



HUMAN RESOURCES DEPARTMENT
FORT BEND COUNTY, TEXAS

Kent M. Edwards, PHR
Director of Human Resources

To: Judge KP George
Commissioner Vincent Morales
Commissioner Grady Prestage
Commissioner Andy Meyers
Commissioner Ken DeMerchant

From: Kathy Novosad
Sr. Human Resources Generalist

Date: September 3, 2019

Subject: Revisions to Employee Information Manual, Section 103

Human Resources is submitting revisions to the Employee Information Manual, *Policy 103: Equal Employment Opportunity*, for your consideration. The proposed changes to the policy are explained on the attached documents.

If you have any questions, please contact Kent Edwards or Kathy Novosad in Human Resources.



Human Resources Team Communication

HR Proposed Revisions to *Policy 103 – Equal Employment Opportunity*

Items for Consideration

Commissioner's Court Agenda Item – September 10, 2019

In consultation with Precinct 4 Commissioner DeMerchant, your Human Resources Team is presenting the following suggested revisions to *Policy 103, Equal Employment Opportunity* for consideration at the September 10th Commissioner's Court session. The highlighted wording below are additions:

"Fort Bend County applies positive employment practices designed to ensure the full realization of equal employment opportunities (EEO) to all employees and applicants for employment without regard to race, color, religion or creed, sex, sexual orientation, gender, gender identity, gender expression, pregnancy status (including childbirth and related medical conditions), national origin, ethnicity, citizenship status, age (40 and over), physical or mental disability, genetic information, protected military and veteran status, political affiliation or beliefs, or any other classification protected by state, federal and local laws unless such classification is a bona fide occupational qualification."

Comments / Observations –

FBC's current EEO policy (103) contains the minimum language required by Title VII of the Civil Rights Act and other Federal and State regulations. The Employee Information Manual contains other policies that address EEO protections as well, such as the Americans with Disabilities Act (201), Respectful Workplace (202), and Military Leave (708), to name a few. Certain classifications included in the proposed statement may not be covered by any applicable federal, state or local law as it applies to Fort Bend County, including: gender identity, gender expression, sexual orientation, political affiliation or beliefs, and veteran status.

Below is an analysis of the proposed changes.

1. *Sexual Orientation, Gender, Gender Identity, and Gender Expression*: U. S. Courts of Appeal have reached different conclusions on the question that sexual orientation and gender identity are protected as discrimination "based on sex" under Title VII of the Civil Rights Act of 1964.



Human Resources Team Communication

- The US Supreme Court consolidated two of the cases and is scheduled to hear oral arguments on October 8, and its subsequent written opinion could presumably conclude (one way or the other) the extent that Title VII applies to Gay and Transgendered employees. <https://www.nytimes.com/2019/04/22/us/politics/supreme-court-gay-transgender-employees.html>
 - The EEOC has considered discrimination based on gender identity and sexual orientation to be discrimination based on sex. <https://www.eeoc.gov/laws/types/sex.cfm>
 - The DOJ also had come out with suggested language regarding EEO plans for recipients of certain grant funds <https://ojp.gov/about/offices/ocr.htm>
 - The EEOC continues to enforce it and has fined employers for non-compliance <https://www.eeoc.gov/eeoc/newsroom/release/4-8-19.cfm>
 - There are examples in the State of Texas EEO policies that refer to sexual orientation. This one is from the DOT <https://ftp.dot.state.tx.us/pub/txdot-info/ocr/eeo/discrimination-harassment.pdf>
 - Other Texas counties, including Bexar, Harris, Travis, and Montgomery counties include some or all of the proposed language in their EEO policy statements
2. *Protected military status and veteran status:* The U. S. Employment and Reemployment Rights Act (USERRA) protects persons currently serving in the armed forces from employment discrimination. Likewise, the Texas Constitution protects persons currently serving in the Texas military forces from employment discrimination. The Vietnam Era Veterans Readjustment Assistance Act (VEVRAA) provides certain protections based on veteran status, but VEVRAA applies to government contractors and sub-contractors only.
 3. *Political affiliation or beliefs:* This may be protected by the 1st Amendment (freedom of speech), but a couple of court cases in TX have held that an elected official can expect a “reasonable level of loyalty and efficiency.” So there is some wiggle room for an elected official to not hire or retain a person as a member of personal staff for political reasons (e.g. a political opponent).
 4. *“...unless such classification is a Bona Fide Occupational Qualification”:* This language is included to cover situations where a factor may truly be a BFOQ. For example, “sex” or “gender” truly being a BFOQ for detention officers in certain positions, or U.S. Citizenship truly being a requirement for positions requiring licensing under TCOLE.

Following is a copy of our current EEO policy (103), a copy of the proposed policy with changes highlighted, and a clean copy of the new (proposed) policy.

Policy 103 – Equal Employment Opportunity

Section 103.01 County Policy on Equal Opportunity

Fort Bend County applies positive employment practices designed to ensure the full realization of equal employment opportunities (EEO) to all employees and applicants for employment without regard to:

- race
- color
- religion
- sex
- national origin
- age
- disability
- genetic information
- or any other classification protected by state, federal and local laws.

This policy applies to all terms and conditions of employment, including but not limited to hiring, placement, promotion, discharge, pay, fringe benefits, layoff, recall, transfer, and training.

Improper interference with an individual's ability to achieve or maintain employment based on a protected status is prohibited.

For further information on Fort Bend County's practices to ensure Equal Employment Opportunity, please visit the County's website or contact the Human Resources Department.

PROPOSED POLICY – (tracking changes)

Current HR policy with proposed changes **highlighted**.
Items supported by Federal and/or State Law are **underlined**

Policy 103 – Equal Employment Opportunity

Section 103.01 County Policy on Equal Opportunity - Proposed

Fort Bend County applies positive employment practices designed to ensure the full realization of equal employment opportunities (EEO) to all employees and applicants for employment without regard to:

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- religion or creed
- sex
- **sexual orientation**
- **gender**
- **gender identity**
- **gender expression**
- **pregnancy status (including childbirth and related medical conditions)**
- national origin
- **ethnicity**
- **citizenship status**
- age (40 and over)
- **physical or mental disability**
- genetic information
- **protected military and veteran status**
- **political affiliation or beliefs**
- **or any other classification protected by state, federal, and local laws, unless such classification is a bona fide occupational qualification**

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FBC Policy 103 – Equal Employment Opportunity

Section 103.01 County Policy on Equal Opportunity

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- gender
- gender identity
- gender expression
- pregnancy status (including childbirth and related medical conditions)
- national origin
- ethnicity
- citizenship status
- age (40 and over)
- physical or mental disability
- genetic information
- protected military and veteran status
- political affiliation or beliefs
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