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March 28, 2023

Honorable Board of Supervisors
County of Ventura
800 South Victoria Avenue
Ventura, California 93009

SUBJECT: Receive and File the Report on Human Resources Policies and Complaint Investigation Procedures

RECOMMENDATION: Receive and file the enclosed audit report.

FISCAL/MANDATES IMPACT: None.

DISCUSSION:

On March 22, 2022, in response to the resignation of the prior County Executive Officer, your Board moved to approve the review of current Human Resources (HR) policies, processes, and reporting mechanisms involving the Employee Complaint Resolution process (used by employees who believe they have experienced events involving discrimination or harassment) and whistleblower protections to determine if such policies and processes need to be refined. Your Board further authorized the Auditor-Controller to audit the controls in place, to oversee such policy and process review, and to contract with an independent consultant for the review.

The Auditor-Controller's Office requested audit proposals from seven (7) independent firms and received two (2) proposals. The Auditor-Controller selected the firm of Ford & Harrison LLP (FordHarrison), a labor and employment law firm with a national practice, to conduct the audit. Since 1978, FordHarrison has worked with many of the nation's government and private employers to reduce the risks associated with employee claims and ensure compliance with federal, state, and local employment laws and regulations.

The audit scope was divided into two phases:

- Phase 1 – Review HR policies and procedures related to the Employee Complaint Resolution Process and whistleblower protections as requested by your Board.
- Phase 2 – Review HR practices related to the County Executive Office (CEO) (e.g., hiring and promotions of CEO staff, and reclassifications of CEO positions).

Honorable Board of Supervisors

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Phase 1 of the audit has been completed and is attached as Exhibit 1. FordHarrison concluded that, overall, the County could benefit from a comprehensive review of its employee policies and implementation of standard operating procedures in its investigations and resource trainings. The report contains 61 recommendations: 1 related to required compliance and 60 related to best practices.

CEO-HR management provided written responses that have been incorporated into the audit report. Although CEO-HR management disagreed with some recommendations, CEO-HR management agreed, in general, to implement actions to address the audit recommendations. For example, CEO-HR will engage a firm that is an expert in public sector practices to conduct a comprehensive review of the County's employment policies and will incorporate specific changes recommended by the firm, mindful of the recommendations made by FordHarrison and upon review by County Counsel. Management action follow-up scheduled for March 31, 2024.

In accordance with County Administrative Policy No. Chapter VII(A)-6, *County Auditing*, the CEO will evaluate HR's progress on completing corrective action. The CEO will provide the results to the Auditor-Controller for scheduling a potential follow-up audit.

This letter has been reviewed by the County Executive Office and County Counsel. If you have any questions, please call me at (805) 654-3151.

Sincerely,



JEFFERY S. BURGH
Auditor-Controller

Exhibit 1 – Audit Report: Phase I – Review of Current HR Policies and Complaint Investigation Procedures

cc: Sevet Johnson, Psy.D., County Executive Officer
Shawn Atin, Assistant County Executive Officer/Human Resources Director
Tiffany North, County Counsel

Writer's Direct Dial:

CONSUELA A. PINTO
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MEMORANDUM

TO: Jeffery Burgh
Auditor-Controller
County of Ventura

FROM: Consuela Pinto
Danielle Pierre
Grace Kim
FordHarrison LLP¹

Jerry Glass
Jeffrey Bennett
F&H Solutions Group

DATE: December 14, 2022: Original Draft Report Provided to the County
February 16, 2023: Comments Received from CEO/HR
March 1, 2023: FH/FHSG Submit Final Report
March 16, 2023: Final Comments from CEO/HR Received
March 20, 2023: Final Report Submitted

RE: **Phase I – Review of Current HR Policies and Complaint Investigation Procedures**

EXECUTIVE SUMMARY

Ford Harrison and F&H Solutions Group were retained to conduct a comprehensive phased assessment of a sampling of Ventura County's (hereinafter, "the County") human resource policies and employee complaint procedures and practices.

Overall, the County's employment policies reviewed by the Audit Team are generally baseline compliant. The policies should be revised to address and account for the vast protections under California law. In addition, the policies serve as a means for employees to understand and follow the law and the County's internal expectations for employee conduct. By revising the policies, the County and its employees will be in a better position to engage with each other in accordance with the County's position on anti-discrimination, and foster a more trusting environment, particularly as it relates to upper management.

Through this audit we also identified several key components for implementation in the County's investigative and training processes. Specifically, we found that there is a need for standardization of process and procedure in: (1) the receipt and review of complaints; (2) processing of complaints; (3)

¹ Consuela Pinto is barred in Washington, D.C. and Maryland. Danielle Pierre is barred in New Jersey, New York and Washington, D.C. Grace Kim is barred in California.

complaint investigations; (4) transparency with respect to the stages of the investigative process, timing, deliverables, and instructions for contacting the investigator assigned to the matter; and (5) the manner in which investigations are closed and results are communicated.

The County could benefit from a comprehensive review of its employee policies and implementation of Standard Operating Procedures in its investigations and resource trainings.

SCOPE OF THE ASSESSMENT

This memorandum encompasses our analysis and assessment of Phase I of the audit – “Review of Current Human Resources Policies and Complaint Investigation Procedures.” Specifically, in Phase I, the following human resources policies, and their related procedures, were reviewed:

1. Code of Ethics²
2. Equal Employment Opportunity Plan
3. Sexual Harassment Policy
4. Whistleblower Policy
5. Respectful Workplace Policy
6. Harassment, Discrimination and Retaliation Prevention Policy
7. Social Media Policy
8. Workplace Violence Policy

In addition, we conducted nineteen comprehensive and substantive interviews of key Human Resources personnel and related management and non-management employees in an effort to assess, among other things, the breadth and consistency in application, and effectiveness of the County’s complaint processing and investigative procedures with regard to the above referenced policies.

FINDINGS

1. Human Resources Policy Assessment

Workplace policies serve two main purposes: (1) provide notice of the organization’s expectations with respect to how work is performed and how employees and managers conduct themselves in the workplace; and (2) establish consistent and clear standards for addressing issues that may arise in the workplace. As a general matter, the policies provided by the County could benefit from a comprehensive review and update to bring them in line with best practices and to provide additional detail with respect to prohibited conduct; however, in most cases the policies helpfully include an avenue for reporting alleged violations or the potential repercussions for an employee’s failure to comply with the policy.

1.01 Code of Ethics

Analysis

This policy was last updated in 2018. The stated purpose is to establish “standards of conduct and to delineate the ethical responsibilities of the public service for the guidance of all employees.” The ethical responsibilities in this one-page policy are generally described and include addressing corruption,

² While County Counsel does not consider the Code of Ethics a Human Resources Policy, auditors were nonetheless asked to review the Code and provide feedback.

refraining from disclosing confidential information, and safeguarding the organization's assets. It also mentions that discrimination is prohibited as is the acceptance of gratuities. The policy also references other ethics – related policies.

“Best Practices” Recommendations

1. Update policy to include a complete list of the standard of ethics to be upheld, a conflict of interest provision, procedure(s) for reporting potential ethical concerns/violations, and confirmation that employees reporting potential violations will be protected from retaliation. To be clear, we are recommending that the County develop a single stand-alone document that includes all ethics obligations. To the extent different rules apply to different positions or levels of authority within the County, then we recommend a comprehensive ethics manual that references positions to which each policy applies.
2. The anti-discrimination provision is out of place in this policy. However, if the County chooses to retain this provision, it should revise the policy to include all protected categories under the California Fair Employment and Housing Act (FEHA).
3. The policy references various ethics trainings, but we recommend that the County confirm that employees' ethics obligations are not limited to corruption, disclosure of confidential information, and safeguarding of assets. For clarity the policy should include examples of prohibited conduct.
4. Amend the policy to include procedures for reporting potential ethical concerns or conflict of interest considerations for public sector employees.
5. Include a statement of the potential ramifications associated with violating this policy.
6. Implement an anti-nepotism policy discouraging managers and supervisors from fraternizing or becoming romantically involved with a subordinate employee in their chain-of-command or with any non-management employee. This is to avoid misunderstandings, complaints of favoritism, possible claims of sexual harassment, and employee morale and dissention problems that can potentially result from personal or social relationships involving managerial and supervisory employees. A standalone policy is also acceptable. To the extent obligations vary by role or level, the policy should address such nuances.
7. The gift policy does not include a procedure for reporting misconduct. It is a best practice that where employees are expected to report a violation of any type, the policy includes the mechanism for reporting. If employees have to go to a separate document to identify the appropriate reporting mechanism they are less likely to follow through.
8. Include an affirmative ethics statement. For example: “The County expects its employees to conduct their job duties according to the highest ethical standards of conduct and to comply with all applicable laws. This policy is intended to increase awareness of potential conflicts of interest and establish a procedure for reporting them.”
9. Include a reference to applicable personnel rules governing outside employment. If possible, summarize the key points in plain language and identify where the rules can be accessed.

10. Include an Acknowledgement page for employee signature at the end of the policy for employees to acknowledge their receipt and review of the policy.

CEO-HR Management Action

Response to 1.01 “Best Practices Recommendations” Nos. 1-10: Partially Agree. The County Executive Office-Human Resources (CEO-HR), in collaboration with County Counsel, will engage a firm that is an expert in California law and public sector practices to conduct a comprehensive review of the County’s employment policies inclusive of the Code of Ethics Policy. CEO-HR will incorporate specific changes recommended by the firm, mindful of the recommendations made by FordHarrison and upon review by County Counsel.

Response to 1.01 Code of Ethics “Best Practices” Recommendation 1: Disagree. The County has 10,000 employees, 26 agencies and departments, and over 1,200 job classifications with responsibilities in significantly varied fields such as safety, healthcare, and numerous analytical specialties. Each agency and department is expert and best situated to develop a customized Code of Ethics, while the County’s Code of Ethics is intended to be broad in scope.

Response to 1.01 Code of Ethics “Best Practices” Recommendation 6: Partially Agree. The County has an anti-nepotism policy as articulated in the Personnel Rules and Regulations Section 1005 which prohibits the employment of relatives. This policy can be broadened to discourage (as recommended) romantic relationships between managers and subordinate employees. However, the recommendation to discourage fraternization with “a subordinate employee in their chain of command or with any non-management employee,” is overbroad and would be very difficult to enforce.

1.02 Equal Employment Opportunity Plan

Analysis

The most recent policy statement is the cover page to the County’s 2021-2023 EEO Plan. This policy does not align with California’s recently updated equal employment opportunity (EEO) laws. Specifically, this EEO plan:

1. Does not include all protected categories under FEHA. Specifically, the following protected categories are not listed: ancestry, physical disability, and mental disability. *See* Cal. Gov’t Code § 12940.
2. Cal. Gov’t Code § 12926, known as the Crown Act, was signed by Governor Newsom on August 20, 2019 and was effective January 1, 2020. The Crown Act redefines “race” to be inclusive of traits historically associated with race, including, but not limited to hair texture and protective hairstyles such as braids, locks, and twists. The County’s EEO policy included in its 2021-2023 EEO Plan does not reflect amendments called for by the Crown Act.
3. Does not adhere to California regulations for dissemination of the policy:
 - a. The policy must be disseminated in the following manner: *See* Cal. Code Regs. Title 2 § 11023(c)

- i. Printing and providing a copy to all employees with an acknowledgment form for the employee to sign and return;
 - ii. Sending the policy via e-mail with an acknowledgment return form;
 - iii. Posting current versions of the policies on a County intranet with a tracking system ensuring all employees have read and acknowledged receipt of the policies;
 - iv. Discussing policies upon hire and/or during a new hire orientation session; and/or
 - v. Any other way that ensures employees receive and understand the policies.
4. It is a best practice to indicate whether the policy is applicable to employees who are subject to a collective bargaining agreement. The current policy does not include this point.
 5. Does not indicate compliance with the provisions of the Americans with Disabilities Act (ADA) or the California Pregnancy Disability Leave Law (PDL), and does not address reasonable accommodation procedures/policies in compliance with applicable laws. A cross reference to the County's ADA policy is recommended.

“Best Practices” Recommendation

1. A standalone EEO policy is recommended. Employees are likely to gloss over a document with a generic title of “Policy Statement” and which is primarily comprised of the County's EEO Plan.
2. Since the County maintains a separate ADA accommodation policy, the EEO policy should include a cross-reference to the ADA policy.

CEO-HR Management Action

Response to 1.02 Equal Employment Opportunity Plan “Best Practices” Recommendations #1 and #2: Partially agree. CEO-HR, in collaboration with County Counsel, will engage a firm that is an expert in California law and public sector practices to conduct a comprehensive review of the County's employment policies inclusive of the Equal Employment Opportunity Plan Policy. CEO-HR will incorporate specific changes recommended by the firm, mindful of the recommendations made by FordHarrison, and upon review by County Counsel.

Response to 1.02 Equal Employment Opportunity Plan Analysis #1 and #2: Partially disagree. The Crown Act amended Government Code section 12926 to add traits historically associated with race, including hair texture and protective hairstyles, to the definition of race but does not require any specific changes to the County's EEO plan or policies. The County's Equal Employment Opportunity policy complies with all legal requirements. We agree with FordHarrison that a revision to the policy which provides additional details and clarification will be beneficial.

Response to 1.02 Equal Employment Opportunity Plan Analysis #3: Disagree. The County complies with California regulations, which require dissemination using any one or more of the methods listed.

1.03 Sexual Harassment Policy

Analysis

This policy does not sufficiently define and outline sexual harassment:

1. There is no discussion of the nuanced characteristics or “quid pro quo” or “hostile work environment” sexual harassment; and
2. The policy does not address its applicability to conduct outside of the workplace and on social media, the irrelevance of gender, third-party liability, and retaliation.

The policy also does not mention that any employee who engages in prohibited harassment may be held personally liable for monetary damages.

The policy does not indicate a period to time for completion of sexual harassment training, as is required under the law.

In addition, there is no indication of whether the County conducts a “stand-alone” sexual harassment training. California law requires employers to provide training for supervisory and nonsupervisory³ employees. See Cal Gov’t Code § 12950.1.

Further, the “Procedure” section is vague; specifically, the section:

1. does not define: (1) its preventative “reasonable steps” or (2) “reasonable grounds”;
2. does not indicate how (method/manner) to report to Human Resources, or how HR will process the report; and
3. does not provide an anonymous method of reporting or indicate the County’s position on confidentiality, anti-discrimination, or anti-retaliation in relation to reporting sexual harassment.

“Best Practices” Recommendation

1. Define and outline the nuanced characteristics of “quid pro quo” and “hostile work environment” sexual harassment.
2. Expand examples of prohibited conduct constituting sexual harassment.
3. Expand the “reach” of the policy to include interns, volunteers, applicants, and independent contractors.
4. Review current content of stand-alone sexual harassment training and related materials to confirm they are in compliance with current state law, and include a statement that

³ The Department of Fair Employment and Housing provides sexual harassment training (supervisory and nonsupervisory) for free in English, Spanish, Korean, Vietnamese, Tagalog, and Chinese. See <https://civildrights.ca.gov/shpt/>.

employees are required to complete the training within a particular timeframe and/or interval.

- a. For example -- state that all employees must participate in sexual harassment training within six months of obtaining a position with the County and then every two years from the date of completion of the last training. Individuals with supervisory responsibilities must complete a two-hour training session and all non-supervisory employees must complete a one-hour training session.
5. Due to the sensitive nature of these claims, the policy should include assurances of anonymity, to the extent possible, confidentiality, anti-discrimination, and anti-retaliation. In addition, the policy should inform employees that the County should maintain appropriate documentation and tracking to ensure reasonable progress towards a timely closure. Also, at the close of the investigation, the County should inform the complaining party, responding party, and any witnesses of the results of the investigation, subject to privacy concerns.
 - a. In addition, the policy should outline an appeals process and option for filing external complaints.
 - b. Include internal complaint procedure and provide contact information.
 6. Develop an anti-retaliation policy for reporting sexual harassment internally or externally with the California Civil Rights Department or EEOC.
 7. Update policy to include language indicating that the County does not consider conduct in violation of this policy to be within the course and scope of employment or the direct consequence of the discharge of one's duties.
 8. Update policy to include a statement that to the extent permitted by law, the County reserves the right not to provide a defense or pay damages assessed against employees for conduct in violation of this policy.
 9. Update policy to include language that employee training time is compensable time and employees are required to report such time on their timesheet.
 10. Update policy to include language that employees who refuse to cooperate in the County's training will be subject to disciplinary action, up to and including termination of employment.
 11. Revise policy to include explanation for individual liability for harassment claims.
 12. Include an Acknowledgement page for employee signature at the end of the policy for employees to acknowledge their receipt and review of the policy.

Required Recommendation

1. Incorporate language outlining the legal remedies and complaint process available through California Civil Rights Department and the EEOC, as well as how to contact both.

CEO-HR Management Action

Response to 1.03 Sexual Harassment Policy “Required Recommendation” and “Best Practices” Recommendations: Partially agree. CEO-HR, in collaboration with County Counsel, will engage a firm that is an expert in California law and public sector practices to conduct a comprehensive review of the County’s employment policies, inclusive of the Sexual Harassment Policy. CEO-HR will incorporate specific changes recommended by the consultant, mindful of the recommendations made by FordHarrison, and upon review by County Counsel.

Response to 1.03 Sexual Harassment Policy Analysis 1: Disagree. The policy does outline conditions constituting quid pro quo and hostile work environment sexual harassment situations.

Response to 1.03 Sexual Harassment Policy Analysis: Disagree with the statement in the Analysis that suggests that the County does not conduct a “stand-alone” sexual harassment training. In a prior correspondence, FordHarrison has noted that they had not reviewed the County’s training materials; their conclusion was based on interviews and review of policies. In fact, the County conducts sexual harassment training that complies with the requirements of California law.

Response to 1.03 Sexual Harassment Policy “Best Practices” Recommendation 7: Disagree. This recommendation, as phrased, is too broad. While the County can state that it does not condone harassing conduct, the determination of whether an act is within the course and scope of employment or the direct consequence of the discharge of one’s duties is a matter of legal determination based on the facts and circumstances of each situation. The County cannot as a matter of policy make the blanket statement recommended by FordHarrison.

1.04 Whistleblower Policy

Analysis

This policy incorporates only some of the key protections under California law. The Labor Code prohibits retaliation against employees who:

1. disclose information to a government or law enforcement agency, a person with authority over the employee, or another employee who has the authority to investigate, discover, or correct what the employee reasonably believes is a violation or noncompliance with law;
2. provide information to, or testify before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of a state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties;
3. refuse to participate in an activity that would result in a violation of local, state, or federal law; or
4. exercise any of these rights in any former employment.

See Cal. Lab. Code § 1102.5(b), (c), (d).

Additionally, the policy limits the definition of a whistleblower to an employee who “engages in good faith disclosure of alleged wrongful conduct...” The standard extends to (1) an employee who has “*reasonable belief*” of a wrongful conduct, even if it is not actually wrongful, and (2) an employee who “*perceives*” he/she may have disclosed this type of information even if the employee actually did not.

Moreover, Labor Code §1102.5 prohibits retaliation against an employee for disclosing this type of information or because the employer **believes** the employee may disclose this type of information — even if the employee has not actually done so. An employee is protected from retaliation when the employee has **reasonable cause** to believe that the information discloses a violation of state or federal statute, or a violation or noncompliance with a local, state or federal rule or regulation.

Moreover, the “Procedure” section of the policy is vague. The policy instructs employees to either disclose orally, in writing, or through one of the County’s hotlines, but the difference between the two Hotlines is not adequately explained.

“Best Practices” Recommendation

1. Revise Policy to include missing information identified above and expand the definition of “alleged wrongful conduct.” Additionally, include a reference to the required poster titled Whistleblowers are Protected (<https://www.laborposters.org/california/52-california-whistleblower-poster.htm>).
 - a. As noted above, the County’s disclosure and investigation processes, generally, need to be revised. If the County would prefer employees utilize the hotlines, the County must clearly delineate their function, as well as, provide avenues for external complaints and the applicable contact information. The policy states that employees will not be subject to adverse personnel action for reasonable belief disclosures of “alleged wrongful conduct.” But, the Hotline naming is confusing. The County maintains an Employee *Misconduct* Hotline for reporting “misconduct or discourteous treatment” and an Employee *Fraud* Hotline for reporting “fraud, waste, or abuse.” The definitions of both should be expanded to provide clarity.
 - b. Thus, in streamlining the options for employees, the policy could outline the employees’ options for contact:
 - i. Immediate supervisor or, if the conduct involves the employee’s immediate supervisor, the next level above the employee’s direct supervisor.
 - ii. A supervisor or manager in another department.
 - iii. The HR Department.
 - iv. The County’s internal complaint hotline: [xxx-xxx-xxx].
2. Include language in the policy directing employees to where the required poster is located on-site and/or on the County’s website.
3. Include an Acknowledgement page for employee signature at the end of the policy for employees to acknowledge their receipt and review of the policy.

CEO-HR Management Action

Response to 1.04 Whistleblower Policy “Best Practices” Recommendations: Partially agree. CEO-HR, in collaboration with County Counsel, will engage a firm that is an expert in California law and public sector practices to conduct a comprehensive review of the County’s employment policies, inclusive of the Whistleblower Policy. CEO-HR will incorporate specific changes recommended by the firm, mindful of the recommendations made by FordHarrison and upon review by County Counsel.

The County’s Whistleblower policy complies with all legal requirements. We will also consult with the Auditor-Controller and County Counsel to determine options in terms of how to streamline the process by which employees can report complaints and the applicable content information.

1.05 Respectful Workplace Policy

Analysis

The policy appears to outline the County’s standards for maintaining a respectful workplace. While the policy appropriately includes insults, bullying, abuse, among others, it does not incorporate policy language against workplace violence. The policy can be improved by including language that is more comprehensive with respect to violence, including a provision that prohibits weapons such as guns and knives in the workplace. To this end, here are suggested examples to include:

- Threats or acts of physical or aggressive contact directed toward another individual;
- Aggressive or hostile acts such as shouting, using profanity, throwing objects at another person, fighting, or intentionally damaging a coworker’s property;
- Bullying, intimidating, or harassing another person (for example, making obscene phone calls or using threatening body language or gestures, such as standing close to someone or shaking your fist at them);
- Behavior that causes another person emotional distress or creates a reasonable fear of injury, such as stalking.
- Assault;
- Threats or acts of physical harm directed toward an individual or the employee’s family, friends, associates, or property;
- The intentional destruction or threat of destruction of Company property or another employee’s property;
- Surveillance;
- Veiled threats of physical harm or similar intimidation; and,
- Any conduct resulting in the conviction under any criminal code provision relating to violence or threats of violence that adversely affects the Company’s legitimate business interests.

This list is illustrative only and not exhaustive. No form of workplace violence will be tolerated.

The “Expectations” set forth in the policy are directed to the Director of Human Resources, who is tasked with providing: avenues of relief; training; and access to information and resources. However, the policy

does not state whether these three resources have been implemented and if so, how they can be accessed.

“Best Practices” Recommendation

1. Revise policy to include, at a minimum:
 - a. examples of discourteous treatment as described in the current draft;
 - b. reference social media;
 - c. an expanded “Contact Information” section to include phone numbers and/or emails for all identified resources;
 - d. state how to access relevant training and how often employees, including managers, must complete the training; and
 - e. include links to educational resources.
2. Expand policy to include contract workers, temporary workers and anyone else conducting County business on the County’s property.
3. Amend policy to include a cross reference to the Workplace Violence Policy.
4. Include an Acknowledgement page for employee signature at the end of the policy for employees to acknowledge their receipt and review of the policy.

CEO-HR Management Action

Response to 1.05 Respectful Workplace Policy “Best Practices” Recommendations: Partially agree. CEO-HR, in collaboration with County Counsel, will engage a firm that is an expert in California law and public sector practices to conduct a comprehensive review of the County’s employment policies, inclusive of the Respectful Workplace Policy. CEO-HR will incorporate specific changes recommended by the firm, mindful of the recommendations made by FordHarrison, and upon review by County Counsel.

1.06 Harassment, Discrimination and Retaliation Prevention Policy

Analysis

While this policy more closely reflects California’s expansive protected categories, it is not in compliance with recent amendments. The policy does not define and explain key terms and the responsibilities of the parties. Specifically, the policy must be revised to:

1. accurately reflect all persons “covered” by the law;
 - a. unpaid interns, volunteers, applicants, and independent contractors from harassment by coworkers, supervisors, managers, and third parties. See Cal. Gov't Code §12940(j)(1); Cal. Code Regs. Title 2, §§ 11019(b)(1) and 11023(b)(3);
2. define any of the key terms (i.e., discrimination, harassment, retaliation);

3. discuss supervisor liability;
4. discuss individual liability for harassment claims; and
5. expressly state that discrimination, harassment, and retaliation are strictly prohibited.

Moreover, the complaint procedure does not adequately describe:

1. how to make a complaint;
2. the investigation process;
3. timing of the investigation;
4. assurances of confidentiality and anti-retaliation for opposing harassment, discrimination, retaliation or filing or lodging a complaint with, or otherwise participating in an investigation, proceeding, or hearing conducted by the County, the California Civil Rights Department, or EEOC; or
5. process of closing the investigation (i.e. The County will consider appropriate corrective action, as well as inform the complaining party and the responding party of the results of the investigation.).

“Best Practices” Recommendation

1. Revise policy to clearly outline California law on anti-harassment, discrimination, and retaliation.
2. As noted above, the County’s disclosure and investigation processes, generally, need to be revamped. County should develop a standard operating procedure for investigating internal complaints. An SOP would streamline the investigation process and create uniformity across agencies.
3. Include both internal complaint procedure and external complaints to California Civil Rights Department and EEOC and provide contact information.
4. Include an Acknowledgement page for employee signature at the end of the policy for employees to acknowledge their receipt and review of the policy.

CEO-HR Management Action

Response to 1.06 Harassment, Discrimination and Retaliation Prevention Policy “Best Practices” Recommendations: Partially agree. CEO-HR, in collaboration with County Counsel, will engage a firm that is an expert in California law and public sector practices to conduct a comprehensive review of the County’s employment policies, inclusive of the Harassment, Discrimination and Retaliation Prevention Policy. CEO-HR will incorporate specific changes recommended by the firm, mindful of the recommendations made by FordHarrison, and upon review by County Counsel.

The County's Harassment, Discrimination, and Retaliation Prevention policy complies with all legal requirements, but we agree that a revision that provides additional details and clarification may be beneficial.

With regard to Response to 1.06 Harassment, Discrimination and Retaliation Prevention Policy Analysis, Items 2, 3, and 5, above: Partially agree. FordHarrison has suggested in prior correspondence that the following could be added, "employee complaints are evaluated on a case-by-case basis. Upon submitting [receiving?] a complaint, HR personnel will contact the employee within X number of days." We agree that this level of detail is appropriate in the policy.

1.07 Social Media Policy

Analysis

Given the social media culture and its presence in the workforce among employees, the County's policy is too narrow. As drafted, the policy only applies to employees who are authorized on behalf of the County to make social media posts. In addition, the policy only addresses specifically authorized content to be posted on social media. While the policy mentions unauthorized comments made by employees, it is too general. For instance, it is acceptable to prohibit employees from using the County's social media to discuss the County's confidential and/or proprietary information, or to sexually harass other employees. However, prohibiting employees from discussing "non-public" information is considered unlawfully overbroad by the National Labor Relations Board because it could be interpreted to prohibit discussion of wages. Moreover, knowing who to contact is an important aspect of employee policies.

Additionally, this policy does not address who to contact in the event an employee is asked to make a public statement about the County. It is important to note that employees have the right to discuss working conditions during non-work times and in non-work areas. A policy that prohibits employees from posting to social media with their personal cell phones during breaks may be considered unlawfully overbroad.

"Best Practices" Recommendation

Update Social Media Policy to:

1. Reduce employees' expectation of privacy for use of employer-owned devices or accounts and for access during working time.
2. Provide advance notice of any monitoring practices by the County, and a clear and specific explanation of the County's monitoring practices, if applicable. Monitoring should be done in a reasonable manner that protects the company's legitimate business interests.
3. Include language indicating that the employees have a right to discuss the terms and conditions of their employment, such as discussions regarding wages and working conditions.
4. Avoid broad language that prohibits employees from discussing "inappropriate," "unprofessional" or "disparaging" information about the County on social media sites without providing specific examples.
5. Discourage "friending" on social network sites between supervisors and employees.

6. Include a “savings clause” which clearly states that nothing in the policy is intended to limit the employees’ right to discuss the terms and conditions of employment or engage in activity protected by state or federal law.
7. Include an Acknowledgement page for employee signature at the end of the policy for employees to acknowledge their receipt and review of the policy.

CEO-HR Management Action

Response to 1.07 Social Media Policy “Best Practices” Recommendations: Partially agree. It is unclear what policy is being referenced. However, the County’s Technology Use policies comply with all legal requirements and are appropriate for a public entity, but we agree that a revision to provide additional details and clarification may be beneficial.

Response to 1.07 Social Media Policy Analysis: Partially disagree. The policy at issue is an Information Technology policy and not a Human Resources policy. It is intended only to apply to County social media sites and those employees who are directed and authorized to post on those sites on behalf of the County. Accordingly, the County may limit what may be stated, including prohibiting discussion of “non-public” information. This policy does not apply to public comment, including comment by members of the public who are County employees, that may be made in response to the County’s posted material.

Response to 1.07 Social Media Policy “Best Practices” Recommendation 1: Disagree. This item is clearly stated in the Employee Technology Use Policy.

Response to 1.07 Social Media Policy “Best Practices” Recommendations 4, 5 and 7: Disagree. Recommendations 4, 5 and 7 are inappropriate for the policy reviewed. The policy that was reviewed is not a broad social media policy applicable to all employees. Rather, as stated above, the policy applies only to employees who work on official County social media as part of their jobs. Accordingly, the policy can limit what type of language such employees can use in that context. Moreover, the County does not have a policy that applies to employees’ personal social media accounts. If the County had such a policy, recommendation 5 would be problematic. Indeed, any effort by the County to place limits on employees’ use of their personal social media would raise Constitutional issues.

1.08 Workplace Violence Policy

Analysis

This policy is framed in terms of what the County Executive Office “will” do, rather than what it has done to prevent workplace violence.

“Best Practices” Recommendation

1. Enhance the basic definition of “workplace violence” included in the policy by providing examples of the type of conduct that is considered workplace violence. Such examples include:
 - a. Displaying aggressive or hostile behavior that creates a reasonable fear of injury to another person or subjects another individual to emotional distress.

- b. Intentionally damaging County property or property of another employee.
 - c. Possessing a weapon while on company property or while on county property, without authorization.
 - d. Committing acts motivated by, or related to, sexual harassment or domestic violence.
2. Add procedure for reporting concerns related to workplace violence and confirm that the County will take immediate action to investigate.
 3. State who is covered by the policy – all employees regardless of position, visitors, contractors, vendors, etc.
 4. Include language indicating that that the policy also applies to off-site County sponsored events, when using County vehicles, and during travel related to County business.
 5. Include an Acknowledgement page for employee signature at the end of the policy for employees to acknowledge their receipt and review of the policy.

CEO-HR Management Action

Response to 1.08 Respectful Workplace Violence Policy “Best Practices” Recommendations: Partially agree. CEO-HR, in collaboration with County Counsel, will engage a firm that is an expert in California law and public sector practices to conduct a comprehensive review of the County’s employment policies, inclusive of the Workplace Violence Policy. CEO-HR will incorporate specific changes recommended by the firm, mindful of the recommendations made by FordHarrison, and upon review by County Counsel.

Response to 1.08 Workplace Violence Policy “Best Practices” Recommendations: Partially agree. The County’s Workplace Violence Policy complies with all legal requirements, but we agree that a revision that provides additional details and clarification may be beneficial.

2.0 Complaint Investigation Assessment

Investigating and responding effectively to employee complaints of alleged misconduct is not only critical to an organization’s ability to correct policy violations, but is essential to maintaining an inclusive work environment that is free from discrimination, harassment, and other unlawful/undesirable behavior. Ventura County employs more than 10,000 people, and in order to respond to employee complaints, the organization has several employees, who we interviewed, who are trained to conduct workplace investigations and do so frequently. However, based on those interviews, as well as our review of certain complaint/investigation files selected by the County, a formal training program is recommended to create best practice investigation methods, especially in situations where the initial complaints are vague, or do not include witness corroboration of the alleged misconduct, as well as anonymous complaints.

CEO-HR Management Action

Response to 2.0 Complaint Investigation Assessment: Agree. We plan to examine multiple providers in order to enhance existing formal training opportunities.

2.01 Organizational Changes

Analysis

Similar to both private and public sector organizations, a direct reporting relationship may be maintained between the Human Resources Director and the County Executive Officer. However, the human resources function itself should be organized separately, including a physical office location that is separate from the Executive Office. The human resources function interacts with every other department within the County of Ventura, and needs to stand alone as its own function. Keeping the human resources function separate lowers the potential for conflict of interest and bias, and could serve to foster trust amongst County employees that Human Resource investigations are conducted without improper input from outside parties.

“Best Practices” Recommendation

1. Consider removing the Human Resources function from the CEO’s Office. The County should assess the impact of such as change to their organizational structure, and determine if a new location for the HR Department is necessary.
2. The County should also consider adding an independent Ombudsman, recognizing financial and organizational resources may be limited.
3. Promote/enhance Diversity, Equity, and Inclusion initiatives, including defining the new relationship between the DEI Officer and the Human Resources function and leadership. Consider appropriateness of assistance in this effort by the CEO. While there is a correlation between DEI and HR, the DEI function should be enhanced to conduct its own training, and engage in other organizational initiatives to promote the culture of the County and ensure that employees are treated equitably. The DEI function plays a vital role in organizational change, especially when considering the diversity that exists within Ventura County, and the citizens that the County supports.

CEO-HR Management Action

Response to 2.01 Organizational Changes “Best Practices” Recommendations 1 and 3: Partially agree. The County Executive Office continues to assess the County’s organizational structure. To date, the need has not arisen to make such a change. We agree that the DEI and HR functions should closely partner and collaborate.

Response to 2.01 Organizational Changes “Best Practices” Recommendation 2: Disagree. We find no evidence of the establishment of an ombudsman position as a best practice within comparable California agencies. CEO-HR relies heavily on County Counsel for legal advice in resolving complaints. Most complaints are the result of interpersonal conflicts and often do not reach the threshold of policy or legal violations. For this reason, we have established the Employee Relations & Resolution (ERR) program to use organizational development interventions in order to improve strained relationships.

2.02 Workplace Investigations

Analysis

During the interviews, employees expressed concerns that workplace investigations were not thoroughly completed, and that the timeline for these investigations was not made clear. In addition, concerns were raised regarding the integrity and outcomes of workplace investigations. While we recognize that many investigations present certain challenges, a formal documented procedure is necessary to ensure that investigations are not only assisting in the discovery of employees and managers who may engage in workplace misconduct, but to also ensure that the culture at Ventura County is conducive to employees achieving the mission and objectives of the organization, free of harassment, discrimination, and other illegal conduct, and to ensure that a respectful workplace is maintained.

Moreover, interviews and a review of certain complaint investigation files provided by the County uncovered that the overall investigation process lacked a clear plan, contemporaneous notes taken during the interview, or a standardized closing letter. Consistency amongst investigation procedures, including the process for closing investigations is central to fostering trust and continuity throughout the investigative process. While investigations can often be difficult to substantiate due to a lack of witnesses, anonymous complaints, or having to make credibility determinations, well-trained investigators know how to conduct thorough investigations and engage in effective methods that uncover the facts.

Several employees who we interviewed expressed concern that the investigative process overall should focus more on uncovering individual and/or systemic policy violations, rather than simply “closing out the complaint.” For example, in one interview, an employee detailed the overall investigative process; however, when reviewing certain investigation files provided by the County, there was no investigation plan, no comprehensive witness list, and moreover, no contemporaneous interview notes to be found in any of the provided investigation files. In later correspondence, the County noted that “it is our practice to record all investigative interviews. This may account for the auditor’s note regarding missing contemporaneous notes.” We were provided no audio files, or any other recording that would confirm this statement.

Based on a review of the files and interviews conducted, the investigative process is not comprehensive. In reviewing several completed investigation files, as well as interviews with multiple investigators, there were instances where certain witnesses were identified but were not included in the internal investigation.

Moreover, there does not appear to be an effort to compile, analyze, and identify the root causes of the complaints, and to address these issues within the organization’s culture through additional training.

For example, a trend analysis might identify similar type of complaints (discrimination, sexual harassment, etc.) within a department that would indicate training is needed for both employees and supervisors. As noted above, well-trained investigators understand how to conduct thorough investigations that uncover systemic issues within the workplace, rather than solely focusing on individual complaints.

Furthermore, while it is a best practice to provide employees with multiple avenues for raising complaints, the current avenues are confusing. Employees expressed general confusion as to where and how to address specific complaints. Although the County has received and investigated numerous complaints, there remains confusion among employees on how to raise a complaint, depending on the issue. For example, the brochure, entitled *Employee Complaint Resolution Process* is designed to advise employees

of the procedure to file complaints. The brochure lists two hotline numbers, one entitled *Fraud*, and the other entitled *Misconduct*. The brochure continues by briefly explaining the definition of discrimination or harassment. The definition of harassment is vague, with no examples provided, and does not identify or distinguish different types of harassment (e.g. – quid pro quo versus hostile environment sexual harassment). Additionally, in the *Procedures* section, the phrase *retaliation* is added, and the second step recommends that employees meet with their “Agency/Department Equal Employment Opportunity (EEO) Coordinator or Human Resources Representative.” Based on many of the interviews we conducted, we learned that certain agencies within the County do not have an internal Human Resources representative. Employees work for the County, who administers policies including those required by Federal and State laws.

Lastly, the current process for reporting to the Board of Supervisors is reactionary. Implementation of semi-annual reporting will result in the study of trends to assess the culture and decide on policy changes and development of new policies, new training, and new ways of communicating requirements to employees.

“Best Practices” Recommendation

1. Appoint an official, who is a subject matter expert on workplace investigations, to conduct periodic reviews of a sampling of investigations, to ensure thoroughness and integrity, and to confirm that the assigned investigator conducted a thorough, unbiased, and properly documented assessment. These reviews are not intended to revisit the determinations made. Rather the purpose of these reviews are to determine whether the investigator requires additionally training on interviewing techniques, legal standards, or report writing. The frequency of these reviews may be determined by the County, but should occur at least annually.
2. Develop Standard Operating Procedures (SOPs) for internal complaint investigations, including recommended timelines, a standard intake form, model report format, and an assessment of necessity of sub-agency-specific procedures and policies.
3. Ensure that Human Resources and Labor Relations investigators are adequately trained, either through in-house counsel or qualified external subject matter experts including counsel, on how to conduct appropriate investigations, interviewing techniques, proper documentation practices as well as continuing training opportunities.
4. Update guidance to clarify appropriate mechanisms for reporting various types of complaints.
5. Implement semi-annual reporting of HR investigations to the Board of Supervisors (same as currently being reported by the Auditor’s Office). Presenting a report to the Board of Supervisors not only ensures the Board is aware of the breadth and depth of complaints being investigated, but also provides for analysis and planning at the highest level to determine what factors may be leading to the complaints, and what steps are necessary for the County to take to reduce the number of complaints across categories. This reporting should not include details that would reveal the identity of anyone involved in an investigation or the department or office at issue.

CEO-HR Management Action

Response to 2.02 Workplace Investigations “Best Practices” Recommendations: Partially agree. CEO-HR will put into place a periodic review of completed workplace investigations. We will assess whether the review will be conducted by County Counsel or an external consultant. Furthermore, we will review and enhance existing standard protocols to improve consistency of procedures. We agree that HR investigator training will be enhanced beyond the extensive training that is currently performed.

Response to 2.02 Workplace Investigations “Best Practices” Recommendation #2: Agree. CEO-HR staff has developed standardized templates for administrative investigation reports and close-out notifications to be used by all County HR professionals conducting investigations. Additionally, guidelines for conducting intake and administrative interviews of respondents and witnesses have been developed. CEO-HR will develop these tools into a formal Standard Operating Procedures manual in consultation with County Counsel.

Response to 2.02 Workplace Investigations “Best Practices” Recommendation #3: Partially agree. In August 2020, CEO-HR staff developed and presented an in-person training module to County HR professionals on conducting administrative investigations that included interviewing techniques, documentation process, and report writing. And, in August 2022 a second training was held to introduce newly developed standardized administrative investigation reports and close-out notifications. Additional future trainings on a regular cycle will be scheduled.

Response to 2.02 Workplace Investigations “Best Practices” Recommendation #5: Agree. Semiannual reporting on investigations to the Board of Supervisors is already in place.

Response to 2.02 Workplace Investigations Analysis: Partially disagree. FordHarrison has generally expressed that CEO-HR’s investigative process is not comprehensive, lacks sufficient documentation, and does not identify the root causes of complaints. Unfortunately, no examples, or specific findings have been provided of the noted lapses. CEO-HR will work to improve our processes but does note that it is our practice to audio record all investigative interviews of complainants, respondents, and witnesses. All witnesses with relevant information are interviewed and the investigations are reviewed for thoroughness by senior staff, and in complex cases by County Counsel.

Additionally, CEO-HR’s workplace investigations are conducted with impartiality, without fear or favor as to the subject of the investigation, regardless of status or identity. We disagree with FordHarrison’s overbroad statements based on a review of only thirteen (13) case files with regard to root cause analysis. The core function of a workplace investigation is to determine the substantiation of the specific allegations that have been made as part of the workplace complaint. That is exactly what CEO-HR does. FordHarrison specifically references that additional efforts should be made to enhance, “the organization’s culture through additional training.” The content of CEO-HR’s robust training programs and the content of the Diversity, Equity, and Inclusion training programs were not subjects of this audit, nor were they reviewed by FordHarrison.

2.03 Training Programs

Analysis

We also inquired about the effectiveness and frequency of available training for employees, provided in conjunction with our review of the County’s employee policies. While the County currently has a new

orientation program and certain online training resources, the training needs to be enhanced, with less emphasis on virtual training and more classroom focused training where employees are more engaged and may ask specific questions.⁴ One of the consistent responses we received during our interviews with employees is that classroom training is preferred, and any supplemental online or virtual training should include specific examples of incidents, to better understand conduct that rises to the level of illegal behavior (or other policy violations).

In addition to interviews, we conducted a review of the provided Grand Jury Final Reports. In response to a 2010 – 2011 Grand Jury Final Report, submitted by former County Executive Officer Mike Powers, it appears that an effort was made to include the subject of bullying within the *Workplace Violence Policy*, despite the fact that the Grand Jury recommendation to the Board of Directors was to “establish a written policy defining bullying actions and the consequences of those engaging in bullying behaviors.” In connection with the overhaul of policies recommended above, we also recommend creating a new, stand-alone training covering *Bullying in the Workplace*, and to include this training as an annual refresher.

Moreover, the “Nuts and Bolts” training should be expanded. Based on interviews with employees in human resources, we were advised that a training curriculum is established based on position⁵ and involves a certain number of required trainings and a certain number of elective trainings. All of the core human resources trainings need to be required, including training on vicarious liability for supervisors.

Any employee who is hired into or promoted to a position wherein they supervise other employees becomes an owner of workplace policies. Ensuring compliance with these policies is not solely the responsibility of the Human Resources Department. Every manager must fully understand the impact of their own behaviors on the workplace as well as the role they play in creating an environment that demonstrates the County’s values.

“Best Practices” Recommendation

1. Develop individual, customized trainings with both in-person and online components for key employment policies, including as may be required by California employment law. Distribute copies of relevant employment policies in connection with each training.
2. Require refresher training annually, including for managers. Refresher training is required every two years, but is recommended to occur annually.
3. Create new, stand-alone training covering *Bullying in the Workplace*, including a component for managers/supervisors on how to be proactive in the workplace. It is recommended that employees be required to attend annual refresher training relating to bullying.
4. Expand “Nuts and Bolts” training to create new curriculum/requirements including training for supervisors and managers regarding vicarious liability.
5. Ensure adequate, updated training of managers and executives, either by in-house counsel or external subject matter experts including counsel, on how to effectively conduct job interviews, including developing job-related questions, scoring rubrics and documenting basis for decision (use a “train the trainers” concept to bring the training in-house after the initial

⁴ The scheduling of in-person training must take into account hybrid works schedules.

⁵ The current training delineates between “manager” and “supervisor.”

training is completed). This would include behavioral-based interviewing techniques and methods of effective ratings. The creation of a strong talent acquisition process is vital to recruiting and promoting the most experienced candidates who are also the right “fit” for the role. Once the initial training is completed, individuals from HR and selected departments can then bring the training in-house for future interview panel members.

CEO-HR Management Action

Response to 2.03 Training Programs “Best Practices” Recommendations: Partially agree. We will review training requirements as noted to determine how the training courses may be revised or otherwise enhanced. Significant training enhancements will require additional time expenditures by the County workforce and additional dedicated training staff.

Response to 2.03 Training Programs “Best Practices” Recommendation #1: Partially agree. We will assess the County’s training program. However, with over 10,000 employees, it is impractical to provide or rely more heavily on in-person training. Virtual training has been widely utilized in recent years across the industry.

Response to 2.03 Training Programs “Best Practices” Recommendation #2: Partially agree. We already require a suite of mandatory training for managers that includes annual refreshers. We will assess additional comprehensive training.

Response to 2.03 Training Programs “Best Practices” Recommendation #3: Partially agree. We will develop a bullying section in the workforce training program. Annual refreshers are impractical given the resourcing requirements.

Response to 2.03 Training Programs “Best Practices” Recommendation #4: Partially agree. We will incorporate vicarious liability into our existing Nuts & Bolts training program.

Response to 2.03 Training Programs “Best Practices” Recommendation #5. Partially agree. We will assess the need to enhance the County’s existing training program on this matter. CEO-HR has already implemented a robust training program for managers and executives on the talent acquisition process. We will review our curriculum to determine areas for enhancement. The HR Overview Course of our Nuts & Bolts Training Program has a Recruitment & Selection module covering structured interviews. The current training includes explanation of how to develop the composition of the interview panel, identify appropriate criteria to measure during selection interviews, the various types of structured interview questions (i.e., behavioral, situational, technical/job knowledge, background, etc.), the pros and cons associated with the various question formats, pitfalls to avoid, scheduling, evaluations, legal and professional considerations, and the nuances of the decision-making process. We also hold an *HR Academy* periodically for the HR professionals who support the various agencies/departments of the County of Ventura. We also have courses tailored toward the County’s interview process. Since our last sessions were held prior to the pandemic, we will plan a relaunch. We also note that FordHarrison did not review the content of the County’s existing Nuts & Bolts training program as part of the current review.