



- Board of Directors
Organization, Personnel and Technology Committee

8/17/2021 Board Meeting

8-1

Subject

Discussion of recommendations from Shaw Law Group's independent review of allegations of systemic Equal Employment Opportunity-related discrimination, harassment and retaliation, and related concerns; adopt recommendations as presented or with modifications and direct General Manager to implement the recommendations; authorize an increase in the maximum amount payable under contract with Shaw Law Group by \$25,000 to an amount not-to-exceed \$575,000 for follow-up requests; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

Executive Summary

In December 2020, Shaw Law Group (Firm) began a board-directed independent review of allegations of systemic Equal Employment Opportunity-related discrimination, harassment, and retaliation, and related concerns. In July 2021, the Firm presented its observations and recommendations during a special meeting of the Organization, Personnel and Technology (OP&T) Committee. This agenda item allows directors to discuss the Firm's recommendations, adopt the Firm's recommendations as proposed or with modifications, and direct staff to implement any recommendations accepted by the Board. Furthermore, this item requests authorization for an additional \$25,000 in the Firm's contract for any work necessary to resolve four separate investigations.

Details

Background

In November 2020, the Board of Directors authorized and directed the Ethics Officer to engage an outside counsel to perform an independent review of allegations of systemic Equal Employment Opportunity-related (EEO) discrimination, harassment, and retaliation and related concerns. In December 2020, the Ethics Officer executed a contract with the Firm to perform the review.

Under the initial board authorization, the scope of work for the Firm included a review of the following areas:

- How EEO-related discrimination, harassment, and retaliation claims are handled by senior management, human resources staff, legal department, and other levels of management, including examination of processes utilized in cases reported by claimants during Metropolitan Board and Committee meetings throughout 2020.
- Effectiveness of processes related to the Diversity, Equity, and Inclusion (DE&I) Council, including confidential interviews of participants.
- Conducting climate assessments on issues including but not limited to the degree of employees' fear of reprisal for reporting violations.
- Compliance with best practices in these and related areas.
- Level of Board of Directors oversight of issues and concerns related to:
 - Diversity, Equity, and Inclusion.
 - Handling of EEO-related complaints.

- Fairness and favoritism in employment practices.

In July 2021, the Firm completed its independent review and presented its report of observations and recommendations at the July 27, 2021 special meeting of the OP&T Committee.

Shaw Law Group's Recommendations

At the July 27, 2021 meeting, directors provided preliminary feedback on the Firm's report. However, there was insufficient time to fully discuss the Firm's recommendations. This item allows for further discussion of the recommendations.

The Firm proposed over 45 recommendations. The recommendations are attached in full and summarized below. **Attachment 1** is a list of all the Firm's recommendations. **Attachment 2** includes relevant pages from the Firm's report detailing the recommendations and the reasoning for them.

The Firm's primary recommendations are as follows:

1. Elevate the EEO Office to an independent department reporting to the Board of Directors (including hiring an EEO Officer) and eliminate the Legal Department's direct involvement in most EEO investigations.
2. Create three additional internal EEO investigator positions.
3. Create a DE&I Manager position to be filled by an individual with prior DE&I experience to create a DE&I Office, lead the DE&I Council, and guide Council members and Metropolitan Leadership to identify and implement best practices.
4. Create additional positions in the Training Unit and Employee Relations to ensure both areas are properly staffed and resourced.
5. Designate a committee and allocate funds for Metropolitan to implement the recommendations detailed in the Report.

In addition, the Firm made recommendations about the Board's oversight role, including requiring staff to report additional quantitative data to the OP&T Committee about EEO issues, carefully evaluating EEO-related information provided by leadership, providing support and resources to resolve EEO issues, modeling professionalism and respectful behavior, and conducting an annual employee survey for at least five years to evaluate Metropolitan's progress on implementing the recommendations and the effectiveness of those recommendations.

Directors may choose to discuss any of the Firm's recommendations, including any not listed above. In the Firm's view, the five primary recommendations are foundational to its other recommendations; all are designed to align Metropolitan with best practices (e.g., Executive Leadership should visit field locations on a regular basis; Metropolitan should create a new hotline for anonymous reporting of EEO issues). If the five recommendations above are adopted, the qualified personnel hired to fill these positions would have the expertise and responsibility for implementing best practices and operational recommendations.

Resolution of Four EEO Investigations Conducted by Shaw Law Group

After the Firm's independent review began, allegations surfaced of retaliation and other misconduct related to matters under the Firm's review. There was consensus that four EEO complaints required investigation outside of Metropolitan's standard internal EEO process. Accordingly, another attorney at the Firm conducted the investigations through separate task orders under the Firm's contract.

This attorney has completed the four EEO investigations, reached factual findings, and submitted investigation reports. The final phase in resolving these four matters, to be handled by the Shaw Law Group, involves determining whether any violations of Metropolitan policy occurred. To complete this final step in the four EEO investigations, the Ethics Officer requests authorization to increase the maximum amount payable under the existing contract by \$25,000 to a maximum amount payable of \$575,000.

Policy

Administrative Code Section 11104: Delegation of Responsibilities

California Environmental Quality Act (CEQA)

CEQA determinations for Options #1 and #2:

The proposed actions are not defined as a project under CEQA because they involve continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines); the creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment (Section 15378(b)(4) of the State of CEQA Guidelines); and organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment (Section 15378(b)(5) of the State of CEQA Guidelines). Additionally, where it can be seen with certainty that there is no possibility that the proposed actions may have a significant impact on the environment, those actions are not subject to CEQA pursuant to Section 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #3:

None required

Board Options

Option #1

Direct staff to implement each of the recommendations in **Attachment 1**; and authorize an increase in the maximum amount payable to the Shaw Law Group by \$25,000, to a maximum amount payable of \$575,000.

Fiscal Impact: An additional increase in expenditure for professional services by \$25,000 to an amount not to exceed \$575,000. These funds not previously budgeted will have an impact on the Ethics Office's overall budget.

Business Analysis: Support implementation of recommendations and improvements regarding Metropolitan's EEO-related policies and practices

Option #2

Direct staff to implement the recommendations in **Attachment 1** with modifications; and authorize an increase in the maximum amount payable to the Shaw Law Group by \$25,000, to a maximum amount payable of \$575,000.

Fiscal Impact: An additional increase in expenditure for professional services by \$25,000 to an amount not to exceed \$575,000. These funds not previously budgeted will have an impact on the Ethics Office's overall budget.

Business Analysis: Support implementation of recommendations and improvements regarding Metropolitan's EEO-related policies and practices

Option #3

Do not adopt Shaw Law Group recommendations, direct staff to implement recommendations, or authorize an increase in the maximum amount payable under this contract.

Fiscal Impact: Not applicable

Business Analysis: Inaction will delay implementation of recommendations and improvements regarding Metropolitan's EEO-related policies and practices and the resolution of four EEO investigations.

Staff Recommendation

Option #1 or #2.



Abel Salinas
Ethics Officer

8/12/2021

Date

Attachment 1 – List of Shaw Law Group’s Recommendations

Attachment 2 – Excerpt from Shaw Law Group’s Report of Observations and Recommendations

Ref# e12682060

List of Shaw Law Group's Recommendations

Recommendations Regarding the District's Prevention and Resolution of EEO-Related Discrimination, Harassment, and Retaliation Claims
Update current EEO-related policies to reflect best practices.
Implement a policy to address abusive conduct, even if not EEO-related.
Continue promoting and hiring individuals for management positions who demonstrate emotional intelligence and the commitment to creating and maintaining a positive and respectful work environment.
Hold managers accountable for modeling professional and respectful behavior, and demanding the same of their teams.
Require District Leadership to visit field locations on a regular basis, and facilitate town-hall-like events to solicit feedback and input from employees.
Continue to enhance the District's current EEO training program.
Require managers to follow and enforce District policies and procedures.
Require managers to promptly and consistently address EEO Issues and other employee concerns.
Continue management forums and leadership breakfasts, with a focus on providing opportunities for managers to learn from one another.
Create additional positions in the Training Unit and Employee Relations to ensure both areas are properly staffed and resourced.
Provide in-depth and regular training to relevant HR personnel regarding laws, regulations, and best practices regarding responding to accommodation requests and handling confidential medical documentation.
Elevate the EEO Office to an independent department reporting to the Board (including hiring an EEO Officer), and eliminate Legal's direct involvement in most investigations.
Create at least three additional internal EEO investigator positions.
Regularly communicate with all employees regarding the separate components of the EEO Office and the Ethics Office, including direct messaging from the General Manager, the CAO, and the Ethics Officer.
Implement a hotline program to allow for anonymous reporting of EEO Issues.
Update the District's "EEO Discrimination Complaint Procedures," and provide copies to complainant(s) and respondent(s) in each investigation.
Create a process for investigating and resolving complaints against department heads and Directors.
Initiate and complete investigations of EEO Issues in a timely manner.

Immediately identify during investigations of EEO Issues whether interim measures are appropriate.
Prioritize investigations if any employee is placed on PAL pending completion of the investigation.
Take appropriate steps to prevent any form of retaliation against individuals involved in the complaint process.
Provide in-depth and regular training to all EEO Office personnel regarding complaint intake and investigation best practices, and ensure internal EEO investigators are trained in trauma-informed practices, including interview techniques and credibility assessments.
Make only factual findings during investigations, not policy and/or legal findings, and use the appropriate evidentiary standard.
Adopt restorative practices, including creating a conflict resolution team, requiring transparency about the District's remedial actions to the extent consistent with employee rights, and ensuring appropriate follow-up after an investigation is complete.
Recommendations Regarding the DE&I Council
Create a DE&I Manager position to be filled by an individual with prior DE&I experience to create a DE&I Office, lead the DE&I Council, and guide Council members and District Leadership to identify and implement best practices.
Only permit Executive Management to attend DE&I Council meetings when invited by the Council.
Ensure that participation on the DE&I Council is voluntary.
Continue to support DE&I Council participation by releasing Council members from their regular work assignments to attend Council meetings and perform Council work.
Include the DE&I Council in the implementation of the recommendations in the Report as appropriate.
Recommendations Regarding Employees' Fear of Retaliation Related to EEO Issues
Implement a District-wide communication program regarding what conduct may constitute retaliation under the District's policy, and the District's commitment to protecting employees from retaliation.
Strictly limit the dissemination of information regarding internal complaints of potential EEO Issues.
Establish a system to ensure that the EEO Office maintains ongoing communication with the complainant(s) and the respondent(s) during an investigation.
Inform every employee interviewed during an investigation that District policy prohibits retaliation against any employee who submits a complaint, and against any witness who participates in the investigation, including the respondent.

Recommendations Regarding Board of Directors' Oversight of the Issues and Concerns Addressed in the Report
Require the District to provide monthly and annual reports to the OP&T Committee that include quantitative data regarding EEO Issues.
Require the District to obtain education and employment verifications for external candidates selected through the recruitment process for employment with the District.
Continue to evaluate the District's recruiting policies and procedures, including for the Apprenticeship program, and recommend adjustments as appropriate.
Continue carefully and thoroughly to evaluate information provided by District Leadership that provides insight into patterns of EEO Issues.
Encourage management transparency by providing appropriate support and resources to resolve EEO Issues.
Continue to be mindful of the Board's role related to EEO Issues and the District's day-to-day operations.
Require Directors to model professionalism and respectful behavior at all times, and reinforce these expectations on a regular basis.
Designate a committee and allocate funds for the District to implement the recommendations detailed in the Report.
Conduct an annual employee survey for at least the next five years to evaluate the District's progress in implementing the recommendations in the Report, and the effectiveness of those recommendations.

I. SUMMARY OF RECOMMENDATIONS

Although the District appears to be moving in the right direction, there still is much work to be done. We summarize below our observations and recommendations based on the Review data.

A. Recommendations Regarding the District's Prevention and Resolution of EEO-Related Discrimination, Harassment, and Retaliation Claims

The District is responsible for preventing EEO Issues, and responding appropriately to conduct that may violate its EEO policies. We recommend that the District take the steps outlined below to improve its practices in these areas.

1. Prevention of EEO Issues

To effectively prevent EEO Issues, the District must promote a positive working environment, effectively manage employee performance, and provide sufficient resources to the EEO Office.

a. Promote a Positive Working Environment

Update current EEO-related policies to reflect best practices.

The District's Operating Policy H-07 ("Equal Employment Opportunity") and Operating Policy H-13 ("Sexual Harassment Prohibition Policy") are out-of-date, and do not contain certain key provisions. For instance, H-07 does not list all of the characteristics protected by law (e.g., political activities or affiliation), focuses on legal compliance rather than setting a higher standard to encourage the prevention of EEO Issues, and does not accurately describe the District's current structure related to the EEO Office. Similarly, H-13 addresses only sexual harassment prevention, and not the prevention of other forms of harassment.

If the District modifies H-07 to include a more detailed discussion of harassment (including harassment based on gender and sexual orientation, which currently are not addressed in H-13), then H-13 could be eliminated.

In addition, H-07 should contain a more robust discussion of retaliation prevention, and more expressly require managers to contact the EEO Office immediately if they become aware of a potential EEO Issue.

Implement a policy to address abusive conduct, even if not EEO-related.

To our knowledge, none of the District's current policies specifically address the prohibition of "abusive conduct," as defined by California Government Code section 12950.1, which includes repeated infliction of verbal abuse, the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of an employee's work performance.

This conduct, even if not based on a protected characteristic covered by the law, can negatively affect the working environment and lead to EEO Issues.

The District may implement a stand-alone policy, or revise Operating Policy H-04 (“Violence in the Workplace”) to incorporate abusive conduct.

Continue promoting and hiring individuals for management positions who demonstrate emotional intelligence and the commitment to creating and maintaining a positive and respectful work environment.

Managers set the tone in terms of the working environment. When filling management positions, the District should ensure successful candidates embrace their EEO-related responsibilities. For example, even if a manager disputes the merits of an employee’s complaint, they should listen actively to the employee and follow the appropriate internal procedures. Employee complaints can provide opportunities for managers to develop more trusting relationships with their teams, and demonstrate their commitment to EEO compliance.

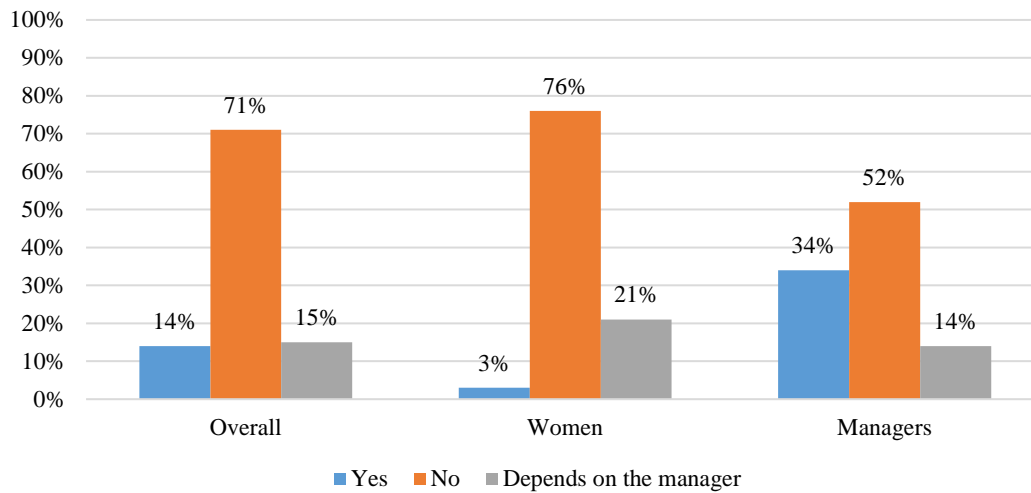
To provide managers with the tools they need in these areas, the District should consider requiring successful completion of its Leadership Academy as a condition of completing probation in management positions.

Hold managers accountable for modeling professional and respectful behavior, and demanding the same of their teams.

It is critical for managers to reinforce their expectations regularly regarding appropriate workplace conduct, and to ensure their conduct is consistent with District policy.

However, a majority of interviewees, including managers, perceive that managers do not clearly articulate their expectations regarding respectful workplace conduct. Notably, even higher percentages of interviewees who stated that they have experienced retaliation for raising a workplace concern (86.2%), and female employees at desert facilities (87.5%), agree with this perception.

“Do managers clearly articulate expectations about respectful workplace conduct?”



For example, some individuals tolerate or encourage the use of inappropriate terms for equipment and profanity. We learned during the Review that some employees use equipment called “dykes.” The term “dyke” is the name commonly used when referring to diagonal cutting pliers (“side cutters” or “diagonal cutters”) electricians use to cut wire. This term is used industry-wide, and is not a District-specific term.¹ That said, the District should discourage employees from using this term, because of its alternative derogatory meaning.²

A minority of District employees still embrace outdated gender and social beliefs. For example:

- A Black female employee told us that an “older, White” male co-worker told her, “I’ve never been around Negroes before.” She explained, “We don’t use that word anymore.”
- A White male employee told us, “[District employees have] formed little associations for every culture. But you can’t have one if you’re Caucasian. It’s turned into, like, you’re bad if you’re White.”
- A manager told us that he wanted to “see things return to the way things were” when managers could ask candidates questions including, “Are you married?” and, “Are you Christian?” because he “wanted guys who would fit in.”

¹ Indeed, our search for “dykes” on Amazon.com generated 398 results for diagonal cutting pliers.

² The term “dyke” is a slang term that “originated as a homophobic and misogynistic slur for a masculine, butch, or androgynous girl or woman.” (Source: www.urbandictionary.com)

- A Latino male employee told us, “I drop an f-bomb now and then. I know I shouldn’t. But that’s how we talk, as real men in the field.”

Some employees are outspoken in their criticism of working with particular groups of employees. For example:

- A Black male employee told us that a co-worker made comments to him about going “down to the border to shoot illegals” and “shooting Black people in the head if they’re Democrats.”³
- On June 17, 2020, a transgender employee sent a work-related email to several co-workers with a rainbow Pride fist in their signature block. An employee who received the email replied to all, “DO NOT EVER AGAIN send an email to me with ANY Political/Activist symbols, quotes, or ANY personal ideals and beliefs that you promote or advocate... QUIT SHOVING IT DOWN MY THROAT!”⁴

When managers fail to intervene and correct demeaning language, disparate treatment, hostility, and other inappropriate conduct, they are contributing to, and even worsening, the problem. The District should focus on selecting managers who will interrupt these behaviors, and then hold the managers accountable when they fail to do so.

Managers also can model respectful behavior by using more inclusive language (e.g., “parental leave” instead of “maternity leave”; “journeyperson” instead of “journeyman”; and “spouse” or “partner” instead of “husband” or “wife”).

Require District Leadership to visit field locations on a regular basis, and facilitate town-hall-like events to solicit feedback and input from employees.

There is a significant gap between what managers believe is happening in the workplace, and employees’ actual experiences. Part of the reason for the disconnect between the managers’ perception and the field employees’ reality is the rarity of senior management presence at field locations. During the Review, field employees consistently expressed a desire for District Leadership to be more present at field locations.

Although COVID-19 has complicated visits to field locations, several Survey participants stated that senior management’s lack of direct interaction with them contributes to field employees feeling isolated and unseen. Regular field visits are critical to continuing to build trust between District Leadership and field employees. These visits allow District Leadership to have further

³ An external investigator investigated these and other allegations. The investigator substantiated many of the factual allegations, but determined that the conduct did not violate District policy. However, Legal referred the matter to Employee Relations to address.

⁴ On July 6, 2020, Kightlinger issued a memorandum to all District employees regarding, “Correspondence Standards and Use of Electronic Signature Standard,” announcing parameters limiting the information that may be included in email signature blocks.

dialogue about the District's culture and working environment in an open, professional, and constructive manner.

Continue to enhance the District's current EEO training program.

California employers must provide regular EEO training to all employees. To meet its obligations in this area, the District's training materials should be up-to-date, and reflect current best practices. Several employees told us that the District's harassment prevention training is delivered via a computer module, and it is not uncommon for employees to get coffee, chat with co-workers, or check email while the program is running. The most impactful training programs use role plays and scenarios to communicate concepts in an entertaining and understandable manner, and are delivered in a "live" format (even if by webinar) to allow participants to ask questions in real-time.

We reviewed the District's "How Was Your Day? Getting Real about Bias, Inclusion, Harassment and Bullying" training launched earlier this year. The training contains four modules: "Overcoming Unconscious Bias," "Embracing Diversity and Inclusion," "Preventing Workplace Harassment," and "Standing Up to Bullying." Although the training is a computer module, it is well done. The program requires frequent interaction to keep the viewer engaged, and presents a solid overview of these concepts.

We are pleased that the program addresses "sex stereotyping," which is relevant to the concerns expressed by Chavez, Grow, and Lee King regarding female employees in trade classifications.⁵ An even stronger program would include customized content providing practical guidance about how to report concerns, rather than generic content such as, "Report harassment to a senior manager or other appropriate person."

We also are pleased that the bullying module includes bystander intervention content. Bystander intervention is one of the most important aspects of an EEO training program. Chavez, Grow, and Lee King all described situations in which other District employees observed their mistreatment, but failed to take any action. The District's EEO case files and information provided by interviewees also revealed numerous instances of EEO complainants being subjected to bullying or other abusive conduct in group settings, without any intervention.

Generally, the "How Was Your Day? Getting Real about Bias, Inclusion, Harassment and Bullying" training was well-received by employees. However, several employees told us that although they understood the concept of, "When bullying shows up, speak up," they wanted more practical guidance on how to do so.

Given the challenges the District faces, a one-time training is not sufficient. The District should reinforce the messages about managing biases and bystander intervention through other

⁵ Several male employees informed us that female employees in the trade classifications are not as capable of certain tasks because men are stronger than women. For instance, these employees perceive difficulty lifting heavy objects as a sex/gender issue, and not a safety issue, which indicates that the messages in the training did not resonate with everyone.

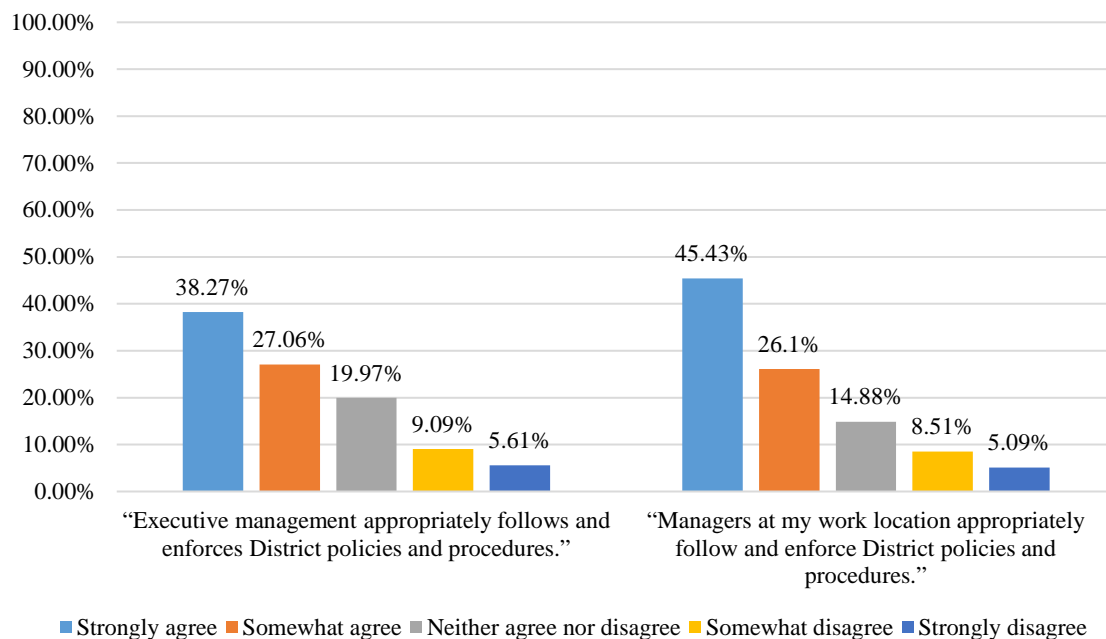
means so these concepts become cultural norms. In addition, the District should provide employees at all levels with the tools necessary to proactively address the discussion of challenging social and political issues (e.g., COVID-19 vaccinations, police brutality) in a positive manner.

b. Effectively Manage Employee Performance

Require managers to follow and enforce District policies and procedures.

We asked Survey participants whether managers appropriately follow and enforce District policies and procedures. The chart below illustrates their responses, differentiated by Executive Management and managers at the participants' work locations. The responses reveal that participants have less confidence that Executive Management follows policies and procedures than managers at their work locations.

Beliefs Regarding Enforcement of Policies and Procedures



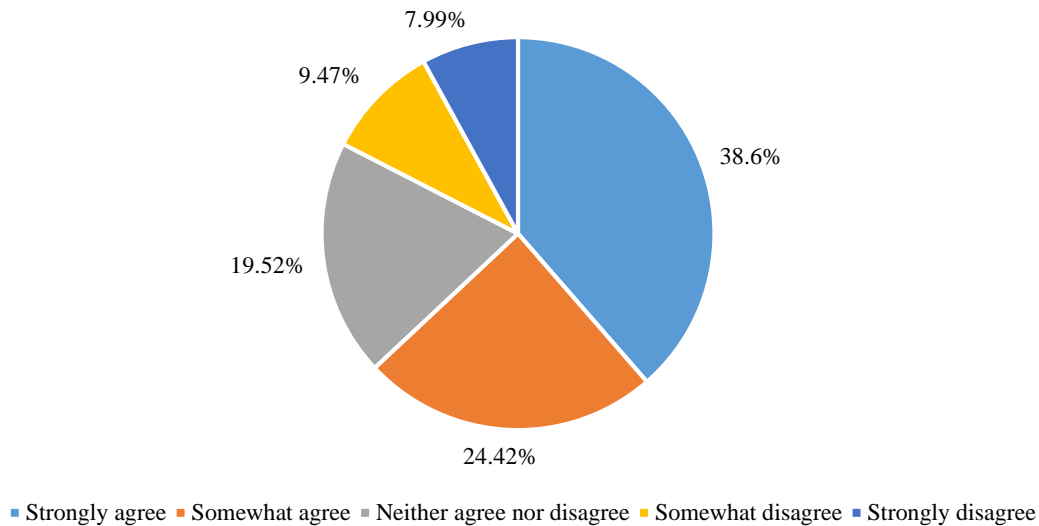
The District must be willing to hold managers accountable for following policies and procedures. This commitment is particularly important for Executive Management, who set the tone for the rest of the organization, and in field locations, where staffing issues and other resource shortages make it tempting to take shortcuts.

Require managers to promptly and consistently address EEO Issues and other employee concerns.

In response to whether "management at my work location takes appropriate action to address employees' concerns," 63% of Survey participants answered favorably (either "strongly

agree” or “somewhat agree”). However, 37% did not answer favorably (“neither agree nor disagree,” “somewhat disagree,” or “strongly disagree”). Notably, when we asked Survey participants whether managers hold employees accountable, and the District holds managers accountable, employees at desert facilities were more likely than average to indicate that their answer would depend on the manager.

“Managers at my work location take appropriate action to address employees’ concerns.”



District managers must embrace their responsibility for preventing, responding to, and supporting employees who perceive themselves as victims of discrimination, harassment, retaliation, and bullying. The District should hold managers accountable for the climate at their work locations, and their adherence to the District’s EEO policies.

In addition, when an employee raises an EEO Issue, managers must take proactive steps to address the situation and prevent bullying and other forms of retaliation against that individual.

Contrary to the Survey results, our review of EEO case files revealed numerous instances of managers immediately reporting EEO concerns; in one case file, Alicia King noted when a manager was held accountable for failing to do so.

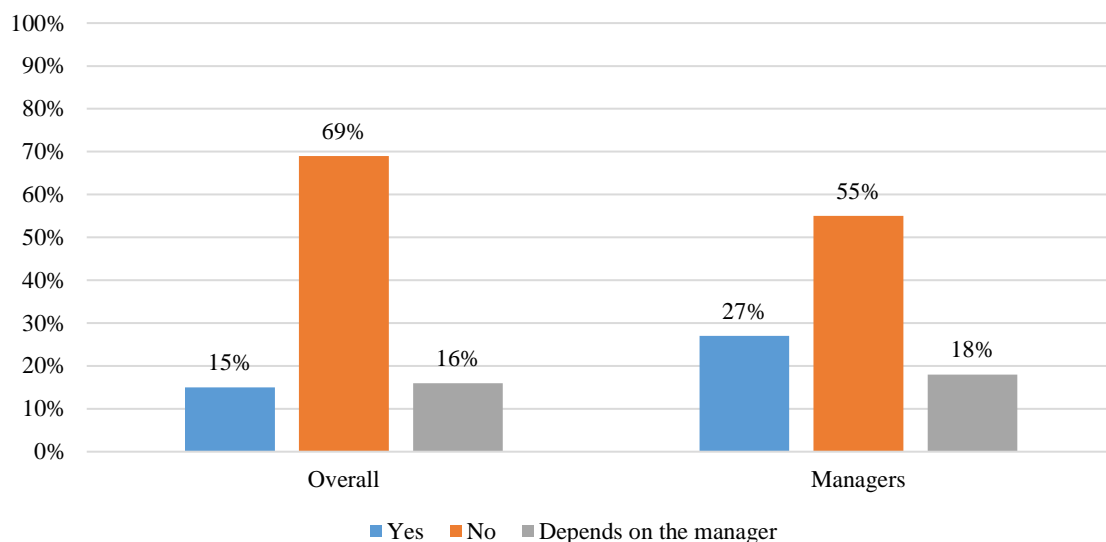
Of course, some EEO Issues (e.g., an employee with no history of EEO misconduct making one off-color comment), may not warrant corrective action, but rather coaching. When appropriate, coaching results in growth for the employee and builds trust with managers. Coaching still requires follow up, though, either in direct communication to the employee or documentation in the manager’s file (not in the employee’s official personnel file).

To determine whether an EEO Issue requires coaching or more serious corrective action, managers should consult with their HR Strategic Partner.

Evaluate the performance of managers and compensate them based on their ability to drive positive interactions on their team, hold employees accountable, demonstrate an appropriate “tone at the top,” and further the District’s DE&I initiatives.

The chart below illustrates that a majority of interviewees, including managers, do not perceive that managers hold employees accountable for inappropriate workplace conduct. Ninety-four percent of interviewees who stated that they have experienced retaliation for raising a workplace concern agreed with this perception, and 29% of female employees at desert facilities stated that whether employees are held accountable for misconduct depends on the applicable manager.

“Do managers hold employees accountable for their work performance and workplace conduct?”

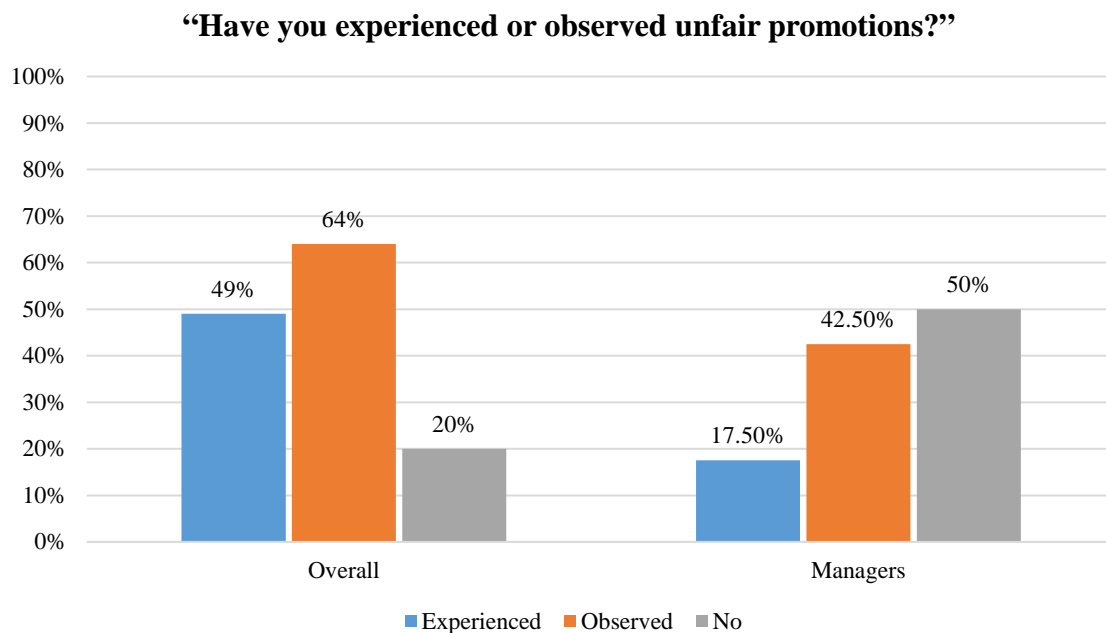


Accountability is about continuous improvement. The District’s progressive discipline process is intended to be a tool for managers to address inappropriate workplace conduct in a manner that will hopefully result in improvement. However, many managers do not feel supported by HR in their efforts to address inappropriate workplace conduct using progressive discipline. They perceive the District frequently “backs down” to an aggressive union. The District should ensure each manager has the tools and support necessary to hold employees accountable when appropriate.

Further, managers need to understand that EEO compliance is a key component of their workplace responsibilities. They should face financial and other consequences if they fail to act consistent with this responsibility, provided the District makes its expectations clear.

Require managers to provide written, position-specific training and advancement plans to all employees to prepare them for internal promotional opportunities.

The Review data reveals that many employees perceive favoritism in promotional decisions. We discussed with 116 interviewees whether they had experienced or observed unfair promotions. A majority of interviewees (64%) reported that they had observed unfair promotions, and 49% of interviewees reported that they had experienced unfair promotions. Managers generally had a more favorable view of hiring practices, and those who responded unfavorably frequently spoke to past practices.



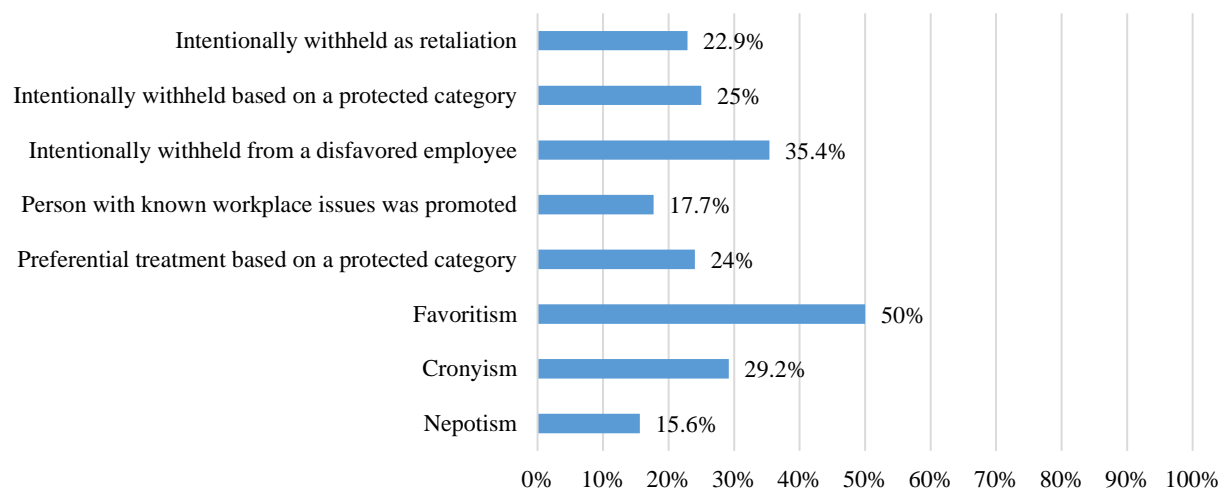
Interviewees repeatedly brought up two examples of “unfair promotions.” The first involved a manager who participated on the interview panel for a position in 2014 while romantically involved with one of the candidates. HR Unit Manager Brandon Patrick, who manages the District’s recruiting team, acknowledged the incident, and explained that HR took steps to avoid the situation in the future. For example, now, before interviews begin, all members of the interview panel complete and sign a document attesting that they reviewed the candidate list and have no conflicts of interest. Patrick provided documentation to support his explanation. Additionally, we reviewed documentation that shows the District investigated the incident and took corrective action.

The second example multiple interviewees mentioned is the perception that one manager gives preferential treatment in promotions to employees with whom he has a common national origin and/or religion. The District retained an external investigator to investigate these allegations, and we reviewed the EEO case file. The investigation report details evidence obtained through witness interviews and documents, and describes situations in which the complainants reached

conclusions based on incomplete and/or inaccurate information. The investigator did not substantiate the allegations. We are satisfied that the investigator conducted a thorough investigation, and reached reasonable findings based on interviews and documents. Additionally, the Department of Fair Employment and Housing (“DFEH”) investigated these allegations in response to an employee’s complaint, and dismissed the complaint for insufficient evidence.

In addition to the two examples above, interviewees provided a variety of reasons for their belief that the promotions at issue were unfair. The most common response was a description of “favoritism.”⁶ More than one-third of interviewees also described situations in which a hiring manager selected a less-qualified candidate over a disfavored employee. Approximately 29% of interviewees described situations involving cronyism. Employees who work at desert facilities were more than twice as likely (33.3%) than other interviewees (15.6%) to perceive that promotions were based on nepotism. Female interviewees were less likely than other interviewees to have perceived favoritism, but more likely to have perceived that a promotion was intentionally withheld because of a protected characteristic, such as sex or gender.

“Why was the promotion unfair?”

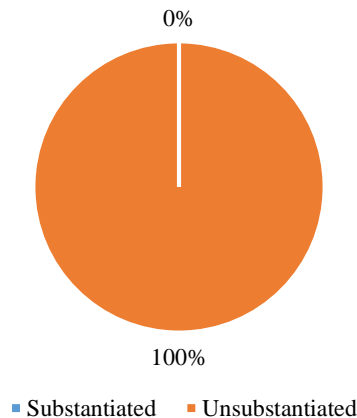


In 2019, Patrick analyzed 2018 recruiting data after AFSCME representatives expressed concern that hiring managers frequently did not offer open positions to the candidate with the highest average interview score. Patrick’s analysis showed that hiring managers offered positions to the highest-scoring candidate in 223 of the 246 (90.6%) recruitments analyzed.

⁶ Interviewees tended to use the words “favoritism,” “nepotism,” and “cronyism” interchangeably. In analyzing interview data, we defined “favoritism” as giving unfair preferential treatment to an employee, “cronyism” as giving preferential treatment to a friend, and “nepotism” as giving preferential treatment to a relative.

Further, the EEO case data does not support the employees' perceptions of favoritism or unfair employment practices. We reviewed 11 EEO case files with recruitment-related allegations. In each case, the allegations were unsubstantiated.⁷

The 11 EEO Cases Involving Recruitment-Related Allegations



Based on the Review data, it appears that some employees are conflating “most experienced” with “most qualified” for a position. However, the District’s recruiting process evaluates a candidate’s education, experience, and licenses to determine whether they meet the minimum qualifications for the position and should be interviewed. An employee with more experience should be able to draw on that experience to perform well in the interview, but the experience alone does not entitle them to the position.

Some employees do not understand that they are responsible for managing their own careers. They need to be their own advocate—communicate with their managers about their career goals, take advantage of learning opportunities and opportunities to increase skills, prepare for interviews, and ask the panel members for feedback after the interview.

Similarly, some managers do not understand that they have a responsibility to help their employees reach their career goals. Managers need to take initiative to understand their employees’ goals and support them by providing learning opportunities and regular, honest feedback on their work performance.

Managers we interviewed provided inconsistent information about their approach to performance evaluations. The District should ensure that managers understand the District’s expected approach to performance evaluations and provide adequate tools to support managers in providing effective and frequent feedback to employees.

Preparing employees for promotional opportunities requires joint effort on the part of the employee, the manager, and the District. Professional development should be an ongoing aspect

⁷ Three EEO cases with recruitment-related allegations are pending results.

of every employee's relationship with their manager. Managers should consider rotational assignments when appropriate, and prepare written training and development plans for each employee to prepare for growth opportunities.

Continue management forums and leadership breakfasts, with a focus on providing opportunities for managers to learn from one other.

We understand the District coordinated management forums and leadership breakfasts before the COVID-19 pandemic. Once it is safe to do so, we encourage the District to continue these events. They provide an important opportunity for managers to learn from one another's successes and failures and gain helpful tips. It is much more efficient for a manager to learn from a colleague who already has solved the problem the manager is experiencing, than spend time trying to solve the problem independently.

Additionally, some managers reported that management can be lonely. This sentiment is particularly true for managers in desert facilities, who recognize that it is inappropriate to socialize regularly with their subordinates (especially when alcohol is involved). These manager-oriented events can help alleviate some of the feelings of isolation.

Also, building relationships with other managers will make facilitating rotational assignments easier.

c. Dedicate Sufficient Resources to EEO Compliance

Create additional positions in the Training Unit and Employee Relations to ensure both areas are properly staffed and resourced.

The District's Training Unit appears committed to providing cutting-edge training for professional development to help managers (and potential managers) develop the skills to be successful. Further, the Training Unit includes staff who are skilled coaches, which makes them valuable partners for Employee Relations and the HR Strategic Partners. We understand demand for this skill is growing as the stigma around coaching is diminishing, and managers are increasingly seeing coaching as a benefit. However, the Training Unit is under-resourced, considering the District's size and geographical reach.

Similarly, the HR Strategic Partners are too frequently pulled away from their strategic work by Employee Relations issues. Each HR Strategic Partner works with an Employee Relations Specialist, but there is more work than they can handle. The District should create additional positions in Employee Relations to support the HR Strategic Partners.

Currently, there is only one Strategic Partner and one Employee Relations Specialist to support the entire WSO group. The District should assign one Employee Relations Specialist to employees in the desert facilities. Ideally, the Employee Relations Specialist would be located at Gene, and expected to visit the other desert facilities on a regular basis.

The Training Unit, the HR Strategic Partners, and Employee Relations will be instrumental to the success of the District's EEO Office and improvements to the District's working environment. Together, they can encourage employees and managers to accept personal responsibility for their actions, keep an open mind about contrary perspectives, and move forward despite past EEO Issues.

Provide in-depth and regular training to relevant HR personnel regarding laws, regulations, and best practices regarding responding to accommodation requests and handling confidential medical documentation.

The Review data regarding the basis of EEO complaints revealed that the District receives more disability complaints than we normally see in our practice. The District should ensure that employees responsible for responding to and processing requests for medical leave and disability accommodations are properly trained on new laws, regulations, and best practices.⁸

2. Investigation and Resolution of EEO Issues

EEO Case Files. We requested all of the District's EEO case files from 2015 to present. We received and reviewed 75 case files.⁹ We also included quantitative data from the four task order investigations in our EEO case analysis.

The chart below illustrates the categories of allegations in the 79 cases.¹⁰ Thirty-three percent of the cases included a retaliation claim—the most of any category. Eighteen percent of these cases included claims of alleged improprieties in recruitment. There were considerably more race-based complaints than complaints of sexual harassment or gender discrimination (although combining the sexual harassment and gender discrimination complaints into one category yields a total that exceeds any other category).

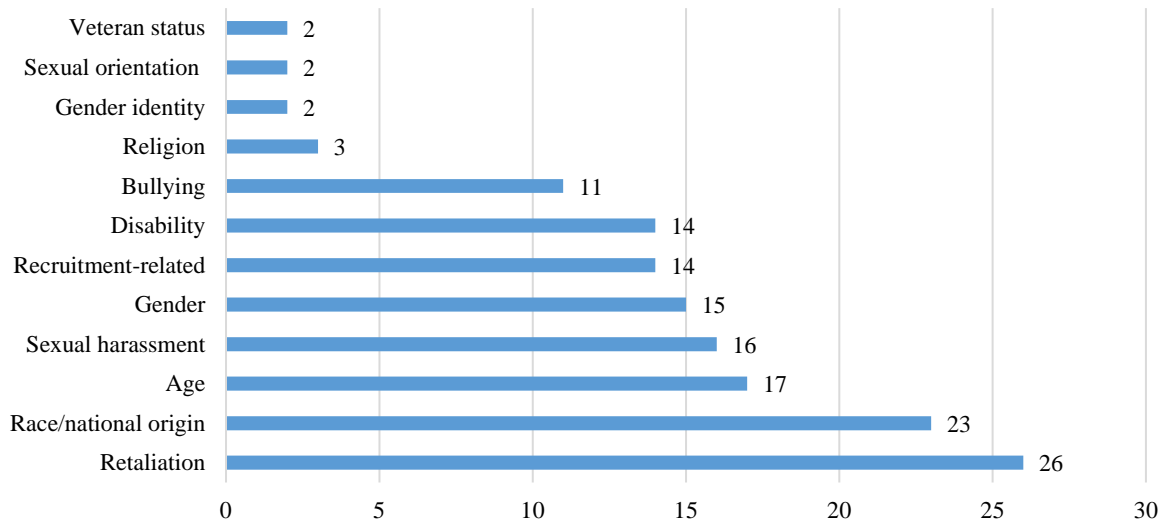
⁸ It came to our attention during the Review that the District retains the services of a physician to review reasonable accommodation requests and other medical documentation. The District should obtain legal guidance regarding whether this practice is compliant with state and federal law.

⁹ We also reviewed the EEO case files regarding Chavez's 2012 and 2013 complaints, and Grow's 2010 complaint. As stated above, information from these cases informed our observations and recommendations included in this Report

¹⁰ Many of the cases contain allegations in multiple categories. For example, if an employee claimed a hiring manager did not select them for a position because of their age, we included the case in the "age" and "recruitment-related" categories.

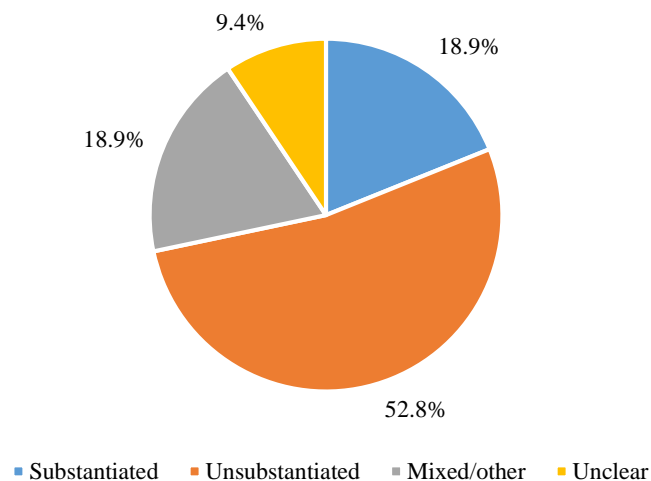
Although "bullying" is not an EEO Issue, we included it as an allegation category if a bullying allegation was investigated along with EEO-related allegations.

Categories of Allegations in EEO Cases (2015–Present)



Twenty-six of the 79 cases we reviewed are still pending.¹¹ The chart below illustrates the results in the other 53 cases.¹² The perception among some employees that the District does not substantiate EEO Issues is inconsistent with the Review data. Anecdotally, the percentage of substantiated cases is not out of line with what we generally observe in our practice.

EEO Investigation Results (2015–Present)



¹¹ The pending cases include the four task order investigations discussed above in **Section II.I.2**.

¹² “Mixed results” means that some of the allegations were substantiated, and some were unsubstantiated. This result includes some cases in which the allegations were unsubstantiated, but the investigation revealed other issues that were referred for remedial action.

“Unclear outcome” means the file did not contain sufficient information to determine whether an investigation was conducted, and if so, the outcome.

We analyzed the data from several perspectives. The table below illustrates the results by allegation category, and reveals that investigators substantiated a greater percentage of racial and sexual harassment complaints than other allegation categories.¹³

Allegation Category	Substantiated	Unsubstantiated	Unclear Outcome	Pending	Total
Retaliation	4	12	3	7	26
Race/National Origin	6	11	1	5	23
Age	1	11	0	5	17
Sexual Harassment ¹⁴	5	8	0	3	16
Gender	1	7	0	7	15
Recruitment-related	0	11	0	3	14
Disability	3	3	3	5	14
Bullying	6	3	0	2	11
Religion	2	1	0	0	3
Gender Identity	0	2	0	0	2
Sexual Orientation	0	1	0	1	2
Veteran Status	1	0	0	1	2
TOTAL	29	70	7	39	145

The table below illustrates that more complainants are male than female. The table also illustrates that AFSCME's assertion to us that the District "almost summarily dismisses" EEO complaints submitted by male employees is inconsistent with the Review data.

Complainant(s)	Substantiated	Unsubstantiated	Mixed Results	Unclear Outcome	Total
Male	6	14	3	4	27
Female	4	11	6	1	22

¹³ The number of unsubstantiated sexual harassment complaints is somewhat misleading. In several cases, the conduct alleged was substantiated, but the investigator found that the conduct did not violate District policy (and in some cases, the investigator made legal findings that the complainant did not suffer from a "hostile work environment").

¹⁴ Four of the five complainants in the substantiated sexual harassment cases are female. Only one (the male complainant) worked at a desert facility. Of the other four, two worked at Union Station, and two worked at a water treatment plant.

Seven of the eight complainants in the unsubstantiated sexual harassment cases are female. Three (all females) worked at desert facilities. Of the other five, one worked at Union Station, and four worked at other field locations.

All three of the complainants in the pending sexual harassment cases are female. Two worked at desert facilities, and one worked in another field location.

Complainant(s)	Substantiated	Unsubstantiated	Mixed Results	Unclear Outcome	Total
Anonymous or multiple complainant(s)	0	3	1	0	4
TOTAL	10	28	10	5	53

Significantly more complaints are submitted against managers than rank-and-file employees. Investigators substantiated a majority of cases against rank-and-file employees. By contrast, a majority of cases against managers were unsubstantiated.

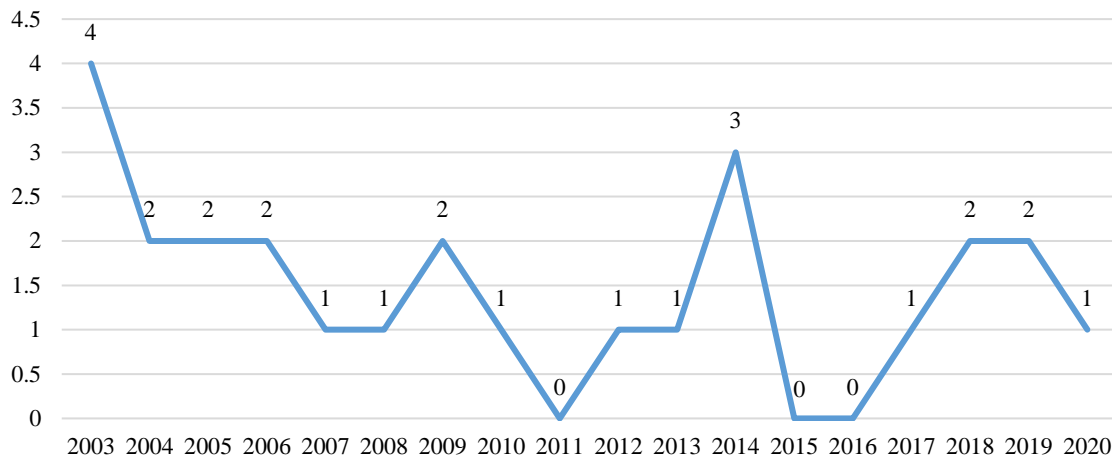
Respondent(s)	Substantiated	Unsubstantiated	Mixed results	Unclear Outcome	Total
Rank-and-file employee(s)	7	2	2	0	11
Manager(s)	3	25	7	5	40
Both	0	1	1	0	2
TOTAL	10	28	10	5	53

The table below compares results from cases Alicia King investigated and cases external investigators investigated. The table does not include the five “unclear outcome” cases because in some cases, it was unclear who, if anyone, investigated the complaint.

Investigator	Substantiated	Unsubstantiated	Mixed results	Total
Internal (A. King)	8	15	4	27
External	2	13	6	21
TOTAL	10	28	10	48

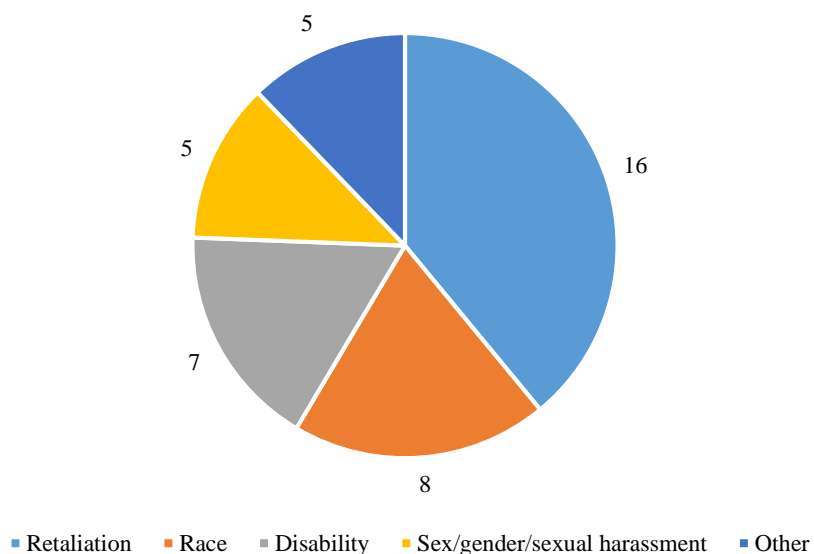
Employment-Related Lawsuits. We reviewed data the District provided regarding employment-related lawsuits. From 2003 to present, employees or former employees filed 26 lawsuits against the District. The chart below illustrates the number of lawsuits filed each year, ranging from zero (2011, 2015, 2016) to a maximum of four (2003).

Employment-Related Lawsuits Filed (2003–Present)



In these lawsuits, 15 of the plaintiffs (58%) were male, and 11 (42%) were female. The chart below summarizes the claims at issue in the lawsuits, 61.5% of which included a retaliation claim.¹⁵

Basis of Lawsuits (2003–Present)



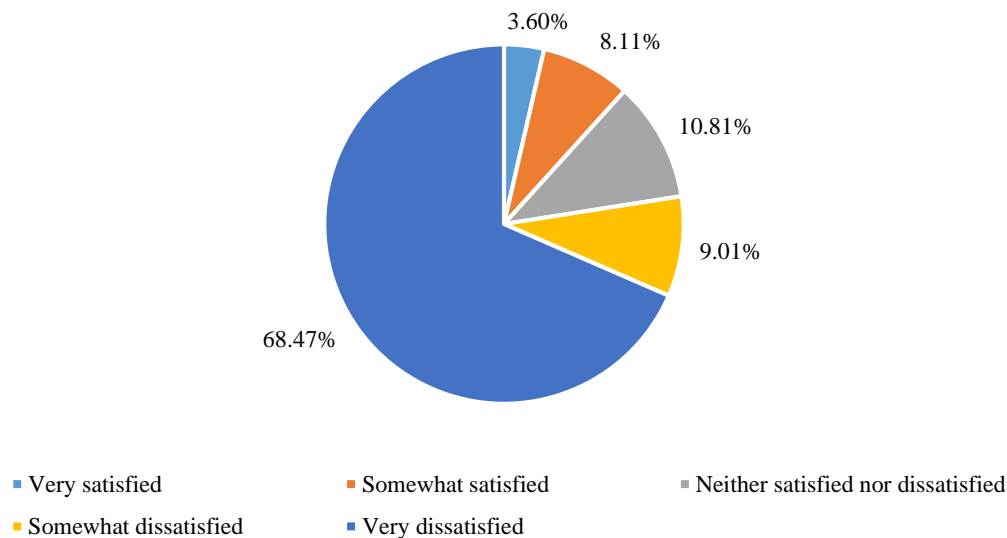
The court dismissed seven of the lawsuits (27%), and the District settled the remaining 19 (73%).

¹⁵ Some of the lawsuits included more than one claim.

As discussed above, 223 (14%) Survey participants indicated they have experienced EEO Issues in last three years.¹⁶ Of those participants, approximately 49% reported their experience to a District employee; slightly more than 50% did not.

The chart below illustrates that 77% of the 112 participants who reported EEO Issues internally were dissatisfied with the District's treatment of their concerns. Notably, female employees at the District's desert facilities were dissatisfied unanimously with the District's treatment of their concerns.

“How satisfied or dissatisfied are you with the way the District responded to your report?”



Survey participants most frequently reported the following reasons for their dissatisfaction with the District's treatment of their concerns: (1) they did not feel “heard” (i.e., they perceived that the District did not take their concerns seriously); (2) they perceived that the District did not take action to address their concerns; and (3) they experienced retaliation after raising their concerns. To the contrary, participants who were satisfied with the District's treatment of their concerns felt that they were “heard” and supported, that the District solved the problem at hand, and that the District prevented any further misconduct.

We recommend that the District take the steps outlined below to improve its effectiveness in responding to potential EEO Issues.

¹⁶ In the Survey, we did not ask employees if they have experienced “discrimination,” “harassment,” or “retaliation,” because these terms have specific legal meaning. Rather, we asked employees, “In the last 3 years, have you had any experiences at [the District] during which someone at work treated you unfairly because of your race, ethnicity, national origin, sex, gender, sexual orientation, and/or any other characteristic protected by law?”

a. **The Structure of the EEO Office**

Elevate the EEO Office to an independent department, and eliminate Legal's direct involvement in most investigations.

Elevating the EEO Office to an independent department will demonstrate the District's commitment to EEO compliance, and engender confidence in the integrity of the Office's activities to encourage employees to report potential EEO Issues. Although some Survey participants and interviewees suggested moving the EEO Office to the Ethics Office, those programs serve different functions, and combining them likely would create confusion among employees.

The new EEO Office should be managed by an EEO Officer who reports directly to the Board, just like the Ethics Officer.¹⁷ The successful candidate must be experienced in managing all aspects of EEO programs, and be able to directly supervise internal and external investigators.

It is critical that the EEO Officer is viewed as neutral in resolving EEO Issues. The EEO Officer should not be eligible for bargaining unit representation, so the potential conflicts of interest with the current EEO Manager also acting as the President of ACE will be eliminated. In the meantime, the current EEO Manager should recuse herself as the EEO Officer from any case involving an ACE member to avoid even the appearance of a conflict of interest.

Currently, Legal selects and manages external investigators for EEO investigations. However, the EEO Officer should have authority to select and manage external investigators when it is not appropriate or feasible to conduct an internal investigation, just as the Ethics Officer does for Ethics investigations. Legal should be consulted only for advice as needed. In a small number of the EEO cases we reviewed, Legal overrode the EEO Manager's recommendation to investigate a complaint, which should not be a decision within Legal's purview. Additionally, Legal is not sufficiently selective regarding the qualifications of external investigators. Although many of the external investigators the District retains are competent, Legal repeatedly retains some investigators who do not follow best practices.

The EEO Officer also should define the scope (i.e., the issues under review) of investigations. This practice is particularly important for external investigators to reduce cost and eliminate duplication of effort (e.g., if internal investigators will handle a portion of the investigation, and the external investigator is not aware of that fact).

Create additional internal EEO investigator positions.

¹⁷ We recognize this recommendation is a departure from the structure in a majority of the organizations the District uses as comparators for compensation and other decisions (e.g., East Bay Municipal Utility District, Los Angeles County Metropolitan Transportation Authority, Los Angeles Department of Water and Power, Orange County Water District, and San Diego County Water Authority). However, we see many parallels between the District's EEO function and Ethics function. Additionally, in our experience, the EEO Office (or Office of Civil Rights) in many state agencies is an independent office that reports directly to the agency head.

Considering the District's size and geographical scope, the EEO Office should have at least three internal investigators to review potential EEO Issues. These investigators should be a team within the EEO Office, reporting to the EEO Officer. As discussed more fully below, the District should hire internal investigators who are properly trained in workplace investigation best practices and trauma-informed practices.

b. The District's Current Investigation Practices

Regularly communicate with all employees regarding the separate components of the EEO Office and the Ethics Office, including direct messaging from the General Manager, the CAO, and the Ethics Officer.

Some employees do not understand the difference between the Ethics and EEO Offices, and everyone will benefit from more transparency regarding their respective functions. The presentation by Pitman and Salinas to the OP&T Committee regarding "Human Resources and Ethics Office Roles in Addressing Complaints," dated March 8, 2021, is an excellent resource.

Implement a hotline program to allow for anonymous reporting of EEO Issues.

As described in **Section VI.2.** above, the Review data revealed that the most frequently reported reasons for employees to feel dissatisfied with the District's treatment of their concerns is they perceived that the District did not take their concerns seriously. Several interviewees described interactions with members of the EEO Office, HR, or Legal that lacked empathy, and left them feeling "dismissed" or "blamed."

For the complainant, how they were treated in the process affects them as much, if not more, than the outcome of the investigation. As a result, many employees perceive that the District, and HR and Legal in particular, is overly focused on defending managers' actions rather than addressing employees' true concerns.

Given the employees' current level of distrust, providing a method for employees to anonymously report perceived EEO Issues would encourage employee participation in the EEO compliance process.

Update the District's "EEO Discrimination Complaint Procedures," and provide copies to complainant(s) and respondent(s) in each investigation.

The District's current EEO procedures should be updated to reflect the District's actual practices. In addition, the EEO Officer should provide the parties to an investigation a copy of the practices at the beginning of every investigation to ensure they understand how the investigation process will work.

Although the procedures state that the District will maintain investigation files that contain any corrective action taken as a result of the investigation, the EEO case files we reviewed do not

contain such documentation. Instead, Employee Relations maintains those records. Although Employee Relations drives the corrective action process, the EEO case files also should reflect the District's post-investigation actions.

The procedures also should include language explaining that the corrective action taken after an investigation is intended to address the substantiated behavior and prevent future occurrences. Many employees perceive that termination is the only appropriate remedy for a violation of the District's EEO policies, which is not the case.

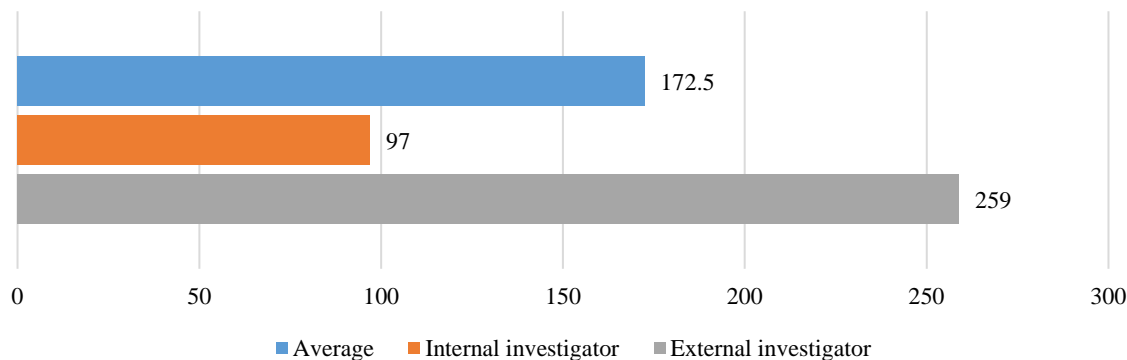
Create a process for investigating and resolving complaints against department heads and Directors.

The Ethics Office recently proposed a process to apply when potential EEO Issues involve department heads and Directors (which will need to be revised to include the EEO Officer position if the Board accepts our recommendation to upgrade the EEO Manager position to an EEO Officer title). Based on our review of the proposed process, the District should adopt proposed "Administrative Code § 2416. Duties and Functions. [Executive Committee]."

Initiate and complete investigations of EEO Issues in a timely manner.

Our review of EEO case files revealed that the average length of time from the date an employee reported a complaint to the date the investigator submitted the investigation report was 172.5 days.¹⁸ This is far too long for the average case to be open. We observed that when Alicia King was investigating EEO complaints, she generally conducted thorough investigations in a relatively timely manner. After Pitman reassigned the EEO investigation function back to the EEO Office in 2019, the time to resolve internal complaints increased significantly.¹⁹

Days from EEO Complaint to Final Report (2015–Present)



¹⁸ In the "Days from EEO Complaint to Final Report (2015–Present)" chart, "Internal Investigator" means Alicia King conducted and managed the investigation process. "External Investigator" means the District retained an external investigator to conduct the investigation, and Legal managed the investigation process.

¹⁹ As previously discussed, the current EEO Manager does not manage EEO investigations; she refers them to Legal to manage.

The District is required to initiate and complete investigations in a timely manner. Generally, the investigation process should take no longer than 60 days for internal or external investigations, absent unusual circumstances. This data supports our recommendation above that the District should hire additional EEO investigators.

In addition, the EEO Office should not delay the initiation of an investigation pending receipt of a written complaint, which we observed in a small number of cases. Once the District is on notice of a potential EEO Issue, the District should begin the investigation process.

Of course, the District need not conduct a formal investigation for every EEO complaint. Some complaints can be resolved by having a conversation with each of the parties. Additionally, the purpose of an investigation is to determine what happened when the organization does not already have that information. If the District already knows what happened, the EEO Office can refer the matter to Employee Relations for further action. Regardless of whether the EEO Office handles complaints in an informal manner or by conducting a formal investigation, every relevant document, conversation, and decision should be documented in the EEO case file.

Immediately identify during investigations of EEO Issues whether interim measures are appropriate.

In certain situations, it may be appropriate for one of the parties involved to be reassigned temporarily or placed on PAL. PAL should be used rarely, and only in circumstances when an employee should not remain in the workplace. It is appropriate to place an employee on PAL, for example, when the employee has threatened physical violence or as needed to protect sensitive information.

PAL temporarily relieves an employee of their normal job duties; it is not the same as teleworking. When an employee is on PAL, it is a best practice to collect all District property (e.g., keys, computer devices), and disable the employee's access to the District computer network and email system while on PAL.

Prioritize investigations if any employee is placed on PAL pending completion of the investigation.

The Review data reveals multiple examples of employees remaining on PAL for several months. If the District places an employee on PAL, the investigation should be prioritized, and completed as quickly as possible. This practice will reduce costs, and the District's potential liability if an employee remains on PAL for a substantial period of time, is eventually exonerated, and then later claims that the leave negatively affected their employment opportunities.

Take appropriate steps to prevent any form of retaliation against individuals involved in the complaint process.

We address this issue more fully in **Section VI.C.** below.

Provide in-depth and regular training to all EEO Office personnel regarding complaint intake and investigation best practices, and ensure internal EEO investigators are trained in trauma-informed practices, including interview techniques and credibility assessments.

Because of the complexities of the District's workplace, all EEO Office personnel must be properly trained and competent in all aspects of the investigation process. The knowledge and understanding of trauma-informed interview practices can be helpful in any investigation, but they are particularly important for investigations involving complaints of violence, sexual misconduct, or prolonged bullying. The presence of trauma changes the way a person encodes and stores memory. Using trauma-informed interview techniques will aid the investigator in obtaining more reliable information, and more importantly, avoid causing secondary trauma.

Make only factual findings during investigations, not policy and/or legal findings, and use the appropriate evidentiary standard.

The District's current practice of permitting external investigators to make policy and/or legal findings is inconsistent with best practices. Investigators should focus only on factual issues, and leave policy findings to HR and corrective action to Employee Relations.

In addition, the current use of the terms "unfounded" and "insufficient evidence" in investigation reports is inconsistent with best practices. All investigators should use a binary standard (e.g., "sustained"/"not sustained," or "substantiated"/"unsubstantiated").

c. Post-Investigation Practices

Adopt restorative practices, including creating a conflict resolution team, requiring transparency about the District's remedial actions to the extent consistent with employee rights, and ensuring appropriate follow-up after an investigation is complete.

Employees who had submitted EEO complaints frequently complained that they did not receive a copy of the investigation report. Further, corrective action taken, if any, is generally intended to address the policy violation, and does not consider the harm to the employee or to the working environment. The District's current lack of restorative processes leaves many employees involved in the complaint process feeling unheard, disrespected, and unsure of how to work together. The District should consider creating a conflict resolution team to address this issue.

Although transparency is an important part of restorative practices, we do not recommend providing copies of reports to the parties outside of any legal obligation to do so (e.g., when the District relies on a report for disciplinary action, the respondent is likely entitled to a copy of the report before their Skelly hearing). Curiosity about consequences is understandable, but full transparency could constitute a violation of an employee's privacy.

Ultimately, employees know a problem is solved because the conduct has stopped. Complainants seeking more information are setting themselves up for disappointment, which eventually becomes resentment. The more resources the District dedicates to restorative processes, the more likely employees will accept the results of investigations, even if they disagree with those results.

The District is fortunate to have some employees who are particularly skilled in this area and could be influential if, as recommended above, the District dedicates sufficient resources to the Training Unit and Employee Relations.

Implement a process for Employee Relations and/or the EEO Office to inform internal recruiters about information relevant to transfer requests, such as an employee's prior complaint against an employee working at the potential new location.

The District maintains a Transfer List of employees who desire to transfer to a different location or position within their classification. Employees may complete a Transfer Request form, which adds them to the list for one year. When a position becomes available, the Recruiter managing the recruitment consults the transfer list for any eligible employees. The hiring manager must consider these employees for the position before accepting other internal and/or external applications. If the Recruiter selects an employee on the Transfer List for the position, the Recruiter asks Employee Relations if the employee is "eligible" to transfer. Employees are eligible to transfer if their manager rated them as "Meets Expectations" or higher on their most recent performance evaluation, and the employee has no appealable disciplinary action. Employee Relations provides only a "yes" or "no" answer to the Recruiter's eligibility inquiry. Employee Relations does not provide any additional details.

Managers generally do not know when employees from other locations have a history of disciplinary action or conflict with other employees, nor should they. The District should implement a process that allows Employee Relations and/or the EEO Office to inform Recruiters who inquire about an employee's eligibility for transfer that the employee has history with their office that should be considered. Such history does not necessarily make the employee ineligible for the transfer. However, the District has a responsibility to ensure that an employee with a history of conflict or EEO Issues with another employee does not transfer to that employees' location when the transfer would be traumatizing or disruptive.

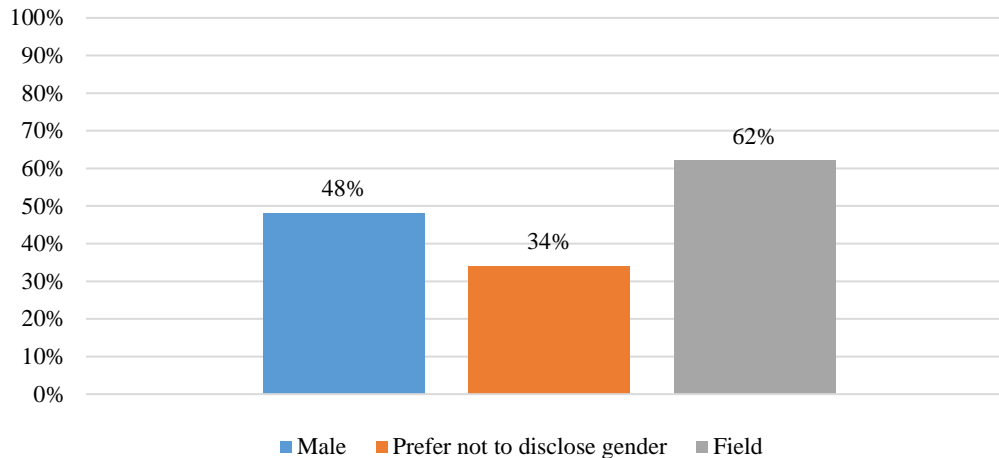
Consider eliminating confidentiality/non-disclosure provisions in settlement agreements with employees who will remain employed with the District after the investigation is completed.

Although generally lawful, the District's practice of including non-disclosure and/or confidentiality provisions in settlement agreements with current employees encourages mistrust and speculation.

B. Recommendations Regarding the DE&I Council

As shown in **Section III.C.** above, we asked Survey participants, “Which of the following best describes your race/ethnicity?” Approximately 10% of Survey participants selected “prefer not to disclose.” Of the 155 participants who preferred not to disclose their race, 62% work in field locations, 48% identified their gender as male, and 34% preferred not to disclose their gender.

Survey Respondents Who Selected “Prefer Not to Disclose Race”



This data explains why the DE&I Council’s work is so important. As discussed in **Section V.** above, the District still has work to do to improve the working environment for racial and ethnic minorities. However, with 10% of District employees avoiding the conversation about race altogether, the District will find it challenging to accomplish that work.

We recommend that the District take the steps outlined below regarding the DE&I Council.

Create a DE&I Manager position to be filled by an individual with prior DE&I experience to create a DE&I Office, lead the DE&I Council, and guide Council members and District Leadership to identify and implement best practices.

DE&I issues are complex and often misunderstood. For example, we asked interviewees if the working environment is safe and respectful for racial and ethnic minorities. A common answer was something to the effect of, “It seems diverse,” an answer that conflates the concepts of diversity and inclusion.

DE&I Council members interviewed provided inconsistent explanations of the DE&I Council’s purpose, even after the Council adopted its mission statement. Further, they reported that six months into the launch of the Council, no one ever defined the terms “diversity,” “equity,” or “inclusion” relative to the work they were expected to do. Although most of the DE&I Council

members are enthusiastic about the opportunity to influence a more diverse, equitable, and inclusive workplace, they admit they lack knowledge of how to do so.

These volunteers cannot effectively solve a problem they are unable to define without guidance from an expert in DE&I issues. The District should create a DE&I Manager position to create a DE&I Office, lead the DE&I Council, and provide necessary guidance to the Council and District Leadership as they seek to identify and implement best practices for a DE&I initiative.²⁰ The District's DE&I Office should encompass the District's Affirmative Action and outreach functions.

The DE&I Manager must be viewed as independent, and have the ability to establish trust and work collaboratively with employees. Because of the nature of the Council's functions, we discourage the District from making the DE&I Manager position eligible for membership in a bargaining unit.

Take steps to further develop the DE&I Council.

The District launched the DE&I Council with positive intentions, but little planning. As a result, the Council's start was a bit rocky. Council members were eager to begin discussing DE&I issues and making recommendations that would lead to positive change, and quickly became frustrated with the lack of clarity on the Council's structure and purpose. The Council is working through some of the growing pains of launching a new initiative. The members are laying a foundation for the important work to be done, and they should continue to be patient and diligent in further developing the Council's structure and goals.

Once the District hires a DE&I Manager, one of their first priorities should be collaborating with the DE&I Council to define the terms "diversity," "equity," and "inclusion" for purposes of furthering the Council's work. Next, the DE&I Manager should guide the Council to identify appropriate initiatives, and set specific and measurable quarterly and annual goals for the Council to implement and evaluate the initiatives identified.

The Council recently established five subcommittees: Communications & Outreach, Recruitment, Recruitment Outreach, Training & Development, and Promotions. The Council should further refine the scope and purpose of the subcommittees, and consider adding a subcommittee focused on supporting ERGs and outreach to form ERGs for groups not currently represented (e.g., members of the LGBTQ+ community and allies, employees with disabilities, and veterans).

Some interviewees expressed concern over the lack of transparency about the Council's activities. For example, there is a "microsite" for the Council on the District's intranet ("IntraMet") where employees can find information about the Council's activities. However, the employee who provides administrative support for the Council prepares a document that summarizes the events

²⁰ Some of the District's detractors would prefer for a Director to lead the DE&I Council because they distrust District Leadership. We do not support this desire. Our recommendations are designed to support the intent of creating an employee-led forum.

at each meeting, rather than detailed meeting notes. The Council should consider how to make their activities sufficiently transparent for all District employees to trust the process.

Only permit Executive Management to attend DE&I Council meetings when invited by the Council.

Currently, Executive Management attends all Council meetings. A majority of Council members reported that their presence is intimidating, and makes them reluctant to participate in Council discussions. Once the District hires a DE&I Manager, we recommend that the DE&I Manager serve as Executive Management's liaison to the Council and report progress as needed. However, the Council should invite Executive Management to attend full Council meetings periodically for the opportunity to continue dialogue about DE&I issues and show support for the Council's efforts.

Ensure that participation on the DE&I Council is voluntary.

When the District launched its DE&I initiative, Chapman asked each of the ERG Presidents to designate two members to serve as representatives on the DE&I Council. Although many of the DE&I Council members volunteered to represent their bargaining unit or ERG on the Council, some feel obligated to participate simply because they hold a leadership position in their ERG. It is important that Council members genuinely want to participate in the Council's efforts. If a member chooses to resign from the Council, they must be able to do so without repercussions.

Continue to support DE&I Council participation by releasing Council members from their regular work assignments to attend Council meetings and perform Council work.

Some of the DE&I Council members expressed concern about the time they are investing in Council work, at the expense of their regular duties. The District took steps to allocate time for Council members to attend Council meetings and perform Council work, similar to the way bargaining unit officers and representatives can designate time spent on union activities as "union release." The District should continue this practice to support the Council's efforts.

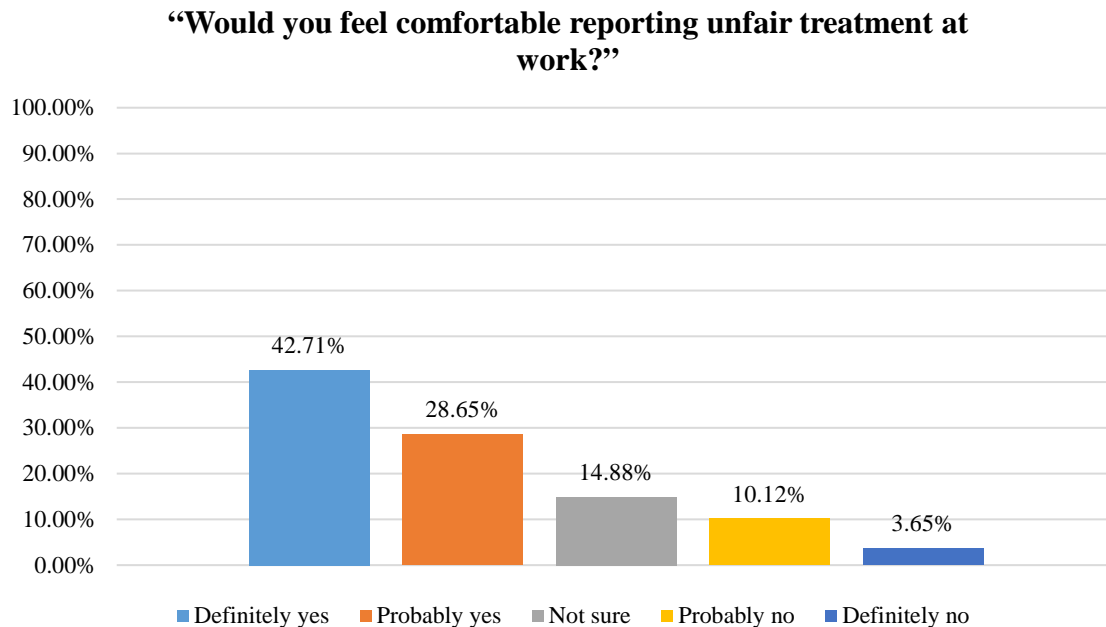
Include the DE&I Council in the implementation of the recommendations in this Report as appropriate.

Many of the recommendations in this Report for preventing EEO Issues are aligned with the DE&I Council's interests. The District should include the Council in the implementation of the recommendations as appropriate.

C. Recommendations Regarding Employees' Fear of Retaliation Related to EEO Issues

Employees who fear reprisal or retaliation often are discouraged from raising EEO Issues, which is consistent with the Review data discussed below.

The chart below illustrates that 71% of Survey participants would feel comfortable reporting EEO Issues internally.²¹



The 29% of Survey participants who expressed discomfort with reporting EEO Issues internally most frequently noted the following reasons for their discomfort: (1) fear of retaliation and/or other damage to their career; (2) a perception that no one will care about their concerns and/or the District would not take action to address their concerns; and (3) a perception that HR and/or managers with knowledge of the complaint would not maintain appropriate confidentiality. A smaller number of participants attributed their discomfort to a previous negative reporting experience.

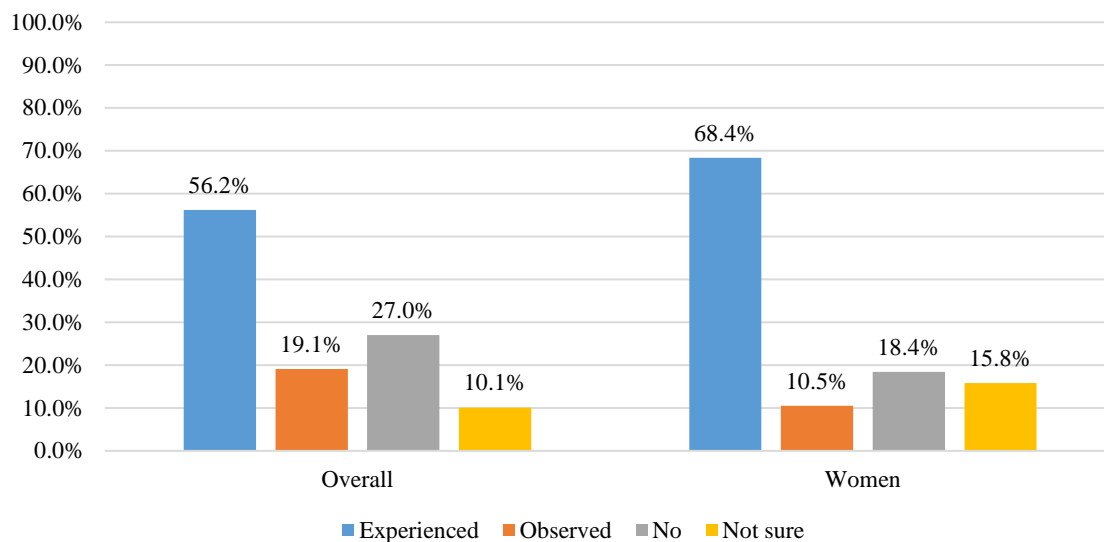
The Survey yielded the following additional insights regarding perceived EEO Issues:

²¹ At first glance, this result appears to be inconsistent with the results of the Ethics Survey. It is important to note, however, that the surveys asked different questions. The Ethics Survey asked whether participants agreed with the statement, “I can disclose a suspected violation without fear of reprisal.” In our Survey and follow-up interviews, we intended to determine why employees fear reprisal or retaliation for reporting concerns, and related facts to support their fears, if any. We did not determine if employees are more or less comfortable reporting EEO Issues than suspected ethics violations.

- Managers are more comfortable with the concept of reporting their concerns than rank-and-file employees, but less likely actually to report their concerns. This result is particularly evident for managers at Union Station. To the contrary, managers at desert facilities are significantly less comfortable with the concept of reporting than other managers in the District.
- Female employees are less comfortable with the concept of reporting than male employees, but more likely to actually report their concerns.
- Employees who work at desert facilities are less comfortable with the concept of reporting than other employees.

To learn more about these trends, we asked interviewees whether they had experienced retaliation after making a complaint, or knew of another employee who had been retaliated against. The chart below illustrates that approximately 75% of interviewees responded affirmatively.

“Have you experienced or observed retaliation after making a complaint?”



This questioning revealed several insights:

- Female employees are more likely than male employees to have experienced conduct they perceive as retaliation after making a complaint, and female employees who work at desert facilities unanimously reported such experiences.
- Managers are significantly less likely to report retaliation than rank-and-file employees.

- Approximately 54% of interviewees who experienced conduct they perceived as retaliation have worked at the District for more than 16 years. Only two such interviewees (4%) have worked for the District for five or fewer years.
- Approximately 56.5% of the alleged incidents reported by interviewees occurred in 2020 or 2021.
- Approximately 42% of interviewees reported that the District withheld a promotion because of their complaint.

As we discussed in **Section VI.A.2.** above, 33% of the District's EEO cases from 2015 to present included a retaliation claim.

If the District implements the recommendations detailed in **Sections VI.A. and B.** above, District employees will be less likely to experience EEO Issues, and more likely to report if they become aware of EEO Issues.

In addition, we recommend the District take the additional steps outlined below.

Implement a District-wide communication program regarding what conduct may constitute retaliation under the District's policy, and the District's commitment to protecting employees from retaliation.

Engaging in protected activity, including submitting an EEO complaint, does not give an employee a "free pass" on poor performance or misconduct. Nor does it relieve the employee's manager of their duty to manage. However, after employees engage in protected activity, they often interpret as retaliation any action that they perceive as negative.

The District should implement a communication program to educate employees about what conduct does, and does not, constitute retaliation. There may be circumstances in which a manager must take reasonable and necessary action to manage an employee's work performance during and after an investigation. The action is not considered retaliation unless it was intended to punish the employee because of the protected activity. The program also should advise managers who are the respondent in a complaint to consult with their HR Strategic Partner about how to continue managing an employee during and after an investigation.

Strictly limit the dissemination of information regarding internal complaints of potential EEO Issues.

Some employees absolutely must know about internal complaints. For example, the EEO Officer must collaborate with Employee Relations to implement appropriate corrective action and restorative practices. However, the District should ensure that investigation reports and information about complaints is disseminated only on a true "need to know" basis. The fewer people who know about the complaint, the smaller the chances are that someone will retaliate against the complainant or anyone else involved in the complaint process.

Additionally, on a regular basis, the District should reinforce the expectation that employees in confidential positions must not discuss complaints with anyone who does not need to know about them.

Establish a system to ensure that the EEO Office maintains ongoing communication with the complainant(s) and the respondent(s) during an investigation.

Ongoing communication with the complainant(s) and the respondent(s) during an investigation reduces anxiety, builds trust, and decreases the likelihood of retaliation against the parties and other participants in investigations. The EEO Office should establish a system to ensure such communication happens at regular intervals.

As a standard procedure, the EEO Office should explain to complainants what is, and is not, considered retaliation, and encourage complainants to report anything that happens that the employee considers adverse.

It is appropriate for the employees in the EEO Office to have empathy with both complainants and respondents. It is natural for a respondent to be upset about being the subject of a complaint. The EEO Office should coach respondents to view the complaint as an indication of a problem that needs to be solved, not a personal attack. Remind respondents that employees have a right to complain, the District has an obligation to investigate the complaint, and the respondents will have an opportunity to tell their side of the story.

The District's existing practice of scheduling meetings or calls with complainants and respondents to deliver opening/closing memoranda and answer questions encourages trust between the EEO Office and employees. We encourage the District to continue this best practice.

Inform every employee interviewed during an investigation that District policy prohibits retaliation against any employee who submits a complaint, and against any witness who participates in the investigation, including the respondent.

As a standard procedure, EEO investigators should inform every employee interviewed during an investigation that confidentiality is expected. Explain that when employees talk about the investigation, it could increase the chances of retaliation, and compromise the integrity of the investigation.

Additionally, EEO investigators should inform interviewees that District policy prohibits retaliation against any employee who submits a complaint, and against any witness who participates in the investigation, including the respondent.

D. Recommendations Regarding Board of Directors' Oversight of the Issues and Concerns Addressed in this Report

We recommend that the Board take the steps outlined below regarding the Board's oversight of the issues and concerns discussed in this Report.

Require the District to provide monthly and annual reports to the OP&T Committee that include quantitative data regarding EEO Issues.

As discussed further below, the District provides the Board and Board committees a considerable amount of information regarding HR issues and personnel matters. However, the District currently does not provide reports on EEO Issues, except as requested. We recommend that the Board require the District to provide quantitative data on EEO Issues to the OP&T Committee on a monthly and annual basis.

The Ethics Office's monthly report to the Board's Audit and Ethics Committee currently includes data regarding the number and general nature of complaints received, investigations opened, and investigations pending. The EEO Office should provide a similar monthly report to the OP&T Committee.

On September 15, 2020, and November 9, 2020, the EEO Office provided information requested by the Board regarding EEO cases over a given period of time, including aggregate data regarding the basis of the complaints, complainant demographics, and investigation results (i.e., substantiated or unsubstantiated).²² The EEO Office should provide to the OP&T Committee an annual report with similar information for EEO complaints made each calendar year. In addition to the type of information provided in the September 15, 2020, and November 9, 2020, reports, the annual report should include data on the average length of time to resolve complaints, and a summary of any disciplinary actions taken.

Reports should include quantitative data only, and should not include the names of any of the employees involved or details of the complaint beyond the general nature (e.g., sexual harassment, age discrimination, etc.).

Require the District to obtain education and employment verifications for external candidates selected through the recruitment process for employment with the District.

For each position in the District, HR prepares a job description that specifies the minimum qualifications for the position, such as a specific educational degree, years of experience, or mandatory certificates or licenses. Our interviews with employees revealed that some employees believe the District hires or promotes candidates who are not qualified for their position because

²² The EEO case results the District reported generally are similar to the results of our analysis discussed above. However, where we noted the results were "mixed," the District reported the results as "unsubstantiated."

the District accepts candidates' representations of their education or experience on employment applications as true, without verifying said information.

HR runs background checks (i.e., criminal history) on external applicants who are selected through the recruitment process for employment with the District. However, we were unable to determine whether the background check process includes education and employment verifications (e.g., obtaining verification from former employers, educational institutions, and licensing bodies that the information applicants provided to the District is accurate). If the District's background checks do not include verifications, the District should consider adding verification services to its background check requests, or assign this function to an employee on the recruiting team.

Continue to evaluate the District's recruiting policies and procedures, including for the Apprenticeship program, and recommend adjustments as appropriate.

As discussed in **Section VI.A.1.b.** above, some employees believe the District engages in unfair hiring practices, particularly with regard to promotions and transfers. However, we generally found little merit to these concerns. Other than the issues already discussed in this Report, we do not see substantial problems with the District's recruitment processes for the Apprenticeship program or other District positions.²³

As previously discussed, the District has made significant improvements to its processes in recent years, including implementing procedures to support a fair process. For example, managers do not have access to the transfer list; hiring managers are discouraged from participating on the interview panel for the first round of interviews; interview panels pose the same questions to every candidate and score every candidate using the same rubric; panelists' scores must be within one rating level of each other; and hiring managers must complete a "Final Hiring Interview Recommendation" form with narrative justifying their selection for HR to review. However, many employees are unaware of these requirements, and continue to have misconceptions about how the recruiting process works.

The District should continue to evaluate and adjust its recruitment process as needed, and consider ways to clarify misinformation about the process.

Continue carefully and thoroughly to evaluate information provided by District Leadership that provides insight into patterns of EEO Issues.

Most Director-interviewees stated that the District provides the Board sufficient information regarding HR issues and personnel matters, and is responsive to Directors' requests for additional data. Our review of reports and presentations provided to the Board corroborated these statements. For example, the "Human Resources" section of the General Manager's monthly

²³ Many interviewees complained that the recruitment process takes too long. Recommendations to improve the efficiency of the District's recruitment process are beyond the scope of this Review.

report includes “HR Metrics” showing quantitative data regarding headcount, recruitments, job audit requests, and personnel transactions (e.g., hires, promotions, separations, and transfers). The General Counsel’s monthly report includes details about employment-related litigation. The report also lists outside counsel agreements and the purpose for each agreement, including agreements for EEO investigations and HR litigation. Legal’s quarterly report lists settled claims and separation agreements.

Assuming the District complies with our recommendation above to provide additional reporting on EEO Issues, the reports listed above and the new EEO reports in combination provide insight into potential EEO Issues and other working environment issues. Directors, particularly those on the OP&T Committee, are responsible for reviewing the information provided, recognizing trends in the numbers that may indicate an issue, and asking questions.

Encourage management transparency by providing appropriate support and resources to resolve EEO Issues.

Several interviewees told us about incidents in which managers felt pressured to withhold negative information from the Board. The majority of these incidents involved pressure from a manager who is no longer employed with the District. However, some employees still sense that managers may be reluctant to share negative information with the Board.

District Leadership and other managers we interviewed overwhelmingly reported that they do not feel pressured to withhold negative information from the Board. To the contrary, they stated that, although it has not always been the case, Executive Management currently encourages transparency. They generally understand the importance of sharing “good news” and “bad news” with the Board.

It is important that District Leadership and managers have confidence that if they notify the Board of an issue, the Board will collaborate with them in a positive manner to resolve the issue. The Board should be mindful that their response is instrumental in encouraging or discouraging transparency.

Continue to be mindful of the Board’s role related to EEO Issues and the District’s day-to-day operations.

Although District Leadership should keep the Board apprised of key developments and the resolution of high-profile EEO Issues that have long-term effects on the District, the Board should not be involved in the District’s day-to-day operations or its EEO processes.

Require Directors to model professionalism and respectful behavior at all times, and reinforce these expectations on a regular basis.

It is unhealthy for members of a Board to always be on the same page; robust debate of issues is necessary for a Board to do its important work. Directors who express strong opinions do

so because they care. However, a Board cannot progress beyond debate and make reasoned decisions when the debate becomes overly heated.

It is apparent that in-fighting on the Board is perpetuating the District's culture and working environment challenges, and damaging the District's reputation. It is difficult for employees to feel confident about the District's commitment to change when the Board is factionalized.

We recommend the Chairwoman of the Board take additional steps to re-establish trust and encourage a more cohesive Board, and the District should provide support and resources as needed to support the Chairwoman's efforts.²⁴

Designate a committee and allocate funds for the District to implement the recommendations detailed in this Report.

Although some of the recommendations in this Report are simple, many are complex, and span multiple areas of responsibility. The Board should designate a committee to request and review the District's response to each recommendation, allocate funds for the District to implement the recommendations the Board chooses to accept, and track the District's progress on implementing the accepted recommendations.

Conduct an annual employee survey for at least the next five years to evaluate the District's progress in implementing the recommendations in this Report, and the effectiveness of those recommendations.

If nothing else, we learned in this Review that most District employees—even the unhappy ones—are committed to the mission of providing safe, reliable drinking water to Southern California. They know they deserve a workplace that allows them to contribute to this mission while being treated with dignity and respect, and they want to be heard when that is not happening.

The issues that triggered this Review are serious, and require a genuine and sustained response. The District cannot consider the issues resolved once it has completed implementation of the recommendations in this Report. Conducting an annual employee survey will help the District ensure that changes are effective, and reveal any unintended consequences or new issues. Further, soliciting feedback generates trust and shows genuine interest in the well-being of the employees.

²⁴ In the spirit of modeling inclusive language, as recommended elsewhere in this Report, we also recommend that the District refer to Chairwoman Gray as "Chairperson Gray."