

25/09

## **EXECUTIVE ORDER NO. 2 of 2009**

**WHEREAS**, the County of Westchester provides equal opportunity to all individuals in its personnel and employment practices and actively seeks to employ and advance qualified individuals indiscriminately; and

**WHEREAS**, to further illustrate the County of Westchester's commitment regarding equal employment opportunity, Executive Order No. 5-2002 entitled "Westchester County Equal Employment Opportunity Policy" was signed, filed and has remained effective since June 2002; and

**WHEREAS**, said Executive Order prohibits discrimination on the basis of race, color, religion, age, national origin, alienage, citizenship status, ethnicity, marital status, familial status, creed, gender, sexual orientation, disability or any other basis prohibited by law; and

**WHEREAS**, by Executive Order No. 8 of 2005, the terms of Executive Order No. 5-2002 were continued and expanded to include and to protect members of the military and individuals predisposing genetic characteristics; and

**WHEREAS**, the Office of Equal Employment Opportunity/Affirmative Action has been moved from the Department of Human Resources to the Human Rights Commission, the Office of Equal Employment Opportunity/Affirmative Action has been restructured and there have been some slight modifications to the implementation responsibilities and the complaint procedures set forth in Executive Order No. 5 of 2002, without any diminution to the County policies prohibiting discrimination in all phases of employment including all terms, benefits and conditions thereof;

**NOW THEREFORE, I, ANDREW J. SPANO**, County Executive of the County of Westchester, in light of the aforementioned do hereby repeal Executive Order No. 5 of 2002, Executive Order No. 8 of 2005 and direct that the following be substituted in their place:

**Westchester County  
Equal Employment Opportunity Policy**

RECEIVED  
JUN 30 2009  
TIMOTHY C. MCNULT  
COUNTY CLERK  
COUNTY OF WESTCHESTER

### **Article I. Statement of Policy**

The County of Westchester provides equal opportunity to all individuals in its personnel and employment practices. In compliance with Federal and

New York State Human Rights Laws, and its own policies, the County of Westchester prohibits discrimination on the basis of race, color, religion, age, national origin, alienage, citizenship status, ethnicity, marital status, familial status, creed, gender, sexual orientation, disability, military status, predisposing genetic characteristics or any other basis prohibited by law, in all part-time, full-time, temporary or other employment practices including termination, promotion, compensation and other terms, conditions and privileges within County employment. Further, contractors doing business with the County are required to meet equal employment opportunity standards.

The County of Westchester actively seeks to employ and advance qualified individuals, regardless of their race, color, religion, age, national origin, alienage, citizenship status, ethnicity, marital status, familial status, creed, gender, sexual orientation, disability, or any other basis prohibited by law. To this end, all County appointing authorities are directed to hire, recruit, transfer and promote so as to reflect, in the County's workforce, the basic composition of the County's general labor force. The County monitors hiring, transfer, promotion, discharge and other personnel actions to identify and address instances of adverse impact caused by discriminatory practices. Additionally, the County examines its job specifications to eliminate unnecessary barriers to advancement on merit and fitness, and seeks the development of all members of the work force.

Responsibility for overall coordination, implementation and administration of the County's Equal Employment Opportunity and Anti-Discrimination Policy is vested with the Office of Equal Employment Opportunity/Affirmative Action. The Office is responsible for developing policies and programs to ensure that the County fully complies with the Equal Employment Opportunity Act of 1972, the New York State Human Rights Law, all other applicable State and Federal laws and regulations, and County laws and policies pertaining to equal employment opportunity and discrimination, whether expressed by legislative act or executive order.

## **Article II. Policy Objectives**

**Section 1.** To preclude discriminatory practices in all phases of employment in Westchester County government, including all terms, benefits and conditions thereof, the County is committed to nondiscriminatory and appropriate:

- A. Recruitment: including, but not limited to:
  - design and content of application forms;
  - posting of job and promotional opportunities;
  - design and content of recruitment literature to reflect the diversity of the County's population;
  - review of positions and turnover rates to identify statistically significant adverse impact and to investigate origins thereof;
  - methods and techniques used in interviewing job applicants;
  - referral agencies used by the County for the purpose of securing job applicants; and
  - maintenance of contacts with referrals from persons of color,

Hispanics, women, the disabled, mature workers and professional and trade organizations using advertisements when feasible.

- B. Selection, Appointment and Placement: including, but not limited to:
- examinations, including the distribution of test announcements and job-relatedness of recommended test components;
  - the application process from selection through appointment;
  - review of all essential job functions for jobs, and
  - provision of reasonable accommodations for otherwise qualified disabled workers and those requiring accommodations of religious beliefs and practices, if applicable and if such accommodation would not constitute an undue hardship.
- C. Classification and Compensation: including, but not limited to:
- the design, review and revision of job specifications;
  - certification of new and existing titles; and
  - monitoring of vacancies.
- D. Training, Promotion and Upward Mobility: including, but not limited to:
- internal training programs;
  - external training opportunities, including County-sponsored programs;
  - qualifications for promotion such as evaluations, oral examinations and seniority (to the extent permitted by New York State Civil Service Law);
  - granting of leaves, including leaves for further education and/or training, where appropriate;
  - promotion patterns within the County, Departments and Units;
  - upward mobility programs and the communication of these programs for all employees;
  - the development and implementation of career ladders and bridges, where feasible;
  - methods for assisting employees with career development planning; and
  - inventories of skills and abilities of employees to aid in the identification of persons to be trained and promoted, to the extent permitted by New York Civil Service.
- E. Termination, Resignation and Retirement: including, but not limited to:
- review of decisions regarding of termination, resignation and retirement;
  - conducting exit interviews; and
  - monitoring of post-termination grievances or other proceedings.

**Section 2.** The County will take measures to develop and implement an effective system to communicate the County's Equal Employment Opportunity (hereinafter "EEO policy") to employees, job applicants and residents about, inter alia:

- a. County training programs;

- b. New employee orientation sessions
- c. Yearly or other performance evaluations
- d. Periodic retraining of EEO Compliance Officers and EEO Counselors;  
and
- e. Intra-departmental yearly staff development programs

**Section 3.** To provide a procedure for addressing and resolving complaints of discriminatory conduct and harassment.

### **Article III. Implementation Responsibilities**

**Section 1. County Executive:** The County Executive has the ultimate authority and responsibility for ensuring that the objectives of the County EEO policy are met, and for enforcing Federal and State equal employment opportunity and anti-discrimination laws within County government.

Specific responsibilities of the County Executive include, but are not limited to:

1. Establishing an Office of Equal Employment Opportunity/Affirmative Action, within the Human Rights Commission with personnel necessary and appropriate to effectuate this policy;
2. Effectuating corrective action, to the extent permissible under Federal, State and County laws, collective bargaining agreements, and as otherwise deemed necessary to implement the objectives of this policy and the fact-finding determinations of the Office of Equal Employment/Affirmative Action; and
3. Reviewing and approving all goals and objectives of the EEO policy.

**Section 2. The Office of Equal Employment Opportunity/Affirmative Action:** The Office of Equal Employment Opportunity/Affirmative Action (hereafter "Office of EEO/AA") is responsible for the implementation and administration of the County's EEO policy and reports directly to the Executive Director of the Human Rights Commission.

Specific responsibilities include, but are not limited to:

1. Reviewing, on an annual basis, the goals and objectives of the County's Equal Employment Opportunity and Anti-Discrimination policy. Developing specific programs designed to achieve measurable goals and targets for submission to the County Executive for review and approval;
2. Administering the training of EEO Compliance Officers, EEO Counselors, and others as deemed appropriate;
3. Administering the complaint procedure, by:
  - a) making available at least one (1) trained EEO Compliance Officer in or for each department;
  - b) making available trained EEO Counselors to respond to complaints throughout the County;
  - c) processing, filing, monitoring and forwarding of all complaints to the appropriate parties.

- d) submitting written findings and determinations with respect to the alleged discriminatory conduct contained in complaints to the complainant, the Department and the alleged discriminator.
- 4. Communicating the County's EEO policy, internally and externally, by:
  - a) meeting with employees, organizations, and community members and their organizations;
  - b) participating in County training and orientation programs, and other public information outreach efforts;
  - c) acting as liaison between the County, as directed by the Executive Director of the Human Rights Commission, and other government agencies concerned with equal employment opportunity.
- 5. Monitoring compliance with all Federal and State EEO/Human Rights reporting requirements;
- 6. Meeting individually with department heads, as needed, to implement and administer the EEO policy, plans and programs;
- 7. Consulting with the Executive Director of the Human Rights Commission, as needed, to implement and administer EEO policy, plans and programs;
- 8. Providing annual recertification of EEO Counselors.

**Section 3. Executive Director of the Human Rights Commission:** The Executive Director of the Human Rights Commission shall provide management oversight to the program.

Specific responsibilities include, but are not limited to:

- 1. Providing administrative oversight for development and implementation of the EEO policy;
- 2. Monitoring personnel procedures and policies that relate to recruitment, classification, compensation, training, resignation, retirement and other terms, conditions and benefits of employment;
- 3. Providing staff support to assist, as necessary, with implementation of County EEO goals and objectives;
- 4. Consulting with the EEO/AA staff, as needed, on the overall policy, plan and program administration.

**Section 4. Commissioners/Department Heads/Appointing Authorities ("Department Heads"):** Department Heads are generally responsible for ensuring that the County's EEO policy is fully implemented within their departments.

Specific responsibilities include, but are not limited to:

- 1. Designating and maintaining an EEO compliance officer for their departments;
- 2. Developing and implementing a departmental EEO plan, including the annual update of said plan(s);
- 3. Disseminating the EEO policy, to their employees, on an on-going basis; and
- 4. Ensuring the implementation of any actions as determined or requested by either the County Executive or the Office of EEO/AA, with regard to attaining the goals of the EEO policy within their

department, including corrective actions.

**Section 5. EEO Compliance Officers:** EEO Compliance Officers are designated by the Commissioner/Department Head/Appointing Authority to assist her/him in the implementation and coordination of the respective department EEO policy.

Responsibilities may include:

1. Coordinating the department's annual EEO-4 report;
2. Developing and writing the EEO Plan for the department, and annual update of said plan;
3. Developing procedures to monitor the EEO Plan within the department;
4. Upon receipt, reviewing statistical work force information such as work force analysis, availability analysis, underutilization analysis, in furtherance of achieving goals of their departmental EEO policy;
5. Providing all assistance required in any Department or elsewhere.

**Section 6. EEO Counselors:** The EEO Counselors are generally responsible for the investigation and resolution of complaints of discriminatory conduct to the extent possible at the departmental level, as assigned by the Office of EEO/AA.

Specific responsibilities include, but are not limited to:

1. Investigating and counseling employees on complaints filed under the EEO policy;
2. Attending training and informational meetings on EEO policy, plans and programs;
3. Communicating EEO policy and programs to workers.

#### **Article IV. Discrimination Complaint Procedure**

##### **Section 1. Reporting of a Complaint**

**1. Obligations of Employee.** Since Westchester County has a zero tolerance policy against discrimination, employees are expected to report incidents of discrimination, whether affecting them or anyone else, as soon as possible after their occurrence.

Anyone who feels that he or she has been subjected to discrimination or other conduct which violates this policy or who has observed such conduct should immediately report the conduct to their supervisor, their Department Head, the EEO Compliance Officer assigned to their Department, or the Office of Equal Employment Opportunity/Affirmative Action (hereafter "Office of EEO/AA"). It is the employee's choice as to where to report. If the employee's supervisor or Department Head is believed to be involved in the discrimination or does not appear helpful in addressing the complaint, the employee immediately should make a report directly and promptly to the Office of EEO/AA. *At any time, any employee who would like guidance as to how to proceed in filing a complaint or who requires assistance at any time may contact the Office of EEO/AA.*

After business hours or on weekends, you may call the Office of EEO/AA at (914) 995-7710. The voice-mail is checked throughout the evening and weekends.

**2. Obligations of Supervisor.** If a complainant reports allegedly discriminatory behavior to a supervisor, or if a supervisor independently observes such behavior, the supervisor shall promptly report this information to the Office of EEO/AA, which shall assign an investigator, as described below. If the initial report by the complainant was verbal, the supervisor also must document the complaint in writing and provide that document to the Office of EEO/AA. As set forth below, the Office of EEO/AA will ensure that actions are taken to address the situation and to comply with this policy.

**Section 2. Time Frame.** A complaint regarding discrimination should be submitted as soon as possible after an alleged act of discrimination takes place. An employee's failure to promptly report discrimination may delay the investigation, make it more difficult to gather information necessary to investigate the report, and impede the County's ability to take prompt corrective action.

### **Section 3. Complaint and Investigative Process**

**1. Investigator.** Once an employee has filed either a verbal or written complaint with the appropriate supervisor, Department Head, EEO Compliance Officer or the Office of EEO/AA, an investigator will be assigned by the Office of EEO/AA and notification of the assigned investigator will be sent to the Department Head, complainant, and alleged discriminator(s). Upon receipt of said notification, Department Heads should accommodate the provision of release time for investigators, complainants, alleged discriminator(s) and relevant witnesses, as determined by the Office of EEO/AA.

Unless the complainant, the alleged discriminator, and the Office of EEO/AA agree, the investigator will not be from the same Department as the complainant or the accused employee. If the allegation of discrimination is made by or about an employee in the Office of EEO/AA, the allegation will be investigated by an official to be designated by the County Executive or his designee.

**2. Investigation.** The investigator will conduct a prompt, thorough and fair investigation. This investigation may include interviewing the parties involved and any relevant and necessary witnesses, as well as reviewing any appropriate records. The particular facts of the allegation will be examined individually, with a review of the nature of the behavior and the context in which the incident(s) occurred. Employees who have been accused of discrimination will be afforded the opportunity to offer and present information in their defense. Additionally, an employee accused of misconduct may have a union representative present while he or she is questioned regarding the allegations of the complaint, if it is likely to lead to disciplinary action.

**3. Confidentiality.** The County will make every effort to keep such

complaints confidential to the extent deemed reasonably practicable. However, a full investigation may be impossible without disclosing certain information to the person allegedly engaging in prohibited behavior, or to potential witnesses. Additionally, all records, with the exception of the Complaint, Resolution of Complaint Form, Complaint Withdrawal Form and determinations by the Office of EEO/AA and appeal determinations generally will be confidential. Disclosure thereof will be made only if authorized by the Office of the County Attorney. A party opposing disclosure may be given an opportunity to provide the County, in writing, with an explanation of why he or she opposes disclosure of any information contained in an investigative file.

**4. Investigation Report.** Upon completion of the investigation, the investigator will prepare and submit to the Office of EEO/AA a written confidential summary of the complaint, including the response and the facts of the investigation. The investigator will endeavor to complete the investigation and to submit the report within seven (7) working days, but this time may be extended by the Office of EEO/AA, as may be required by the particular circumstances of each situation.

**Section 4. Final Fact-Finding Determination of EEO/AA Office.** The Office of EEO/AA after reviewing the report, promptly will issue a final written fact-finding determination. If there is cause to believe that the County's policy against discrimination has been violated and that disciplinary or corrective action should be taken, depending on the nature and severity of the conduct, the Office of EEO/AA in the final fact-finding determination, shall, if appropriate, recommend appropriate disciplinary or corrective action.

The final fact-finding determination promptly shall be forwarded to the Head of the Department where the employee accused of misconduct is employed, to the complainant and to the alleged discriminator(s).

**Section 5. Corrective or Disciplinary Action.** Any employee who is found to have committed an act of discrimination may be subject to corrective or disciplinary action as provided by County procedures, up to and including termination.

In the event that the final fact-finding determination issued by the Office of EEO/AA includes a recommendation that disciplinary or other corrective action be taken, then the Head of the Department shall independently determine if it is appropriate to initiate a disciplinary proceeding or take other corrective action, pursuant to Civil Service Law § 75 and applicable collective bargaining agreements. If the Department Head determines that it is not appropriate to initiate a disciplinary proceeding or take other corrective action, the Department Head may contact the Office of EEO/AA to discuss the fact-finding determination.

**Section 6. Appeals.** After a fact-finding determination has been made pursuant to the sections set forth above, the complaining employee or the person who has been found to have engaged in the discriminatory behavior may appeal the decision. To ensure that the Office of EEO/AA is apprised fully of the basis for the appeal, the person appealing should submit a detailed written



memo. Such appeal must be submitted within seven (7) working days of the issuance of the final fact-finding determination. A designated Hearing Officer shall make such additional investigation as is reasonably necessary, and then, unless a longer period of time is required, within seven (7) working days after such further investigation promptly issue a written appeal recommendation. The Executive Director of the Human Rights Commission shall review such recommendation and make a final determination. A copy of the appeal determination shall be provided to the Department, the complainant and the employee accused of misconduct.

**Section 7. Monitoring.** After corrective action has been taken, the Office of EEO/AA will monitor the conduct of the employee accused of discrimination or the department in which the alleged discrimination occurred, for approximately ninety (90) days to ensure compliance with the proposed recommendation, to prevent subsequent acts of discrimination or misconduct, and to prevent retaliation. (The employee who reported the discrimination can request a longer period of oversight.)

**Section 8. False Complaints.**

An employee who in bad faith makes a false complaint or statement, whether during an investigation or otherwise, is subject to disciplinary action.

**EFFECTIVE DATE**

This Executive Order shall supersede all previous orders. It shall be effective immediately, shall be disseminated to all employees, and shall remain in full force and effect until otherwise superseded or revoked.

  
Andrew J. Spano  
County Executive

Dated: June 30, 2009  
White Plains, New York

