



POLICY AND PROCEDURE

SUBJECT: Fulton County Discrimination Complaint
Procedure

DATE: June 16, 2004

NUMBER: 100-41

I. Purpose and Scope of the Procedure:

A. Purpose

The purpose of the Discrimination Complaint Procedure ("Procedure") is to promote equal employment opportunities for Fulton County employees by providing a means for the internal resolution of complaints alleging discrimination on the basis of race, gender, color, religion, national origin, age (40 and over), disability, or sexual identity as prohibited by federal and state law and/or County regulations.

B. Use of the Procedure

The procedure may be used by any employee of Fulton County who believes that he or she has been discriminated against as defined in the Procedure.

C. Use of Other Internal Complaint Procedures and External Discrimination Complaint Procedures

This procedure affords the *exclusive* method for internal resolution of discrimination complaints and may, in appropriate instances, be used in conjunction with other internal discrimination complaint or grievance procedures. This procedure may be used in conjunction with external (i.e. State or Federal) discrimination complaint procedures. Therefore, this procedure is available concurrently to an employee who has filed a complaint with the U.S. Equal Employment Opportunity Commission on the same or substantially similar issue(s). Any complaint pending under this procedure may be suspended upon request (by the complainant) to the Office of Equal Employment Opportunity (EEO).

II. Definitions:

For the purpose of this procedure, the following items have the following meanings ascribed to them:

Complete Discrimination Complaint – a written statement by a specifically identified applicant, employee or former employee: 1) alleging that he or she has suffered direct injury as a result of an action by a County official or employee, which is intended to, or has the effect of, discriminating against the individual on the basis of race, gender, color, religion, national origin, age (40 and over), disability, or sexual identity; and 2) requesting that the Office of Equal Employment Opportunity (EEO) take action to resolve the discrimination. Complaints filed that raise employment concerns, but which do not allege discrimination on the basis of race, gender,

color, religion, national origin, age (40 and over), disability or sexual identity, generally will be referred to another County entity such as the Employee Relations Division of the Personnel Department or the Office of Disability Affairs for evaluation and/or resolution.

Complainant – an individual or group of individuals who file a discrimination complaint

Alleged Discriminator – the County official or employee named in a discrimination complaint as having taken the action which is the basis for the complaint

Respondent – generally, the appointing authority of the department in which the Alleged Discriminator works

Director – the Director of the Office of Equal Employment Opportunity or the Director's designated representative

Administrative Procedures – internal procedures, other than the Discrimination Complaint Procedure, for resolving employee grievances or adverse personnel actions

III. Administration of the Discrimination Complaint Procedure:

A. Responsibility for Administration

The procedure will be administered by the Director, and all records resulting from use of the procedure will be maintained by the Director with the exception of medical records protected under state and federal laws, which shall be forwarded to the Personnel Department for retention in the employee's medical file. The Director is responsible for determining compliance with all aspects of this procedure and providing information concerning the procedure specifically requested by employees.

B. Time Periods

Unless specifically stated otherwise, the time periods within this procedure refer to calendar days and not business days.

IV. Complaint Procedure

A. Filing a Complaint

An employee who believes he or she is experiencing or has experienced discrimination, may file an acceptable written statement with EEO by completing a Discrimination Complaint Form to be provided by EEO. EEO immediately will evaluate the written information provided to determine whether it has sufficient information to consider the complaint as complete.

An employee choosing to utilize this procedure is responsible for providing EEO with any and all requested information such that EEO may proceed with complaint evaluation and investigation and/or resolution attempts.

B. Administrative Closures

In a variety of circumstances, EEO may determine that a Complaint should be closed administratively. (Examples of such circumstances include, among others: 1) the Complainant's failure to cooperate in the processing of the evaluation, investigation and/or resolution of the complaint; 2) the Complainant's decision to withdraw his/her complaint; 3) the death of the Complainant, making it impossible for EEO to investigate the allegations fully; 4) the Complaint is a continuation of a pattern of previously filed complaints involving the same or similar allegations against the same Respondent, which repeatedly have been found factually or legally insubstantial by EEO; and 5) EEO's obtainment of information at any time confirming that the allegations raised by the Complainant have been resolved.

C. Time for Filing a Complaint

In order to be timely, a complaint must be filed within thirty (30) days of the last date on which the action described in the complaint occurred.

The filing date of a Complaint shall be the date that is stamped on the Complaint upon receipt by EEO.

D. Waivers

If a Complaint is not filed in a timely manner, EEO will notify the Complainant of the opportunity to request a waiver. The Director may grant a waiver of the 30 day filing requirement under any of the following circumstances:

1. The Complainant reasonably could not be expected to know the act was discriminatory within the 30 day period, and the complaint was filed within 10 days after the Complainant became aware of the alleged discrimination;
2. The Complainant was unable to file a complaint because of illness or other incapacitating circumstances during the 30 day period, and the complaint was filed within 10 days after the period of illness or incapacitation ended;
3. Unique circumstances generated by agency action have adversely affected the Complainant;
4. Other circumstances which, within the sole discretion of the Director, warrant granting the waiver.

E. Notification of Complaint Filing and Obligation to Respond

If the Director determines that the complaint is complete and is filed timely, the Director will notify the County Attorney and Respondent. Generally, EEO will issue a data request letter (DRL) to the Respondent, seeking information and documents relevant to complaint resolution. The Respondent is required to respond in writing to any DRL issued by EEO in connection with the complaint. The written response generally must be received by the Director within five (5) days of the Respondent's receipt of the DRL. Extensions will be granted at the discretion of the Director upon receipt of a written request.

F. Complaint Evaluation and Investigation

EEO shall attempt to resolve the Complainant's allegations of discrimination promptly and appropriately. Complaint evaluation and investigation generally will be completed within 60 days from the date a complaint is filed. When additional time is required, a letter may be sent by the Director notifying the Complainant and Respondent of the new time frames by which EEO anticipates completing its evaluation and/or investigation.

V. Resolution Without an Official Case Summary Report

If a complaint is resolved *during* the evaluation and investigation process, the complaint resolution letter to all parties should contain:

- ♦ the basis for the complaint (race, gender, color, religion, national origin, age (40 and over), disability, or sexual identity);
- ♦ a brief statement of the allegations;
- ♦ an explanation of the basis for EEO's determination that the complaint has been resolved; and
- ♦ a copy of any signed, written agreement that has been reached.

VI. Official Findings and/or Recommendations and Subsequent Review

Upon completion of the complaint evaluation and investigation, EEO shall issue a Case Summary Report that shall contain sufficient documentation to support its findings and conclusions.

A. When the Respondent is not the Department Head

Where the Director finds that there is reasonable cause to believe that discrimination has occurred, the Director may determine a remedy that the department head shall implement. In the event the department head disagrees with the proposed remedy, the department head shall have the right to appeal the remedy, but not the determination, made by the Director. Such appeal shall be made in writing to the County Manager within three (3) days of the issuance of the Case Summary Report. Within ten (10) days, the County Manager shall make a final decision regarding the remedy, based on a review of the findings and supporting documentation.

After the County Manager makes a decision, there is no further County review of the complaint.

B. When the Respondent is the Department Head

Where the Director finds that there is reasonable cause to believe that discrimination has occurred and the Respondent is a department head, the Director may recommend a remedy to the County Manager. Within ten (10) days, the County Manager will make a final decision regarding the remedy in the matter, based on a review of the findings and recommendations. This decision shall be issued in writing to each of the concerned parties as well as the Director.

VII. Strict Prohibition Against Retaliation

Fulton County Government strictly prohibits retaliation against: 1) any employee or citizen who opposes any act or practice they perceive to violate this policy; or 2) any employee who has made a charge, testified, cooperated, assisted or participated (in any manner) in any EEO-related investigation, proceeding or hearing. Retaliation is a separate violation, distinct from the initial, underlying discrimination allegation. Individuals engaging in retaliation shall be subject to discipline without regard to whether there has been a finding of cause in the initial complaint. Any employee who feels they have been subjected to retaliation should contact EEO immediately.

Departmental Sponsor: Office of the County Manager

Policy Review Date: June 2007

References: Minutes of the Board of Commissioners, September 15, 1999
Minutes of the Board of Commissioners, June 16, 2004

Departments Affected: All Departments and Offices of Appointed or Elected Officials