

All Agency Policy Directive

Internal Discrimination Complaint Management

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I. PURPOSE AND OBJECTIVE

The Metropolitan Transportation Authority and each of its affiliated and subsidiary agencies (“MTA” or, if referring to the affiliated and subsidiary agencies, the “Agencies”) is fully committed to Equal Employment Opportunity (“EEO”) for all employees, applicants for employment and certain non-employees without regard to race, color, religion, creed, national origin, ancestry, sex, sexual orientation, age, disability, predisposing genetic characteristic, gender identity and expression, pregnancy, veteran or military status, marital/familial/partnership/caregiver status, status as a victim of domestic violence, stalking and/or sex offenses, or any other legally protected basis. In addition, the MTA will not impermissibly use or rely on immigration/alienage/citizenship status, credit history, arrest/conviction records, unemployment history or salary history in its employment practices. Furthermore, the MTA expressly prohibits any form of harassment based on the aforementioned protected bases.

All MTA employees, applicants for employment and certain non-employees such as visitors, contractors, consultants, interns, fellows, or apprentices in the workplace shall be protected from retaliation or harassment for filing a complaint, participating in the investigation of a complaint, participating in any employment discrimination proceeding or other protected activity. Such retaliation or harassment is strictly prohibited and will not be tolerated. Workplace shall include workplace adjunct activities that may be offsite such as trainings and conferences.

The purpose of this Policy Directive is to establish a process for managing and resolving EEO complaints brought by employees, applicants for employment and certain non-employees who believe that they have been subjected to employment discrimination prohibited by the MTA’s All Agency Equal Employment Opportunity Policy and related nondiscrimination policies concerning employment discrimination, harassment and retaliation (“EO Policies”).

II. SCOPE

- A. This Policy Directive applies to all employees, represented and non-represented, of the MTA, including its current and any future subsidiary or affiliated entities (collectively known as “MTA Agencies” or “MTA”). For represented employees, in the event of a conflict between this Policy Directive and a collective bargaining agreement, the terms of the collective bargaining agreement shall govern.
- B. The Agencies’ responsibility for ensuring compliance with EEO Policy has its basis in Federal

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and State laws and related rules and regulations. However, the Agencies' prohibition against discrimination, harassment, and retaliation, as set forth in the EEO Policies, may be broader than federal or state legal prohibitions.

III. DEFINITIONS

Complainant: An employee, applicant for employment and certain non-employees of the MTA who have filed a complaint with DEO alleging a violation of the MTA's EEO Policies.

Complaint: A written, or oral statement filed with or brought to the attention of DEO alleging a violation of an Agency's EEO Policies. MTA typically requires the completion of a Complaint Form and written statement which clearly states the alleged violation of MTA Equal Employment Opportunity Policy Directive and associated protected category on which the allegation is based and a request for a formal investigation of the concern.

Department Head: Executives with the lead responsibility for an operating or administrative function within an Agency.

Diversity and Equal Opportunity ("DEO"): A division of the Department of Diversity and Civil Rights with a location at each Agency. This division's responsibilities include, but is not limited to, investigation of allegations of discrimination and making determinations as to whether the Agency's EEO Policies have been violated.

Employment Discrimination: Discriminatory employment actions, conduct, treatment, harassment and/or retaliation of employees, certain non-employees, or applicants for employment taken in violation of the equal opportunity policies.

Non-employees – individuals that are not employed by the MTA but provide services in the workplace, such as visitors, contractors, consultants, interns, fellows, or apprentices or other persons providing services in the workplace or who are an employee of such a contractor, subcontractor, etc.

Respondent: An individual or Agency or subdivision of an Agency identified by a complainant as the party who allegedly committed a violation of the Agency's EEO Policies.

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IV. LIMITATIONS

- A. Complaints that involve or include allegations that require an interpretation of, or may be governed by, a provision of a collective bargaining agreement will be reviewed with Labor Relations or their designee for interpretation.
- B. Upon notice of a Complainant's filing the same complaint or a substantially similar complaint with any court or other external, administrative agency, DEO will, as a general matter, administratively close the case after consultation with the Agency's legal department and refer the matter to the Agency's legal department.
- C. If a Complainant fails or refuses to cooperate during an investigation or fails to comply with the requirements contained in this Policy Directive, the Complaint may be administratively closed.
- D. Although they are not Agency employees, employees of independent contractors, consultants, or vendors providing services in the MTA workplace may allege that they have been subjected to discrimination by an Agency employee. Agency employees may also allege that they have been subject to workplace discrimination by employees of independent contractors, consultants, or vendors in the MTA workplace. Such allegations should be referred to DEO for appropriate action. If the Respondent is an employee of an independent contractor, consultant, or vendor, DEO or the designated Agency contract representative will notify the Human Resources Department of the independent contractor, consultant or vendor, and provide them with either the written Complaint for their investigation or the Complaint determination following a DEO investigation or follow the procedure described in the contract. Employees of independent contractors, consultants or vendors do not become Agency employees by virtue of filing a complaint or being involved in any DEO process.

V. ROLES AND RESPONSIBILITIES

- A. **Agency President:** Maintains overall authority for the Agency's Equal Employment Opportunity (EEO) Policy, including conveying to all levels of management the Agency's EEO Policies and their objectives. The Agency President will issue a written statement annually to all employees advising them of their rights and responsibilities under the Agency's EEO policies.
- B. **MTA's Chief Diversity and Inclusion Officer (CDIO):** reports to the Chairperson/CEO. The CDIO serves as head of the Department of Diversity and Civil Rights. The CDIO exercise all

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powers delegated by the Chairperson/CEO to establish, implement, and oversee strategies and programs to ensure diversity, inclusion and equal opportunity including, but not limited to, the day-to-day management responsibilities for the All-Agency Equal Employment Opportunity Program and related EEO Policies.

- C. **Agency Chief EO Officers:** serve as the Head of the Agency's DEO division and have a dual reporting relationship to the Agency President and CDIO (or the CDIO's designee). The Agency Chief EO Officer exercises all powers delegated by the Agency President and the CDIO (or their designee) to establish, implement and strategies and programs to ensure diversity, inclusion, and equal opportunity. This includes, but is not limited to, reviewing, mediating, and investigating all matters of discrimination, and directing the responsibilities under this Policy Directive.

- D. **EO Investigator:** Reports to the Agency Chief EO Officer or to the Director of Investigation within the DEO Division at MTA. The EO Investigator is responsible for conducting prompt and thorough investigations at the direction of the Agency Chief EO Officer or their designee. The EO Investigator's responsibilities include: meeting with the complainant, attempting to resolve complaints informally, which could include mediation (if appropriate), interviewing relevant parties and witnesses, compiling and analyzing data and personnel documents, preparing written investigatory reports on the findings from the investigation and making recommendations about whether the Agency's EEO Policies have been violated. Alternatively, the Agency Chief EO Officer, the Agency Deputy Chief EO Officer or their designee may conduct an EO investigation.

- E. **Department Heads, Manager and Supervisors:** Assist in maintaining a work environment that is free from discrimination, discriminatory harassment and retaliation, as described by the EEO Policies. Department heads, managers and supervisors are required to inform employees who complain of Discrimination, Harassment, or Retaliation of their rights to file a complaint with Agency's DEO Division, and immediately report potential violations of this Policy which they become aware of to the Agency DEO Division, regardless of whether a complaint has been made.

Department heads, managers and supervisors are required to assist the Agency Chief EO Officer, where appropriate, in resolving matters raised in EEO complaints. Assistance includes, but is not limited to, assisting, when asked, in scheduling of interviews; implementing interim actions which could include the reassignment/relocation of parties involved in the complaint; taking action to de-escalate workplace tension after a complaint has been reported and directing all

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employees in their department to fully cooperate with the Agency Chief EO Officer during its investigation of complaints.

- F. **Employees:** Every employee is required to give their full cooperation, including providing oral and written statements that are complete and accurate to the Agency's DEO division as it carries out its responsibilities under this Policy Directive. Employees shall not impede or interfere with an investigation by their DEO division. Examples of prohibited conduct include, but are not limited to, retaliation against or interference with a complainant's right to file a complaint or with any person's participation in an investigation.

VI. RESPONSE TO COMPLAINTS

- A. Department heads, managers and supervisors must notify the Agency's DEO division of all complaints of employment discrimination as soon as they become aware of such complaints and/or whenever they observe, learn about, or suspect that improper discriminatory conduct has occurred. The DEO division will provide the department head, manager, or supervisor with advice on how to proceed. If the allegations set forth in the complaint are likely to constitute a violation of the Agency's EEO Policies, the Agency's DEO division will investigate the complaint in accordance with the procedures set forth below.
- B. Employees who believe that they have been subjected to employment discrimination may discuss the matter with their managers or supervisors if they choose; however, an employee is not required to speak with a manager or supervisor (or People/Human Resources) before contacting the Agency's DEO division. If the manager or supervisor is the subject of the complaint, the manager or supervisor shall not attempt to resolve or investigate the matter but shall immediately refer the matter to the Agency's DEO division.
- C. Managers and supervisors must respond to applicants for employment, employees', and certain non-employees' expressions of concern about perceived discriminatory treatment in a prompt and respectful manner and assure the complaining party that the matter will be addressed.
- D. Upon request, all documents related to a complaint should be gathered by the manager or supervisor and promptly provided to the Agency Chief Equal Opportunity Officer. If the matter involves bias graffiti or physical damage to property, the graffiti or damaged property is not to be removed before the local precinct of the local police department with jurisdiction, or the MTA Police Department, as applicable, is contacted and pictures are taken of the graffiti and the

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damaged property.

VII. COMPLAINTS

A. Employee's, Certain Non-Employees' and Applicant's Right to File a Complaint

1. Individuals covered by MTA's EEO Policies have a right to meet privately with members of the Agency's DEO division. Such a meeting may take place either during or outside of the employee's or certain non-employees' work hours. If an employee or certain non-employee requests to meet with the Agency's DEO division during the regular workday, they should obtain approval from a manager or supervisor prior to leaving their work assignment. An employee or certain non-employee need not disclose to their manager the purpose for or details of the request to meet with the Agency's DEO division. Reasonable leave requests to meet with the Agency's DEO division during work hours must be accommodated by the manager or supervisor as quickly as practicable, consistent with the operational needs of their units. The Agency's DEO division, upon request, will provide written documentation of an appointment for any employee who desires to meet with the Agency's DEO division. No leave time shall be deducted from the employee or certain non-employee meeting with the Agency's DEO division during regular work hours.
2. At the Complainant's request, arrangements may also be made to hold the meeting before or after their work hours, or during their lunch period. Should such a meeting take place entirely on the individual's own time, they need not advise a manager or supervisor of the meeting or obtain the consent or approval of a manager or supervisor. The Agency's DEO division may arrange to meet with Complainants outside the Agency's premises where appropriate and/or necessary to ensure confidentiality.
3. Department Heads, managers and supervisors are reminded that an employee and certain non-employees have the right to file an EEO complaint, and such right may be exercised freely without retaliation. Managers and supervisors should seek guidance by consulting with their Agency's DEO division concerning proposed discipline or changes in job assignments after the manager or supervisor becomes aware that an employee has either had an appointment with the Agency's DEO division or has filed a complaint with the DEO division. The Agency's DEO division may consult with the Agency's legal department on these matters where appropriate.

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B. Time Period for Filing a Complaint

- A. A Complaint must be filed with the Agency's DEO division within 365 calendar days of the date the alleged discriminatory act occurred, or within 365 calendar days of the date the employee or applicant could reasonably be expected to know of the alleged discrimination. Sexual Harassment complaints must be filed within three years after the alleged conduct.
- B. The DEO division may, in its discretion, investigate on behalf of the Agency claims of employment discrimination that fall outside of this limitations period. When the DEO division investigates on behalf of the Agency claims that fall outside the limitation period, the Complainant will not receive a written determination.

C. Where to File a Complaint

MTA Bus Company

Agency Chief EO Officer
DEO Division
130 Livingston, 3rd Floor
Brooklyn, New York 11201
(718) 694-1708

MTA Bridges and Tunnels

Agency Chief EO Officer
DEO Division
2 Broadway, 24th Floor
New York, NY 10004
(646) 252-7403

MTA Construction & Development

Agency Chief EO Officer
DEO Division
2 Broadway, 8th Floor
New York, NY 10004
(646) 252-4379

MTA Headquarters / Grand Central Madison Concourse

Chief Diversity and Inclusion Officer
DEO Division
2 Broadway, 16th Floor
New York, NY 10004
(646) 252-1385

MTA Long Island Rail Road

Agency Chief EO Officer
DEO Division
Jamaica Station, 4th Floor
Jamaica, NY 11435
(718) 558-8170

MTA Metro-North Railroad

Agency Chief EO Officer
DEO Division
420 Lexington Avenue, 12th Floor
New York, NY 10170
(212) 340-2560

MTA New York City Transit

Agency Chief EO Officer
DEO Division
130 Livingston Street, Room 3005
Brooklyn, New York 11201
(718) 694-1730

An employee or applicant for employment may also contact the following external agencies which may also have jurisdiction over the claim:

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1. The United States Equal Employment Opportunity Commission

New York District Office,
33 Whitehall Street, 11th Floor –
New York, NY 10004, (800) 669-4000.
www.eeoc.gov (EEOC) or eeoc.gov

2. The New York State Division of Human Rights

New York District Office
One Fordham Plaza
4th Floor New York, NY 10458
(888) 392-3644
www.dhr.ny.gov or dhr.ny.gov

The New York State Division of Human Rights also has a toll-free confidential hotline to provide individuals with complaints of workplace sexual harassment counsel and assistance, which is 1-800-427-2773.

3. The New York City Commission of Human Rights may also be an available Forum and can be contacted at

New York City Commission of Human Rights
22 Reade St.
New York, NY 10007
(212) 416-0197
www1.nyc.gov/site/cchr/index.page

Note: There are statutory deadlines for filing complaints with the external agencies listed above. Particularly, in New York State, sexual harassment complaints to the Division of Human Rights must be filed within three years after the alleged conduct.

If an employee, certain non-employee(s), or applicant believes that they have been discriminated against and wishes to file a complaint with one or more of the external agencies listed above, the employee, certain

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non-employee or applicant should promptly contact the external agency for guidance to preserve their rights.

Filing an EEO complaint with the agency's Diversity and Equal Opportunity Division under this Policy does **not** extend the time to file an external Complaint and there is not a requirement that persons covered by this Policy file an internal Complaint before seeking an external remedy. A Complainant does not need to wait for a determination from MTA in order to pursue a complaint with external agencies and should be aware that the external agencies have time limits/statutes of limitation upon which to file a Complaint depending on when the conduct occurred. However, upon notice of Complainant's filing the same or a substantially similar complaint with any court or other external administrative agency, MTA will follow Section **IV.B** and may discontinue its investigation.

D. Summary of Complaint Investigation Process

1. An employee, certain non-employee or applicant for employment who believes they have been subjected to employment discrimination may file a complaint with the DEO division. The employee, certain non-employee or applicant for employment shall meet with an EO Investigator for an interview regarding the complaint.

A prewritten statement by Complaint does not exclude the Complainant from the requirement to complete the Internal EEO Discrimination Complaint Management Form provided by the Diversity and Equal Opportunity division.

If the complaint is oral, the EO Investigator will encourage the complainant to complete the Internal EEO Discrimination Complaint Management Form. If the complainant refuses to complete this form, the EO Investigator shall prepare an Internal Discrimination Complaint Management Form based on the oral complaint received from the complainant.

2. If the EO Investigator, in consultation with the Agency Chief Equal Opportunity Officer or their designee, concludes that the complaint sets forth allegations which may constitute a violation of the Agency's EEO Policies, the complaint will be accepted for investigation and a secure file will be opened. The complainant will be advised of the acceptance of the complaint in writing.

Anonymous complaints alleging discrimination, sexual or other discriminatory harassment or related retaliation will be investigated when the DEO division determines that the complaint provides sufficient information for a prompt and fair investigation.

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3. If, at any time prior to or during the investigation, the Agency EO Investigator determines that there is an actual or potential conflict of interest in their conducting the investigation of the complaint, the EO Investigator shall immediately suspend work and notify the Agency Chief Equal Opportunity Officer, and if appropriate, their Agency's Ethics officer(s) and the Legal department. The Agency Chief Equal Opportunity Officer, in consultation with the Agency's Legal department and/or Agency Ethics officer, shall determine whether a conflict exists that precludes the EO Investigator from conducting, or continuing to conduct, the investigation, and if so, shall reassign the matter.
4. The EO Investigator shall prepare a **written** preliminary investigation plan, including, at a minimum, a description of the circumstances surrounding the allegations, the employment history of the parties, the place, date, location, time, and duration of the incident in question, and prior related incidents or allegations. The investigation plan will identify the complainant, the respondent and any relevant witnesses for interviews and determine if a site visit is necessary. The EO Investigator will share the plan with the Agency Chief Equal Opportunity Officer or their designee. The plan will be revised as necessary.
5. The EO Investigator will conduct a prompt and thorough investigation of the complaint. The investigation will include interviewing relevant parties and witnesses, compiling and analyzing data and documents relevant to the investigation, and drafting notes accurately and completely, including date, time, and place of the interview.
6. When interviewing represented parties, all notices required by an applicable collective bargaining agreement should be given as well as any other required notice of any right to representation. The EO Investigator should contact the Agency's Office of Labor Relations for guidance with respect to such notices. If the complainant or the respondent requests that they have an attorney present during any interview, or if the complainant or the respondent requests that the DEO division notify and/or conduct any communication through the complainant's or respondent's attorney, the Agency Chief Equal Opportunity Officer must contact the Agency's Legal department for guidance prior to taking any further action.
7. All employees and certain non-employees are required to fully cooperate with investigations conducted by the DEO division. Failure to cooperate in an investigation may result in disciplinary action.
8. Prior to closing an investigation, the EO Investigator shall prepare a written investigation report on the findings from the investigation. The report shall contain information concerning the witnesses who were

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interviewed and all documents that were reviewed. The report will also provide a detailed summary of complainant, respondent and witness interviews. The report will analyze the allegations and make recommendations where warranted. The DEO division may consult with the Agency's Legal department during the preparation of the written investigation report as appropriate, or at any other phase of the investigation as appropriate or necessary.

E. Complaint Determination

1. Determination by the DEO division

All complaint determinations will be issued to the complainant and the respondent in writing. The DEO division will make every reasonable effort to issue the determination within 120 business days after the acceptance of the complaint.

2. Types of Complaint Determinations

- a) **Reasonable Cause** - Based on the investigation, there is sufficient evidence for a rational person to reasonably believe that one or more of the MTA's EEO Policies has been violated.

In connection with a "reasonable cause" determination, a recommendation may be made by the Agency Chief Equal Opportunity Officer to the applicable Department Head that appropriate action be taken with regard to a current employee. The Department Head must consult with the OLR and/or the Agency's Human Resources Department prior to taking any action with regard to an employee to ensure that the employee is afforded all rights applicable to their position. The DEO division and/or OLR and/or the Agency's Human Resources Department may consult with the Agency's Legal department, as necessary.

- b) **No Reasonable Cause** - Based on the investigation, there is insufficient evidence for a rational person to reasonably believe that the Agency's EEO Policies have been violated.

If, after investigation, a "no reasonable cause" determination is issued to the parties, the case will be closed. Even in cases where there is a determination of "no reasonable cause," the DEO division may recommend that further action be taken, including but not limited to counseling and/or training of any of the employees involved. In such cases, the DEO division should refer the matter to the applicable Department Head, the Agency's Human Resources Department and/or OLR for their consideration of such further action.

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- c) Informal Resolution - An agreement has been reached that fully resolves the issues raised by the complainant. In this situation, the DEO division will not issue a determination on the merits of the complaint.
- d) Withdrawn - The complainant has made a written request to voluntarily withdraw the complaint. If the complaint is withdrawn, the DEO division may end the investigation if it finds it appropriate to do so. The Agency Chief Equal Opportunity Officer may, however, continue to investigate a complaint that has been withdrawn, if it determines that further investigation is warranted.
- e) Administrative Closure - The DEO division has closed the case without reaching a determination regarding the allegations of the complaint, consistent with this procedure and/or for good cause.

3. Final Determination

The determination by the DEO division is final and binding upon the complainant and respondent; there is no internal right of appeal.

VIII. FREEDOM FROM RETALIATION OR INTERFERENCE

It is a violation of MTA policy to retaliate against a complainant or interfere with a complainant's right to file a complaint or any person's participation in an EEO investigation. Impeding or interfering with an investigation by the DEO division also constitutes a violation of MTA policy. Any employee who willfully engages in such conduct may be subject to disciplinary action, up to and including termination.

IX. CONFIDENTIALITY

The investigation shall be conducted in as confidential a manner as the DEO division finds practicable under the circumstances of the complaint. Prior to the commencement of the investigation, the complainant shall be advised that the matter will be treated with confidentiality as is practicable under the circumstances. However, confidentiality may not always occur due to the need to fully investigate and the duty to take effective remedial action.

X. INTENTIONAL FALSE CLAIMS

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If any employee knowingly makes false accusations of discrimination or knowingly provides false information in the course of an investigation of a complaint, such conduct may be grounds for discipline. *A complaint made in good faith, even if found to be unsubstantiated, will not be considered a false accusation.*

XI. POLICY LIFECYCLE MANAGEMENT

This Policy Directive will be reviewed every two (2) years and revised, as necessary. As with all MTA Policies, MTA may modify or rescind this Policy Directive at any time at its sole discretion.

XII. WAIVER

The MTA's Chief Diversity and Inclusion Officer (or Deputy Chief Diversity and Inclusion Officer as their designee) and the MTA Chief Ethics, Risk and Compliance Officer may approve a waiver to this policy. Such waiver must be in writing and signed by both Officers.