



Procedure 614

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LEAD DEPARTMENT HR

EQUAL EMPLOYMENT OPPORTUNITY (EEO) DISCRIMINATION, HARASSMENT AND RETALIATION COMPLAINTS, INVESTIGATIONS AND APPEALS

PURPOSE – This procedure implements Policies 6.06 and 6.07 and sets forth the complaint process and complaint mechanisms, in compliance with state law. This procedure assigns responsibilities within the District for investigating and resolving complaints reported to the Diversity and Inclusion Office (DIO) alleging Equal Employment Opportunity (EEO) discrimination, workplace harassment (including sexual harassment) or retaliation in violation of Policies 6.06 and 6.07 to assure timely, consistent, and appropriate action.

Forms Used

Q-006 – EEO Discrimination/Harassment Complaint (from the DIO)
PE-105 – Statement of Grievance (from Locals 2019, 444, 39 and 21)

Scope

For applicants for employment, employees and students/trainees to claim EEO discrimination and/or workplace harassment based on protected group status and/or for related retaliation claims. For independent contractors, vendors and volunteers to claim EEO harassment based on protected group status.

Independent contractors, vendors and volunteers should report any claims of EEO discrimination and/or retaliation to the District Contract Equity Office.

Definitions

Applicant

An individual who has completed an employment application and met minimum qualifications for a specific, available position at the District.

Complaint

An oral or written allegation of discrimination, harassment, and/or retaliation.

Complainant

The person raising a complaint.

EEO Discrimination

EEO discrimination involves making employment decisions on the basis of an individual's protected group status, including but not limited to, decisions regarding the following aspects of the employment relationship:

- Recruitment
- Hiring
- Placement
- Promotion
- Transfer
- Training
- Working terms and conditions
- Wage and salary administration
- Employee benefits and application of policies

Discrimination includes harassment on the basis of a protected group and failure to accommodate a religious practice or provide a reasonable accommodation for a qualified individual with a disability.

Employee

An individual selected and/or appointed to a position created and authorized by the Board of Directors and receiving compensation and benefits from the District, including individuals in Board authorized job classifications with the term intern in the title.

Independent Contractor

A person that is not an employee of the District and provides goods or services to the District under terms specified in a contract.

Student/Trainee

Any District-authorized student or trainee who is not compensated by the District but is either paid by a third party or retained by a third party to work at the District in order to gain job experience or academic credit.

Protected Groups

Policy 6.06 – Equal Employment Opportunity prohibits discrimination or harassment on the basis of race, color, religious creed, gender (including gender identity and gender expression), marital or registered domestic partnership status, age, national origin, ancestry, disability (mental or physical, including AIDS and HIV), medical condition (cancer and genetic characteristics), genetic information, sexual orientation, military and veterans status, family or medical leave status, pregnancy, pregnancy disability leave status, or any other status protected by federal, state and/or local laws.

Respondent

The person accused of violating Policy 6.06 and/or 6.07, and related policies and procedures.

Retaliation

Retaliation involves taking an adverse action, e.g., firing, demoting, harassing, or otherwise "retaliating" against someone, because they engaged in a protected activity, i.e., filed a charge of discrimination, complained to the District or other entity about discrimination on the job, or participated in an employment discrimination proceeding (such as an investigation or lawsuit).

Vendor

An employee, owner, or agent of a company that provides goods or services to the District.

Volunteer

Individuals serving as unpaid helpers for various community events. Individuals who volunteer or donate their services, usually on a limited basis, for public service, religious or humanitarian objectives for non-profit organizations that receive their service.

Workplace

The workplace exists where there is a nexus between the behavior and the EEO rights of employees or others (customers, vendors, member of the public, etc.). The workplace may include District facilities and worksites, or off-site locations, outside of the District's facilities, such as off-site meetings and trainings and social functions involving District employees or related to District activities.

**Complaint
Procedures**

Any complainant who believes that he/she has experienced EEO discrimination or harassment is encouraged to file a complaint within 30 working days of the last discriminatory or harassing incident. However, complainants have 365 calendar days from the date of the last incident to file a complaint with the DIO.

The District encourages the early reporting of conduct which can reasonably be construed as EEO discrimination, harassment and/or retaliation. Early reporting permits a timely and accurate review/investigation of the issue, and allows for a more timely District response, as appropriate.

Complaints can be made orally or in writing. The EEO Discrimination/Harassment Complaint Form (Form Q-006) may be obtained from the DIO. If the complaint is filed as a grievance, the appropriate grievance form must be used in addition to the Form Q-006.

A complaint may be raised with:

- the employee's supervisor or other District supervisor;
- a manager in Human Resources;
- the DIO; or
- an employee's union representative

Managers, supervisors, other District officials, and Union representatives should immediately forward complaints to the DIO. Written complaints should be placed in a sealed envelope, marked confidential, and then forwarded to the DIO.

Supervisor/Manager Responsibilities

Supervisors must be familiar with this procedure and be ready to assist employees (including those who do not report directly to them) who wish to lodge complaints. Supervisors must regard all complaints of discrimination, harassment and/or retaliation seriously. They should not ignore or minimize such complaints or otherwise discourage employees from reporting them.

During the complaint process, the confidentiality of the information received, the privacy of the individuals involved and the wishes of the complainant will be protected to the degree feasible. The expressed wishes of the complainant for confidentiality will be considered in the context of the District's legal obligation to act on the complaint and the right of the respondent to obtain information necessary to his/her defense of the complaint. In most cases, however, confidentiality will be strictly maintained by the District and those involved in the investigation. In addition, any notes or documents written by or received by the person(s) conducting the investigation will be kept confidential to the extent possible and according to applicable state or federal law.

All employees have a right to file with an external agency. The statute of limitation to file a complaint with the California Department of Fair Employment and Housing (DFEH) or the Equal Employment Opportunity Commission (EEOC) is 365 calendar days and 300 calendar days, respectively, from the last discriminatory incident. DFEH contact information: www.dfeh.ca.gov, (800) 884-1684, contact.center@dfeh.ca.gov. EEOC contact information: www.eeoc.gov, (800) 669-4000, info@eeoc.gov.

Investigation Procedures

Intake Interview

Within 10 working days of receipt of a complaint, the DIO will schedule an intake interview. The intake interview will be recorded to maintain the accuracy of notes, unless the complainant declines to be recorded. If the complainant does not want to be recorded, a third party note-taker, of the investigator's choice, will be present during the interview. Complainants are expected to notify the DIO at least two working days in advance if they do not wish to be recorded so that the investigator can make arrangements for a third-party note-taker and to avoid a needless delay of the intake interview. If recorded, the complainant may also record the intake interview, upon consent of the investigator, or request a copy of the recording.

During the intake interview, complainant should state the basis for the charge of discrimination, harassment and/or retaliation, describe the specific action about which he/she is complaining, provide all details of the incident(s), and supply the names of all the individuals involved, including any witnesses.

The DIO will determine if the complainant's claim is:

- Timely;
- States a *prima facie* case – i.e., if complainant provided information that would lead the DIO to infer, absent other evidence, that discriminatory conduct or harassment may have occurred due to complainant's protected group status; and/or
- Requires formal investigation or the matter can be handled and resolved at the Department level in a manner that addresses the complainant's concerns.

If the DIO determines that a case is either untimely and/or that complainant has not stated a *prima facie* case, the DIO will not accept the case.

If the DIO determines that a case is timely, that complainant has stated a *prima facie* case, but that the case can be resolved at the Departmental level, the DIO will contact and work with the respondent's department to resolve the issue.

Supervisors working with the DIO to resolve complaints at the Departmental level should understand that all discussions with individuals involved or potentially involved in a discrimination, harassment or retaliation complaint shall be done in an objective non-accusatory fashion, with the goal of obtaining and understanding all of the facts. During the discussion, the employee(s) should maintain confidentiality and not discuss the situation with coworkers due to the sensitive nature of the issue and the potential for unsubstantiated rumors. The supervisor shall confer with the DIO throughout the process. (All formal EEO investigations will be forwarded to the DIO. The incident and actions taken will be documented in writing by the supervisor, and forwarded to the DIO.)

If the DIO determines that a case is timely, that the complainant has stated a *prima facie* case, and that a case involves matters that require further exploration, the DIO will accept the case for investigation.

Acceptance/Non-Acceptance

The DIO will notify the complainant whether or not their complaint was accepted within 10 working days of the intake interview. The DIO or responsible manager will notify the respondent within 10 working days of the intake interview only if the complaint is accepted for investigation.

Investigation

All DIO EEO investigations will be conducted by impartial and qualified personnel, i.e., the Diversity and Inclusion Officer or a qualified EEO investigator designated by the Diversity and Inclusion Officer or designated management official.

To maintain confidentiality to the fullest extent possible, the investigation will be conducted in a manner which will limit the dissemination of information.

Components of the investigation will include:

- Interviews with complainant and respondent;
- Interviews with witnesses with potentially relevant information that have been identified by complainant and/or respondent, and any other witnesses deemed appropriate by the investigator;
- Review of personnel records, prior EEO complaints, policies, procedures, and other relevant documents; and
- Credibility determinations under California Evidence Code section 780, as appropriate.

Interviews will be recorded to maintain the accuracy of notes unless the interviewee declines to be recorded. If the interviewee does not want to be recorded, a third party note-taker, of the investigator's choice, will be present during the interview. Interviewees are expected to notify the DIO at least two working days in advance if they do not wish to be recorded so that the investigator can make arrangements for a third-party note-taker and to avoid a needless delay of the interview. If recorded, interviewees may also record their interview, upon consent of the investigator, or request a copy of the recording.

Prior to being interviewed, complainant and Respondent will be notified that a union representative or another District person may be present during their interview.

Depending on the situation, temporary measures to restrict and/or eliminate contact between parties under investigation may be necessary. Such actions may include separating the employees, temporarily reassigning one or both, and/or restricting their work activities or locations until the investigation is complete and appropriate corrective actions are taken. If it becomes necessary to remove an employee from the workplace during an EEO investigation, the employee may receive paid leave.

Rights and Responsibilities

- The complaint and investigation are confidential to the degree they can be kept confidential in order to conduct the investigation. However, in limited circumstances during the investigation, the investigator may disclose the identity of the complainant(s) and/or some witnesses to the respondent(s) and/or witnesses due to the nature of the allegations and in order to adequately investigate the allegations. Such disclosure by the investigator does not relieve any employee participating in the investigation from exercising utmost care in maintaining confidentiality during the investigation.

- Retaliation against employees alleging discrimination or harassment, or involved as witnesses in a discrimination or harassment investigation is prohibited, regardless of whether or not the original complaint is substantiated. Employees who oppose and/or refuse to participate in prohibited discrimination or harassment are also protected against retaliation. Employees should notify the DIO or their supervisor if they feel they are being retaliated against or become aware of retaliation.
- After an EEO investigation has concluded and the EEO appeals process has been exhausted, either the complainant or respondent may have further appeal processes beyond Procedure 614. In such event, the disclosure of information about the investigation, such as the identity of the complainant, respondent or witnesses may be required, for example, in arbitration or in litigation.
- Complainants, respondents and witnesses are expected to keep the allegations, questions and findings/outcomes of the investigation confidential.
- The District is obligated under law and policy to investigate allegations of discrimination, harassment and retaliation.
- Employees are obligated to cooperate in an investigation and provide accurate, complete and truthful information.
- Intentionally deceiving or misleading an investigator will not be tolerated and constitutes falsehood under Policy 2.05, Employee Discipline, which requires corrective action up to, and including, termination of employment.
- Complaints received by the District will be timely closed.
- The DIO will document and track all complaints and investigations to ensure reasonable progress.

Determination

Upon completion of a thorough investigation, the investigator will prepare a report of factual findings. Factual findings for harassment, denial of reasonable accommodation, failure to engage in the interactive process, and failure to provide pregnancy disability leave or family care and medical leave will be made pursuant to the preponderance of evidence standard. Preponderance of the evidence is defined as just enough evidence to make it more likely than not that the fact the complainant seeks to prove is substantiated/unsubstantiated. Factual findings for discrimination and discriminatory retaliation complaints are reviewed as follows: if a preponderance of the evidence demonstrates that an enumerated basis was a substantial motivating factor in the denial of an employment benefit to that individual and the denial is not justified by a permissible defense.

The report and all supporting evidence will be maintained in the DIO in locked file drawers and/or in secured computer files. The report will not be distributed to the respondent(s) and/or complainant(s), or any other parties.

The DIO will review the report and issue a Notice of Determination to the respondent. Respondent's manager and Employee Relations will receive copies of the determination if any of the allegations are substantiated. The complainant will only receive a Notice of Determination if complainant filed a Q-006 EEO Discrimination/Harassment complaint. All determinations will result in at least one of the following conclusions regarding the facts alleged:

- **Substantiated** means supported by proof or evidence; verified by corroborating information; it is more likely than not to be true.
- **Unsubstantiated** means that the evidence did not support the claim; it is more likely than not that the allegation is not true or is without merit.
- **Inconclusive** means that the evidence did not conclusively indicate whether the allegations were founded or unfounded; the investigation could not establish the truth or falsity of the allegations.

DIO's Notice of Determination will include a summary of the basis for each factual determination. In addition, all determinations will also indicate what if any policies or procedures were violated and if such violation rose to the level of discrimination, harassment and/or retaliation.

**Appeal
Procedures**

If complainant or respondent is dissatisfied with the determination issued by the DIO, he/she may submit a written appeal (Appeal) with the DIO within 10 working days of the date of the determination. An Appeal can only be filed by complainant if they have filed a Q-006 EEO Discrimination/Harassment complaint. The Appeal must clearly detail the concerns about specific findings of the determination. The DIO will consider the issues presented in the Appeal and determine, in light of these facts, if the determination was supported by a preponderance of the evidence.

If the DIO concludes that the determination should be upheld, the individual has exhausted the District's administrative channels for addressing the complaint through the DIO.

If complainant filed the EEO complaint as a union grievance, the employee may pursue the appeals available through the respective Memorandum of Understanding.

No appeal will be processed through more than one procedure.

The complainant may also pursue a complaint through an external agency – the DFEH and/or the EEOC (see page 4 for detailed information).

**Corrective Action/
Discipline**

The District will take appropriate and prompt corrective remedial action where misconduct is found. Management, in consultation with Employee Relations, is responsible for taking corrective/disciplinary actions for violations of policy and procedure, to end discrimination, harassment and/or retaliation, and to correct the behavior that led to the incident/complaint. Depending upon the severity of the conduct, these actions may include, but are not limited to:

- an apology from Respondent
- a letter of counseling
- a written warning
- training
- mandatory counseling
- suspension
- reassignment, transfer, demotion; and/or discharge

**Equal Employment Opportunity (EEO)
Discrimination, Harassment and Retaliation
Complaints, Investigations and Appeals**

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References

Policy 2.05 Employee Discipline
Policy 6.06 Equal Employment Opportunity (EEO)
Policy 6.07 Prevention of Workplace Harassment
Procedure 223 Discipline
