

Hoopa Valley Tribal Council
HUMAN RESOURCE PROGRAM

71 Willow St. ~ PO Box 218 ~ Hoopa, CA 95546
Phone (530) 625-9200 ~ Fax (530) 625-4269



**Harassment Policy and Guidelines for the Investigation of
Harassment Complaints**

A. Overview

Pursuant to Section 5.5.2 of Title 30, this document provides explanatory detail regarding the Hoopa Valley Tribe’s harassment policy and sets forth procedures for submitting and investigating harassment complaints.

Harassment is prohibited by federal and tribal employment laws. Title 30 of the Hoopa Valley Tribal Code provides definitions for “harassment” and “sexual harassment.”

Section 5.5.1(a) of Title 30 defines “harassment” as follows: *Any unwelcome verbal, non-verbal, or physical conduct designed to threaten, intimidate or coerce employees.*

Section 5.5.1(b) of Title 30 defines “sexual harassment” as follows: *Unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to or rejection of such conduct is used as the basis for employment decisions or such conduct has the purpose or effect of creating an intimidating, hostile, or offensive working environment.*

Sexual harassment may take different forms. Examples of conduct that may constitute Sexual Harassment:

VERBAL	NON-VERBAL	PHYSICAL
Sexual innuendoes, suggestive comments, jokes of a sexual nature, sexual propositions, lewd remarks, or threats; requests for any type of sexual favor (including repeated unwelcomed requests for dates); verbal abuse or “kidding” which is oriented towards a prohibitive form of harassment, including that which is sex oriented and considered unwelcome.	The distribution, display, or discussion of any written or graphic material, including calendars, posters, and cartoons which are sexually suggestive, or show hostility toward an individual or group because of sex; suggestive or insulting sounds, leering; staring; whistling; obscene gestures; content in letters and notes, facsimiles, e-mail, that is sexual in nature.	Unwelcome, unwanted physical contact including but not limited to, touching, tickling, pinching, patting, brushing up against, hugging, cornering, kissing, fondling, forced sexual intercourse or assault.

- a. **Two (2) Types of Sexual Harassment.** As defined by the EEOC, there are two types of sexual harassment, “quid pro quo” and “hostile work environment,” explained in more detail in the chart immediately below:

Quid Pro Quo	Hostile Work Environment
<p>Literally translated to mean “something for something” or “this for that”. This type of Sexual Harassment exists when submission to harassment is used as the basis for employment decisions; such as offering a promotion or pay raise in exchange for sexual favors.</p>	<p>This type of Sexual Harassment occurs when behaviors create an offensive and hostile working environment. This can be initiated by anyone in the working environment including customers/patrons. This type of environment consists of verbiage of a sexual nature, unwelcome sexual materials, or even unwelcome physical contact as a regular part of the work environment. Posters, cartoons of a sexual nature, vulgar or lewd comments or jokes, deliberate exclusion or withholding of critical information, or unwanted touching or fondling are all included in this category.</p>

- b. **Consensual Relationships.** Romantic or sexual relationships between a manager or other supervisory employee and his or her direct reports are strongly discouraged. It has been well documented that such relationships tend to invite compromising conflicts of interest or the appearance of such conflicts. In addition, such relationships may give rise to the perception by others that there is favoritism or bias in employment decisions affecting the staff employee. Moreover, given the uneven balance of power within such relationships, consent by the staff member is suspect and may be viewed by others or by the staff member themselves as having been given as the result of coercion or intimidation. The atmosphere created by such appearances of bias, favoritism, intimidation, coercion or exploitation undermines the spirit of trust and mutual respect. If such a relationship exists, it should be reported to the appropriate Department Head/Supervisor immediately and the parties involved need to be aware that one or both employees may be moved to a different department or other actions may be taken to mitigate the potential conflicts of interest.

B. Harassment Complaint and Investigation Guidelines

- a. **4-R’s, Steps for Victims of Sexual Harassment: RESPOND, RECORD, REPORT, REVIEW.** Failure to promptly report instances of sexual harassment is not an excuse for a harasser’s inappropriate conduct, but it is critical that all employees be aware of the steps they can take to address potential incidents of harassment. The chart immediately below outlines recommended best practices for handling and responding to these incidents:

<p>Step 1: RESPOND</p>	<p>It is important that any recipient of unwelcome gestures or remarks of a sexual nature not remain silent. Take the time to make it clear to the harasser that such conduct is considered offensive, unwelcome, and that such conduct must stop at once. In many cases, individuals are unaware they have offended through their actions, and thus many sexual harassment offenses may be resolved through simple awareness.</p>
<p>Step 2: RECORD</p>	<p>Employees may wish to keep a written log of all incidents of harassment, noting the date, time, place, and persons involved along with any witnesses to the event.</p>
<p>Step 3: REPORT</p>	<p>Do not hesitate to approach the supervisor or manager of the harasser if a request to stop offensive behaviors is ignored. Remember that the organization can not solve the problem if not aware. Employees may also approach a supervisor or Personnel / HR if they are uncomfortable confronting the harassing individual engaging in the offensive conduct.</p>
<p>Step 4: REVIEW</p>	<p>Review the complaint guidelines set forth in this document. If the employee decides to file a complaint, contact Personnel / HR and submit a written complaint outlining the violation.</p>

b. Confidentiality

1. All notes taken or documents received by Personnel / HR as it pertains to harassment complaints will be kept in confidential files separate from personnel files and accessible only to the Director of Personnel / HR and/or the Director's designee.
2. Personnel / HR will take prompt responsive action upon receipt of a complaint UNLESS the complaint expressly requests that no action be taken AND Personnel / HR determines in the exercise of their discretion with Office of Tribal Attorney (OTA) guidance that applicable federal or other laws do not mandate action.
3. The anonymity of the individual filing the complaint or making an inquiry cannot always be maintained if the individual wishes to have Personnel / HR take corrective or disciplinary action in a particular case. Moreover, the Hoopa Valley Tribal Council may be legally obligated to take action once our staff is informed that harassment or retaliation has occurred or may be occurring. Complete confidentiality cannot be guaranteed in such a case, but will be secured to the greatest extent possible under the circumstances.

c. **Complaint Procedures.** The following Complaint Procedures shall be followed in order to address a complaint regarding harassment or retaliation. Following these procedures will ensure to the greatest extent, the confidentiality and acceptable resolution to any complaint.

1. A person who feels harassed or retaliated against may initiate the complaint process by filing a written and signed complaint to their supervisor, or directly with Personnel / HR, within one year of the incident giving rise to the complaint. If a supervisor becomes aware that specific instances of harassment are occurring, either from personal observation or as a result of an employee coming forward, the supervisor is required to report it immediately to the Personnel / HR Director.

2. **Initial Confidential Assessment.** Personnel / HR will promptly conduct a confidential assessment of each complaint. Personnel /HR will determine as part of its assessment, with legal guidance from the Office of Tribal Attorney (“OTA”) as needed, whether a formal investigation should be instituted or whether informal resolution of the complaint should be sought. This determination will depend on the following:

- a. Severity, frequency, and pervasiveness of the conduct
- b. Consideration of prior complaints made by the individual filing the present complaint
- c. Consideration of prior complaints made against the alleged offender
- d. The quality of the evidence (first hand knowledge, credible corroboration, witnesses, etc.)

3. **Investigation.** If the outcome of the confidential assessment is that a formal investigation is warranted (or informal resolution efforts are later deemed to be inadequate), the Personnel / HR Director with OTA if needed will determine the appropriate type of investigation. There are two types of investigations:

- a. Internal Investigation - Conducted by a qualified designated representative (“designee”) of the HR / Personnel Department with legal guidance as needed by OTA.
- b. Private 3rd Party Investigation - Conducted by a qualified independent professional investigation agency. A private 3rd party investigation should only be considered when: (i) an actual or apparent conflict of interest exists that would significantly interfere with the Personnel / HR designee’s ability to conduct a fair and complete investigation; (ii) the investigation required is of a complexity or scope that would likely exceed the resources of the HR / Personnel Department; or (iii) the accused or the complainant is a Tribal Council Member or supervisor of the HR / Personnel designee that would otherwise conduct the investigation.

4. **Conclusion of Investigation.** Within sixty (60) days of initiating the investigation, the investigator (either internal or 3rd Party) shall prepare a written report. Based on the findings set forth in the report, the Personnel / HR Director shall determine whether a violation of this harassment policy has occurred and be responsible for carrying out the appropriate corrective action and imposing appropriate discipline on the employee. If the investigation is inconclusive or it is determined that there has been no harassment

occurred, but some potential misconduct has been revealed, preventative or appropriate corrective action may nonetheless be taken by the Personnel / HR Director. However, if it is specifically determined that sexual harassment has occurred, the Personnel /HR Director shall consult with the Tribal Chairman and Office of Tribal Attorney before taking corrective or disciplinary action.

5. Conclusion of Investigation Involving Tribal Council Members or Members of Boards/Committees/Commissions. When the subject of the harassment complaint is a Tribal Council Member or a member of one of the Tribe's Boards, Committees, or Commissions, the procedure set forth in the preceding paragraph shall be followed, except that it shall be the responsibility of the Tribal Council to determine any appropriate corrective action or discipline to be imposed.

d. Responsibilities of Personnel/HR, Managers/Supervisors, and Employees

1. All employees share the responsibility of understanding and preventing harassment. Supervisors have an absolute responsibility as leaders in administration and enterprise to act promptly to address any harassment of which they are aware and which exists in their areas of responsibility. If a supervisor knows that harassment or retaliation is occurring, or receives information that such behavior may be occurring, he or she must take immediate action to address the problem. Such action should include, but is not limited to, speaking directly with the injured person, developing a specific account of the actions, omissions or occurrences that are alleged to be harassment, and reporting the conduct to the Personnel / HR Department.

2. The Personnel or Human Resource Director has the primary responsibility for implementing this policy. In particular, the Personnel / HR Director will:

- a. Protect confidentiality throughout the complaint, assessment, and investigation process by striving to limit disclosure of any complaint to those directly concerned, consistent with the duty of fairness to the people involved and the duty to prevent harassment from occurring in the future. However, complete confidentiality cannot be guaranteed.
- b. Ensure both the individual filing the complaint (complainant) and the accused individual (respondent) are aware of the seriousness of the complaint.
- c. Explain the harassment policy and investigation procedures to all parties involved.
- d. Explore informal means of resolving harassment and retaliation complaints when deemed appropriate following the confidential assessment.
- e. Notifying the police if criminal activities are alleged.
- f. Arranging for a formal investigation of the alleged harassment and the preparation of a written report when deemed appropriate following the confidential assessment.
- g. Submitting a written report summarizing the results of any investigation and making recommendations to designated officials.

h. Maintain confidential records of these inquiries and complaints as well as their resolution.

i. Provide ongoing information and education to the employees and management, including members of the Tribal Council and all members of the Tribe's Boards, Committees, and Commissions, on recognizing, understanding, and combating unlawful harassment.

3. **Recusal.** If a complaint involves any employee that would otherwise be tasked with participating in responding to a complaint made under this policy, that employee shall recuse himself or herself from participation in the investigation and disposition of the complaint.