

Washington Metropolitan Area Transit Authority
Board Action/Information Summary

☐ Action ☒ Information

MEAD Number:
201999

Resolution:
☒ Yes ☐ No

TITLE:

EEO Policies

PRESENTATION SUMMARY:

Staff proposes an updated Equal Employment Opportunity (EEO) and Affirmative Action (AA) Policy No. 7.1.1/2. The proposed policy incorporates the latest Federal Transit Administration (FTA) and Office of Federal Contract Compliance Programs (OFCCP) requirements.

PURPOSE:

Staff seeks approval of the proposed Equal Employment Opportunity and Affirmative Action Policy and Instruction 7.1.1/2.

DESCRIPTION:

Metro is updating its Equal Employment Opportunity (EEO) and Affirmative Action policy to incorporate the latest requirements from the Federal Transit Administration (FTA) and Office of Federal Contract Compliance Programs (OFCCP).

Key Highlights:

Metro is committed to Equal Employment Opportunity (EEO) and to complying with all applicable federal laws that prohibit workplace discrimination and retaliation. By this action, on September 27, 2018, staff will request, by consent, Board of Directors approval of an updated Equal Employment Opportunity and Affirmative Action (EEO/AA) Policy, No. 7.1.1/2

Background and History:

Resolution 2011-12, delegated to the General Manager/Chief Executive Officer (GM/CEO) authority to amend any portion of Metro's personnel policies except for its Equal Employment Opportunity and Affirmative Action (EEO/AA) Policy. The Board of Directors most recently approved Metro's EEO/AA Policy in Resolution 2004-27, but since then the Federal Transit Administration (FTA) updated its EEO Circular in 2016 and again in 2017.

The proposed policy incorporates the latest FTA and Office of Federal Contract Compliance Programs (OFCCP) requirements. In accordance with the

requirements, Metro's EEO/AA Policy, establishes updated expectations for equal employment opportunity and affirmative action in the organization.

Discussion:

The updated EEO policy:

- Expands descriptors for protected groups, which include ancestry, genetic information, gender identity, gender expression, childbirth, breast feeding, pregnancy, marital status and citizenship status;
- References that WMATA makes reasonable accommodations for disabled applicants and employees and for employees with sincerely held religious beliefs depending upon individual circumstances;
- Expands the Chief Human Resources Officer and EEO Officer responsibilities to provide training to all employees, managers, and supervisors;
- Requires the Chief Procurement Officer to obtain information on contractor EEO Programs;

- Revises reporting and investigation procedures that:
 - Clarify and improves procedures.
 - Provide a dedicated telephone number and email address for the reporting of policy violations;
 - Require supervisors and managers to report any harassing conduct witnessed, not just reported by subordinates.
 - Removes the Alternative Dispute Resolution (ADR) process, as WMATA no longer has an ADR program.

- Expands statement of non-retaliation and adds OFCCP-required pay transparency provision.

In support of the EEO/AA Policy, the GM/CEO updated Metro's Anti-Sexual Harassment Policy 7.1.1/2 and established a stand-alone Non-Retaliation Policy 7.1.5.

The Office of Equal Employment Opportunity will monitor activities and enforce adherence to the policy as outlined in the reporting and investigation procedures.

Following Board approval, management will disseminate the EEO/AA Policy as well as the Anti-Sexual Harassment and Non-Retaliation policies throughout the Authority. Training on the updated policy will continue, and additional classes will be added. Staff will develop a robust communication strategy that will be used to reinforce Metro's commitment to eliminating discrimination, harassment and retaliation.

FUNDING IMPACT:

There are no capital or operating cost associated with the request for Board approval.	
Project Manager:	Franklin C. Jones
Project Department/Office:	Department of Fair Practices/OEEO

TIMELINE:

Previous Actions	<p>2-24-2011 Grant of Authority to GM/CEO to Amend the Personnel Manual</p> <p>4-20-2018 GM/CEO acceptance of EEO and Affirmative Action Policy</p> <p>4-18-2018 GM/CEO Approval of Anti-Sexual Harassment Policy</p>
Anticipated actions after presentation	<p>9-24-2018 Dissemination of Approved policy to staff.</p> <p>9-24-2018 Approved policy will be placed on WMATA intranet.</p>

RECOMMENDATION:

Board approval of the Equal Employment Opportunity/Affirmative Action policy.

SUBJECT: UPDATE OF EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION POLICY

RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

WHEREAS, In Resolution 2011-12, the Washington Metropolitan Area Transit Authority's (WMATA) Board of Directors delegated to the General Manager/Chief Executive Officer authority to amend all personnel policies, except for the policy regarding Equal Employment Opportunity and Affirmative Action (EEO/AA Policy); and

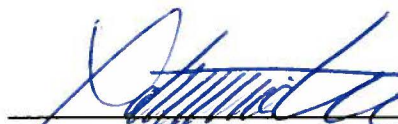
WHEREAS, The EEO/AA Policy states WMATA's commitment to EEO/AA for employees and applicants, and fulfills the requirements of federal laws, executive orders and Federal Transit Administration requirements; and

WHEREAS, The Board of Directors last adopted the EEO/AA Policy in Resolution 2004-27; NOW, THEREFORE, be it

RESOLVED, That the Board of Directors approves the attached updated EEO/AA Policy/Instruction that incorporates the latest requirements from the Federal Transit Administration and Office of Federal Contract Compliance Programs; and be it finally

RESOLVED, That as this Resolution deals solely with internal management of WMATA, it shall be effective immediately.

Reviewed as to form and legal sufficiency,



Patricia Y. Lee
General Counsel

**POLICY/INSTRUCTION:
7.1.1/2****EQUAL EMPLOYMENT OPPORTUNITY AND
AFFIRMATIVE ACTION****SUPERSEDES: 7.1.1/1****APPLICABLE TO: ALL EMPLOYEES AND APPLICANTS**

METRO RESERVES THE RIGHT TO ELIMINATE, CHANGE, OR MODIFY THIS POLICY AT ANY TIME. ADDITIONALLY, THE LANGUAGE USED IN THIS POLICY SHOULD NOT BE CONSTRUED AS CREATING A CONTRACT OF EMPLOYMENT BETWEEN METRO AND ANY OF ITS EMPLOYEES OR OTHERWISE ALTERING AN EMPLOYEE'S AT-WILL EMPLOYMENT RELATIONSHIP WITH METRO.

1.00 PURPOSE

- 1.01 Washington Metropolitan Area Transit Authority (Metro) is committed to Equal Employment Opportunity (EEO) and to complying with all applicable federal laws that prohibit workplace discrimination and retaliation. Metro strictly prohibits all discrimination on the basis of race, ancestry, color, age, national origin, ethnicity, religious creed or belief, physical or mental disability, marital or familial status, legally protected medical condition, genetic information, military or veteran status, sex (including pregnancy, childbirth, breastfeeding, or related medical condition), gender (including gender identity and gender expression), sexual orientation, citizenship status, protected activity (such as opposition to or reporting of prohibited discrimination or harassment), or any other status or classification protected by applicable federal laws. Metro will also make reasonable accommodations for disabled applicants and employees and for the sincerely held religious beliefs of applicants and employees depending upon individual circumstances.
- 1.02 This commitment to EEO extends not only to employees of Metro but also to independent contractors, trainees, apprentices, or any participant in a program to provide unpaid experience in the workplace or our business. This commitment extends to all areas of personnel actions, including but not limited to advertising, recruiting, hiring, training, evaluation, promotion, transfer, work assignments, accommodation requests, requests for leave, compensation, benefits, disciplinary actions, layoffs, discharges, terminations, participation in company activities, programs, or events, or any other terms, conditions, or privileges of employment.

2.00 SCOPE

This policy applies to all Metro employees, applicants and contingent workers (e.g., temporary staff). Further, employees should report any discriminatory behavior prohibited by this policy of any other individuals doing business with Metro.

3.00 DEFINITIONS

- 3.01 **Applicant** - anyone who submits an expression of interest in employment for a specific job opening to Metro.
- 3.02 **Employee** - a person employed by Metro and contingent workers.

4.00 RESPONSIBILITY

- 4.01 The Board of Directors is responsible for approving policies that ensure Metro complies with all applicable federal laws governing nondiscrimination in employment and EEO, including Federal Transit Administration (FTA) requirements, as well as engaging in affirmative action measures

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regarding Applicants and Employees. The Board authorizes the GM/CEO to delegate authority to accomplish these objectives, and to revise this policy as necessary for legal compliance.

- 4.02 The General Manager/ Chief Executive Officer (GM/CEO) is responsible for executing and issuing an EEO policy statement that complies with applicable federal laws and FTA requirements, designating an Equal Employment Opportunity (EEO) Officer, who has full authority with respect to EEO and affirmative action, and giving the EEO Officer support and assigning sufficient staff to successfully carry out the EEO Program.
- 4.03 The EEO Officer is delegated by the GM/CEO with full authority to plan, develop, manage and administer Metro's EEO and affirmative action policies and programs. The EEO Officer reports to and is directly responsible to the GM/CEO. The EEO Officer is responsible for developing and implementing the programs and practices that support the goal of equal employment opportunity and affirmative action, including compliance with the FTA EEO Circular, as amended, and applicable Office of Federal Contract Compliance Programs (OFCCP) regulations.
- 4.04 The Chief Human Resources Officer (CHRO) is responsible for advising Employees and Applicants of position entrance requirements, training programs, and professional development opportunities; ensuring new Employees acknowledge in writing that they have received, read and understand this policy; conducting training for Employees, managers, and supervisors; and stating in all recruitment ads that Metro is an equal employment opportunity employer.
- 4.05 Managers and Supervisors are responsible for carrying out the provisions of this policy and the EEO Program; cooperating with the EEO Officer in investigations of discrimination complaints; encouraging Employee participation to support the advancement of the EEO Program; and ensuring Employees and Applicants who file complaints under this policy are not subjected to retaliation, penalty or any resulting differences in treatment.
- 4.06 The Chief Procurement Officer (CPRO) is responsible for requesting EEO Programs from contractors who meet the EEO Program threshold.
- 4.07 All Employees are responsible for abiding by this policy and shall fully cooperate in the investigation of a complaint filed under this policy.

5.00 POLICIES AND PROCEDURES

- 5.01 Affirmative Action and EEO Program:
- (a) Metro has established Affirmative Action Programs (AAPs) under Executive Order 11246, Section 503 of the Rehabilitation Act, and the Vietnam Era Veteran's Readjustment Assistance Act of 1974.
- (b) The EEO Officer shall develop AAPs for qualified individuals with disabilities and protected veterans that satisfy all OFCCP requirements and applicable FTA requirements.
- (c) The EEO Officer will make the AAPs available for inspection by any Employee or Applicant

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upon request.

- (d) The EEO Officer shall develop an EEO Program that complies with applicable federal laws, including applicable FTA requirements.

5.02 Reporting and Investigation Procedures:

- (a) Any Employee or Applicant who witnesses or believes he or she has been subjected to discrimination or harassment is encouraged to promptly bring such claim to the attention of their managers, supervisors, and/or management, including the EEO Officer. Employees are not required to report violations of this policy to their supervisors, managers, or any other person engaging in the unwelcome behavior if that supervisor, manager, or other person is the subject of the report. All supervisors or managers who witness any discriminatory or harassing misconduct, or receive complaints of such misconduct, are required to immediately report the conduct to the EEO Officer.
- (b) Any Employee or Applicant who believes he or she has been subjected to or witnessed violations of this policy may file a written complaint with the EEO Officer:

EEO Officer Number (202) 962-1082, OEEH hotline@wmata.com

Any Employee or Applicant who believes the facts or the circumstances make it inappropriate to file a written complaint with the EEO Officer may report the matter immediately to the CHRO, who will then serve in the role of EEO Officer for the matter.

- (c) This policy is not intended to prohibit Employees or Applicants from filing complaints with the U.S. Equal Employment Opportunity Commission.
- (d) Employees or Applicants who elect to file a written complaint are encouraged to do so within 30 calendar days of the alleged discriminatory act(s) to ensure a timely resolution.
- (e) The written complaint should provide the following information to the extent possible:
- (1) The protected class (i.e. race, sex, age, etc.) basis of the alleged discrimination.
 - (2) Name(s) and title(s) of the individuals who allegedly engaged in the discriminatory behavior.
 - (3) A detailed description of the alleged discriminatory act(s) or behavior including all pertinent facts and circumstances.
- (f) The EEO Officer shall make a determination whether the allegations warrant investigation.

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Should the EEO Officer determine that the complaint does not warrant investigation, the EEO Officer shall provide a determination letter to the complainant.

- (g) If the EEO Officer determines that an investigation is warranted, he or she shall promptly initiate the investigation process and provide notice to the complainant.
- (h) After concluding the investigation, provided the investigation is not elevated to Metro's Office of General Counsel (COUN) under the supervision and direction of COUN, in which case all further communications shall be conducted at the express and sole direction of COUN, the EEO investigator shall prepare a report of investigation that includes a statement of the allegations, factual findings and conclusions based on the evidence collected, and shall consult with the designated employee relations official on the recommended remedial or corrective actions, if any.
- (i) The EEO Officer shall have final approval of the investigation findings and appropriate resolution plan or corrective actions, if any, and shall ensure corrective actions, if any, are implemented.
- (j) After review and approval, the EEO Officer shall provide the complainant with a summary of the investigation findings and resolution plan, if any.

5.03 Non-Retaliation

- (a) Metro strictly prohibits retaliation in any way against anyone who has reported, participated in an investigation of, or opposed harassment, discrimination, or retaliation.
- (b) The initiation of a complaint under this policy shall not under any circumstances be grounds for discipline. It is a violation of Metro policy for an individual to be disciplined or otherwise disadvantaged for following the procedures in this policy.
- (c) Persons engaging in any form of retaliation will be subject to disciplinary action, up to and including termination.
- (d) Supervisors and managers must obtain the written consent of the designated employee relations official before taking any personnel actions against an Employee who has exercised rights under this policy.
- (e) Any Employee who believes he or she has been subject to retaliation under this policy, or has observed retaliation, should report the retaliation immediately to the EEO Officer.

5.04 Pay Transparency:

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- (a) Metro will not discharge or in any other manner discriminate against Employees or Applicants because they have inquired about, discussed, or disclosed their own pay or the pay of another Employee or Applicant.
- (b) Employees who have access to the compensation information of other Employees or Applicants as a part of their essential job functions may not disclose the pay of other Employees or Applicants to individuals who do not otherwise have access to compensation information, unless the disclosure is (a) in response to a formal complaint or charge, (b) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by WMATA, or (c) consistent with a legal duty to furnish information.

6.00 ENFORCEMENT

- 6.01 Any Employee who engages in discrimination, retaliation, or otherwise violates this policy, or any supervisor or manager who knowingly permits such conduct to occur or fails to report violations of this policy, will be subject to disciplinary action, up to and including termination.
- 6.02 Employees who fail to cooperate in good faith with the investigative process may be subject to discipline, up to and including termination.

7.00 EXCEPTIONS

Not applicable.

8.00 RELATED POLICIES, REGULATIONS & RESOLUTIONS

- 8.01 WMATA Board Resolution 2004-27, 2011-12 and 2018
- 8.02 Title VII of the Civil Rights Act
- 8.03 OFCCP Program Regulations
- 8.04 Federal Transit Administration EEO Circular
- 8.05 P/I 7.1.2, Anti-Sexual Harassment and Other Harassment
- 8.06 P/I 7.1.5, Non-Retaliation
- 8.07 P/I 7.1.3, Americans with Disabilities Act – Employment
- 8.08 P/I 7.1.4, Religious Accommodation

9.00 LIST OF APPENDICES, ATTACHMENTS OR FORMS

Not applicable.

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