

UNRESOLVED COUNTY HARASSMENT COMPLAINTS

SUMMARY

Charges of harassment, hostile work environment and retaliation were made against a management level employee in the Human Resources Department. Charges of hostile work environment and retaliation were also made against another management level employee in the Human Resources Department. The allegations are particularly troubling since these managers work in the department responsible for enforcing the County Equal Employment Opportunity Policy and Procedures. Top priority should have been given to the investigation of the allegations. Either these managers should have been cleared, or prompt and appropriate remedial action should have been taken. The Orange County 2002-2003 Grand Jury became aware of the allegations in a complaint letter. The complaint detailed the allegations and indicated that the charges had not been properly investigated by the County.

The County Equal Employment Opportunity Policy and Procedures clearly states that all complaints are to be investigated promptly, and, if the allegations are sustained, prompt and appropriate remedial action is to be taken. All supervisory and management employees are responsible for responding to any suspected acts of unlawful discrimination, harassment and retaliation. Failure by a manager or supervisor to appropriately address these types of allegations is considered to be a violation of this policy.

These allegations were brought to the attention of the County Executive Office by two senior level County managers. The senior level managers provided the names of five County employees whom the County Executive Office could contact for further information on the allegations. The County Executive Office had several meetings and numerous correspondences with these five County employees over a six month period. The Grand Jury found no evidence that these allegations were fully investigated as required by the County Equal Employment Opportunity Policy and Procedures. Further, the Grand Jury found that the resulting actions were not taken in a prompt manner as required by the County policy.

INTRODUCTION AND PURPOSE

The Orange County 2002-2003 Grand Jury received a well documented complaint letter alleging sexual harassment, hostile work environment and retaliation by a management level employee in the Human Resources Department and charges of hostile work environment and retaliation by another management level employee in the Human Resources Department. It was also alleged that the County Executive Office had failed to properly address these issues.

The County Executive Office is the executive branch of Orange County government and is responsible for providing leadership, vision, and knowledge of emerging trends and issues for the purpose of supporting and implementing Board policy. The County

Executive Office is also responsible for ensuring that the County of Orange is operated in an efficient, accountable, and responsive manner.

The purpose of this study was to perform a review of the County Executive Office to ensure that the allegations were properly investigated according to the County's Equal Employment Opportunity Policy and Procedures (County's EEO Policy).

METHOD OF STUDY

The Grand Jury interviewed various current and retired personnel, and reviewed Equal Employment Opportunity (EEO) documents, various correspondence and notes.

BACKGROUND

Orange County Equal Opportunity Policy and Procedures

In 1972, the Orange County Board of Supervisors established an Equal Employment Opportunity Access Program (EEO) to provide equal opportunity for all persons.¹ The EEO Access Office is responsible for overseeing the County's EEO Policy. Demonstrating its commitment to EEO, the Board of Supervisors Resolution 99-514 states that sexual harassment in any form will not be tolerated.² Orange County's Equal Employment Opportunity Policy and Procedures defines actions as harassment when based on a person's sex where such conduct is an explicit or implicit term or condition of employment or where harassment is so severe or pervasive that a reasonable person would conclude that the conduct creates a hostile or abusive work environment. Furthermore, sexual harassment may include same sex as well as opposite sex misconduct.

The County's EEO Policy gives examples of sexual harassment which include:

- participating in conduct the purpose or effect of which is to unreasonably interfere with an individual's work performance or create an intimidating, hostile, or offensive working environment;
- regularly telling sexual jokes or using sexually vulgar or explicit language in the presence of another person;
- using foul language or gestures;
- making derogatory or provocative remarks about or relating to an employee's sex or appearance;
- making unwelcome, inappropriate inquiries about a person's private or personal behavior.³

The County's EEO Policy requires that when the County receives a complaint of discrimination, harassment or retaliation, or otherwise has reason to believe that discrimination, harassment or retaliation is occurring; prompt investigation and prompt, appropriate remedial action is to be taken whether or not the aggrieved employee files a complaint. The complainant and the accused are entitled to know and be promptly informed at the conclusion of the investigation as to whether allegations were determined to be founded, unsubstantiated or unfounded.

Failure by a manager or supervisor to appropriately report and address known or suspected incidents of discrimination, harassment or retaliation shall be considered to be a violation of the County policy and appropriate disciplinary action may be taken.

Sexual Harassment, Hostile Work Environment and Retaliation Complaints

In early 2001, two senior level managers received, from their employees, allegations of sexual harassment, hostile work environment and retaliation by a management level employee in the Human Resources Department and hostile work environment and retaliation allegations against another management level employee in the Human Resources Department. The two senior level managers felt that the County Executive Office was the appropriate level to investigate these charges. The EEO Access Office, which normally investigates these types of complaints, reports to the Human Resources department. The two senior level managers met with the County Executive Office and the office of County Counsel in April 2001 to report the allegations. In the meeting, the two senior level managers provided information on the allegations and the names of five employees who could provide further documentation of the allegations.

Initially, the five employees were scheduled to be interviewed by a law firm retained by the County on May 24, 2001, regarding the allegations. One day prior to the date of the interviews, the five employees were contacted by the County Executive Office and told that the meeting with the law firm was cancelled. A meeting was set for that day to do some fact finding. Four of the employees met with the County Executive Office that day and one met a few days later.

In the meetings, all five employees made allegations of sexual harassment against a management level employee in the Human Resources Department and charges of hostile work environment and retaliation against another management level employee in the Human Resources Department. The allegations included constant use of vulgar, profane, sexually suggestive and graphic language. Furthermore, the employees alleged that they were subjected to unwelcome, inappropriate questions about private and personal behavior, derogatory and provocative remarks about and relating to their sex and appearance. They clearly felt this behavior was sexual harassment and created a hostile work environment as defined by Orange County's Equal Employment Opportunity Policy and Procedures.

They alleged that when they complained of this behavior, the two management level employees who were the subject of the complaints took certain retaliatory actions against them.

Each of these employees received a letter from the County Executive Office dated June 14, 2001, thanking them for meeting to discuss their concerns about possible violations of the County's Equal Opportunity Policy. The letter further stated that appropriate measures would be taken, that the County policy prohibits any retaliation for their participation, and to call the County Executive Office if they feel they were being subjected to retaliation.⁴

Employee Number One

After the June 14, 2001 letter from the County Executive Office, Employee Number One received a call from the County Executive Office on August 8, 2001, saying things were moving forward and that the names of the complainants needed to be released to the people against whom the allegations were made. Employee Number One agreed to release the employee's own name but expressed concern about retaliation. On August 15, 2001, Employee Number One provided the County Executive Office a copy of an email the employee thought was evidence of retaliation. After this date there was no further contact or feedback from the County Executive Office on this employee's complaint.

Employee Number Two

After the June 14, 2001 letter from the County Executive Office, Employee Number Two received a call from the County Executive Office requesting to use the employee's name as a complainant. Employee agreed and there was no further contact or feedback from the County Executive Office on this employee's complaint.

Employee Number Three

After the June 14, 2001 letter from the County Executive Office, Employee Number Three met with the County Executive Office and an agency head on September 17, 2001. This was five months after the County Executive Office was informed about the employee's allegations. The employee expressed concern about not being submitted for an open promotional position and about continued retaliation. The employee was considering filing an "employee selection" complaint. About a week later, Employee Number Three wrote the County Executive Office that the employee was withdrawing the "employee selection" complaint but reaffirming the other complaints. The employee had no further contact or feedback from the County Executive Office on the employee's complaint.

Employee Number Four

After the June 14, 2001 letter from the County Executive Office, Employee Number Four had the following contacts and correspondence with the County Executive Office regarding the employee's complaint:

- June 19, 2001 letter from employee in response to County Executive Office June 14, 2001 letter stating that no prompt and thorough investigation was occurring, and that retaliation against the employee was continuing. This was two months after the County Executive Office was informed about the employee's complaint.
- June 29, 2001 letter from County Executive Office to employee in response to employee's June 19, 2001 letter asking the employee to submit in writing the factual basis for the employee's statements. The letter requested specifics as to events, dates, times, participants, what was said and by whom and who was present. The letter also assured the employee that if this information was provided, appropriate measures would be taken if they were warranted.
- July 30, 2001 letter from employee to County Executive Office providing information requested in June 29, 2001 letter.
- August 13, 2001 letter from County Executive Office to employee acknowledging the employee letters of June 19, 2001 and July 30, 2001.

- October 29, 2001 letter from County Executive Office to employee stating that a thorough review of the employee's complaints of a hostile work environment and retaliation had been conducted. The conclusion of the review was that no conduct that would rise to the level of a hostile work environment, as defined by law, had occurred within the past year and a half. Further, it stated that no specific acts of retaliation were found since the employee had not suffered any adverse employment action. Since the employee had initially complained in 1999 the employee had been promoted and received pay increases. It also indicated that the County Executive Office had spent countless hours examining the matter.

Employee Number Five

After the June 14, 2001 letter from the County Executive Office, Employee Number Five had the following contacts and correspondence with the County Executive Office regarding the employee's complaint:

- June 26, 2001 letter from employee to County Executive Office detailing phone conversations and discussions the employee had with the County Executive Office and the office of the County Counsel regarding alleged retaliation.
- June 29, 2001 letter from County Executive Office to employee asking the employee to submit in writing the factual basis for the employee's statements. The letter requested specifics, as to events, dates, times, participants, what was said and by whom and who was present. The letter also assured the employee that if this information was provided, appropriate measures would be taken if they were warranted.
- July 6, 2001 letter from employee to County Executive Office regarding the County Executive Office's June 14, 2001 letter and providing additional information regarding the latest series of retaliatory actions.
- July 17, 2001 letter from employee to County Executive Office regarding the County Executive Office's letters of June 14, 2001 and June 29, 2001 and providing specific information requested in the County Executive Office's June 29, 2001 letter.
- July 31, 2001 memo from employee to County Executive Office regarding phone conversation that same day expressing concern that the matter is not being investigated.
- August 13, 2001 letter from County Executive Office to employee regarding employee letter of July 17, 2001, and a memo from the County Executive Office on July 31, 2001, thanking the employee for providing the additional details regarding possible violation of the County EEO Policy. The employee was requested to provide a copy of the complaint the employee filed with the Equal Employment Opportunity Commission.
- August 15, 2001 memo from employee to County Executive Office providing a copy of employee EEOC complaint as requested in County Executive Office's August 13, 2001 letter.
- October 10, 2001 letter from The County Executive Office to the employee titled Resolution of Dispute. This letter was intended to confirm the results of recent discussions with the employee and to bring closure to this matter. It indicated it was intended to be a Memorandum that constituted a legally binding agreement. The agreement offered the employee an equity adjustment in exchange for the employee

to release and discharge the County, its officers, agents and employees from any and all actual and potential claims, obligations and causes of action, which the employee may have, or may claim to have against them relating in any way to the employee's employment with the County as of the date of signing. Employee signed the Memorandum on October 18, 2001.

County Executive Office's Response to These Complaints

The County Executive Office's response to these complaints was to rely on counsel's advice that the acts giving rise to the alleged hostile work environment occurred in 1999, and are "stale" and beyond the statute of limitations for filing a claim with the California Department of Fair Employment and Housing and Federal EEOC. The County EEO Policy is silent on the statute of limitations.

The County Executive Office further relied on the assurance of one of the management level employees in the Human Resources Department that the allegations in 1999 were dealt with by asking the other management level employee in the Human Resources Department about the allegations. The County Executive Office was assured that the allegations were without merit. Also, the County Executive Office received four unsolicited correspondences from Human Resource personnel refuting the hostile work environment claims against the two management level employees in the Human Resources Department. Neither investigation, by the management level employee in the Human Resources Department in 1999 nor the County Executive Office in 2001, appeared to have interviewed or contacted any witnesses who could have corroborated or refuted the allegations.

Regarding the complaints of retaliation, the County Executive Office and office of the County Counsel met with the two management level employees in the Human Resources Department and directed them to respond in writing to "each and every allegation" of retaliation in the correspondence to the County Executive Office by Employee Number Four and Employee Number Five. Both responded in writing either denying the allegations of retaliation or stating they had no knowledge of the alleged incidents. Again, it appears that no witnesses were contacted or interviewed to either corroborate or refute the allegations, even though both the complainants and the respondents provided names of other parties that either witnessed or had knowledge of the incidents.

Further, the County Executive Office states that Employee Number Four has been promoted and received pay increases since the employee's initial complaint in 1999 and, therefore, has not been subject to any adverse employment actions leading to retaliation. However, the EEOC Compliance Manual states that adverse actions need not affect terms and conditions of employment to constitute retaliation. Although some courts have disagreed over whether retaliation must take the form of an ultimate employment action to be considered unlawful, the EEOC has concluded that any adverse treatment based on a retaliatory motive and is reasonably likely to deter a complainant or others from bringing a complaint is illegal, regardless of the level of harm.⁵

Regarding Employee Number Five, the County Executive Office settled the employee's complaint by granting a salary equity increase and having the employee sign the aforementioned release of any claims against the County. The County Executive Office saw this as a pragmatic decision as this cost was less than the cost of a protracted legal proceeding. This, however, does not relieve the County of its obligation under the County's EEO Policy that states, *When the County of Orange receives a complaint of discrimination, harassment or retaliation, or otherwise has reason to believe that discrimination, harassment or retaliation is occurring, it will take all necessary steps to ensure that the matter is promptly investigated and prompt, appropriate remedial action is taken whether or not the aggrieved employee files a complaint.*

Employees Number One, Two and Three did not receive any feedback on their allegation as required by the County's EEO Policy. This policy states that *complainant and the accused are entitled to know and be promptly informed at the conclusion of the investigation as to whether allegations were determined to be founded, unsubstantiated or unfounded.*

FINDINGS

Under *California Penal Code* Sections 933 and 933.05, responses are required to all findings. The 2002–2003 Orange County Grand Jury arrived at the following findings.

1. The County Executive Office did not take all necessary steps to promptly investigate the allegations of sexual harassment, hostile work environment and retaliation by Employee Number One as required by the Orange County EEO Policy.
2. The County Executive Office did not take all necessary steps to promptly investigate the allegations of sexual harassment, hostile work environment and retaliation by Employee Number Two as required by the Orange County EEO Policy.
3. The County Executive Office did not take all necessary steps to promptly investigate the allegations of sexual harassment, hostile work environment and retaliation by Employee Number Three as required by the Orange County EEO Policy.
4. The County Executive Office did not take all necessary steps to promptly investigate the allegations of sexual harassment, hostile work environment and retaliation by Employee Number Four as required by the Orange County EEO Policy.
5. The County Executive Office did not take all necessary steps to promptly investigate the allegations of sexual harassment, hostile work environment and retaliation by Employee Number Five as required by the Orange County EEO Policy.
6. At its current reporting level, the EEO Access Office does not have the independence to investigate certain management employees.

Responses to Findings 1 – 6 are required from the Orange County Board of Supervisors. Responses to Findings 1 – 6 are requested from the County Executive Officer.

RECOMMENDATIONS

In accordance with *California Penal Code* Sections 933 and 933.05, each recommendation requires a response from the government entity to which it is addressed. These responses are submitted to the Presiding Judge of the Superior Court. Based on the findings, the 2002–2003 Orange County Grand Jury makes the following recommendations.

1. An independent qualified EEO investigator conduct a thorough investigation of Employee Number One’s allegations of sexual harassment, hostile work environment and retaliation. (Finding 1)
2. An independent qualified EEO investigator conduct a thorough investigation of Employee Number Two’s allegations of sexual harassment, hostile work environment and retaliation. (Finding 2)
3. An independent qualified EEO investigator conduct a thorough investigation of Employee Number Three’s allegations of sexual harassment, hostile work environment and retaliation. (Finding 3)
4. An independent qualified EEO investigator conduct a thorough investigation of Employee Number Four’s allegations of sexual harassment, hostile work environment and retaliation. (Finding 4)
5. An independent qualified EEO investigator conduct a thorough investigation of Employee Number Five’s allegations of sexual harassment, hostile work environment and retaliation. (Finding 5)
6. Evaluate the current reporting relationship for the EEO Access Office to enable proper performance of its duties. (Finding 6)

Responses are required to Recommendations 1 – 6 from the Orange County Board of Supervisors.

Responses to Recommendations 1 - 6 are requested from the Orange County Chief Executive Officer.

BIBLIOGRAPHY

County of Orange Equal Employment Opportunity Policy and Procedures
7 Steps to Lawfully Investigate Harassment and Discrimination Complaints, presented by
Brightline Compliance LLC, October, 2001
Orange County Commitment to Equal Employment Opportunity, January, 2002 Update
EEOC Compliance Manual, May 20, 1998, The U.S. Equal Employment Opportunity
Commission

NOTES

¹ Orange County Human Resources EEO Access Office www.oc.ca.gov/hr/eoo/index.htm

² Orange County Human Resources EEO Access Office www.oc.ca.gov/hr/eoo/commit.htm

³ Orange County Human Resources EEO Access Office www.oc.ca.gov/hr/eoo/newpolicy.htm

⁴ County Executive Office Letter dated June 14, 2001 [to five employees]

⁵ EEOC Compliance Manual, Washington, D.C.: May 20, 1998, The U.S. EEO Commission