



Ethics, Organization, and Personnel Committee

6/11/2024 Committee Meeting

6c

Subject

Discussion of proposed revisions to the investigative procedures for Equal Employment Opportunity and Ethics allegations involving members of the Board of Directors and Direct Reports to the Board

EEO and Ethics Complaint and Investigation Procedure Re Direct Reports and Board Members

I. PURPOSE

The Metropolitan Water District of Southern California (“District”) is committed to preventing discrimination, harassment and retaliation in the workplace.

The District has zero tolerance for any conduct that violates this policy. Conduct need not violate either federal or state law in order to constitute a violation of this policy.

A single act by a District employee may constitute a violation of this policy and provide sufficient grounds for the District to discipline the employee.

This policy establishes a complaint procedure by which the District will investigate and resolve complaints of discrimination, harassment and retaliation by and against District covered individuals. The District encourages all covered individuals to report any conduct that they believe violates this policy as soon as possible.

The District expressly prohibits any retaliation against an employee because they filed or supported a complaint or because they participated in the investigation or complaint resolution process. Individuals found to have retaliated against an employee in violation of this policy will be subject to appropriate sanction or disciplinary action, up to and including termination.

II. COVERED INDIVIDUALS AND SCOPE OF POLICY

This policy covers the following individuals: General Manager, General Auditor, General Counsel, Ethics Officer and any Board member (“covered individuals”).

This policy applies to all terms and conditions of employment, internships, and volunteer opportunities, including, but not limited to, selection, hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, compensation, and training.

III. REPORTING DISCRIMINATION, HARASSMENT, AND RETALIATION

Everyone must work toward preventing discrimination, harassment, and retaliation, but leadership matters. Supervisors and managers have a special responsibility to make sure employees feel safe at work and that workplaces are free from discrimination, harassment, and retaliation. Any employee or covered individual is encouraged to report discriminatory, harassing, or retaliatory behavior to a supervisor or manager. Anyone who witnesses or becomes aware of potential instances of discrimination, harassment, or retaliation should report such behavior to a supervisor, manager, or to the EEO or Ethics Officer, without disregard to any chain of command.

Any report of an alleged EEO or Ethics violation submitted to any department (e.g., Human Resources, Water System Operations), department (e.g., Audit, Ethics, Legal), or Board Member must be immediately forwarded in writing to the intake committee¹. A referring group, department, or Board Member should notify the complainant, in writing, of the referral to the intake committee. The intake committee will confirm receipt of a complaint with the referring group, department or Board Director, and the complainant). The intake committee will document any complaint or referral in its confidential case database system.

IV. COMPLAINTS AND INVESTIGATIONS

A. COMPLAINTS

After the intake committee is notified of an EEO or Ethics complaint, the intake committee will promptly (not to exceed three (3) business days) confirm receipt of the complaint in writing and will contact the complainant within five (5) business days to schedule an intake assessment for the purposes of obtaining additional information as necessary.

The intake committee will conduct an intake assessment within ten (10) business days of receipt of a complaint to better understand the facts and circumstances surrounding the complaint. Any instances in which this timeline is exceeded will be due to extenuating circumstances of the parties involved (i.e. participants' leave of absence, their coordination with union representatives, participants' delays due to work schedule). In the case of an anonymous complaint, the intake assessment may be more limited in scope.

During the intake assessment, the complainant should be prepared to provide the following information:

- 1) The basis for the charge of discrimination, harassment, and/or retaliation;
- 2) A description of the specific action(s) about which they are complaining, including the date(s) and time(s) the alleged action(s) occurred; and
- 3) The names of all the individuals involved, including the subject of the complaint (respondent), and any witnesses who saw, heard or otherwise has knowledge of the alleged discrimination, harassment or retaliation.

¹ The intake committee will be comprised of an outside entity whose responsibilities and duties are outlined in this policy.

After completing an intake assessment, and upon the collection and review of relevant documentation and information, the intake committee will determine whether the complaint falls under this policy. If the allegation, in part or in whole, falls within the EEO or Ethics Office's jurisdiction, the intake committee will determine whether the complaint is appropriate for investigation by an external investigator. The complainant will be notified of this determination within ten (10) business days of the date in which the complainant provides the intake committee with all requested information necessary to establish jurisdiction. There may be instances when the intake committee will need to preliminarily gather information to determine jurisdiction, which may extend the ten (10) business day timeframe.

If the intake committee determines that a complaint falls outside its jurisdiction, inform the complainant in writing and refer the matter in writing to the appropriate office (e.g., Human Resources, Ethics). The referral will be documented in the EEO or Ethics Offices' case database system.

Once the intake committee receives a complaint of a potential policy violation, it will immediately begin assessing the situation to determine if interim measures should be implemented to restrict and/or eliminate contact between a complainant or respondent. If, at the discretion of the intake committee, an interim measure is required impacting a direct report, the intake committee will immediately inform the ad hoc committee, via an attorney client privileged communication, of the recommendation for an interim measure, the basis for the recommendation, and what specific measure is recommended. Such recommendations may include separating the employees by temporarily reassigning one or both employees, placing an employee on administrative leave, and/or modifying work activities or locations until the investigation is complete and appropriate action is taken. If the ad hoc committee agrees that either the recommended interim measure or another action is necessary and appropriate, the ad hoc committee will confidentially request that the Chair of the Board convene a special meeting to consider imposition of an interim measure.

When interim measures are implemented, it is best practice for the respondent to be subject to the interim measure pending the outcome of the investigation, unless the complainant voluntarily requests a temporary interim measure during the investigation.

Some examples of when interim measures may be taken include, but are not limited to:

- When there is a direct reporting relationship between the complainant and the respondent, and the complaint includes egregious allegations of discrimination, harassment and/or retaliation, including sexual harassment;
- To prevent the disruption or alteration of possible evidence;
- To prevent repetition of alleged conduct complained of;
- When there is a reasonable belief that an employee's continued presence in the workplace raises concerns about safety in the workplace.

Once an interim measure has been imposed impacting a direct report, the intake committee will continue to assess the situation to determine if the interim measure continues to be required and will keep the ad hoc subcommittee updated, accordingly. The intake committee encourages a complainant and/or impacted direct report to communicate with the ad hoc committee if any challenges or ongoing issues arise because of the imposition of an interim measure. The intake committee and the ad hoc committee, as applicable, will review the situation accordingly.

After the intake assessment is complete and relevant information is reviewed, the intake committee (with input from the complaining party) may elect to address and resolve a complaint in an informal manner, instead of by investigation. The informal resolution process may be effective when an allegation, as presented by the complainant, is not egregious enough to constitute a violation of the District's EEO or Ethics policies, and/or the intake committee determines an informal resolution is the most effective approach to resolving the complaint. Some examples of when the intake committee may elect to informally resolve a complaint includes:

- Behavior that is not egregious or sufficiently severe in nature;
- When the general facts of an allegation aren't disputed by the parties involved and the respondent admits to the alleged conduct
- When an incident arises from a misunderstanding or minor personality conflict;

At the end of the informal resolution process, the intake committee will generate a summary report. The summary report will include any substantiated finding(s). The investigative scope, process, evidence and analysis summarized in the report must support the findings. Once the intake committee concludes the summary report is in order, the report will be finalized and the intake committee will notify the ad hoc committee of the findings in the case. Upon receipt of the substantiated findings, the ad hoc committee will recommend action to the Board, as appropriate.

B. INVESTIGATIONS

Once the intake committee determines that a potential EEO or Ethics policy violation should be investigated, the investigation will immediately proceed in a prompt, thorough and fair manner by an external investigator/law firm. The investigation may include individual interviews with the parties involved and, where necessary, with witnesses who may have observed the alleged conduct or may have other relevant knowledge.

Once the intake committee determines that a potential EEO or Ethics policy violation should be investigated, the intake committee will notify the complainant and respondent of the investigation in writing. As the investigation progresses, other witnesses will receive advance notice of their interview and will be notified of their responsibility to cooperate during the investigation. Notification includes the following:

- The complainant will be notified of the decision to investigate a complaint, in writing, within five (5) business days. The notice will contain the basis upon which the matter is being investigated and the assigned investigator's name.
- The respondent will be notified that an EEO or ETHics complaint has been made against them, the basis upon which the matter is being investigated applicable to the respondent, and the assigned case investigator's name.
- Witnesses will be notified that they have been identified as a witness concerning an EEO or Ethics investigation for the purposes of scheduling a witness interview. Witnesses will also be notified of their duty to cooperate during the investigation, which will include participating in a witness interview and providing appropriate records as requested during the investigation.

All notices to the complainant, respondent, witnesses will remind the parties that the matter is confidential and that retaliation for participating in an investigation is strictly prohibited. The investigation will proceed and conclude promptly, and the investigator will take the time necessary to ensure the investigation is fair to all parties and is thorough. Case investigations will take ninety (90) business days to complete. However, cases may extend this timeline due to the complexity of the investigation, including the number of protected characteristics listed, the number of allegations under investigation, the amount of parties or witnesses to be interviewed, the expansion of investigative scope, and/or scheduling challenges with involved investigative parties, and/or their representation. The intake committee will inform involved parties, about the status of their investigation, through ongoing communication.

If the intake committee becomes aware of information indicating an individual participating in an investigation has potentially acted in bad faith by making a false allegation of discrimination, harassment or retaliation, or has provided false information to the intake committee during the course of an investigation, that information will be promptly and thoroughly assessed accordingly. Appropriate responsive action may follow if an individual participating in an investigation is found to have made a false allegation of discrimination, harassment or retaliation, or has provided false information to the intake committee during the course of an investigation.

At the completion of an investigation, the investigator will generate a written report with factual findings based on the preponderance of evidence standard. Each factual allegation will be resolved by one of the following findings:

- **Substantiated.** Where the investigation results show that it is more likely than not that a factual allegation occurred.
- **Unsubstantiated.** Where the investigation results failed to show that it is more likely than not that a factual allegation occurred.

The investigator will also be called upon to make a finding on whether a violation of District policy or the Administrative Code, as applicable, has occurred.

Once a report is complete, the investigation report and all relevant or supporting documentation will be reviewed by ad hoc committee. In cases where there are unsubstantiated findings, the investigation will be closed, and a notification letter will be sent to the complainant and respondent. The complete report and all relevant supporting documentation will be maintained confidentially and in an attorney-client privileged manner by the intake committee and not otherwise distributed unless required by law.

In cases where there are substantiated findings, the ad hoc committee shall determine recommended appropriate action, including prompt and effective remedial action. The remedial action will be commensurate with the severity of the offense.

V. RIGHT TO FILE REPORT WITH OUTSIDE ADMINISTRATIVE AGENCIES

An individual possesses the right to report workplace harassment, discrimination or retaliation to the EEOC and/or the CRD.

These administrative agencies provide a complaint process as well as certain legal remedies where the applicable agency determined that a violation of the law occurred.

The nearest EEOC and CRD offices are listed on the internet and in the government section of the telephone book. Employees may also check the posters that are located on District bulletin boards for EEOC and CRD office locations and telephone numbers.

VI. CONFIDENTIALITY

When conducting EEO or Ethics investigations, transparency must be balanced with the importance of confidentiality, protection of personnel information, and individual privacy rights. Like most organizations, the District conducts EEO or Ethics investigations confidentially. In addition to protecting individual privacy rights, this allows all persons who participate in an EEO or Ethics investigation to trust in the integrity of the process and be protected from potential retaliation. The District will take reasonable steps to keep information provided in the complaint and during investigative process confidential. EEO or Ethics investigations will be conducted in an attorney-client privileged manner. Similarly, the Informal Resolution process will be conducted in an attorney-client privileged manner. The District will endeavor to keep the reporting of the Covered Individual's concern, complaint and/or investigation confidential; however, complete confidentiality cannot be guaranteed when it interferes with the District's ability to fulfill its obligations under EEO or Ethics policies and applicable laws or to address the complaint, complete the investigation, and take appropriate action. All participants in an investigation are also asked to refrain from publicly disclosing their participation in an investigation or the substance of their participation.

Attachment 1 - Memo to Board

From: Chair of the Board
Sent: Friday, June 7, 2024 4:03 PM
To: Board of Directors
Subject: Draft Changes to EEO and ETHICS INVESTIGATION Procedures for Senior Metropolitan Officials



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Office of the Board of Directors

Date: June 7, 2024
To: Ethics, Organization, and Personnel Committee Members
Board of Directors
From: Adán Ortega, Jr., Chair of the Board
Subject: Draft Changes to EEO and ETHICS INVESTIGATION Procedures for Senior
Metropolitan Officials

On November 28, 2023, I reported to the Executive Committee that issues existed between our direct reports stemming from our current investigation procedures of senior officials. There is growing consensus that the current methods of processing and investigating cases against senior officials is unsustainable. I asked the Executive Committee's Ad Hoc Subcommittee on EEO Investigations to work with specialized outside counsel to draft a potential alternative processes for Metropolitan senior officials. Their draft describing an alternative process is attached. At this stage, the EOP Committee will provide direction and feedback on the draft provided that will be incorporated and presented at the Executive Committee on June 25th. My hope is that we can approve a revised process at July's board meeting. I look forward to our discussion.



Investigation
Policy.pdf