



BANANA SHIRE COUNCIL

ANTI-DISCRIMINATION

and

EQUAL EMPLOYMENT OPPORTUNITY POLICY

NUMBER: 1.2.7

TITLE: Anti-Discrimination and Equal Employment Opportunity Policy

DEPARTMENT: Executive Services

SCOPE: The Policy is binding on each Council employee whether permanent, temporary or casual and will extend to others eg. Contractors and volunteers who are or who may be perceived to be, acting on behalf of Council. The term 'employee' is inclusive of all such persons.

This Policy is not limited to the workplace or work hours. This Policy extends to all functions and places that are work related. For example, work lunches, conferences, Christmas parties and client functions. Equal Employment Opportunity (EEO) laws apply to all areas of employment, as well as the provision of goods and services.

PURPOSE:

Banana Shire Council ("Council"), aims to provide an environment where employees and others in the workplace are treated fairly and with respect, and are free from unlawful discrimination, harassment, vilification and bullying.

Banana Shire Council aims to ensure that when employment decisions are made, they are based on merit. Banana Shire Council also tries to create a work environment which promotes good working relationships.

DEFINITIONS:

Equal Employment Opportunity

Equal Employment Opportunity is the principle that ensures that all employees and potential employees are treated equitably and fairly, regardless of their race, sex, marital status, age, physical or intellectual impairment, or sexual preference.

EEO Groups

EEO Groups are groups that have been identified as experiencing high levels of discrimination and disadvantage in the workplace and for whom EEO strategies are needed to be developed to address these disadvantages. These groups are:

- Women
- People of non-English speaking backgrounds (NESB)
- People of Aboriginal or Torres Strait Islander descent
- People with physical disabilities

Merit Principle

The Merit Principle requires that people be assessed according to their skills, abilities, qualifications, experience and standard of work performance relevant to the duties of the nominated position or training and development opportunity, and disregarding any personal characteristics which are irrelevant to the position or training and development opportunity.

Discrimination

Under federal and state legislation unlawful discrimination occurs when someone, or a group of people, is treated less favourably than another person or group because of their race, national or ethnic origin; sex, pregnancy or marital status; age; disability; religion; sexual preference; membership of a trade union activity; or some other characteristic specified under anti-discrimination or human rights legislation.

Unreasonable Behaviour

Behaviour that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine or threaten.

Frivolous, Vexatious or Malicious Complaints

Complaints that are deliberately harmful, spiteful, trivial or unworthy of serious attention or resources.

RELATED DOCUMENTS:

- Recruitment and Selection Policy
- Grievance/Complaint Management Policy
- Local Government Act 2009
- Anti-Discrimination Act 1991
- Training, Learning and Development Policy
- Banana Shire Council Enterprise Agreement 2009
- Local Government (Operations) Regulation 2010

POLICY:

EEO Laws

Under EEO laws, discrimination, vilification, sexual harassment, bullying and victimisation are unlawful and strictly prohibited.

Discrimination

Discrimination in employment occurs when a person is treated less favourably in their employment because of a ground of discrimination. Grounds of discrimination are set by law (Federal, State and Territory laws) and include sex, race, age etc. A full list of the grounds of discrimination which operate Australia wide are set out below. Those that operate Federally and in the State and/or Territories in which employees undertake their work for Banana Shire Council will be relevant.

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| • Race (including colour, nationality, descent, ethnic, ethno-religious or national origin) | • Religious belief or activity |
| • Sex | • Marital status, relationship status |
| • Pregnancy (including potential pregnancy) | • Homosexuality, transexuality, sexuality, sexual preference, lawful sexual activity, gender identity |
| • Carers' responsibilities, family responsibilities, carer or parental status, being childless | • Disability, including physical, mental and intellectual disability |
| • Breastfeeding | • Age |

- Physical features
- Industrial/trade union membership, non-membership or activity
- Employer association membership, non-membership or activity
- Temporary absence from work because of illness or injury
- HIV/AIDS
- Spent convictions
- Association (i.e. association with a person who has one or more of the attributes for which discrimination is prohibited)
- Profession, trade, occupation or calling
- Political belief or activity
- Compulsory retirement
- Criminal record
- Medical record
- Defence service

Discrimination also includes the situation where an employee harasses another person based on a ground of discrimination. Harassment is unwelcome conduct that a reasonable person would expect to offend, humiliate or intimidate.

Vilification

Vilification is a public act which incites hatred, severe contempt or severe ridicule of a person or group, because of race, homosexuality, transgender, transexuality or HIV/AIDS. Vilification is a particularly serious breach of EEO laws and will be dealt with accordingly.

Sexual Harassment

Sexual harassment is unwelcome conduct of a sexual nature, which makes a person feel offended, humiliated or intimidated. Conduct can amount to sexual harassment even if the person did not intend to offend, humiliate or intimidate the other person. However, conduct will not be sexual harassment if a reasonable person, having regard to all the circumstances, would not have anticipated that the conduct would offend, humiliate or intimidate the other person. Sexual harassment does not have to be directed at a particular individual to be unlawful. Behaviour which creates a hostile working environment for other employees can also be unlawful.

Examples of sexual harassment include, but are not limited to:

- Physical contact such as pinching, touching, grabbing, kissing or hugging.
- Staring or leering at a person or at parts of their body.
- Sexual jokes or comments.
- Requests for sexual favours.
- Persistent requests to go out, where they are refused.
- Sexually explicit conversations.
- Displays of offensive material such as posters, screen savers, Internet material etc.
- Accessing or downloading sexually explicit material from the Internet.
- Suggestive comments about a person's body or appearance.
- Sending rude or offensive emails, attachments or text messages.

Bullying

Bullying is repeated, unreasonable behaviour directed towards an individual or group that creates a risk to health and safety. Single incidents of unreasonable behaviour can also create a risk to health and safety and may escalate into bullying. There is no requirement that bullying be intentional.

It is not bullying for a manager or supervisor to counsel an employee about their performance. Performance counselling is a necessary part of ensuring that employees meet Banana Shire Council's standards of work and behaviour. Also, other reasonable managerial actions such as disciplinary action, work directions and orders, and allocation of work in compliance with business needs and systems do not constitute bullying.

Victimisation

Victimisation is where a person is retaliated against or subjected to a detriment because they have lodged a complaint, they intend to lodge a complaint or they are involved in a complaint of unlawful conduct. Employees must not retaliate against a person who raises a complaint or subject them to any detriment.

Rights and Responsibilities

All employees must:

- ensure they do not engage in any unlawful conduct towards other employees, customers/clients or others with whom they come into contact through work;
- ensure they do not aid, abet or encourage other persons to engage in unlawful conduct;
- follow the complaint procedure in this Policy if they experience any unlawful conduct;
- report any unlawful conduct they see occurring to others in the workplace in accordance with the Grievance / Complaint Management Policy; and
- maintain confidentiality if they are involved in the complaint procedure.

Employees should be aware that they can be held legally responsible for their unlawful conduct. Employees who aid, abet or encourage other persons to engage in unlawful conduct, can also be legally liable.

Breach of this Policy

All employees are required to comply with this Policy at all times. If an employee breaches this Policy, they may be subject to disciplinary action. In serious cases this may include termination of employment. Agents and contractors (including temporary contractors) who are found to have breached this Policy may have their contracts with Banana Shire Council terminated or not renewed.

If a person makes an unfounded complaint or a false complaint that is vexatious, frivolous or malicious in nature (e.g. making up a complaint to get someone else in trouble or making a complaint where there is no foundation for the complaint), that person may be disciplined and may be exposed to a civil defamation claim.

Complaint Handling Procedure

If an employee feels that they have been subject to any form of unlawful conduct contrary to EEO laws or this Policy, they should not ignore it. Banana Shire Council has a Grievance / Complaint Management Policy for dealing with these issues. The Policy has numerous options available to suit the particular circumstances of each individual situation and complaints will be handled in accordance with the Policy.

Confidentiality

Confidentiality will be maintained at all times, by all parties involved.

Questions

If an employee is unsure about any matter covered by this Policy, they should seek assistance from the Human Resources Section.

Variations

Banana Shire Council reserves the right to vary, replace or terminate this policy at any time.

POLICY VERSION AND REVISION INFORMATION

Policy Authorised by: Council
Minute No: OM001185
Authorised Date: 27 October 2010 (Ordinary Meeting)
Version: 2
Original issue: 24 May 2007 Ordinary Meeting – Minute No. 31797
Review date: October 2012

Control of Policy Transferred by Council to CEO as an
Operational Policy
12 December 2012 - Minute OM002173