
Alameda-Contra Costa Transit District

Administrative Regulation No. 213A: Prohibiting All Forms of Unlawful Employment Discrimination, Including Sexual or Other Forms of Harassment

Issuing Officer: General Manager
Date of Adoption: 8/12/1998
Most Recent Amendment: 9/14/2016
See Also: 213

Subject Category: Human Resources
Subsection: General
Control Department(s): Compliance & Diversity

I. PURPOSE

The purpose of this Administrative Regulation (AR) is to assist the Board of Directors, Board Officers, and District employees carry out their respective roles and functions to ensure and maintain compliance with Board Policy(ies) related to discrimination prevention as well as federal and state program requirements.

In addition, the purpose of this AR is to outline the District's standards, requirements, complaint procedures, and remedial guidelines regarding inappropriate and/or unprofessional conduct that does, or potentially could, rise to the level of unlawful Discrimination and/or Harassment; and to clarify complaint and investigation procedures for all employees and job applicants who believe they may have been subjected to inappropriate workplace conduct based on their protected status.

II. PERSONS AFFECTED

All elected officials, Board Officers, employees, temporary employees, volunteers, paid and unpaid interns, consultants, vendors, contractors and job applicants. This Policy applies to all District locations, as well as to all employer-sponsored activities, such as training, social, or other events, whether held at a District facility or at other locations.

III. DEFINITIONS

"Discrimination" means treating any employee, or applicant for employment, differently because of his or her protected status.

"Gender expression" means a person's gender-related appearance or behavior, whether or not stereotypically associated with the person's sex at birth.

"Gender identity" means a person's identification as male, female, a gender different from the person's sex at birth, or transgender.

"Gender non-conforming or variance" is a behavior or gender expression by an individual that does not match or conforms to the social expectations for one's gender.

“Harassment” is a form of discrimination and involves targeting an individual or a group because of a protected status. Harassment includes sexual harassment and may also include, but is not limited to, epithets, slurs, derogatory comments or jokes, intimidation, negative stereotyping, threats, assault, or any physical interference with an employee's normal work or movement. Harassment may also include written or graphic material placed on walls, bulletins boards, or elsewhere on the District's premises, or circulated in the work place, that denigrates, shows hostility or aversion towards an individual or group because of a protected status; whether or not the offending party intended to offend, or believed his or her comments or conduct were welcomed.

“Inclusion” means a culture that connects each employee to the organization; encourages collaboration, flexibility, and fairness; and leverages diversity throughout the organization so that all individuals are able to participate and contribute to their full potential.

“Protected Status” includes: race; religion/religious creed (including religious dress and grooming practices); color; national origin (including language use restrictions); ancestry; disability (mental and physical) including HIV and AIDS; medical condition (cancer and genetic characteristics); genetic information; marital status; sex; gender, gender identity, sex stereotype and gender expression; age (40 and over); sexual orientation; military and veteran status, denial of family and medical care leave or pregnancy disability leave and/or status in any other group protected by federal, state, or local law.

“Retaliation” means any adverse employment action, including but not limited to discharge, discipline, demotion, or transfer.

“Sex” includes, but is not limited to, pregnancy, childbirth, breastfeeding, and any related medical conditions, and gender identity and expression.

“Sex stereotype” means an assumption about a person's appearance or behavior, or about an individual's ability or inability to perform certain kinds of work based on a myth, social expectation, or generalization about the individual's sex.

“Sexual Harassment” is a form of Harassment and is defined as unwelcome sexual advances; requests for sexual favors; or other unwelcome visual, verbal, or physical conduct of a sexual nature. Sexual harassment is discrimination because of sex, and may occur between members of the opposite sex, or may include gender-based harassment between two members of the same sex. Conduct constitutes sexual harassment when:

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; and/or
- such conduct has the purpose or effect of unreasonably interfering with an individual's work performance and/or creating an intimidating, hostile, or offensive working environment.

“Sexual Orientation” means heterosexuality, homosexuality and bisexuality.

“Transgender” refers to a person whose gender identity differs from the person’s sex at birth. A transgender person may or may not have a gender expression that is different from the social expectations of the sex assigned at birth. A transgender person may or may not identify as “transsexual”.

[Definitions provided herein are not intended to label employees but rather to assist in understanding this AR and the legal obligations of the District. Employees may or may not use these terms to describe themselves.]

IV. REGULATION

A. Coverage

This AR applies to all District elected or appointed officials, employees, and job applicants. This Policy applies to all District locations, as well as to all employer-sponsored activities, such as training, social, or other events; whether held at a District facility or at other locations.

B. Prohibited Types of Behavior

1. Discrimination or Harassment Based on a Protected Status

The District will not tolerate any Discrimination or Harassment based on a Protected Status that affects tangible job benefits; interferes unreasonably with an individual's work performance; or creates an intimidating, hostile, or offensive working environment. The District does not allow anyone, including any supervisor, co-worker, or third party, to unlawfully harass or discriminate against District employees or applicants for employment. In addition, harassment or any other form of discrimination is prohibited by or against any person providing services to or working with the District pursuant to a contract.

2. Discrimination or Harassment Based on a Perception or Belief Regarding a Protected Status

The District prohibits discrimination and/or harassment based on a perception that a person has a protected status or is associated with a person who has a protected status.

3. Retaliation

The District will not tolerate retaliatory conduct. The District strictly prohibits any retaliation against an employee or job applicant who has expressed a good faith concern about unlawful discrimination or harassment; filed a complaint of discrimination, harassment, or retaliation; or has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing related to such a complaint. The District also strictly prohibits retaliation against an employee who has opposed any practice or conduct that violates this AR and related Board Policy(ies).

4. Policy Will be Interpreted in Accordance with Federal and State Law

This AR will be interpreted in a manner that is consistent with federal and state laws regarding discrimination and harassment. A determination as to whether a violation of this Policy has occurred will be based on the context in which the alleged conduct occurs.

5. Inappropriate, Unprofessional, or Disrespectful Conduct Based on Protected Status That May Not Constitute Unlawful Harassment

It is the goal of the District to prevent the occurrence of harassing activity and to stop harassing conduct when it occurs and before it becomes a violation of law. This AR therefore covers activities that are inappropriate in a work environment, whether or not they are sufficiently severe, persistent, or pervasive to constitute unlawful harassment. The District prohibits not only unlawful harassment, but also any conduct that is unprofessional, disrespectful, or inappropriate based on a protected status, whether or not it rises to the level of legally prohibited.

C. District's Commitment to Inclusion

The District is committed to maintaining a diverse workforce and an organizational culture of Inclusion. This is reflected by the following actions:

1. Continuing to update and identify all protected statuses under state and federal mandates;
2. Disseminating discrimination prevention policies and related administrative regulations to all current employees annually, and future employees upon hire;
3. Continuing training/education sessions regarding prevention of employment discrimination, harassment (including sexual harassment), and anti-bullying/abusive conduct;
4. Recognizing organizational roles and responsibilities;
5. Maintaining an effective process for reporting complaints;
6. Maintaining an effective process for investigating complaints; and
7. Following regulatory authorities.

D. Specific Provisions Relations to Gender

AC Transit will not tolerate discrimination in any way on the basis of transgender, gender identity, or gender expression. In 2016, the state and federal government added additional expectations for employers to create a safe and productive work environment for all employees.

Gender Neutral Restrooms: All employees have a right to safe and appropriate restroom and locker room facilities. This includes the right to use a restroom or locker room that corresponds to the employee's gender identity, regardless of the employee's assigned sex at birth. AC

Transit has designated at least one secure, gender neutral, restroom at each building for use of any employee(s) who desires privacy, regardless of the underlying reason.

A designated restroom can also be used by any employee who does not want to share a restroom with a transgender or gender non-conforming coworker. Use of the designated restroom should always be a matter of choice. No employee should be forced to use a designated restroom either as a matter of past practice and/or personal beliefs.

In all cases, the goal is to ensure the safety, comfort, and healthy development of transgender or gender non-conforming employees, while maximizing the employee's workplace integration and minimizing stigmatization of any employee.

This commitment to state and federal expectations does not anticipate every situation that might occur with respect to transgender or gender non-conforming employees, and the needs of each sex stereotype, transgender or gender non-conforming employee must be assessed on a case-by-case basis which will be addressed by another administrative regulation.

E. Dissemination of Information

District discrimination prevention policies and related administrative regulations, along with a signed statement from General Manager shall be distributed to all current employees annually, future employees upon hire, and on the District's website and intranet with an acknowledgment form for the employee to sign and return.

The same information shall be posted on bulletin boards in lunch rooms, included in employee handbooks and EEO related training, and provided to outside recruitment entities (temporary recruitment/employment agencies) and community based partners.

The District will provide training and education to its employees for the prevention of discrimination, sexual harassment, and anti-bullying/abusive conduct.

F. Individual Expectations and Responsibilities

All Employees - Individual Expectations and Responsibilities:

- Engage in conduct and behaviors in accordance with the District's discrimination prevention policies and this AR.

Managers and Supervisors - Each manager and supervisor is responsible for:

- Engaging in conduct and behaviors in accordance with the District's discrimination prevention policies and this AR.
- Promoting awareness and keeping subordinate employees within their organizational area informed of the District's discrimination prevention policies and this AR.

- Taking all necessary steps to prevent and correct unlawful discrimination, including sexual or other forms of harassment, from occurring within their organizational area.
- Immediately reporting any/all complaints received relating to unlawful discrimination, including sexual or other forms of harassment, to the Equal Employment Opportunity Office (EEO Office).
- In partnership with the Labor Relations department, take appropriate remedial actions when cases of discrimination and/or harassment have occurred.

G. Departmental Expectations and Responsibilities

The EEO Office is responsible for:

- Coordinating training and education for all District employees regarding the implementation of District policy and this AR. Training and education shall include distribution of the District's discrimination prevention policies and this AR to all employees; including distribution to new employees as part of the District's orientation process.
- Investigating complaints of unlawful discrimination, including sexual or other forms of harassment, and advising management of corrective action, if warranted.
- Retaining confidential records of complaints regarding unlawful Discrimination, including sexual or other forms of harassment.
- Monitoring all recruitment, selection, placements, and promotions regarding implementation of the Board policy and this AR.

The Labor Relations Department is responsible for:

- When Discrimination and/or Harassment has been determined, recommending appropriate remedial action based on the nature, frequency, and severity of the conduct; taking into account any prior discipline imposed for violation of Board policy and/or this AR
- Collaborating with the EEO Office and other departments to resolve related issues, conduct analysis, and identify measures to prevent discrimination and harassment at the District.

H. Reporting Complaints

To the extent possible, a complaint will be treated with confidentiality and the privacy rights of all parties involved in an investigation will be protected. However, confidentiality cannot be guaranteed when doing so would inhibit a complete and thorough investigation.

Inquiries:

The EEO Office is available to provide assistance to employees and applicants for employment with regard to the internal complaint and investigation process. In addition, general information and referrals to external agencies are available from the EEO Office.

Reporting Complaints – Internally:

- Any incident of unlawful Discrimination, including sexual or other forms of harassment, should be reported promptly to the employee's supervisor or manager, to any member of management, or to the District's EEO Office (510-891-4848 or 510-891-4850). **An employee is not required to complain first to their supervisor.**
- Any supervisor who receives a complaint or who observes discriminatory/harassing conduct should inform EEO Office staff immediately. A delay in reporting may hamper the thoroughness of the investigation. The EEO Office is responsible for investigating all allegations of violations of the AR or related policy(ies).
- If a complaint is reported verbally, EEO Office staff will meet with the complainant and reduce the complaint to writing. The complainant will be asked to review the written complaint for accuracy and sign it.

Reporting Complaints – Externally:

Every employee and applicant for employment is entitled to file/report allegations of unlawful Discrimination, sexual, or other forms of harassment, or retaliation to an outside agency. Each agency has its own time frame for filing a complaint. The following represents a summary of the external agencies. Outside employment discrimination jurisdictions may change since the publication of this document.

- United States Equal Employment Opportunity Commission (EEOC). Email address: <https://www.eeoc.gov/>
- State of California Fair Employment and Housing Act (DFEH) Email address: http://www.dfeh.ca.gov/Publications_FEHADescr.htm

I. Investigation Procedures

Investigation:

- The EEO Office will contact the complainant in a timely manner upon receipt of a complaint of discrimination, harassment, or retaliation.
- EEO Office will assign an investigator to seek information sufficient to determine if the EEO Office has jurisdiction to investigate the complaint's allegations.

- If the assigned investigator determines there is sufficient information to support EEO Office jurisdiction, the assigned investigator will initiate an investigation into the allegations contained in the complaint.
- The assigned investigator, whenever possible, will obtain a written, signed statement from the complainant describing the allegations in detail.
- The assigned investigator will interview the complainant, the charged party(ies), and all relevant witnesses to obtain further information. The assigned investigator will also seek to obtain and retain all documentary and other evidence pertaining to the complaint allegations.

Report:

- Upon completion of an investigation, the assigned investigator will prepare a written fact-finding report that will contain findings related to each factual allegation in the complaint.

Conclusion of the Investigation:

- If the EEO Office concludes that the District's Discrimination prevention policies or this AR has been violated, the assigned investigator will notify Labor Relations department and the director/manager of the department in which the Harassment or Discrimination occurred. Remedial action will be taken if any misconduct is found.
- The Labor Relations department will determine and recommend appropriate remedial action to the manager sufficient to end the harassment or discrimination. Remedial actions for District employees violating the District's discrimination prevention policies or this AR may include, but are not limited to, discipline up to and including termination, coaching, training, and other measures that will remedy the situation giving rise to the violation.
- Disciplinary actions will be based on the nature, frequency, and severity of the conduct; as well as any prior discipline imposed for violations of the District's discrimination prevention policies and/or this AR.
- Violation of the District's discrimination prevention policies and/or this AR by a representative of a District contractor/vendor may cause the termination of the contract or the representative being banned from District property.
- The department director/manager and/or the Labor Relations department will inform the EEO Office what remedial action was taken and provide proof of said action for EEO Office's file.

- Upon completion of the investigation, the EEO Office will prepare and provide a closing statement to the complainant and the accused summarizing the findings. The complainant will not be informed of the nature of the disciplinary action taken against an individual who has been found to have violated the District's discrimination prevention policies and/or this AR unless the EEO Office determines it is appropriate to do so.

Approved by:



Michael A. Hursh, General Manager

Alameda-Contra Costa Transit District