitment of persons who are to be considered for employment. The Human Resources Director will make use of recruiting procedures that are competitive and of such character as to fairly test and determine the qualifications, fitness and ability of applicants to perform the duties of the position or classification applied for.

The Human Resources Director shall schedule recruitments according to the current and anticipated service needs of the County, and in consideration of departmental workload. Scheduled recruitments may be postponed or cancelled, or the closing date extended. In these events, the Human Resources Director shall notify all affected persons and post public notice.

Hiring authorities must obtain CEO approval to recruit and fill temporary and regular vacancies which occur in their departments prior to the Human Resources Director taking any action. A request to recruit is submitted via a requisition which states the position being recruited for, salary range, and location.

7.2 WAIVER OF SELECTION PROCEDURE

When a selection procedure has been publicly announced and the number of applicants meeting the minimum qualifications for the position is insufficient in size to allow for a satisfactory applicant pool, the County Human Resources Director may, at his/her discretion:

- A. Revise the conditions of the recruitment to a more practical basis under the circumstances, while still ensuring minimum qualifications are maintained.

The County's Human Resources Director may, in his/her discretion, forego regular selection procedures for the appointment of persons to temporary positions.

9.2 ORDER OF NAMES ON THE ELIGIBILITY LIST

A. Eligibility List for a Non-Exempt Position

The names of the applicants who have attained a passing mark in a selection process for a non-exempt position shall be placed on the eligibility list in order of final earned ratings. In case of identical ratings, the names of the applicants shall be placed in the same rank in alphabetical order. The department appointing authority receives the names of the highest ten ranked candidates at one time. If there are an insufficient number of candidates remaining on the original list, then the Human Resources Director may also include additional names from another eligible list meeting the requirements of this section.

B. Sufficiency of Eligibility List

When an eligibility list for either a non-exempt or exempt position contains an insufficient number of applicants to make a competitive and informed hiring decision the Human Resources Director may (1) expire the list and establish a new list to provide a broader range of candidates or (2) may allow additional recruiting to add names to the existing list, in order to provide a broader range of candidates.

C. Tenure of Eligibility List

An eligibility list shall be in effect from the date on which it is approved by the Human Resources Director and shall continue in force for a period of six months, unless otherwise expired. Such lists may be extended by the Director in increments of three months but not to exceed the maximum of one year.

9.3 REMOVAL OF NAMES FROM THE ELIGIBILITY LIST

The names of candidates may be removed from an eligible list for any of the following reasons:

- 1) For any cause for disqualification set forth in Section 6.5.
- 2) Upon communication from the candidate that he/she no longer desires to remain on the eligible list.

- 3) After refusal of two (2) offers of appointment from any department to the class for which the eligible list was established.
- 4) For failure to be reached by the Human Resources or hiring department within a reasonable period of time.
- 5) After the candidate has been certified to the same department one time without selection, the candidate may remain on the list for other departments unless the provisions of this section otherwise apply.
- 6) A candidate who has failed the pre-employment drug/alcohol test shall be removed from all County eligibility lists for a period of one year from the date of the results of the positive drug/alcohol test.
- 7) The name of an employee who separates from County service shall be removed from a promotional list.

SECTION 10.0 - APPOINTMENT AND RE-EMPLOYMENT

10.1 APPOINTMENT FOLLOWING CERTIFICATION

The appointing authority shall fill a vacancy or new position in a class by selection from the candidates on the eligibility list. The appointing authority may, at his/her discretion, appoint or refuse to appoint from any eligibility list when the list contains an insufficient candidate pool to conduct a meaningful and competitive recruitment. In such cases, and in accordance with Section 9.2, the hiring authority may request the Human Resources Director to expire the list.

10.2 APPOINTMENT PROCEDURE

The appointing authority shall, prior to a regular, non-exempt appointment:

- 1) Interview a minimum of 3 candidates who have been certified. This requirement shall have been met if the appointing authority was in attendance at the appraisal board.

*****Third policy revision: Holidays*****

HOLIDAYS

21.7 HOLIDAY LEAVE

- a) Each regular employee in the County service, except employees assigned as crisis workers and members of the Deputy Sheriff's Association, shall be entitled to compensation without appearing for work for the following designated holidays:
 - (1) January 1st
 - (2) The third Monday in January known as "Martin Luther King's Birthday"
 - (3) The third Monday in February known as "President's Day"
 - (4) The last Monday in May known as "Memorial Day"
 - (5) July 4th known as "Independence Day"

- (6) The first Monday in September known as "Labor Day".
- (7) The 2nd Monday in October known as "Columbus Day"/ "Indigenous People's Day."
- (8) November 11th, known as "Veteran's Day".
- (9) Thanksgiving Day, designated Thursday in November.
- (10) The Friday immediately following Thanksgiving Day.
- (11) December 25th.
- (12) Every day designated by the President or Governor for a public fast, thanksgiving, or holiday and approved by the Board of Supervisors.
- (13) All employees will receive two floating holidays per fiscal year, which may be taken at any time mutually agreed upon by the employee and the appointing authority. Employees will not be permitted to accrue or carry over floating holidays from one fiscal year to the next.

Employees should review their applicable MOU or Agreement for additional provisions regarding holiday leave.

******Fourth policy revision: Tuition Reimbursement******

TUITION REIMBURSEMENT

23.3 ELIGIBILITY OF EMPLOYEES FOR TUITION PAYMENT/ REIMBURSEMENT

Probationary and regular full-time employees performing their jobs satisfactorily are eligible for payment of or reimbursement of tuition at the sole discretion of the County, as determined annually by the Board or its designee subsequent to adoption of the County operating budget.

******Fifth policy revision: Equal Opportunity and Policy Against Discrimination, Harassment and Retaliation******

(Found at Appendix P-1)

SUBJECT: EQUAL OPPORTUNITY POLICY

The County is committed to a policy of equal application of rules and regulations in all employment practices including hiring, firing, promotion, compensation and other items, privileges, and conditions of employment. The County prohibits discrimination against employees or applicants for employment on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age (over 40), sexual orientation, reproductive health decision-making or military and veteran status or any other basis protected by law. Employees, volunteers, or applicants who believe they have experienced any form of employment discrimination or abusive conduct are encouraged to report the conduct immediately by using the complaint procedures provided in these Policies, or by contacting the U.S. Equal Employment Opportunity Commission, or the California Civil Rights Department. To further this policy, the following procedures have been formulated.

Discrimination Complaints

To assist employees and job applicants who feel they have been discriminated against on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age (over 40), sexual orientation, reproductive health decision-making or military and veteran status or any other basis protected by law, the following complaint procedures have been formulated.

(1) Informal Discussions

If an employee or job applicant feels that they have been discriminated against on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age (over 40), sexual orientation, reproductive health decision-making or military and veteran status or any other basis protected by law, the employee/applicant should, within five (5) working days of the incident, bring this matter to the attention of the immediate supervisor or any management employee of the County.

If the employee/applicant is not satisfied with the results of the informal discussion with the supervisor or management employee, they may, within fifteen (15) days of the incident, file a formal written complaint.

(2) Formal Complaint

The employee/applicant must, to the best of their ability, complete a County discrimination complaint form clearly expressing the complaint, giving names of individuals involved and dates. The completed form shall be delivered to the department head or the Human Resources Director. The department head shall forward the complaint to the Human Resources Director.

The Human Resources Director shall assign an individual to investigate the complaint. An investigation will be conducted, and a report shall be sent to the Human Resources Director noting recommended actions to be taken. The Human Resources Director shall, upon receiving the completed investigation report, make a decision on the recommendations and notify the complainant of the outcome of the investigation in writing. If the employee is not satisfied with the outcome of the investigation, they shall have the right to appeal the decision to the County Executive Officer (CEO) who shall review the record and make a final decision within twenty (20) days. The CEO's decision shall be final.

This procedure shall apply to all County employees and applicants for County employment. By law, employees filing discrimination complaints shall be free of any retaliation or harassment by any County official.

An individual additionally has the option to report harassment, discrimination or retaliation to the U.S. Equal Employment Opportunity Commission (EEOC) or the California Civil Rights Department. 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 County bulletin boards for office locations and telephone numbers.

(Found at Appendix P-2)

SUBJECT: POLICY AGAINST DISCRIMINATION, HARASSMENT AND RETALIATION

A. PURPOSE

The County is committed to providing a work environment free from discrimination, harassment, and retaliation. This Policy defines discrimination, harassment, and retaliation and sets forth a procedure for the investigation and resolution of complaints of such conduct by or against any employee, volunteer, intern, applicant or person providing services pursuant to a contract with the County.

B. POLICY

- a. Discrimination, harassment, and retaliation violate this Policy and will not be tolerated. 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. Discrimination or harassment of an applicant, employee, volunteer, intern, or person providing services pursuant to a contract violates this policy when such conduct is based on the individual's actual or perceived race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age (over 40), sexual orientation, reproductive health decision-making or military and veteran status or any other basis protected by law. It is also improper to retaliate against any individual for making a complaint of discrimination or harassment or for participating in a discrimination or harassment investigation. Retaliation constitutes a violation of this Policy.
- b. This Policy applies to all terms and conditions of employment, including but not limited to hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, training opportunities and compensation.
- c. Employees who violate this Policy are subject to discipline, up to and including termination.

C. DEFINITION OF DISCRIMINATION

Discrimination occurs when an individual is treated differently and adversely in terms and conditions of employment 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.

D. DEFINITION OF HARASSMENT

Harassment can consist of virtually any form or combination of verbal, physical, visual or environmental conduct engaged in because of a person's actual or

perceived protected classification. It need not be explicit, nor even specifically directed at the victim.

The prohibition against sex harassment includes a prohibition against sexual harassment, gender harassment, and harassment based on pregnancy, childbirth or related medical conditions.

Harassment includes, but is not limited to the following types of misconduct:

Verbal: Inappropriate or offensive remarks, slurs, jokes or innuendoes based on actual or perceived protected classification. This may include, but is not limited to the following: Inappropriate comments regarding an individual's body, physical appearance, attire, sexual prowess, marital status, pregnancy or sexual orientation; and unwelcome flirting or propositions, demands for sexual favors, verbal abuse, threats or intimidation, or patronizing or ridiculing statements that convey derogatory attitudes about a particular gender, religious creed, national origin, ancestry, disability, medical condition, marital status, age or sexual orientation.

Physical: Inappropriate or offensive touching, assault, or physical interference with free movement when directed at an individual on the basis of actual or perceived protected classification. This may include, but is not limited to, kissing, patting, lingering or intimate touches, grabbing, massaging, pinching, leering, staring, unnecessarily brushing against or blocking another person, whistling or sexual gestures.

Visual or Written: The display or circulation of offensive or derogatory visual or written material related to an individual's actual or perceived protected classification. This may include, but is not limited to, posters, cartoons, drawings, and graffiti, reading materials, computer graphics or electronic media transmissions.

Environmental: A work environment that is permeated with sexually-oriented talk or innuendo, insults or abuse related to sex, gender, gender identity, gender expression, or any other protected classification not relevant to the subject matter of the job. A hostile environment can arise from an unwarranted focus on sexual topics or sexually suggestive statements or from an unwarranted focus on an individual's protected classification. An environment may be hostile if unwelcome sexual behavior is directed specifically at an individual or if the individual merely witnesses unlawful harassment in the individual's immediate surroundings. An environment may also be hostile if unwelcome behavior focusing on an individual's protected classification is directed specifically at an individual or if the individual merely

witnesses the unlawful harassment in the individual's immediate surroundings.

The determination of whether an environment is hostile is based on the totality of the circumstances, including such factors as the frequency of the conduct, the severity of the conduct, whether the conduct is humiliating or physically threatening, and whether the conduct unreasonably interferes with an individual's work.

Romantic or sexual relationships between supervisors and subordinate employees are discouraged. There is an inherent imbalance of power and potential for exploitation in such relationships. The relationship may create an appearance of impropriety and lead to charges of favoritism by other employees. A welcome sexual relationship may change, with the result that sexual conduct that was once welcome becomes unwelcome and harassing.

By definition, sexual harassment is not within the course and scope of an individual's employment with the County.

E. DEFINITION OF 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 (over 40), sexual orientation, reproductive health decision-making or military and veteran status, or any other basis protected by law.

F. DEFINITION OF PROTECTED ACTIVITY

Protected activities include making a request for an accommodation for a disability; making a request for accommodation for religious beliefs; making a complaint under this Policy; opposing violations of this Policy; or participating in an investigation under this Policy.

G. DEFINITION OF 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.

H. BEHAVIOR PROHIBITED BY ALL EMPLOYEES

1. No supervisor, manager, or any other person employed by the County may engage in discrimination as that term is defined by this policy. This means

that no supervisor, manager, or other person employed by the County may condition the terms and conditions of employment or continued employment in the County – including but not limited to any employee benefit, promotion, job assignment, disciplinary action, layoff, recall, transfer, leave of absence, training opportunities or compensation – on an applicant's or employee's actual or perceived protected classification or on the basis of the individual's association with a person who is member of a protected classification, actual or perceived.

2. No supervisor, manager, or any other person employed by the County may condition employment or continued employment in the County or any employee benefit, including promotion or job assignment, on an applicant's or employee's acquiescence to any of the discriminatory or harassing behavior defined above.
3. No supervisor, manager, or any other person employed by the County may create a hostile or offensive work environment for, or retaliate against, any applicant or employee because that person has opposed a practice prohibited by this Policy or has filed a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing conducted by an authorized investigator.
4. No supervisor, manager, or any other person employed by the County shall assist any individual in doing any act which constitutes harassment, discrimination, or retaliation against any employee of the County.
5. No County employee shall destroy evidence relevant to an investigation of alleged harassment, discrimination or retaliation.

I. OBLIGATIONS OF SUPERVISORS/MANAGERS

Each manager and supervisor are responsible for:

1. Informing employees of this Policy.
2. Providing a copy of this Policy to all County employees and displaying this Policy in prominent locations throughout County offices.
3. 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.
4. Receiving complaints in a fair and serious manner, and documenting steps taken to resolve complaints.
5. Following up with those who have complained to ensure that the behavior has stopped and that there are not reprisals.
6. Assisting, advising, or consulting with employees and the Human Resources Director regarding this Policy.
7. Assisting or participating in the investigation of complaints involving employees in their departments and, when appropriate, if the complaint is

substantiated, recommending appropriate corrective or disciplinary action in accordance with this Policy, up to and including termination.

8. Providing employees with a copy of the information sheet on sexual harassment prepared by the Civil Rights Department upon request.
9. Periodically notifying employees of the procedures for registering a complaint as well as those available for redress. Such notification shall occur through the normal channels of communication.
10. Informing those who complain of harassment or discrimination of their option to contact the Civil Rights Department (CRD) and Equal Employment Opportunity Commission (EEOC) regarding alleged Policy violations. The Human Resources Director will make available upon request information from the CRD and the EEOC about filing claims of sexual harassment with these entities.
11. Implementing appropriate disciplinary and remedial actions.
12. Reporting potential violations of this Policy to the Human Resources Director, regardless of whether a complaint has been submitted.
13. Participating in periodic training and scheduling employees for training.

A copy of this Policy shall appear in any publication of which sets forth the comprehensive rules, regulations, procedures and standards of conduct for employees. This Policy shall be included in the County's policies and procedures manual and employee handbook. This Policy will also be provided to all new hires as part of the new employee orientation process.

J. OBLIGATIONS OF ALL EMPLOYEES

All employees, including non-manager and non-supervisor employees, are responsible for:

1. Treating all individuals in the workplace or on worksites with respect and consideration.
2. Modeling behavior that conforms to this Policy.
3. Participating in periodic training.
4. Reporting any conduct believed to fit the definition of harassment, discrimination or retaliation as defined in this policy, to their immediate supervisor or to the Human Resources Director or their designee. This includes conduct of non-employees, such as sales representatives or service vendors or harassing conduct toward such contractors. This employee obligation exists whether or not the employee who is the object of the harassment reports the alleged harassment. In the event that the Human Resources Director is the complainant or is considered the/a perpetrator of the alleged harassment, employees shall report such allegedly harassing conduct to the County Executive Officer or their designee.
5. Cooperating with any investigation of any alleged act of harassment,

discrimination or retaliation conducted by the County or its agents. This includes responding fully and truthfully to all questions posed during an investigation. Complainants will be encouraged to provide specific written allegations to facilitate the investigation.

6. Taking no actions to influence any potential witness while an investigation is ongoing.

D. INVESTIGATIVE/CORRECTIVE ACTION

All who believes they have been subjected to discrimination, harassment or retaliation, may make a complaint -- orally or in writing -- to any supervisor, manager, or department head, without regard to any chain of command.

All employees shall immediately report any evidence of discrimination, harassment or retaliation, or complaints regarding discrimination, harassment, or retaliation made to them to their immediate supervisor or to the Human Resources Director or their designee. Any supervisor or manager who receives a complaint regarding harassment shall immediately report it to the Human Resources Director.

The Human Resources Director shall authorize an investigation or conduct an investigation of any incident of alleged discrimination, harassment or retaliation that is reported. The investigation shall be conducted in a prompt and thorough manner and in a way which ensures, to the extent feasible, the privacy of the parties involved.

The person designated to investigate shall immediately report in writing the findings of fact to the Human Resources Director. The Human Resources Director will determine whether County Policy has been violated and communicate the conclusion of the investigation to the complainant. Disciplinary action shall be decided in accordance with County policy and after consultation with the Human Resources Director.

Under no circumstances shall a County employee who believes that they have been the victim of discrimination, harassment, or retaliation be required to first report that conduct to a supervisor or other authority figure if that person or authority figure is the perpetrator of the alleged harassment, discrimination or retaliation.

Under no circumstances shall a supervisor, manager, or other authority figure retaliate in any way against an employee who has made a complaint or who has provided information as a witness to an incident of alleged harassment, discrimination or retaliation.

It is the right of all employees to seek at any time redress for alleged harassment, discrimination, or retaliation from the CRD and the EEOC as though a court of law. 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 County bulletin boards for office locations and telephone numbers. Employees are always encouraged to seek redress through the County's administrative policies as well.

All individuals are requested to maintain confidentiality to the extent possible in communicating or investigating any claims of alleged harassment. In addition, all individuals with knowledge of a claim of alleged harassment or who are in any way

involved in the investigation into such a claim are requested to maintain the same level of confidentiality. 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. The County will share information regarding an investigation of alleged harassment on a need-to-know basis only. The County 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.

******Fifth policy revision: Family and Medical Care Leave******

(Found at Appendix P-3)

FAMILY and MEDICAL CARE LEAVE

B. DEFINITIONS

- 1) **“12-Month Period”** means a 12-month period measured forward from the day the leave begins.
- 2) **“Child”** means a son or daughter, such as a biological, adopted, or foster child, a stepchild, a legal ward or a child of a person standing in loco parentis, and for entitlement to FMLA coverage, under the age of 18 years of age, or 18 years of age or older who is incapable of self-care because of a mental or physical disability.

A child is “incapable of self-care” if they require active assistance or supervision to provide daily self-care in three or more of the activities of daily living or instrumental activities of daily living such as, caring for grooming and hygiene, bathing, dressing and eating, cooking, cleaning shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, etc.

Under CFRA regulation, beginning January 1, 2021, all “child” also includes individuals fitting the aforementioned categories over the age of 18.

- 3) **“County”** means the County of Nevada.
- 4) **“Designated person”** means any individual related by blood or whose association with the employee is the equivalent of family relationship. One designated person per 12-month period may be used for CFRA.
- 5) **“Parent”** means the biological, adoptive, step or foster parent of an employee or an individual who stands or stood in loco parentis (in place of a parent) to an employee when the employee was a child. This term does not include parents-in-law.
- 6) **“Spouse”** under the definition of FMLA means a husband or wife as defined or recognized under California State law for purposes of marriage. This includes same sex partners in marriage. Under CFRA regulation, registered domestic partners are also recognized as spouses.
- 7) **“Serious health condition”** means an illness, injury, impairment, or physical or mental condition that involves:

a. **Inpatient Care** treatment or anticipated treatment in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e., inability to work, or perform other regular daily activities due to the serious health condition, treatment involved, or recovery therefrom); or

b. **Continuing treatment** by a health care provider: A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

i.) A period of **incapacity** (i.e., inability to work, or perform other regular daily activities due to serious health condition) of more than three consecutive full calendar days, and

ii.) Any subsequent treatment or period of incapacity relating to the same condition that also involves:

(a) Treatment two or more times within 30 days from the first day of incapacity, by a health care provider, by a nurse or physician's assistant under direct supervision by a health care provider, or by a provider of health care services (e.g., a physical therapist) under orders of, or on referral by a health care provider; and the first medical visit must take place within seven days of the first day of incapacity, or

(b) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider where the first medical visit must take place within seven days of the first day of incapacity. This includes for example; a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. If the medication is over the counter and can be initiated without a visit to a health care provider, it does not constitute a regimen of continuing treatment.

c. Any period of incapacity due to pregnancy or for prenatal care. (This entitles the employee to FMLA leave, but not CFRA leave. Under California law an employee disabled by pregnancy is entitled to pregnancy disability leave.)

d. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

i.) Requires periodic visits for treatment by a health care provider, which consists of visiting a health care provider at

least twice a year for the same condition, or by a nurse or physician's assistant under direct supervision of a health care provider;

ii.) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

iii.) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). Absences for such incapacity qualify for leave even if the absence lasts only one day.

e. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of but need not be receiving active treatment by a health care provider.

f. Any period of absence to receive multiple treatments (including any period of recovery there from) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment.

- 8) **“Covered active duty”** means: (1) in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country, or (2) in the case of a member of a reserve component of the Armed Forces, duty during the deployment of member of the Armed Forces to a foreign country under a call or order to active duty under certain specified provisions.
- 9) **“Covered Servicemember”** means (1) a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or (2) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces, including a member of the National Guard or Reserves, at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.
- 10) **“Outpatient Status”** means, with respect to a covered servicemember, the status of a member of the Armed Forces assigned to either: (1) a military medical treatment facility as an outpatient; or (2) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

- 11) **“Next of Kin of a Covered Servicemember”** means the nearest blood relative other than the covered servicemember’s spouse, parent, son, or daughter, in the following order of priority: Blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as their nearest blood relative for purposes of military caregiver leave under the FMLA.

- 12) **“Serious Injury or Illness”** means (1) in the case of a member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating; or (2) in the case of a veteran who was a member of the Armed Forces, including a member of the National Guard or Reserves, at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy, means a qualifying injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

- 13) **“Qualifying Exigency”** includes (1) short notice deployment; (2) military events and related activities; (3) childcare and school activities; (4) financial and legal arrangements; (5) counseling; (6) rest and recuperation; (7) post-deployment activities; (8) parental care; and (9) additional activities that the District and employee may agree qualify as an exigency.

******Sixth policy revision: Background Check Requirement for Applicants And Employees Who Have Access To Federal Tax Information ******

(Found at Appendix P-11)

SUBJECT: BACKGROUND CHECK REQUIREMENT FOR APPLICANTS AND EMPLOYEES WHO HAVE ACCESS TO FEDERAL TAX INFORMATION

A. PURPOSE

This policy applies to all applicants and employees at the County of Nevada who require access to Federal Tax Information (FTI) to complete work assignments associated with their employment. In accordance with Internal Revenue Service (IRS) Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies (Publication 1075), Nevada County applicants and employees having access to Federal Tax Information (FTI) must undergo a background investigation prior to being permitted access to FTI, which includes a criminal conviction history screening and citizenship/residency validation. Individuals with access to FTI must undergo reinvestigation every five years.

B. APPLICABILITY

This policy is applicable to all current and prospective employees, volunteers, agents, contractors, and subcontractors of the County of Nevada whose work assignments may require access to FTI.

C. AUTHORITY

- IRS Publication 1075
- 26 United States Code (U.S.C.) § 6103
- Family Code § 17202
- Government Code § 1044, 12952 (if applicable upon passage of AB 1008) 19572, and 18935
- Labor Code § 432.7 and 432.9
- Title 2, California Code of Regulations (CCR) § 11017 and 11017.1
- State Personnel Board Rule 172
- Penal Code § 11105(b)
- Equal Employment Opportunity Commission (EEOC) Enforcement Guidance 915.002

D. DEFINITIONS

FTI: Federal Tax Information – Includes tax returns or return information received directly from the IRS or obtained through an authorized secondary source, such as Social Security Administration, Federal Office of Child Support Enforcement, Bureau of the Fiscal Service, or Centers for Medicare and Medicaid Services, or another entity acting on behalf of the IRS pursuant to Internal Revenue Code (IRC) 6103(p)(2)(B) Agreement.

Access to FTI: Includes individuals who require access to FTI to perform their official duties and as authorized under the IRC. Pursuant to need-to-know restrictions, an individual who has the authority to access FTI information should not access such information unless it is necessary to perform their official duties and for the purposes listed in IRC 6103.

Unauthorized Access: Unauthorized access occurs when an entity or individual knowingly or due to gross negligence receives or has access to FTI without authority, as defined in IRC 6103.

Direct Access: FTI includes tax return or any information from a tax return received directly from the IRS or obtained through an authorized secondary source, such as Social Security Administration (SSA), Federal Office of Child Support Enforcement (OCSE), Bureau of the Fiscal Service (BFS), Centers for Medicare and Medicaid Services (CMS), or another entity acting on behalf of the IRS pursuant to an IRC 6103(p)(2)(B) Agreement.

Criminal Conviction History Screening: Includes a review of Federal Bureau of Investigation (FBI) fingerprint results through the state identification bureau (California Department of Justice [DOJ]) to identify suitability for employment, and a check of local law enforcement agencies where the subject has lived, worked and/or attended school within the last five (5) years prior to the investigation.

Citizenship/Residency Validation: Validation of an individual's eligibility to legally work in the United States using the USCIS Form I-9 and USCIS E-Verify System. This requirement applies to employment candidates only.

Custodian of Records: Individual(s) designated by an agency as responsible for the hiring decisions, for the security, storage, dissemination, and destruction of the criminal records furnished to the agency, and who serves as the primary contact for DOJ for any related issues.

Reinvestigation: Includes a redetermination of the criminal conviction history screening, based on new information obtained since the last screening, including local arrest information if the employee has lived, worked, or attended school in another state/county. Reinvestigations will occur 5 years from the date of the previous investigation. Subsequent arrest notifications shall be requested as required under Government Code section 1044(d).

Criminal History Information: Information obtained through the screening process, excluding criminal history prohibited for consideration by state and federal statutes, rules, and regulations (e.g. conviction judicially dismissed).

E-Verify: A USCIS internet-based system that compares information from Employment Eligibility Verification (Form I-9) to government records to confirm an individual is authorized to work in the US.

Internal Revenue Service Office of Safeguards: Monitors safeguard measures utilized by agencies receiving FTI.

Department of Justice: Process fingerprint and applicant data information requests and transmit information to the requesting agency.

E. GUIDELINES

Nevada County is responsible for identifying each position that provides individuals with access to FTI, including employee, volunteer, agent, contractor, and subcontractor positions. Identified individuals must undergo and pass a background investigation prior to being permitted access to FTI and are subject to reinvestigation every 5 years thereafter.

Then minimum requirements of the background investigation include:

- Review of FBI fingerprint results that include criminal history in all 50 states (FD-258 Applicant Fingerprint Card).
- Check of local law enforcement agencies where the subject of the background investigation has lived, worked, and/or attended school within the last five (5) years, and if applicable, a check of the appropriate agency for any identified arrests.
- Reinvestigation of each individual with access to FTI every 5 years from the date of the previous background investigation.

Validation of citizenship/residency for employment candidates shall include the following:

- Validate citizenship/residency to confirm the subject's eligibility to legally work in the United States.
- Utilization of Form I-9 and supporting documents.
 - Within three days of completion Form I-9, verify employment status through the E-Verify system.
- Ongoing monitoring for expired employment eligibility, if applicable.

FTI access includes, but is not limited to, any county or federal or state computer system access or online database, hard copy documents, reports, forms, and any other paper or electronic media that contains FTI.

Criminal history screening for employment purposes, including reinvestigation screening, will be conducted in accordance with Federal EEOC Enforcement Guidance, California

Department of Fair Employment and Housing (DFEH) rules and regulations and applicable California Labor Code provisions.

Fingerprint and criminal conviction history screening must be reflected on each position duty statement and job posting/announcement for each position with access to FTI.

Individuals who do not successfully pass the background investigation shall not be permitted to hold a position with access to FTI.

All offers of employment and work assignments are conditional pending successful completion of the policy requirements.

F. RECORDKEEPING

Records relating to compliance with this policy will be maintained using methods designed to safeguard the data.

The types of records that are maintained for pre-employment background processes include records documenting that pre-employment fingerprinting was completed; that an E-verify record was established; and that local law enforcement agencies were contacted. Fingerprint results are shredded once a determination is made regarding information in the results.

The types of records that are maintained for reinvestigation processes include records documenting that re-fingerprinting was completed and that local law enforcement agencies were contacted. Fingerprint results are shred once a determination is made regarding information in the results.

G. CRITERIA FOR WITHDRAWAL OF EMPLOYMENT OFFER OR INITIATION OF DISCIPLINARY PROCEEDINGS

Disqualification Criteria

The felony and misdemeanor convictions listed below are offenses that may render any individual's background unsuitable for employment in positions that involve access to FTI and do not attempt to specify every unacceptable criminal conviction.

- Fraud: welfare, insurance, financial, theft, or bribery
- Misuse of data
- Inappropriate access to data
- Theft/Burglary

Criminal background investigation results will be considered utilizing an individual assessment method providing that any basis for withdrawal of a job offer (applicant) or initiation of disciplinary proceedings (employee) will be job-related and consistent with business necessity. Individuals subject to criminal conviction screening will have the opportunity to provide additional information within a specified timeframe in the event the background investigation results in an unfavorable outcome or requires clarification. Final decisions resulting in a denial of employment will be provided in a written statement of the reason for denial.

Factors to be considered in the decision to withdraw an employment offer (applicant) include, but are not limited to, the seriousness of the offense committed, the nature and background of the offense, the length of time which has passed since the conviction, and

whether or not the facts that constituted a conviction are still a crime under current statutes and guidelines.

With respect to employees, the use of information received as a result of the required subsequent 5-year reinvestigation of employees is limited to convictions that will disqualify an individual from accessing or having access to FTI in course and scope of their employment. The decision to initiate the disciplinary process will be based on factors that include, but are not limited to, the seriousness of the offense committed, the nature and background of the offense, the length of time which has passed since the conviction, and whether or not the facts that constituted a conviction are still a crime under current statutes and guidelines.

The decision to withdraw an employment offer (applicant) or begin the disciplinary process (employee) will be done on a case-by-case basis after review of the documents and completion of the background investigation. Decisions made under this policy and in accordance with state and federal regulations and policies are final and not subject to review or appeal when pertaining to prospective employees.

H. CONTACT INFORMATION

Any questions regarding interpretation of this policy should be directed to:

Nevada County Human Resources
human.resources@co.nevada.ca.us
Phone: 530-265-7010
Fax: 530-265-9841
950 Maidu Avenue
Suite 260
Nevada City, CA 95959

I. EFFECTIVE DATE

This policy is effective December 11, 2018.
First revision: March 28, 2023.