



Report on the Legal Department's Role in EEO Investigations

Legal and Claims Committee
Item #7a
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Legal Principles and Policies

- State and federal law require employers to take reasonable steps to prevent discrimination, retaliation and harassment due to an employee's protected class
- Metropolitan's policies broadly prohibit discrimination, retaliation and harassment
- Metropolitan employees may file a complaint with EEO staff. EEO conducts intake and refers matters that require investigation to Legal
- Complainants and witnesses are protected from retaliation

Background of Legal's Involvement

- Prior to 2019, Legal coordinated EEO investigations in limited circumstances (i.e., conflict of interest, workload issues)
- In 2019, HR requested and Legal agreed to hire outside consultants to handle all EEO investigations until HR hires dedicated investigations staff
- Since 2019, Legal has anticipated the majority of EEO investigations will be transitioned back to internal staff
- After internal staff assumes the lead role, Legal will be available to advise on any legal or handling questions

External Investigators

- Legal currently utilizes a diverse group of attorneys who are highly qualified and experienced in conducting EEO investigations
- Many investigators are certificate holders with the Association of Workplace Investigators

External Investigators cont'd.

- Some investigators have specialized experience in public agency employment law
- Other investigators have specialized experience in handling a variety of administrative investigations for public agencies, such as EEO and misconduct investigations

Legal's Current EEO Investigations Process

Step 1: Intake of Referral From EEO

- In most cases, Legal reviews referral materials and immediately works to contract with an outside investigator
- In a small number of cases, it is unclear whether Metropolitan has a legal duty to investigate. In these cases, Legal will consult with the EEO manager and make a joint decision whether to investigate

Step 2: Hiring the Investigator and Scope

- Legal selects investigators based on particular expertise and availability
- The EEO manager identifies scope of the investigation
- The investigator confirms scope and consults with Legal as necessary

Step 3: Coordinating the Investigation

- The investigator works independently
- Legal staff assists with witness coordination, due process issues, conferring with the union as needed, scheduling, obtaining records, identifies persons most knowledgeable on a given subject area as needed, answering procedural questions
- Legal reviews a draft report
- Decisions regarding findings lie entirely with the investigator

Step 4: Concluding the Investigation

- Legal provides complete reports to the EEO manager, along with all exhibits, unless there is a conflict of interest
- The EEO manager issues closing memos to the parties
- Legal is available to consult with the EEO manager and Employee Relations regarding any needed follow up or corrective action
- Ultimate decisions regarding discipline and other corrective actions are made by Employee Relations, EEO, and relevant Group Management

EEO Investigation Case Volume

Since 2019, the number of complaints referred for EEO investigation have increased



Timeliness Goals

- Legal agrees with the goal of a 60-to-90-day completion
- **Increased investigation time factors:**
 - Many complaints span several years
 - Significant numbers of witnesses and records
 - New allegations identified during an investigation
 - Litigation / outside agency coordination
 - Coordination with union and staff schedules (leaves, etc.)
 - Anonymous complaints involving numerous witnesses
 - Coordination with outside investigator schedules

Discipline Considerations

- Some EEO investigations lead to discipline
- As public employees, Metropolitan staff have the right to appeal discipline, often in an administrative hearing
- The investigation's integrity and thoroughness can be directly challenged in a disciplinary appeal
- Ensuring investigations are conducted properly directly impacts Legal's ability to defend disciplinary action through the appeals process

Legal's Future Involvement in EEO Investigations

- To coordinate EEO investigations in limited cases (conflicts, etc.)
- Advise investigators on various legal issues as needed, such as:
 - Whether a duty to investigate has arisen
 - Whether interim measures, such as separating employees or placing someone on paid administrative leave pending an investigation, are appropriate
 - Whether investigations should be privileged
 - Whether and how to disclose the investigation
 - Safeguarding privacy and due process rights

