



- Legal and Claims Committee

8/17/2021 Committee Meeting

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Subject

Report on the Legal Department's Role in Equal Employment Opportunity Investigations

Executive Summary

The role of the Legal Department in equal employment opportunity (EEO) investigations was discussed as a part of the Shaw Law Group report presented to the Organization, Personnel and Technology Committee at the July 27, 2021 Special Meeting. Staff in the Legal Department (Legal) does not conduct EEO investigations or direct their outcomes. Due to a lack of resources in Human Resources (HR), in early 2019, HR requested that Legal contract with external investigators to conduct EEO investigations until internal investigations staff could be hired by HR. The purpose of this letter is to provide the Board with information about the process.

Details

As stated in the Shaw Law Group report, since early 2019, HR has not had the resources needed to conduct EEO investigations. As a result, HR requested, and Legal agreed to facilitate investigations of EEO complaints by contracting with qualified neutral external investigators to conduct and complete investigations. HR and Legal work collaboratively, and Legal works closely with the EEO manager to coordinate all investigations.

A. Underlying Legal Principles and Metropolitan Policies

Under state and federal law, Metropolitan is obligated to take all reasonable steps to prevent harassment or discrimination based on a person's protected class, or related retaliation. Protected classes encompass many different personal characteristics, including but not limited to race and gender, and prohibited harassment includes sexual harassment.

Metropolitan's policies contained in its Operating Policies and Administrative Code prohibit all harassment, discrimination, and retaliation prohibited by EEO law, and also prevent broader, less severe conduct that would not rise to the level of a violation of law. As part of its broader efforts to prevent workplace discrimination, harassment, and retaliation, Metropolitan employees may make an EEO complaint with the EEO manager without fear of retaliation. All complaints are carefully reviewed and, in many cases, Metropolitan's EEO manager refers complaints for investigation by a neutral outside investigator hired by Legal. Conducting a workplace investigation in appropriate cases is important since failure to do so can impact Metropolitan's ability to prevent discrimination, harassment, or retaliation, or respond to such allegations.

B. The External EEO Investigators Utilized by Legal on Behalf of HR

A list of the EEO investigators currently used by Legal on behalf of HR and their qualifications is attached as **Attachment 1**. Many of the investigators are Association of Workplace Investigators Certificate Holders (AWI-CH) certified investigators with significant experience in workplace investigations. Other investigators are experienced employment attorneys at respected public agency-oriented law firms who have expertise in handling the unique demands of a public sector administrative investigation. Other attorneys are solo practitioners with several years of experience conducting workplace investigations, particularly for public agencies.

C. The EEO Investigation Process

The EEO investigation process typically consists of the following phases: (1) intake of the referral from the EEO manager via a complaint and review of all initial documentation; (2) hiring the external investigator and

identifying the scope of the investigation; (3) coordinating the investigation; and (4) concluding the investigation. Currently, external investigators conduct all EEO investigations. Legal's primary role is to accept referrals from the EEO manager for investigation and to assign the investigation to external investigators. In cases where there is a question regarding the duty to investigate, Legal collaborates with the EEO manager to determine whether an investigation should be performed. In most cases, Legal simply accepts the referral from the EEO manager and assigns the matter to an investigator.

Once an investigation is assigned, the investigator independently researches the facts. During an investigation, attorneys and confidential administrative staff in Legal assist the investigator by ensuring employees receive proper due process notice, coordinating with the bargaining units as needed, scheduling interviews requested by the investigator, and providing the records and evidence requested by the investigator. Legal also provides the investigator with copies of Metropolitan policies and Administrative Code sections and other relevant materials. Attorneys in Legal may respond to procedural or scoping questions from the investigator, and the investigator may also consult with the EEO manager for similar information as necessary to complete the investigation (e.g., personnel records or explanation of HR procedures). Legal reviews the report for issues such as completeness and adequate factual support. Ultimate decisions regarding findings lie entirely with the investigator.

Once the investigation is complete, Legal provides the completed report to the EEO manager, along with all exhibits, unless there is a conflict of interest. Legal is available to consult with the EEO manager regarding any needed follow-up and to advise on whether proposed corrective action steps are legally defensible. Ultimate decisions regarding discipline and other corrective action are made by Employee Relations, EEO, and management.

D. Case Volume

Since the commencement of the public discussions of workplace issues at Metropolitan in 2020, the formation of the DE&I Council, and the initiation of the Shaw Law Group's work, the number of EEO complaints at Metropolitan has increased. The number of external investigations was 10 in calendar year 2019, and 15 in calendar year 2020. Currently, 18 outside investigations have been initiated so far this year. To accommodate the increase, Legal has contracted with additional external investigators and has dedicated additional administrative and attorney staff time to provide support.

Currently, HR's goal, if the positions are authorized, is to hire two EEO investigators so that EEO investigations can be transitioned back to internal staff. A recruitment process is in progress to hire one EEO investigator.

Before 2019, Legal facilitated EEO investigations at the request of HR by using external investigators on a case-by-case basis due to a conflict of interest (such as when a manager in the HR chain of command was the subject of a complaint), occasional staffing limitations, or when HR requested an external investigator to handle a more time-consuming investigation.

Legal agrees with the goal of completing an investigation within 60 – 90 days. At the same time, a one-size-fits-all approach to investigatory deadlines is not practicable, as AWI and other workplace investigations organizations recognize. Many investigations are highly complex, deal with numerous witnesses, voluminous records, multiple different allegations, and entail coordination with involved employees within multiple groups and work units, as well as representatives from multiple bargaining units. Legal also must coordinate with schedules of external investigators who serve multiple clients.

E. Future Involvement of Legal in the Investigation Process

Since 2019, Legal has anticipated that EEO investigations will be transitioned back to internal EEO investigators when the resources are available, except in cases where using an external investigator is appropriate. Legal will remain available to consult with or advise EEO staff on the questions of law related to EEO matters as appropriate. There are many situations in which collaboration between EEO and Legal can be helpful to the process as issues often arise that require legal advice, including: (1) whether an investigation is required; (2) whether any interim measures are necessary; (3) whether the investigation should be conducted under the attorney-client privilege; (4) how to safeguard confidentiality, privacy, due process, and First Amendment rights; and (5) whether and how to disclose the results of the investigation.

Investigations can have a direct impact on not only the affected employees, but also on Metropolitan itself. When imposing discipline on its employees for violating EEO policies, Metropolitan must follow correct procedures, must ensure the constitutional due process and privacy rights of all employees are protected, and must ensure its response to substantiated allegations is appropriate. A legal claim can arise against Metropolitan if it does not properly handle these issues.

In cases where discipline results from an investigation, the discipline can be directly challenged by the subject employee's bargaining unit in an administrative appeal. The administrative hearing is conducted by a neutral hearing officer, with Legal staff attorneys or special counsel under Legal's supervision defending the discipline. The thoroughness and integrity of an investigation directly impact the administrative process and whether disciplinary action will be sustained by the hearing officer. Regardless of the outcome of the investigation, it is important for Legal to be available to consult on investigations, as needed, to ensure fairness and compliance with all requirements and that subsequent actions by Metropolitan management can withstand any challenge.

Policy

Metropolitan Administrative Code Section 6219: Disciplinary Actions

Metropolitan Administrative Code Section 6300: Statement of Equal Opportunity Policy

Metropolitan Administrative Code Section 6303: Objectives of Affirmative Action Program

Metropolitan Administrative Code Section 7111: Nondiscrimination and Harassment

Metropolitan Administrative Code Section 8161: Non-discrimination Practices in District Contracts

Metropolitan Administrative Code Section 4513: Equal Opportunity Requirements

Operating Policy H-07: Equal Employment Opportunity (prohibiting discrimination and harassment based on protected characteristics, and related retaliation)

Operating Policy H-13: Sexual Harassment Prohibition Policy (also prohibiting related retaliation)

Fiscal Impact

None



Marcia Scully
General Counsel

8/12/2021

Date

Attachment 1 – EEO Investigators

Ref# I12685696

EEO INVESTIGATORS

Albright Yee & Schmidt

Metropolitan contracts primarily with Clifton Albright, a well-known Los Angeles employment attorney. Mr. Albright typically assigns experienced employment lawyers to handle assigned EEO investigations. Mr. Albright was appointed by both presidents Obama and Trump to the Industry Trade Advisory Committee on Small and Minority Business, and his law firm is recognized by the City and County of Los Angeles as a Minority-Owned Enterprise. Albright, Yee & Schmidt currently represents the County of Los Angeles, City of Los Angeles, Los Angeles Unified School District (LAUSD), Southern California Edison, Commerce Casino, the Los Angeles Department of Water and Power (DWP), Toyota, the Water Replenishment District of Southern California (WRD), and DirecTV in labor, employment and tort matters. Mr. Albright brings tremendous experience in employment litigation and counseling matters to the table for Metropolitan.

Christina K. Dixon – Aecus Law

Ms. Dixon is the managing attorney of Aecus Law, a workplace investigations, employment advice and counseling law firm. Ms. Dixon is a member of the Association of Workplace Investigators and a member of the American Bar Association's Labor and Employment Section. Ms. Dixon gained several years of experience at major international and national law firms where she represented both public entity and private business clients in employment matters. Ms. Dixon also conducts employment audits and counsels clients on all aspects of the employment relationship, including hiring, wage and hour and classification issues, discipline and termination. She received her Juris Doctor from the University of Michigan Law school, where she was an American Indian Graduate Center Fellowship Recipient

Ronald D. Bremen

Metropolitan primarily contracts with attorney Ronald Bremen in connection with misconduct matters. However, Mr. Bremen does receive EEO investigation assignments from time to time. Mr. Bremen is a former police officer with several years of law enforcement investigations experience with different agencies. Most recently, Mr. Bremen worked as a Special Deputy Inspector General for the California Office of Inspector General where he reviewed findings and administrative investigations performed by others. Mr. Bremen has also served as a Workers Compensation Appeals Board judge and spent several years with the United States Department of State, Bureau of Diplomatic Security.

Michael Heider

Metropolitan primarily contracts with attorney Michael Heider to perform misconduct investigations. However, Mr. Heider does receive EEO investigation assignments from time to time as well. Mr. Heider is a retired sergeant with the County of Los Angeles Sheriff's Department. Mr. Heider spent several years in the Sheriff's Advocacy Unit where he supervised employment litigation handled by outside attorneys, worked on Internal Affairs Bureau investigations, and oversaw the prosecution of peace officer misconduct disciplinary cases and the Civil Service Commission appeals. Mr. Heider spent many years as a detective with the Major Crimes Bureau where he investigated serious crimes, including sexual assault cases. Most recently, Mr. Heider worked as a Special Deputy Inspector General for the California Office of Inspector General where he reviewed findings and administrative investigations performed by others.

IMC Law, Inc.

Metropolitan primarily contracts with attorney Lynne Davis, the founding member of IMC Law, Inc. IMC provides employment law independent investigation and mediation services. Ms. Davis specializes in conducting workplace investigations as an independent investigator, and she is a Charter Member of the Association of Workplace Investigators. She has conducted independent investigations of employment-related claims, as well as Title IX discrimination and sexual assault matters, for private and public companies, law firms, private and public universities, community college districts, private schools, and public school districts. IMC provides training for management and non-supervisory employees on any and all employment issues, including required sexual harassment training under AB 1825 and training on harassment, discrimination and retaliation prevention, interviewing practices, bullying, and health and safety. Ms. Davis has been active in the Women's Legal Defense Fund (now known as the National Partnership for Women and Families) and is a member of the Women Lawyers Association of Los Angeles.

Olivarez Madruga Lemieux O'Neill

Metropolitan primarily contracts with attorneys Tom Madruga and Elana Rivkin-Haas for administrative EEO investigations. Both attorneys are highly experienced employment lawyers. Ms. Rivkin-Haas, in particular, has significant experience in workplace investigations, public employment disciplinary matters, and advising public agencies on a variety of issues unique to government employers. She has presented and given training at school districts and professional organizations on a variety of topics including, disability discrimination and the reasonable accommodations process, and sexual harassment prevention. Olivarez Madruga Lemieux O'Neill is a certified minority-owned law firm.

Oppenheimer Investigations Group, LLP

Metropolitan contracts with attorney Amy Oppenheimer, who is the managing partner of the firm. Ms. Oppenheimer is an experienced employment attorney and investigator and has worked with both private and public employers. Ms. Oppenheimer is a retired administrative law judge, and her expertise includes investigating workplace harassment. Ms. Oppenheimer led the founding of the Association of Workplace Investigators and served as its Chair for several years. She has served as neutral for the past twenty-five years as mediator, investigator of employment disputes, arbitrator, trainer, and expert witness. She is a trial-qualified expert on the issue of employment practices in preventing, responding to, and investigating workplace harassment and discrimination, having testified at trial, deposition, and arbitration more than sixty times.

She has served as the past Chair of the Executive Committee of Labor and Employment Section of the State Bar of California, and she is a founder and past president of the board of Association of Workplace Investigators.

Public Interest Investigations, Inc.

Metropolitan contracts primarily with Barbara Dalton, Vice President of Public Interest Investigations, Inc. (PII). Barbara Dalton is an attorney and a licensed private investigator. As vice president of PII, she specializes in conducting third-party investigations into allegations of employment discrimination based on race, gender, disability, age, and sexual orientation. Her work has included conducting investigations at schools, colleges, and universities, including investigations into allegations of sexual misconduct and discrimination brought pursuant to Title IX, and complaints brought under Uniform Complaint Procedures. Dalton serves as a hearing officer for Title IX adjudications and appeal hearings. She has helped develop Title IX trainings for investigators and hearing officers and regularly attends specialized training on conducting Title IX investigations. She has also supervised and conducted investigations of employee and employer misconduct, wage and hour violations, and wrongful termination claims. Ms. Dalton also oversees investigations for Metropolitan, which are handled by experienced employment attorneys at PII. Ms. Dalton is a sustaining member of the Association of Workplace Investigators. PII has also been selected by the Ethics Office to conduct its investigations.

Reddock Law Group

Angela Reddock-Wright is a nationally respected employment lawyer with a particular focus on workplace investigations. She is an AWI-CH certified workplace investigator, and the Los Angeles Business Journal recognizes her as one of the “Most Influential Minority and Women Attorneys.” Ms. Reddock-Wright typically assigns attorney Roberta Yang to handle investigations, who is also an experienced employment lawyer and AWI-CH certified workplace investigator and has received training in trauma-informed interview techniques. Ms. Reddock-Wright and Ms. Yang have both been appointed by the Board of Supervisors for the County of Los Angeles to the County Equity Oversight Panel where they evaluate workplace investigations conducted by County staff.

Van Dermeyden Maddux

Metropolitan primarily contracts with attorney Deborah Maddux, who is a senior partner at the firm and is an AWI-CH certified workplace investigator. Ms. Maddux is a trained mediator, Title IX hearing officer, and highly experienced employment attorney. She is also a SHRM certified EEOC investigator and has handled workplace discrimination investigations across California, including the state Legislature. Over the past 25 years, she has handled investigations involving the Public Safety Officers Procedural Bill of Rights Act, the Firefighters Procedural Bill of Rights, and Internal Affairs. She is an experienced investigator in Title IX sexual assault claims, and is a founding member of T9 Mastered, a training firm for Title IX investigations. She is experienced in testifying during administrative and judicial proceedings regarding completed investigations. In addition, she has litigated in state and federal courts, including the California Court of Appeals and the California Supreme Court. Similar to the Shaw Law Group, the Van Dermeyden Maddux firm has advised and trained employers on best practices for conducting and overseeing workplace investigations.

Susan Woolley

Susan Woolley is an attorney with extensive experience in discrimination and workplace investigations. Among other appointments, Ms. Woolley was appointed by the Board of Supervisors for the County of Los Angeles to the County Equity Oversight Panel where she reviewed and evaluated workplace investigations conducted by the County's staff of over 15 EEO investigators. Ms. Woolley is an adjunct professor at Loyola Law School, where she teaches fact investigation, and is a prominent member of AWI where she provides training on a variety of investigative subjects, including writing investigative reports. Ms. Woolley has designed investigation procedures, developed disciplinary guidelines, and reviewed hundreds of investigations as joint consultant for the U. S. Department of Justice and Major Corporation.