



# Memorandum

## MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT

Reviewed by Wm M Date 9.12.08  
General Manager

DATE: September 11, 2008  
TO: Board of Directors  
FROM: Administrative Services Manager  
SUBJECT: Personnel Policy update to the Harassment and Discrimination Policy

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**RECOMMENDATION:** Approve Changes to the District's Harassment and Discrimination Policy.

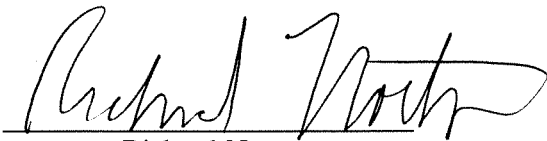
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### DISCUSSION

The District's current Harassment Policy is legally compliant but should be updated to incorporate "best practice" improvements that have developed in the last few years. The policy before you is based on a model policy provided by the legal firm of Liebert Cassidy Whitmore who conducted Sexual Harassment and Discrimination Training for Supervisors earlier this year. It expands coverage to include job applicants, officials (Board members), contractors and vendors. It defines discrimination, harassment and retaliation; provides comprehensive instruction on how to report violations and describes in more detail the investigative and remedial responses to those complaints. It lists the responsibilities of employees and supervisors to maintain an environment free of harassment and discrimination.

As you know, the policy was brought to the Board last month with the recommendation that it be approved subject to final legal review. The document before you has been evaluated and two modifications have been made by Linda Tripoli, legal specialist who works closely with Rob Wellington's office on personnel matters. These changes are highlighted by bold font on the first page of the attached policy document. The new policy has been accepted by representatives of the bargaining groups.

Following approval by the Board, the policy will be presented to all District employees through on-site training and by written notice. This will reinforce the training that District employees have received in 2004, 2006, 2007, and earlier this year. Vendors and site users will also be made aware of the updated policy as appropriate.

  
Richard Norton

## PERSONNEL POLICY

### X. HARASSMENT AND DISCRIMINATION

~~The District is committed to providing a work environment free from discrimination. In keeping with this commitment, the District maintains a strict policy prohibiting unlawful harassment, including sexual harassment. This policy prohibits harassment in any form, including verbal, physical and visual harassment by any employee, supervisor or non-supervisor.~~

~~In general, ethnic or racial slurs and other verbal or physical conduct relating to a person's race, color, religion, national origin, cultural background, sex, age or handicaps constitute harassment when they are personally offensive and unreasonably interfere with a person's work performance or create an intimidating work environment.~~

~~Any employee who believes he or she has been harassed by a co-worker, supervisor, or agent of the employer, should promptly report the facts of the incident or incidents and the names of the individuals involved to a supervisor or to the General Manager. Supervisors shall immediately report any incidents of sexual harassment to the General Manager. The General Manager will investigate all such claims and take disciplinary action if appropriate. Any claims against the General Manager will be investigated by the District Board or a subcommittee thereof.~~

~~If you have any questions concerning this policy, please feel free to contact the Administrative Services Manager or General Manager.~~

- A. Purpose. It is the purpose of this Policy to provide all employees, applicants, and contractors with an environment that is free from any form of discriminatory harassment, discrimination or retaliation as defined in this Policy. This Policy prohibits harassment or discrimination on the basis of any of the following protected classifications: an individual's race, religion, color, sex, gender identity, sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin, ancestry, citizenship status, uniformed service member status, marital status, pregnancy, age, medical condition and physical or mental disability (whether perceived or actual).

It is also the policy of MRWMD to provide a procedure for investigating alleged harassment, discrimination and retaliation in violation of this Policy. The protection from discrimination includes the protection from retaliation for having taken action either as a complainant, or for assisting a complainant in taking action, or for acting as a witness or advocate on behalf of an employee in a legal or other proceeding to obtain a remedy for a breach of this policy. Any act of retaliation will be treated as a separate and distinct incident, regardless of the outcome of the complaint and may result in appropriate disciplinary action.

- B. Policy. MRWMD has zero tolerance for any conduct that violates this Policy. Conduct need not rise to the level of a violation of law in order to violate this Policy. Instead, a single act can violate this Policy and provide grounds for discipline, **up to and including termination**, or other appropriate sanctions. If you are in doubt as to whether or not any particular conduct may violate this Policy, do not engage in the conduct, and seek guidance from a supervisor and/or manager.

C. Definitions

1. Policy Coverage. This Policy prohibits officers, **officials**, employees and contractors from harassing or discriminating against applicants, officers, officials, employees and contractors because: (1) of an individual's protected classification, (2) of the perception of an individual protected classification, or (3) the individual associates with a person who has or is perceived to have a protected classification.
2. Discrimination. This Policy prohibits treating individuals differently because of the individual's protected classification as defined by this Policy.

3. Harassment. Harassment means unsolicited words or conduct which subjectively and objectively offend another person. Harassment includes, but is not limited to, the following examples of behavior undertaken because of an individual's protected classification:
  - a. Verbal harassment, such as epithets (nicknames and slang terms), derogatory or suggestive comments, propositioning, jokes or slurs, including graphic verbal commentaries about an individual's body, or that identify a person on the basis of his or her protected classification. Verbal harassment includes comments on appearance and stories that tend to disparage those of a protected classification.
  - b. Visual forms of harassment, such as derogatory posters, notices, bulletins, cartoons, drawings, sexually suggestive objects, or e-mails on the basis of a protected classification.
  - c. Physical harassment, such as assault, touching, impeding or blocking movement, grabbing, patting, leering, making express or implied job-related threats in return for submission to physical acts, mimicking, taunting, or any physical interference with normal work or movement.
  - d. Sexual harassment, such as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature or any of the above described conduct when:
    - i. Submission to such conduct is either an expressed or implied term or condition of an individual's employment, or
    - ii. Submission to or rejection of such conduct is used as the basis for employment decisions affecting such individual, or
    - iii. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating a hostile, intimidating or offensive work environment.
4. Retaliation. Any act of reprisal against a person who reports or provides information about harassment or discrimination such as real or implied threats or intimidation.

- D. Reporting Harassment, Discrimination or Retaliation. A person who feels he or she has been harassed, discriminated against or retaliated against in violation of this Policy should report the conduct immediately to a supervisor or manager so that the complaint can be resolved quickly and fairly.

Any supervisory or management employee who receives such a report must in turn direct it to the Administrative Services Manager who will determine what level of investigation and response is necessary.

Applicants, employees, officers, officials and contractors have the option to report harassment, discrimination, or retaliation to the U.S. Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing (DFEH).

E. Response to Complaint of Harassment, Discrimination or Retaliation

1. Investigation. Upon receipt of a complaint of alleged harassment, discrimination or retaliation, the Administrative Services Manager will be responsible for coordinating a thorough investigation (unless he/she is named in the complaint). The type of investigation undertaken, and the party chosen to conduct the investigation will depend on the nature of the complaint made.

MRWMD takes a proactive approach to potential Policy violations and will conduct an investigation if its supervisors or managers become aware that harassment, discrimination or retaliation may be occurring, regardless of whether or not the recipient of the alleged action or a third party reports a potential violation.

2. Remedial and Disciplinary Action. If the investigation determines that the alleged conduct occurred and that the conduct violated this Policy, MRWMD will notify the complainant and perpetrator of the general conclusion(s) of the investigation and take effective remedial action that is designed to end the violation(s). Any employee or officer determined to have violated this Policy will be subject to disciplinary action, up to and including termination. Disciplinary action may also be taken against any supervisor or manager who condones or ignores potential violations of this Policy, or who otherwise fails to take appropriate action to enforce this Policy. Any official or contractor found to have violated this Policy will be subject to appropriate sanctions.

3. Confidentiality. Every possible effort will be made to assure the confidentiality of complaints made under this Policy. Complete confidentiality cannot occur, however, due to the need to fully investigate potential Policy violations and take effective remedial action. An individual who is interviewed during the course of an investigation is prohibited from discussing the substance of the interview, except as otherwise directed by Administrative Services Manager. Any individual who discusses the content of an investigatory interview will be subject to discipline or other appropriate sanction. The MRWMD will not disclose a completed investigation report except as it deems necessary to support a disciplinary action, to take remedial action, to defend itself in adversarial proceedings, or to comply with the law or a court order.

F. Responsibilities of Employees, Management and Supervisory Employees

1. Employees. In order to establish and maintain a professional working environment, while at the same time preventing harassment, discrimination, and retaliation, employees are expected to:
  - Set an example of acceptable conduct by not participating in or provoking behavior that violates this Policy.
  - Report harassment, discrimination or retaliation as quickly as possible, whether the employee is the target of the conduct or a witness.
  - Maintain confidentiality as required by this Policy.
  - Fully cooperate with the MRWMD investigation of complaints made under this Policy.
2. Managers and Supervisors. In addition to the responsibilities listed above, managers and supervisors are responsible for the following:
  - Implementing this Policy by taking all complaints seriously and modeling behavior that is consistent with this Policy.
  - Directing all complaints to the Administrative Services Manager.
  - Monitoring the work environment and taking appropriate and prompt action to stop potential Policy violations.
  - Following up with those who have complained to ensure the behavior complained of has ceased.
  - Making sure no employee retaliates through any action of intimidation, restraint, coercion or discrimination.