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TULARE COUNTY GRAND JURY REPORT 2014-2015

FINDINGS:

- F1. For fiscal years 2010-2013, First 5 Tulare County did not include Innovation Grants or Capital Project Grants on the Local Annual Report, but they were included on the Financial Statements.
- F2. For fiscal years 2010-2013, First 5 Tulare County consistently had errors on the Program Reports within the Local Annual Report.
- F3. For fiscal years 2010-2013, First 5 Tulare County Program Report Interpretations on the Local Annual Report were not consistent leading to errors in the Cost per Client.

RECOMMENDATIONS:

- R1. First 5 Tulare County be more transparent in the areas of reporting all Programs and Grants within the Local Annual Report.
- R2. First 5 Tulare County officers and managers have additional training in reviewing and verifying reports before distribution to the public.
- R3. First 5 Tulare County Program Officers have additional training in report writing for consistent Interpretations on the Program Reports.
- R4. First 5 Tulare County create a check list for verifying information between Financial Statements and Local Annual Report to prevent errors before distribution to the public.

REQUIRED RESPONSES:

- 1. First 5 Tulare County
- 2. Tulare County Board of Supervisors

Disclaimer

Grand Jury reports are based on documentary evidence and the testimony of sworn or admonished witnesses, not on conjecture or opinion. However, the Grand Jury is precluded by law from disclosing such evidence except upon specific approval of the Presiding Judge of the Superior Court, or another judge appointed by the Presiding Judge (Penal Code Section 911, 924.1 (a) and 929). Similarly, the Grand Jury is precluded by law from disclosing the identity of witnesses except upon an order of the court for narrowly defined purposes (Penal Code Section 924.2 and 929).

WORKPLACE HARASSMENT AND THE EMPLOYEE GRIEVANCE PROCESS

BACKGROUND:

Sparked by the concerns of several county employees regarding workplace harassment and a seemingly ineffective grievance resolution to those concerns, Tulare County Grand Jury (Grand Jury) initiated an inquiry.

Inappropriate behavior runs counter to workplace behavior policies, but harassment is unlawful. Harassment can be anything from engaging in behavior intended to force someone to quit to actual physical threats. Understanding what constitutes harassment at work is important in setting up and maintaining a workplace environment where all employees feel welcome, productive and protected. Determining the difference between inappropriate, but not illegal behavior and illegal harassment, is key to successful resolution of harassment grievances.

The County of Tulare's Grievance Form and Personnel Rules No. 13 and 14 (General Policy) are designed to educate and inform all unrepresented and designated represented county employees of their rights and responsibilities under Labor Code §1102, Title VII of the Civil Rights Act of 1964 and Government Code §12941et seq, targeting areas of discrimination and sexual harassment. Rule 14 states:

It is against the policies of the County for any employee, male or female, to discriminate against or sexually harass another employee.

To be clear, this report does not portend to find fault with existing regulations established to correct or mitigate infractions against established standards. Instead, this report is designed to draw attention to a problem that cannot be avoided if it is not opened and exposed; a report that encourages a pro-active and educational approach against the possibility of workplace harassment and/or violence.

REASON FOR INVESTIGATION

The 2014-2015 Tulare County Grand Jury deemed the understanding of what constitutes harassment in the workplace to be important.

METHOD OF INVESTIGATION:

Tulare County Grand Jury requested, and received documents from a reliable source that outlined county grievance structure and procedures. Interviews with pertinent county personnel were also conducted.

FACTS:

1. The county's grievance procedure under Rule 13 – Employee Grievance Procedure (13.2) states that discrimination complaints are routed to the Human Resources Director, who conducts an

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investigation of the complaint. The County Administrative Officer (CAO), the department and the employee are then advised of the resolution of the complaint.

2. County of Tulare Grievance Form, Personnel Rule 13, offers three (3) formal steps towards complaint resolution. An employee's formal grievance filing begins the following process.
3. Step 1 includes information that describes the employee's attempts to resolve the grievance and requires a supervisor's response to the employee's complaint. If the grievant is not satisfied with the supervisor's ruling at this phase, he or she can choose to follow up with Step 2.
4. Step 2 requires Grievant Request for Appointing Authority Review, with Appointing Authority's Response to follow. The grievant has the option to pursue a Step 3 petition if unsatisfied with the ruling at this point.
5. Step 3 authorizes Grievant Request for a Panel Review. The grievance panel includes one county employee selected by the grievant, one person appointed by the department and one member appointed by the Board of Supervisors (BOS). The BOS appointed member chairs the committee.
6. Equal Employment/Discrimination/Sexual Harassment Policy Personnel Rule 14, does not specify workplace harassment or bullying by its definition, but it does define discrimination as "...any unlawful consideration or use of race, color, religion, national origin, sex, sexual orientation, creed, political affiliation, ancestry, marital status, age, physical disability, or mental disability or any other criteria prohibited by law..." A grievance alleging workplace harassment can be undertaken within the purview of this policy outline. Additionally, The United States Supreme Court stated that, where an employer has a published sexual harassment/discriminatory harassment policy, the employee must report it under that policy and give the employer the opportunity to remedy the situation.
7. Included within the report received by Tulare County Grand Jury were seventeen (17) former Discrimination and Harassment Complaints occurring from July 1, 2012 to June 30, 2013. There were three (3) cases specifically alleging some form of harassment. The outcome of each of these cases was 'not supported by evidence.'
8. Harassment and bullying in the Workplace
 - a. "Harassment is behavior that is characteristically repetitive and intends to harm through mental agony or causing a person to be upset is known as psychological harassment. From a legal point of view, such behavior is abusive, intimidating or humiliating and is found to be threatening. Most often, such behavior leaves behind no legal evidence except for complaints or report by the victim, who suffer torment and lowered self-esteem. Psychological harassment can range from verbal abuse to aggressive and intimidating actions. When this occurs at the victim's workplace, it is especially upsetting as it also can affect work performance." *Excerpt from attorneys at: JustAnswer LLC*
 - b. Unlike harassment, bullying is a covert behavior directed at someone a bully feels threatened by. It is also a form of psychological intimidation and aggression that is not based on a

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protected characteristic. The target doesn't even realize when they are being bullied because the behavior is conveyed through trivial criticisms and isolating actions that occur behind closed doors. While harassment is illegal, bullying in the workplace is not.

- c. Demanding bosses are not necessarily bullies as long as they are respectful and fair and their primary motivation is to obtain the best performance by setting high yet reasonable expectations for working safely.
- d. Anyone can be a harasser. Many situations involve employees bullying their peers, rather than a supervisor bullying an employee.

9. Harassment is Personal

- a. Harassment consists of conduct outside the scope of necessary job performance. Presumably, this is motivated by personal gratification because of meanness or bigotry, or for other personal motives.

10. Scope of Hostility

- a. Managers, supervisors or co-workers rarely blatantly admit treating someone adversely because of his or her actual or perceived inclusion in a protected class. Therefore, there is rarely a "smoking gun" to prove discrimination or harassment. Rather, they are usually proven by the whole and totality of the circumstances occurring.
- b. To qualify as a "hostile" workplace, conduct must be intentional, severe, recurring and/or pervasive and interfere with the employee's ability to perform his or her job.

11. Harassment is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, (ADEA), and the Americans with Disabilities Act of 1990, (ADA).

12. Union representatives, where applicable, may assist employees in all steps of the grievance process.

FINDINGS:

- F1. Regarding Policy 13, Step 3, Grievant Request for a Panel Review: it has been suggested by representatives that an independent appointed chair would afford this process more balance in this final step, due to the possibility of "conflict of interest" issues.
- F2. Step 3 has rarely, if ever, been utilized according to those interviewed for this report.
- F3. Tulare County is in compliance with state and federal sexual harassment/discriminatory harassment policies in its publication of Personnel Rule 14.