

PRO-302.5 PROHIBITION ON DISCRIMINATION, HARASSMENT, WORKPLACE BULLYING, AND RETALIATION ADMINISTRATIVE PROCEDURE

1.0 Purpose.

The purpose of this Administrative Procedure is to implement Sections 301.5 and 301.7.1–301.7.4 of TRWD Board Policy 301 Employment Practices and Section 302.3.1 of TRWD Board Policy 302 Employee Standards of Conduct and Code of Ethics regarding TRWD’s commitment to equal employment opportunity and to providing a work environment free from discrimination, harassment, bullying, cyberbullying, and retaliation. This Administrative Procedure is also intended to set forth TRWD’s prohibition of discrimination and harassment on the basis of race, color, national origin, age, sex, sexual orientation, gender identity or expression, pregnancy status, religion, disability, genetic information, veteran status, or any other basis prohibited by law, and its prohibition of workplace bullying and cyberbullying.

2.0 Scope.

This Prohibition on Discrimination, Harassment, Workplace Bullying, and Retaliation Administrative Procedure applies to all departments, divisions, and offices within TRWD, and to all TRWD employees and all applicants for employment with TRWD. This Administrative Procedure applies to all terms, conditions, and privileges of employment including recruiting, hiring, training, promotion, transfer, compensation and benefits, discipline, termination, and retirement.

3.0 Equal Employment Opportunity Statement.

TRWD is an Equal Opportunity Employer. As set forth in Board Policy 301.5, TRWD provides equal employment opportunity to all employees and applicants for employment without regard to an applicant or employee’s race, color, national origin, age, sex, sexual orientation, gender identity or expression, pregnancy status, religion, disability, genetic information, veteran status, membership (or application for membership) in the uniformed services, or any other status protected by local, state, or federal law.

Employment and advancement opportunities at TRWD should be based on qualifications, educational background, and experience and without regard to the individual’s race, color, national origin, age, sex, sexual orientation, gender identity or expression, pregnancy status, religion, disability, genetic information, veteran status, membership (or application for membership) in the uniformed services, or any other status protected by law.

Retaliation against anyone who files a complaint or opposes prohibited employment discrimination, harassment, or retaliation, or participates in the complaint process, is a violation of this administrative procedure and is expressly prohibited.

4.0 Prohibited Conduct.

The following conduct is prohibited by Board policy and this administrative procedure. TRWD prohibits discrimination, harassment, workplace bullying, cyberbullying, and retaliation as set forth in this Administrative Procedure, even if the conduct does not rise to the level of unlawful conduct.

Discrimination. Conduct directed at an employee on the basis of race, color, national origin, age, sex, sexual orientation, gender identity or expression, pregnancy status, religion, disability, genetic information, veteran status, membership (or application for membership) in the uniformed services, or any other status protected by law, that adversely affects the employee's employment, including the terms, conditions, and privileges of employment.

Harassment. Harassment includes physical, verbal, or nonverbal conduct based on an employee's race, color, national origin, age, sex, sexual orientation, gender identity or expression, pregnancy status, religion, disability, genetic information, veteran status, membership (or application for membership) in the uniformed services, or any other status protected by law, when the conduct is so severe, persistent, or pervasive that the conduct:

- Unreasonably interferes with the employee's work performance.
- Creates an intimidating, threatening, hostile, or offensive work environment.
- Otherwise adversely affects the employee's performance, work environment, or employment opportunities.

Harassment may include offensive or derogatory language, threats, intimidation, jokes, name-calling, slurs, rumors, graffiti, visual or printed material endorsing racial, ethnic, or other stereotypes, physical aggression or assault directed at a person on the basis of the person's protected characteristics such as race, color, national origin, age, sex, sexual orientation, gender identity or expression, pregnancy status, religion, disability, genetic information, veteran status, membership (or application for membership) in the uniformed services, or any other status protected by law.

Sexual harassment. Sexual harassment is a form of sex-based discrimination and harassment that includes unwanted sexual advances; requests for sexual favors; sex-based or motivated physical, verbal, or nonverbal conduct; or other conduct or communication of a sexual nature, that adversely impacts an employee's employment or creates a hostile work environment. TRWD's prohibition on sexual harassment includes a prohibition on quid pro quo harassment or hostile environment harassment as defined below.

Any person can be the harasser and any person can be an individual subjected to sexual harassment regardless of the person's sex, gender, sexual orientation, or gender identity.

Examples of sexual harassment may include unwelcome sexual advances, requests for sexual favors, touching intimate parts of the body, coerced or forced sexual acts, sexual jokes, slurs or innuendo (including electronic communication), and other unwelcome sex-based conduct, if it rises to the level of quid pro quo or hostile environment harassment.

Quid pro quo harassment. Quid pro quo harassment occurs when an employee either explicitly or implicitly conditions another employee's employment or employment opportunity on the employee's participation in or submission to unwelcome sexual conduct. Quid pro quo harassment also occurs when an

employee's rejection of unwelcome sexual conduct is the basis for an adverse employment action affecting the employee.

Hostile environment harassment. Hostile environment harassment occurs when unwelcome sex-based conduct is so severe, persistent, or pervasive that it unreasonably interferes with the employee's work performance or creates an intimidating, threatening, hostile, or offensive work environment.

Retaliation. Prohibited retaliation occurs when a materially adverse employment action results because of: an employee's report or complaint that they experienced discrimination or harassment in the workplace; an employee's good faith report that another TRWD employee was subjected to prohibited workplace discrimination or harassment; or because an employee served as a witness or otherwise participated in the complaint process related to a report or complaint of workplace discrimination or harassment.

Workplace bullying. Workplace bullying occurs when there is harmful, targeted mistreatment of one or more TRWD employees by one or more other TRWD employees or officials, including workplace peers, supervisors, or subordinates. Workplace bullying occurs when a TRWD employee engages in written, oral, or electronic expression, or a physical act or gesture (or any combination of such conduct) that occurs in the workplace and is directed at an employee or group of employees that has, or a reasonable person would expect to have, the effect of:

- Physically harming an employee, or damaging an employee's property;
- Placing an employee in reasonable fear of physical harm or damage to the employee's property; or
- Interfering with the rights of an employee by: (1) creating an intimidating or hostile work environment for the employee; or (2) interfering with the employee's work performance or ability to participate in or benefit from the services, activities, or privileges provided by TRWD.

Workplace bullying may involve threatening, humiliating, or intimidating behavior; verbal abuse; physical aggression; non-verbal gestures; sabotage of, or interference with, an employee's work product or work environment; and/or exclusion from work-related activities, such as meetings.

Workplace bullying does not include the legitimate exercise of employee management, including employment directives, criticism or feedback designed to improve an employee's job performance, or work- or performance-related discipline.

Cyberbullying. Cyberbullying occurs when there is bullying through the use of social media, technology, or any electronic communication including a computer, cell phone, text messaging device, or other work or personal electronic device.

Like workplace bullying, cyberbullying does not include the legitimate exercise of employee management, including employment directives, criticism or feedback designed to improve an employee's job performance, or work- or performance-related discipline.

5.0 Designation of Equal Employment Opportunity (EO) Compliance Responsibilities.

TRWD designates its Human Resources Director to manage its equal employment opportunity compliance.

Responsibilities of HR director regarding EO compliance.

The Human Resources Director is responsible for formulating, implementing, coordinating, and monitoring all TRWD's efforts in the area of equal employment opportunity. This may include:

- Collecting and analyzing employment data.
- Developing recruitment techniques designed to comply with the equal employment policies and administrative procedures of the District.
- Monitoring TRWD's—and its departments' and divisions'—compliance with the prohibition on discrimination, harassment, and retaliation.
- Advancing efforts to promote non-discrimination in hiring and employment practices.
- Ensuring personnel are trained about TRWD policies and procedures prohibiting discrimination, harassment, and retaliation.
- Assisting and guiding District administrators and supervisors to appropriately and proactively respond to specific personnel problems.
- Complying with all legal recordkeeping and notice requirements to ensure full compliance with applicable local, state, and federal laws governing employment including employment discrimination laws, rules, and regulations
- Serving as a liaison between TRWD and government agencies who regulate under local, state, federal non-discrimination laws, and as a liaison with non-profit organizations, community groups, and others who may assist in the District's efforts to promote equal employment opportunity.
- Keeping TRWD's administrative leadership informed of key developments in laws and administrative guidance regarding equal employment opportunity and the prohibition on employment discrimination.

Communications regarding TRWD's equal employment opportunity compliance.

Any communication from an applicant for employment, an employee, a government agency, or an attorney concerning any matter relating to the District's equal employment opportunity compliance or this administrative procedure shall be referred to the Human Resources Director.

6.0 Duty to Report Alleged Misconduct.

Employees who believe they, or another employee, have been subjected to discrimination, harassment, including sexual harassment, prohibited workplace bullying or cyberbullying, and/or retaliation should report the allegations to:

- Their supervisor and/or next-level supervisor;

- The Human Resources Director; and/or,
- The Human Resources Department.

Employees are not required to report allegations of misconduct to the person alleged to have engaged in the misconduct. Reports of discrimination, harassment, sexual harassment, workplace bullying, cyberbullying, and/or retaliation against an employee's own supervisor may be reported to the Human Resources Director. Reports of misconduct against the Human Resources Director may be directed to the Chief Human Resources Officer. Reports of misconduct against the Chief Human Resources Officer may be directed to the General Manager. A report of allegations of misconduct against the General Manager may be made directly to the TRWD Board President who will inform the TRWD Board.

Timely reporting. Reports of alleged discrimination, harassment, workplace bullying, cyberbullying, and retaliation in the workplace shall be made as soon as possible after an employee knew or should have known of the alleged act of misconduct.

Supervisors' duties. Any TRWD supervisory personnel who receive a report of prohibited employment discrimination, harassment, workplace bullying, cyberbullying, or retaliation—or who otherwise have knowledge or information about discrimination, harassment, workplace bullying, cyberbullying, or retaliation in the workplace—shall immediately notify TRWD's Human Resources Director.

Failure to report. Supervisory personnel's failure to report their receipt of a report or knowledge of prohibited employment discrimination, harassment, workplace bullying, cyberbullying, or retaliation may be subjected to discipline up to and including termination of employment.

7.0 Response to Report.

Upon receipt of a report of employment discrimination, harassment, workplace bullying, cyberbullying, or retaliation, the Human Resources Director should respond immediately to appropriately address the allegations and ensure there is no discrimination, harassment, bullying, cyberbullying or retaliation in TRWD's workplace. If the Human Resources Director determines that further investigation is needed, they may initiate the complaint process set forth in the *TRWD 301.3 Employee Complaint Administrative Procedure*.

8.0 Interim Action.

When appropriate, the Human Resources Director shall promptly take interim action to prevent further misconduct while responding to reports of employment discrimination, harassment, workplace bullying, cyberbullying, or retaliation, including during any complaint process initiated. Interim action may include paid administrative leave, temporary transfers, or temporary changes to supervisor assignment, if applicable and appropriate.

9.0 Employee Initiation of the Complaint Process.

An employee who wishes to initiate an investigation regarding allegations of employment discrimination, harassment, workplace bullying, cyberbullying, or retaliation—or who is unsatisfied with the initial response to a report under Section 7.0—may file a complaint under the *301.3 Employee Complaint Administrative Procedure* to initiate TRWD’s employee complaint process.

10.0 Confidentiality.

To the extent possible, TRWD shall respect the privacy of the reporter, the person accused of the misconduct, and all other persons involved in the report or response to the reports of employment discrimination, harassment, workplace bullying, cyberbullying, and retaliation. Some limited disclosures may be necessary to adequately respond to the report and/or to comply with state or federal law.

11.0 Retention of Records.

The Human Resources Director shall retain copies of all reports of employment discrimination, harassment, workplace bullying, cyberbullying, and retaliation, and TRWD’s response to the reports, in accordance with TRWD’s record retention policies and schedules, but not less than the time period required by law.

12.0 Training.

The Human Resources Director will ensure that all New Hire Orientation includes information regarding TRWD’s Board policies and this administrative procedure to ensure all personnel know about TRWD’s commitment and efforts to ensure a workplace free from employment discrimination, harassment, bullying, cyberbullying, and retaliation. The New Hire Orientation should provide all employees information regarding the duty to report employment discrimination, harassment, workplace bullying, cyberbullying, and retaliation.

13.0 Commitment to Non-Discrimination Throughout TRWD.

While overall authority for implementing this administrative procedure and ensuring the District’s compliance with equal employment opportunity and non-discrimination is assigned to the Human Resources Director, all TRWD personnel are required to support, comply with, and further TRWD’s non-discrimination efforts throughout the District.

14.0 Violations of this Procedure.

An employee’s violation of TRWD’s prohibition on employment discrimination, harassment, workplace bullying, cyberbullying, and retaliation as defined in this Administrative Procedure may result in discipline up to and including termination of employment.