2025 Investigation Procedures and Handbook (Second Edition)

King County Metro Equal Employment Opportunity Office

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Introduction

The King County Metro Equal Employment Opportunity (EEO) Office is proud to present the second edition of its Investigative Procedures and Handbook (Handbook). The EEO Office is grateful for the contributions from Metro's employees, division leadership, Metro Human Resources, Transit Employee Labor Relations, Metro's Equity Inclusion and Belonging team, DHR's Workforce Equity division, and all its other partners throughout the County in creating a document that elevates the civil rights of all Metro employees.

The purpose of this Handbook is to provide the EEO Office and the Metro workforce a transparent framework by which it receives, investigates, and analyzes allegations of protected class-based misconduct. With the procedures and legal standards articulated in this Handbook, the EEO Office is taking a step to build trust and demystify what happens when someone files a complaint of discrimination and the role the EEO Office has in driving change at Metro.

The EEO Office has the unique responsibility of providing independent and impartial oversight over all of Metro's employment practices as mandated by the Federal Transit Administration (FTA). The EEO Office, under the direction of the EEO Officer, has an affirmative responsibility to ensure that employees have equal employment opportunities and to prevent discrimination, retaliation, and harassment in the workplace.

A part of that responsibility includes conducting fair and impartial investigations of alleged instances of discrimination, harassment, and retaliation under Federal laws (EEO laws) and the King County Nondiscrimination, Anti-Harassment & Inappropriate Conduct Policy & Reporting Procedures, Policy Number 2021-0012, PER 22-3-3 (Policy). This Handbook does not cover any of the data reporting responsibilities or other non-investigative EEO Program requirements of the EEO Office. For more information on Metro's EEO Plan, see here.

This Handbook should be updated annually to reflect changes in applicable law, policy, and regulations, and to be responsive to the operational and administrative needs of Metro and its employees. Questions and suggestions for improving this document should be directed to the EEO Office.

EEO Office – Mission, Vision, and Values

Mission

To protect Civil Rights and advance equity for all King County Metro employees.

Vision

A Metro free of discrimination where everyone can professionally grow and thrive, regardless of who they are and the identities they hold. The Metro EEO Office will do its part to keep our region moving by providing Metro employees and leadership trustworthy information and data to drive equitable employment decisions and policies.

Values

Equity. We name and acknowledge that racism, sexism, ableism, transphobia, homophobia, and xenophobia are real, systemic maladies that are rooted in our nation's long history and practices of legal segregation, discrimination, and colonization. The knowledge of the intersecting past and present effects of these "isms" inform our future work.

Expertise in Civil Rights Law. We celebrate that Civil Rights laws are monumental achievements of our society, fought for by countless leaders and martyrs of justice, including our County's namesake, the Rev. Dr. Martin Luther King, Jr. We honor their memories with sophisticated expertise in the equal and unbiased application of these laws.

Compassion. We listen to the voices and stories of those affected by discrimination with empathy and compassion, regardless of the merits of their allegations. And as a neutral party to these matters, we similarly will treat those alleged to have violated policy or law with equal respect and compassion, knowing that investigations can be a difficult process to experience, and never assuming wrongdoing or intent.

Transparency. We practice transparency in our processes, knowing that true transparency leads to accountability. We will strive to ensure that the Metro workforce knows about our policies and procedures in investigations, compliance with federal law, and Metro's EEO Plan. We invite engagement and critique that leads to positive change and innovation.

Cooperation. We acknowledge that we are part of a larger structure, where partnership with other departments, leadership, and employees is crucial to translating the information and data we provide into meaningful action. While the EEO Office shall operate as independently as possible and free from outside influence, we value the expertise and cooperation of the many talented professionals throughout King County in doing what is just and equitable.

Chapter 1

General Investigative and Legal Principles

General Investigative and Legal Principles

I. The Purpose of an Investigation

The purpose of an investigation is to build a factual and evidentiary record to determine whether alleged violations of EEO law[1] or policy occurred. It is important that the investigations be conducted in a fair and neutral manner so that all parties involved in the investigation can trust and rely on the investigative findings. Investigations balance the need to take seriously the concerns of the person raising the allegations of wrongdoing (the Complainant) with the fairness and process due to the person being accused (the Respondent).

The FTA tasks the EEO Officer with monitoring and advancing equitable employment practices and affirmatively preventing discrimination, harassment, and retaliation. The EEO Officer may approach specific allegations of discrimination as part of a larger pattern or practice of discrimination and may also consider information and data that may not otherwise be considered in other investigations (previous EEO complaints against the same person or division, for example).

During an investigation, the EEO Officer, acting through the EEO Office and its investigators, will provide appropriate leadership and departments information that may be important to prevent on-going discrimination or future retaliatory acts, or to address immediate and emergent issues.

At the conclusion of an investigation, the Complainant and Respondent(s) will be informed of the outcome, and the EEO Office will provide Metro leadership written reports of its findings so that appropriate action can be taken. The responsibility to act on the information and reports provided by the EEO Office remains with the appropriate Metro division and departments, as to not make the EEO Office, Officer, or staff a witness or party to any future complaints.

II. Protected Classes and Protected Activities

For the EEO Office to conduct an investigation, the allegations of discriminatory behavior must be based on a person's protected class or having engaged in a protected activity for retaliation cases.

EEO law[2] and the Policy protect employees from discrimination on the basis of **protected classes**, which are certain things about a person that they cannot nor should be asked to change. Generally, under EEO laws, protected classes include race, color, religion, national origin, sex, disability, age, and genetic information. In this context, sex includes pregnancy, childbirth, gender identity, and sexual orientation.[3]

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[1] Including Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 and Civil Rights Act of 1991, Title II of the Genetic Information Nondiscrimination Act, Title I of the Americans with Disability Act, the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, Sections 501 and 505 of the Rehabilitation Act, and the Uniformed Services Employment and Reemployment Rights Act of 1994.

[2] FTA Circular 4704.1A, 2.2.3. For information on the EEO Office's non-investigative duties, please see Metro's EEO Policy Statement and EEO Plans here.

[3] *Hegwine v. Longview Fibre Co., Inc.*, 132 Wash.App. 546 (2006).

The Policy, on the other hand, defines protected status to include an employee's "sex, age, creed, disability, marital status, national origin, race, color, religion, pregnancy, gender, gender identity or expression, genetic information, sexual orientation, veteran or military status, use of a service animal, domestic violence victimization, engaging in protected activity and any other status protected by federal, state or local law."[4]

In retaliation cases, a person must have engaged in a **protected activity** to be covered by EEO law or the Policy, regardless of their protected class. A protected activity can include, but is not limited to, making a complaint of discrimination, opposing discriminatory behavior or practices, participating in an EEO investigation as a party or a witness.[5]

III. Differences Between EEO Laws and the Policy

While similar in their purpose and scope, there are key differences between EEO laws and the Policy.

EEO laws are based in civil rights laws and come with decades worth of instructive case law by which to analyze different situations and allegations. Case law refers to how courts have interpreted written law, providing an analytical and logical framework from which the EEO Office can base its investigations. Case law will be found throughout this Handbook, with the case name in italics followed by information on when and which court made the decision. The EEO Office is required to receive complaints of and investigate alleged violations of these laws.

The Policy, on the other hand, is an internally developed policy with specific applicability to the King County enterprise and workforce. The Policy makes an important distinction between violation of the Policy and illegal acts of discrimination, that not all violations of the Policy will constitute illegal discrimination, with illegal discrimination having a higher standard.

a. Case Law, EEO Laws, and Application to the Policy

Case law provides the EEO Office a well-established and predictable framework by which it analyzes different allegations. Where EEO laws are similar to the Policy, the EEO Office will employ the reasoning and standards established in case law. The case law and research in this document, Particularly Chapter 4, are limited to published Washington State courts, 9th Circuit, and U.S. Supreme Court decisions. Federal administrative decisions and non-Washington cases are cited only in the absence of applicable case law for guidance purposes.[6]

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[4] The final phrase "any other status protected by federal, state or local law" requires special attention given the breadth of what is encompassed. For example, in the City of Seattle's Fair Employment Practice Ordinance, political ideology is also a protected class. SMC 14.04.020(A). Also, in the King County Charter, family caregiver is a named protected class. King County Charter, Section 840. In both examples, neither provides definitions nor is there established case law to analyze such claims. If these allegations based on these or other untested protected classes arise, contact the PAO for legal advice.

[5] See Chapter 4, Types of Discrimination, Retaliation.

[6] However, it should be noted that Washington Courts are not bound by Federal Law. *Glasgow v. Georgia-Pacific Corp.*, 103 Wash.2d 401 (1985); *Davis v. Department of Labor and Industries*, 94 Wash.2d 119 (1980).

IV. The Prima Facie Case and Analysis

The EEO Office will investigate and analyze allegations using a prima facie case analysis, used by many other investigative agencies, including the Equal Employment Opportunity Commission (EEOC), United States Department of Housing and Urban Development (HUD), Seattle Office for Civil Rights, the Washington State Human Rights Commission, and the King County Civil Rights Program. This provides a transparent and uniform way by which allegations of discrimination are analyzed.

Prima facie elements are facts that must be established in a case of discrimination and will differ depending on the kind of discrimination alleged. A prima facie case cannot be established without each element being supported by the evidentiary record. For a list of all kinds of discrimination and their respective elements, see Chapter 4, Types of Discrimination, below.

To establish a prima facie case, the EEO Office must receive enough evidence or information from a Complainant.[7] This means that the EEO Office will review the information provided by the Complainant at the intake stage to determine whether the prima facie elements for a claim have been satisfied.

a. Burdens of Proof and Evidentiary Standards

To start an investigation with the EEO Office, the Complainant has the "[initial] burden of establishing *specific and material facts* to support each element of their prima facie case."[8] At the start of an investigation, the Complainant needs to sufficiently state facts that meet each of the prima facie elements that would lead to an investigation.[9]

The burden of proof, that is, the burden to produce evidence and to persuade, can shift between the Complainant and Respondent(s) in cases of discrimination based on circumstantial evidence when a Complainant lacks "direct evidence of discriminatory animus."[10] This analysis is often referred to as the McDonnell Douglass burden shifting analysis.[11]

b. Preponderance of the Evidence

Determinations in investigations by the EEO Office are based on a *preponderance of the evidence*, meaning a greater than 50 percent probability, or "more likely than not." This is the widely recognized standard for workplace investigations, as well as for civil cases. During an investigation, the burden is on the Complainant to demonstrate that *all* the prima facie elements and allegations of their claim have been satisfied by a preponderance of the evidence. In factual findings and cases of inappropriate conduct, the preponderance of the evidence standard is used to determine if a certain fact or allegation occurred.
The EEO Office's investigations do not require the Complainant to personally establish the facts of their case. The EEO Office acts as a fact finder to gather evidence that may support those facts but does not act

[7] If unchallenged, the prima facie case is generally sufficient for the Complainant's allegations to prevail in an investigation. *See* Part IV. a, Burdens of Proof and Evidentiary Standards.
[8] *Hiatt v. Walker Chevrolet Co.*, 120 Wash.2d 57, 66 (1992).
[9] *See* Chapter 3, Part III, Intake.
[10] *Hill v. BCTI Income Fund-I*, 144 Wn2d 172, 180 (2001).
[11] *McDonnell Douglas Corporation v. Green*, 93 S.Ct. 1817, 1820 (1973).

as an advocate nor pursue unreasonable or specious leads that a personal attorney or other advocate may have pursued.

c. Burden Shifting

When a Complainant has established a prima facie case of discrimination, an inference of discrimination has been established. In cases where there is no direct evidence of discrimination, the burden of proof then shifts to the Respondent to articulate some "legitimate, nondiscriminatory reason" for the alleged discriminatory act. A Respondent need not prove their legitimate, nondiscriminatory reason; rather, articulating the response is sufficient to rebut the Complainant's prima facie case.

If the Respondent articulates a legitimate, non-discriminatory reason, the burden again shifts back to the Complainant to demonstrate by a preponderance of the evidence that the legitimate, nondiscriminatory reasons was **pretext** – or as the *McDonnell* Court called it, "a coverup for a [] discriminatory decision."[12] If pretext is established, an inference that the allegations occurred as alleged may be made; however, an investigator may also find that the pretextual reasoning was given for a different reason, such as covering up facts.[13]

In cases of direct discrimination, burden shifting is not appropriate. For example, if the allegation is that a supervisor used a racial slur, no burden shifting is necessary if the evidence shows that the slur was used. Put another way, in cases of direct discrimination, there is no legitimate, non-discriminatory reason for why the alleged behavior occurred.

d. Reasonable Person Standard

In many cases involving the Policy's provision on inappropriate conduct and retaliation, the reasonable person standard is applied. This standard is used to determine whether a reasonable person in the same situation would find certain conduct harassing, offensive, or would be dissuaded from engaging in a protected activity or asserting their civil rights.

V. Jurisdiction

Jurisdiction is the authority to take action in certain circumstances depending on the subject matter (what is being alleged) and who the parties to the investigation are.

All matters having to do with protected class-based discrimination, harassment, retaliation, and inappropriate conduct at Metro are within the EEO Office's subject matter jurisdiction. While the Policy states that Complainants may report to other entities such as Human Resources (HR), it is Metro's practice that all these matters are reported to both the EEO Office and HR, with the EEO Office having discretion to retain matters for investigation.

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[12] *McDonnell Douglas Corporation v. Green*, 93 S.Ct. 1817, 1826 (1973).
[13] *See* EEOC Guidance on Retaliation and Related Issues, https://www.eeoc.gov/laws/guidance/enforcement-guidance-retaliation-and-related-issues#_ftn4

For the EEO Office to have personal jurisdiction, the Respondent must be an employee (current or former) of Metro. A Complainant may be a current or former employee, applicant, or potential applicant for a position with Metro.

It should be stressed that just because the EEO Office has jurisdiction to investigate, does *not* mean that a division or other Metro agency need to stop their own processes in maintaining operations or addressing workplace issues. Real-time employment and workplace decisions should be made without advice or interference by the EEO Office, and divisions should make these decisions in consultation with HR, Transit Employee Labor Relations (TELR), and the Prosecuting Attorney's Office (PAO), as appropriate.

a. Contractors

Independent contractors are protected by the Policy and are also subject to the Policy.

While contractors are *not* considered employees covered by Title VII and other EEO laws; just because a Respondent or Metro asserts that an individual is a contractor does not necessarily mean that they are. In *Murray v. Principal Financial Group, Inc.*, 613 F.3d 943 (9th Cir. 2010), the Ninth Circuit adopted the following factor test adopted from *Nationwide Mutual Insurance Company v. Darden*, 112 S.Ct. 1334 (1992):

> [1] the skill required; [2] the source of the instrumentalities and tools; [3] the location of the work; [4] the duration of the relationship between the parties; [5] whether the hiring party has the right to assign additional projects to the hired party; [6] the extent of the hired party's discretion over when and how long to work; [7] the method of payment;[8] the hired party's role in hiring and paying assistants; [9] whether the work is part of the regular business of the hiring party; [10] whether the hiring party is in business; [11] the provision of employee benefits; and [12] the tax treatment of the hired party.

b. Types of Employees

The EEO Office investigators make no distinction between full time employees, career service employees, represented or non-represented employees, probationary employees, temporary and term-limited employees, employees on special duty assignment, or intermittent employees. All are considered employees for the EEO Office's investigations.

c. Pregnancy, Sexual Orientation, Gender Identity

Discrimination based on pregnancy, gender identity, or sexual orientation are analyzed within a sex discrimination framework and are under the jurisdiction of the EEO Office.[14] Pregnancy is specifically protected under the Pregnancy Discrimination Act (an amendment to Title VII) that protects on the basis of pregnancy childbirth, or related medical conditions. Pregnancy related medical conditions may require a temporary disability accommodation analysis.[15]

i. The Pregnancy Workers Fairness Act

[14] *Hegwine v. Longview Fibre Co., Inc.*, 132 Wash.App. 546 (2006).

[15] *See* Chapter 4, Types of Discrimination.

The Pregnant Workers Fairness Act (PWFA), requires a covered employer to provide a reasonable accommodation to a qualified employee's or applicant's known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer undue hardship. Examples of reasonable accommodations under the PWFA are: (1) additional, longer, or more flexible breaks to drink water, eat, rest, or use the restroom; (2) changing equipment, devices, or workstations, such as providing a stool to sit on, or a way to do work while standing; (3) changing a work schedule, such as having shorter hours, part-time work, or a later start time; (4) telework, and more. The PWFA effectively makes it easier for pregnant persons to receive certain reasonable accommodations through a less invasive interactive process.

VI. Conflicts of Interest

The EEO Officer and the investigators must remain neutral and impartial to all investigative matters and must operate free of conflicts of interest – actual or perceived. Current or former relationships, professional or personal, with any parties to an investigation must be disclosed to the Investigations Manager or EEO Officer. A determination will be made as to whether the assigned investigator or other EEO staff (including the EEO Officer) has a conflict and should not be involved in the matter. If a conflict is identified that individual shall not be a part of that investigation. Similarly, if a conflict becomes apparent during an investigation, it should immediately be disclosed to the Investigations Manager or EEO Officer.

In cases where the EEO Officer is the subject of an investigation or has a conflict of interest regarding the matter, the same procedure above will apply. The EEO Officer shall disclose to the General Manager the nature of the conflict and the General Manager will decide if the EEO Officer's recusal is necessary. By default, Metro's General Manager is the EEO Officer in these cases, and may designate an alternative, interim EEO Officer depending on the circumstance.

VII. Confidentiality

a. Personal Information

The EEO Office and its staff will regularly review and retain information and documents that contain highly sensitive and personal information. While *completed* investigations are subject public record requests, the EEO Office shall not share any details of an investigation unless there is legitimate need to know. Personal details, such as someone's personal address or medical information, should never be disclosed to parties outside of the EEO Office or an investigation.

If the EEO Office is asked for documents or information (potentially sensitive or otherwise), the requestor should be referred to make a public records request so that the information can be appropriately redacted.

EEO Office staff shall not keep investigative materials on their personal desktop, SharePoint, One Note, or any unsecured electronic location for indefinite periods of time. Use of personal technology and cell phones for EEO business and investigations is prohibited. All investigative files should be kept on the EEO's secured drive, accessible only to EEO staff. Emails communications and attached documents may still exist in an employee's County email server, but if the messages or attachments are downloaded, they should be kept on the secured server.

b. Witnesses

During an investigation, the EEO Office may need to interview witnesses who have been identified as having personal knowledge of the allegations listed within the formal complaint. During the investigation, the EEO Office will not share with parties or division leadership who it has chosen to interview to protect the privacy of witnesses. Further, the EEO Office does not list the names of witnesses in its findings and instead refers to witnesses by their job title or other identifier.

VIII. Compliance with KCC 2.15

EEO Office staff will work and complete investigations in compliance with KCC 2.15, the Citizenship and Immigrant Ordinance. EEO Office staff will not require any individual to provide information regarding their citizenship and/or immigration status to file a report, request assistance, or otherwise participate in any process facilitated by the EEO Office. EEO Office staff will not request or seek to obtain information regarding the citizenship and/or immigration status of anyone involved in an EEO investigation, unless necessary to the case (discrimination based on national origin, or verification of employment eligibility for examples).

EEO Office staff will also not provide personally identifiable information, including citizenship and/or immigration status, to any individual or agency outside of King County unless so required by law, regulation, or court order.

Chapter 2

Metro Partners and the Coordination Team

Metro Partners and the Coordination Team

Properly addressing workplace issues and civil rights matters often requires the expertise, assistance, and authorities of other County and Metro Partners. This Chapter summarizes how the EEO Office will work with other County and Metro divisions and agencies in ways that are effective, prioritize workplace safety and well-being, and still allows the EEO Office to operate as a neutral party and independent fact finder.

I. Partner List

The following is a list of County partners that may contribute to successful resolution of a matter or act as a resource for the EEO Office and the Parties.

Division Directors and Leadership. Division Directors and their leadership teams see to the vital day-to-day operations of Metro. They must be informed when an investigation has commenced and when it has come to an end. Their partnership is also vital in ensuring investigations do not interfere with operations and that the proper chain of command is informed and appraised of the EEO Office's work for reasons ranging from scheduling interviews, mass communication to their division, and reducing the risk of retaliation or the appearance of retaliation.

Employee Services. Metro's Employee Services works in partnership with Metro leadership to build a highly motivated and high-performance workforce. Employee Services develops and implements human resource strategies, policies, and procedures on a variety of HR matters including performance management, leave management, workplace conflict, position management, employment investigations, and classifications. The following partners are some of the divisions of Employee Services:

Disability Services. Transit Disability Services (TDS) at King County Metro is committed to assisting Metro Transit employees with disabilities in their workplace during their employment by providing reasonable accommodations under Title I of the Americans with Disabilities Act. TDS provides a resource through its understanding of the interactive and reasonable accommodation processes. Employees who have not yet started an interactive process should be referred to TDS. If you need to contact TDS' general email, you can email them at transitdisabilityservices@kingcounty.gov.

Department of Human Resources and Business Partners. Metro, like most other large departments of the County, has its own dedicated staff for HR matters but still reports ultimately to the head of DHR at the County. HR Managers and Business Partners apply county policy and assist divisions in navigating traditional HR matters such as: accommodations, leave and benefits, application of the Personnel Rules, and discipline. Business Partners also provide guidance to division leadership and employees on whether a matter is potentially a violation of the policy. If you need to contact the Human Resources Business Partners' general email, you can email them at MetroHRBP@kingcounty.gov. If you need to contact Metro's HR Manager, you can contact Metrohrmanager@kingcounty.gov.

Organizational Health and Development. The Organizational Health and Development (OHD) team works with Metro employees and divisions on a number of matters including training and education. OHD developed Metro's The Way We Work Together campaign that explains the procedures for reporting discrimination and harassment according to the Policy. If you need to contact OHD's general email, you can email them at MetroOHD@kingcounty.gov

Transit Employee Labor Relations. The Transit Employee and Labor Relations (TELR) section has the responsibility of assisting with and advising on the administration of the various collective bargaining agreements that represent King County Metro's employees. TELR provides the EEO Office knowledge of how to comply with contractual labor agreements and acts as a liaison of sorts to the Unions. The TELR Manager is a member of the Coordination Team. TELR is also responsible for responding to complaints filed by the EEOC. See below for information on how EEO Office works with Unions and TELR during investigations, Part II. c. If you need to contact TELR's general email, you can email them at transit.laborrelations@kingcounty.gov.

Equity Inclusion and Belonging. The Equity Inclusion and Belonging Team (EIB) provides Metro vital resources in addressing complex workplace issues and supporting employees with a strong focus on a racial and intersectional equity analysis. The EIB team and EEO Office were once part of the same division and should continue to work closely together to align and advance civil rights and equity. If you need to contact EIB's general email, you can email them at MetroEIB@kingcounty.gov

General Manager's Office. The EEO Office is a part of the General Manager's Office (GM's Office) and the EEO Officer reports directly to the GM per the FTA Circular. Under the Metro EEO Policy, the EEO Officer acts with the GM's authority with all levels of management, labor unions, and employees. The GM's Office should be apprised of all investigative reports. The GM also acts as the EEO Officer in the event of conflict and may assign EEO duties as necessary.

Metro Transit Police. The King County Metro Transit Police Department is committed to providing safe and accessible transit for all members of the community. Transit Police are a part of Metro's ongoing mission to creating a mobility system that gives everyone an opportunity to thrive.

Office of Equity, Racial and Social Justice. The Office of Equity, Racial and Social Justice (OERSJ) is an office under the executive and houses the County's Civil Rights Program. OERSJ is the county coordinator for Title VI of the Civil Rights Act and Title II of the ADA and is responsible for the enforcement of the King County Civil Rights Ordinances and the Citizenship and Immigrant Ordinance. OERSJ has jurisdiction over discrimination matters in County employment including at Metro if the complaint is filed under KCC 12.18, Fair Employment Practices Ordinance.

Office of the Ombuds. The Ombuds manages complaints from the public concerning King County government agencies. The Ombuds also investigates employee complaints of improper governmental action, whistleblower retaliation, and alleged violations of the Employee Code of Ethics. The Ombuds operates as an independent office within the legislative branch of King County. The Ombuds do not investigate discrimination or protected class-based matters; however, there may be situations where parallel investigations would benefit from collaboration. If you need to contact the Ombud's general email, you can email them at ombudsmail@kingcounty.gov.

Safety and Security. The Safety and Security team covers a broad range of functions at Metro, including responding to reports of violence, vandalism, and other safety matters that affect both riders, the public, and employees.

Workforce Equity. Workforce Equity is a division of the County's Department of Human Resources. This team ensures an inclusive and diverse workforce throughout King County. This includes helping to implement workplace practices which align with the King County Equity and Social Justice (ESJ) Strategic Plan and delivering services that allow each employee to thrive.

Workforce Equity also supports employees and management by collaborating to provide equity training opportunities, administering the Equal Employment Opportunity/Affirmative Action program, and conducting internal, countywide investigations related to discrimination, harassment, and inappropriate conducts. The Workforce Equity Investigations Manager is also a member of the Coordination Team.

II. Points of Cooperation

Generally, there are five times where EEO Office investigators must collaborate with other Metro divisions and partners:

1. When interim, preventative, or safety measures are necessary.[16]
2. When no investigation is conducted by the EEO Office but the matter needs referral to another division.
3. When a party is represented by the union during an investigation.[17]
4. When notices of a formal complaint and investigation are sent to the Parties.
5. When requests for information are sent out.[18]
6. After the findings are complete.

Early resolution is not discussed in this Chapter. Please see Chapter 3, Part V and Part VII below for case closure and procedures for pursuing early resolution with the parties.

a. Interim and Preventative Measures

At any time during the intake or investigative process, certain interim and preventative measures may be appropriate and necessary to prevent or stop on-going discrimination or retaliation or the appearance of retaliation.

While the EEO Office cannot compel Metro management to take specific action, the EEO Office will inform the appropriate partners of the possible need for interim or preventative measures during the investigation. For instance, it may become evident that a Complainant continues to be mistreated by the supervisor they complained about, so the EEO Office should alert the appropriate partners who may decide to change the Complainant's supervisor during the investigation, depending on the situation. The EEO Office may also alert Metro management of the possibility or the appearance of actual retaliation.

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[16] *See* Parts II a and b below.
[17] *See* Subsection (c) below.
[18] *See* Chapter 3, Part IV.

In these cases, the EEO Office will notify the Coordination Team and other leadership, as appropriate, of the existing dynamics and possible need for interim measures. Action taken after this point will depend on the specifics of the situation. The EEO Office must only relay information to remain a neutral party in the investigative process.

b. Circumstances Involving Potential Criminality or Immediate Safety Concerns

In matters that involve potentially criminal elements or an immediate danger to someone's safety or property, Safety and Security and Metro Transit Police should be contacted immediately, regardless of the stage of the investigation. Any EEO employee that encounters such a situation, must immediately contact:

- Transit Security & Emergency Management Superintendent and the Director and Chief Safety Officer for Safety, Security & Quality Assurance.
- The Chief of Metro Police, and the Investigations and Operations Captains (contact information here).
- The EEO Officer and Metro HR Manager should also be cc'd on those communications.

Depending on the circumstances, it may be appropriate for Metro Transit Police or another agency to take over elements of the investigation as matters regarding timeliness and evidentiary custody are more stringent in criminal matters than EEO investigations. The EEO Office will work in cooperation with Safety and Security and Metro Transit Police to prioritize employee and customer safety, including putting investigations in abeyance pending the completion of a criminal investigation.

c. Transit Employee Labor Relations (TELR) and Unions

Actions taken during or after an EEO investigation must be done in compliance with relevant labor agreements. This section outlines major areas of cooperation between EEO and TELR.

i. Timeline: 90 Days for Investigations

In alignment with many provisions from collective bargaining agreements, the EEO Office should aim to complete their investigations with 90 days of notice and receipt of a complete and credible complaint. The Coalition Labor Agreement (CLA, formerly known as the Master Labor Agreement) states that if an investigation is expected to go beyond the 90 days, notice must be provided to the parties and union.

The 90 days begins "[w]hen the division or agency director/designee is made aware of a credible allegation of misconduct." Because the EEO Office is designated as responsible for receiving and responding to complaints of discrimination/protected class based inappropriate conduct, the 90 days begins when the EEO Office receives notice of a complete and credible complaint, that is, when the intake process is complete.

Extensions of the 90 Days for Investigation. If an investigation is expected to take longer than 90 days to complete from the time the EEO Office received the credible complaint, the EEO Office shall use the extension notice form and send it directly to the employee(s) under investigation and the Complainant. In cases where the Respondent is covered under the CLA, or other union agreement, the notice must also be sent to the TELR Manager who will forward to the appropriate union.

ii. Timeline: 30 Days for Discipline

Various collective bargaining agreements reference a 30-day requirement to execute discipline after the investigation is completed. The 30 days would start with the finalization of the investigative report by the EEO Officer. To have completely executed the discipline means to have provided the employee either a discipline proposal or have notified the employee that no action will be taken. This also means that any potential discipline must go through King County Metro's standard processes for review prior to presenting the proposed discipline within the 30-day period.

Extension of the 30 Days for Discipline. TELR has responsibility for requesting and obtaining agreement from any relevant union for an investigation, as all agreements with unions are managed through TELR. TELR will present a request to the Union, with an explanation of the reason for the extension and will inform the EEO Office and Coordination Team of the outcome as well as provide a copy of the written request and response from the Union.

iii. EEO and TELR Investigation Assignment and Coordination

TELR will immediately notify the EEO Officer and Investigations Manager when it becomes aware of a situation or allegation of harassment or discrimination based on protected class. The EEO Office will follow its normal process for establishing jurisdiction and will investigate if appropriate. Likewise, the EEO Office will notify the TELR Manager if a labor relations matter arises during an investigation. TELR and the EEO Office will work on these situations on a case-by-case basis to determine the scope that will be investigated by each office.

iv. Response to External Agency Charges

TELR is responsible for responding to external agency complaints such as the EEOC and the Washington Human Rights Commission for employment matters. Complaints are assigned to specific representatives within TELR. Part of the standard work for TELR is to notify the EEO Office when they have been assigned a complaint so that the EEO Office is aware and can share any relevant information to assist with the response.

The EEO Office has no role in responding to complaints filed by these other agencies. The EEO Office cannot take a defensive role for Metro in responding; but it can provide factual and investigatory assistance if necessary. The EEO Office Project Manager also receives notices of charges filed with the EEOC and Washington State Human Rights Commission and maintains a list of those investigations to cross reference with new incoming complaints.

III. The Coordination Team

The Coordination Team is a regularly meeting group convened by the EEO Office to discuss matters requiring Metro-wide coordination around matters arising from EEO reports and investigations. The membership is comprised of Metro's EEO Officer, EEO Investigation Manager, Metro's HR Manager, the TELR Manager, Metro's EIB Manager, and the Workforce Equity Investigations Manager. The perspectives from this group are necessary to ensure that these complex workplace issues are examined with all of the following in mind: process and racial equity, HR policies and procedures, alignment with Central HR and Executive priorities, adherence to contractual union obligations, and EEO laws. In addition to racial equity, the Coordination Team will analyze matters through an intersectional lens accounting for gender, disability, sexual orientation, and historical and oppressive power dynamics.

Coordination Team members receive all notices of investigations, closure memos where the EEO Office does not investigate, and investigative findings after an investigation is complete. EEO Investigators frequently brief Coordination Team members on memos and findings.

In addition to serving the logistical function of sharing information and implementing recommendations, the Coordination Team's purpose is to promote transparency and accountability in the EEO's investigative process. In a sort of checks and balances system, the Coordination Team existence ensures that no EEO matter is swept under the rug – regardless of the outcome of an investigation or even if the findings are fully agreed upon. The Coordination Team also ensures that Metro leadership is adequately apprised of matters and issues arising from EEO investigations.

Chapter 3

Investigation Procedures & Standards

Investigation Procedures

I. Receiving Reports

A Complainant's initial report is simply that, a report of an alleged or potential EEO matter. The fact that something has been reported does not mean that any wrongdoing has been committed, nor does it mean an investigation has been launched.

The EEO Office can receive reports from any number of sources, including the EEO email (metroeeo@kingcounty.gov) and phone line (206-477-9454), online surveys and submissions, written letters, or direct contact with an employee in distress. Reports will also come in as referrals from partners in ES, TELR, EIB, and HR. All employees, including directors, managers, superintendents, and base chiefs have been instructed to forward any reports of possible protected class-based discrimination, harassment, or retaliation directly to the EEO Office and HR.

If a matter started in another agency (e.g., the Ombuds or TELR), but over the course of that investigative process it was discovered that protected class-based discrimination occurred or EEO laws were potentially violated, the procedure for receiving and logging the report (see below) remains the same.

While employees can contact individual investigators or EEO staff, directing all reports to the EEO email and phone line is preferable so the EEO Program manager can record the report and create a case file.

II. Creating Case Files and Triage

When a report comes to the EEO Office, it should be logged in to the EEO Case Management System regardless of the source and assigned a case investigation number. In 2025, the EEO Office will begin utilizing its Case Management system, which will allow the EEO Office to log Complainant reports, assign maters to the correct entity to conduct an investigation of the concern, and collect data to help divisions ensure that they are abiding by EEO laws and find ways to prevent inequity within the workplace. When the EEO Office receives a report, the report should be inputted in the Case Management system immediately upon receiving or discovering the report. At this phase, the report is screened and triaged to the appropriate entity:

- For Metro employment matters: The EEO Office retains the report. The EEO Project Manager should conduct a screening with the Complainant to determine whether the allegations involve an EEO matter that the EEO Office can investigate. If the Complainant has alleged an EEO matter, the Investigations Manager should assign an investigator to conduct an intake with the Complainant and determine whether the EEO Office can investigate the concern or if the concern needs to be referred to a different partner (i.e. HR, TELR, Ombuds Office).
- For public/customer matters involving disability: The report is forwarded to the ADA Title II Coordinator at Metro.
- For public/customer matters involving all other protected classes: The report is forwarded to the Title VI Coordinator at Metro
- For all other matters: The person making the report is referred to an appropriate agency.

Depending on the circumstances, receiving a report and creating a case file may occur at the same time as the Intake.[19]

a. Naming Complainants and Respondents

A **Complainant** is the individual who has been harmed by the alleged violations of EEO law or Policy. This person may not be the same as the person making the report. Generally, for an investigation to commence, it must have a person who serves as a Complainant, and it is the Complainant's choice to move forward on an investigation. However, certain exceptions may apply where the EEO Office will open an investigation even without the consent of the Complainant.[20] To contact a Complainant, use the initial contact form when contacting a complainant who has made a report.

A **Respondent** is the party alleged to have violated EEO law or the Policy in an investigation. An investigation may commence with an individual respondent, multiple respondents, or Metro as the respondent. In some cases, there may be no identified respondent.

b. If the Reporter is not the Complainant

Reports will often come from sources that are not directly affected by the alleged discriminatory behavior. For example, directors, chiefs, and superintendents may report something they have heard or was reported to them, or a witness to a discriminatory act may be the reporter.

In such cases, the EEO Office should contact the potential complainant(s) directly using the initial contact form. This letter invites the potential complainant to speak to the EEO Office to better understand the situations through the intake process. The potential complainant is also advised of their rights to file civil rights complaints with the EEO Office and other agencies, informed they are protected from retaliation, and provided additional information and resources.[21]

Sometimes, it may be appropriate to send informational communications to a Complainant's division director, immediate supervisor, and any other involved parties to inform them that the EEO Office has been altered to the matter and will be proceeding with an intake process. The purpose of this communication is to alert the division that the Complainant has engaged in a protected activity and that while no formal investigation has been launched, retaliatory actions are prohibited by law and policy.

c. When the EEO Office Serves as the Complainant

In certain circumstances, the EEO Office may serve as the Complainant. The EEO Office retains a high degree of discretion to bring forth these cases. The following are common examples of when the EEO Office may initiate an investigation on its own.

- When the matter involves protected class-based discrimination, but there is no identifiable individual or individuals who would be a proper Complainant. Example: vandalism of Metro property with racist imagery.

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[19] *See* below.
[20] *See* Subsection (C) When EEO Serves as Complainant.
[21] *See* Intake below.

- Matters that are part of a documented and/or known pattern of discriminatory behavior. Example: Complainant is the fourth person to come forward in the same week to report the same behavior but does not want to pursue an investigation as the named Complainant.
- Employment data reveals a pattern of potentially discriminatory practices. Example: employment data from a division reveals that all employees that self-identified as having a disability were discharged over the course of 3 years.
- Egregious matters where a victim or affected individual does not wish to affirmatively come forward as a complainant. Examples: sexual assault or an unnecessarily public termination overtly based on a protected class.

d. Individual Respondents

Where allegations specifically name an individual Metro employee as having engaged in discriminatory behavior, that individual should be named in the investigation. There should be an individual Respondent named in matters alleging inappropriate conduct; but not necessarily so for other matters (see below When Metro is the Respondent). Individuals should not be named because they are they are the head or director of an agency, unless specific allegations of wrongdoing are raised against them that could result in investigative findings and discipline against them.

In situations with multiple individual Respondents, the EEO Office will determine if separate cases need to be opened depending on the circumstances of the case.

e. When Metro is the Respondent

In certain circumstances, the EEO Office will name Metro as a Respondent. For example, the EEO Office may name Metro as a Respondent if it is difficult to identify individual Respondents, it is not immediately apparent who the Respondent is, but Metro may be responsible as the employer, or the failures of a system or a department led to the allegations of discrimination (i.e., failure to accommodate a disability.)

In cases where Metro is the Respondent, legal analysis should follow EEO law and case law as it is unclear if the Policy applies to Metro and its divisions. Allegations of inappropriate conduct under the Policy must have a named, individual Respondent, not Metro.

f. If There is No Identifiable Respondent

Where there is no identifiable Respondent, the EEO Office may still proceed with an investigation. For examples, hate speech, vandalism, or anonymous harassing letters. If during the investigation, it becomes evident that there are potential Respondents, the EEO Office will continue by amending a formal complaint and provide proper notice to the identified Respondent(s).

III. Intake

The purpose of the intake is to ensure the matter is proper for the EEO Office to investigate. During this time, no investigative evidence should be collected except for documents and information provided by the Complainant. After receiving a report, an assigned investigator should contact the Complainant within three (3) to five (5) business days using the initial contact form. Within a timely manner, an investigator should then determine whether the Complainant's allegations can be investigated by the EEO Office.

In some cases, an intake is not necessary because the allegations or events are well-established and clearly matters the EEO Office should proceed to investigate (defacing of Metro property with racist imagery, for example).

During an intake, an investigator shall consider the following to determine if an investigation is proper: (a) the allegations are specific and recognized by law/policy; (b) the allegations are timely; (c) there are no other investigations into the same allegations and circumstances; and (d) the complainant wants a formal investigation with the EEO Office. If any of these four considerations is not satisfied, an investigation is not necessary, and the matter should be closed.[22] If the answer to all four is yes, an investigation is proper, and a formal complaint should be drafted.[23]

a. Are the Allegations Specific and Recognized by Law and Policy?

An investigation must be scoped appropriately to ensure consistency in intake and legal analysis. To do so, the EEO Office uses the prima facie element analysis, meaning a Complainant must articulate material facts that meet all the elements of a form of discrimination found in this Handbook for an investigation to begin.[24] A Complainant does not need to specify exactly what kind of discrimination they are alleging. It is the investigator's job to recognize the elements of a potential case. If a Complainant is not able to state specific facts for the EEO Office to investigate as part of their prima facie case, the matter is not proper for investigation.

For example, a Complainant with a disability may say that they have been treated unfairly during a hiring process because of their disability and that they did not get job because of it. An investigator should recognize that the claim here is failure to hire due to disability and possibly a failure to accommodate a disability. Questions should be asked to establish if all the elements of those kinds of discrimination have material elements that can be investigated (was the County put on notice of their disability, were there comparators for who got the position, where in the hiring process they believe they were treated differently, for examples).

b. Are the Allegations Timely?

For violations of law or Policy, the EEO Office will generally apply a three-year statute of limitations. However, there are matters of timeliness that may influence whether a full investigation is appropriate, including, but not limited to: if the allegations occurred before 2018 (prior to the Policy's enactment), time passed, fairness to the potential respondent(s), apparent likelihood of finding a preponderance that a violation occurred as alleged; when the Complainant knew or should have known about the discrimination, mootness, availability of evidence, and if the memories of witnesses are in question.

c. Are There Other Complaints Involving the Same Allegations and Circumstances?

The Complainant should be asked if they have filed or made complaints with other agencies. If the Complainant has active complaints and/or investigations into the same allegations and circumstances that

[22] *See* Subsection (e), Closure after intake, below.
[23] *See* Part IV.
[24] *See* Chapter 4, Types of Discrimination.

were reported to the EEO Office, the investigator shall consider if the existing investigation sufficiently protects the Complainant's civil rights; if so, an additional investigation by the EEO Office is not likely proper.

The EEO Office's programming is modeled after the requirements set forth by the Federal Transit Administration's Circular 4704.1A, where the FTA will close or not investigate matters where "[t]he same complaint allegations have been filed with another Federal, state, or local agency and … that the recipient will provide the complainant with a comparable resolution process under comparable legal standards." Most of these questions will require a case-by-case analysis, except in cases where there is an active lawsuit or claim with the Office of Risk Management, then the EEO Office will not investigate that matter.

For example, if the Complainant has an active complaint being investigated with the EEOC, Complainant's rights are likely upheld by this process. However, if the EEOC declines to investigate, or simply issues a right to sue letter without a determination, the Complainant's case may proceed with the EEO Office, subject to the other considerations of the Intake process.

Cases of allegations of inappropriate conduct may or may not be sufficiently covered by an investigation by an outside entity. Matters involving alleged inappropriate conduct should be analyzed on a case-by-case basis to ensure a Complainant is able to exercise their civil rights.

In another example, if the Complainant has an investigation open with the Ombuds, the Ombuds is likely investigating improper application or adherence to County rules and policies, and *not* from the perspective of a Complainant's protected class. In these cases, it would be appropriate for the EEO Office to investigate the matter from a civil rights perspective. But again, a case-by-case determination is necessary, and an investigator must be able to articulate why they have chosen a path forward.

If the Complainant wants to withdraw other complaints to move forward with an investigation outside of the EEO Office, that is their option. However, it shall be clearly communicated to the Complainant that statutes of limitations and other time considerations (including those from labor agreements) may impact their options moving forward, and that they should consult with an attorney if they have questions and concerns.

d. Does the Complainant Want a Formal Investigation with the EEO Office?

If all other considerations are satisfied, it is the Complainant's choice to assert their civil rights through an investigative process.[25] The Complainant may still choose not to move forward with a formal complaint. Complainants should always be informed of their option to be referred to a partner for resolution without an investigation. For example, a Complainant may not want an investigation, but an apology or some sort of mediation with management and the potential respondent, in which case a referral to a partner like EIB and HR would be appropriate.

If the Complainant chooses not to move forward with an investigation, they shall be properly referred to HR or other appropriate division, and clearly informed of their rights to proceed with the EEO Office in the future, protections from retaliation, timeliness considerations, and to consult with an attorney if they have

[25] However, certain exceptions will apply. *See* Chapter 3, Part II. c, When the EEO Office Serves as the Complainant.

questions about asserting their rights. When referred, the EEO Office must communicate to the Complainant that it cannot be involved in any remedial steps to resolve the Complainant's matter. In all cases, the investigator shall inquire and ensure that the Complainant is not making their decision due to coercion or inappropriate influence.

e. Closure After Intake

If the investigator determines that one of the considerations for investigation has not been satisfied, the investigator shall write an intake memo and explain why no investigation will continue. The EEO Officer or their designee must approve of the memo and rational.

If the memo is approved, the investigator shall send the Complainant a notice explaining why no formal investigation will be conducted. Where appropriate, the Coordination Team should receive a copy of the intake memo and appropriate partners should be notified of the outcome, including HRBPs and TELR, especially in cases where the matter was referred from them. Intake memos should not be shared with potential complainants for privacy reasons.

IV. Formal Investigation

a. Formal Complaint

If all intake considerations have been satisfied, the Investigator shall draft a formal complaint. The purpose of this document is to clearly articulate the allegations and mark the start of the EEO Office's investigatory process. The allegations in the formal complaint must align with the Types of Discrimination found in Chapter 4. The formal complaint should be succinct but contain sufficient information to allow a Respondent the opportunity respond to the allegation(s). This document also explains the role of the EEO Office and other important information for the Parties.

The Investigator shall communicate with the Complainant as necessary to ensure the allegations are accurate and that the Complainant understands that not all the details or information may be included in the formal complaint. The Investigator shall then submit to the EEO Officer and/or Investigations Manager for approval before proceeding to sending notices.

b. Notices

When the formal complaint has been finalized, the Investigator shall send notices to the Parties informing them that an investigation has begun, their rights, the EEO Office's process, that retaliation is illegal, and other important information. Importantly, this notice provides the Respondent(s) their due process rights by informing them of the allegations against them, their rights, and the opportunity to respond. The notice should include a copy of the formal complaint.

The start date of the investigation is when the formal complaint is approved by the EEO Officer. However, for contractual timelines under the CLA, the 90-day investigative timeline begins when the EEO Office receives a complete and credible report of the allegations (when the Intake process has been completed).

If an investigation is expected to take longer than 90 days to complete from the time the EEO Office received the credible complaint, the EEO Office shall send an extension notice directly to the employee(s) under investigation and the Complainant. In cases where the Respondent is covered under the CLA, or

other union agreement, the notice must also be sent to the TELR Manager who will forward to the appropriate union.[26]

A separate notice along with the formal complaint must be sent to the following individuals: Metro's General Manager, Metro's Deputy General Manager, the Division Director and Deputy Director, and the Coordination Team. Other individuals who have a legitimate need to know about the investigation may be added as necessary and appropriate, including TELR Representatives and HRBPs. The EEO Officer and Investigations Manager should be cc'd in this communication.

c. Requests for Information and Documents

This section outlines how and when the EEO Office requests information and evidence from the parties to an investigation. In general, information and document collection should not commence until after a formal complaint has been drafted and sent to the parties. To complete a thorough and fair investigation, all parties must be given the opportunity to provide information they believe relevant to the allegations.

i. **From Metro and DHR.** Requests for information or documents that could be considered a public record should be requested through Metro HR and/or DHR. Use the Request for Information template and send together with the formal complaint directly to the Metro HR Manager. Information requests may be sent at the same time with the formal complaint. Information requests to HR should be cooperative in nature, and HR may provide an explanatory narrative if helpful to the investigation.

   If certain personnel documents are required for the investigation, use DHR's Personnel File Access/Review Request Form. A list of documents kept in a personnel file can be found here. When making the request, in the section "the purpose of my review is", select "Other" and copy and paste the following: "Metro EEO Investigation, Case Number XXXX. A copy of the full complaint and request for information has been provided to Metro HR." Once access is granted, documents may be downloaded to the case file.

   In the case of denials from the Personnel File Access/Review Request Form, contact the Laserfiche Administrator or laserfiche@kingcounty.gov for an explanation or review. Escalate to the EEO Officer, if necessary.

   Documents requested via the Personnel File Access/Review Request Form should also be listed in the Request for Information but indicate that the request has also been made through the DHR online form. In some cases, documents normally stored in Laserfiche may not be immediately available. In such cases, make this consideration known in the Request for Information form sent to Metro HR.

ii. **From Individual Respondents.** An individual Respondent may provide their responses to the allegations in an interview format or by providing a written statement. Individuals must be provided the opportunity to submit documentation and evidence in support of their response or that they believe would be helpful in the investigation.

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[26] *See* Chapter 2 Part II on working with TELR.

The EEO Office may request documents and information that is readily available to individual Respondents; although it is preferable that the EEO Office make requests directly to HR.[27] In some cases, an individual may have documents and evidence that are outside the control of the County or Metro, and it is appropriate to request those documents from them.

iii. From Complainants. Information requests to Complainants do not need to be made through the same formal means as with the County or Respondents. However, if a piece of information or evidence is necessary to establish a prima facie case or to make a determination of discrimination, and is in the control of the Complainant, that request should be made in writing to the Complainant subject to the same standards for timeliness below.

iv. From Disability Services. In cases where medically sensitive or disability-related information is necessary, an Investigator must receive written confirmation from the individual (usually the Complainant) to allow for the release of the information. After receiving written confirmation, the Investigator must forward it and a copy of the complaint to the appropriate contact at Disability Services.

v. Timeliness for Responses. There is no defined amount of time, however, twenty (20) calendar days is the EEO Office's standard expectation. Extensions of time may be requested and granted at the investigator's discretion and in good faith with the party providing the response. However, see section on Adverse Inferences if responses and information is not received or unduly delayed.

vi. Adverse Inferences. If any party fails to respond to a Request for Information, withholds information, alters documents, or significantly impedes an investigation by failing to provide requested information in a timely manner in an accessible format, the EEO Officer may conclude that the requested information was not produced because it was unfavorable to that party.

For example, an adverse inference could be applied during the burden shifting analysis, and the EEO Office may determine that the investigative record fails to show a legitimate nondiscriminatory reason for a Respondent's actions. Therefore, an adverse inference application may lead to a conclusion that a Complainant should prevail on their claim when a Respondent's stated reason for an adverse employment action is a pretext for discrimination.[28]

[27] *See* Chapter 4 Part (b)(c)(i) regarding requesting documentation and information from Metro and DHR.
[28] *See* Chapter 1. Section III. d. Burden Shifting.

Adverse inferences should be used sparingly to make factual determinations. The EEO Office shall work in good faith with parties to gather data and information necessary to make a finding. The EEO Office shall provide all parties notice and the opportunity to provide information and documents requested before making such an inference.

d. Witness Interviews and Credibility

To complete a thorough and fair investigation, interviews with witnesses will often play a critical role. At minimum, the EEO Office should interview the Complainant, Respondent(s), and any parties who could reasonably be expected to have relevant information. Notes from interviews should be kept in the case file. For tips on how to conduct a successful interview, see this EEOC guidance document. The same document gives the follow guidance on weighing the credibility of witnesses:

> "If there are conflicting versions of relevant events, the employer will have to weigh each party's credibility. Credibility assessments can be critical in determining whether the alleged harassment in fact occurred. Factors to consider include:
>
> - **Inherent plausibility**: Is the testimony believable on its face? Does it make sense?
> - **Demeanor:** Did the person seem to be telling the truth or lying?
> - **Motive to falsify:** Did the person have a reason to lie?
> - **Corroboration:** Is there **witness testimony** (such as testimony by eye-witnesses, people who saw the person soon after the alleged incidents, or people who discussed the incidents with him or her at around the time that they occurred) or **physical evidence** (such as written documentation) that corroborates the party's testimony?
> - **Past record:** Did the alleged harasser have a history of similar behavior in the past?
>
> None of the above factors are determinative as to credibility. For example, the fact that there are no eye-witnesses to the alleged harassment by no means necessarily defeats the Complainant's credibility, since harassment often occurs behind closed doors. Furthermore, the fact that the alleged harasser engaged in similar behavior in the past does not necessarily mean that he or she did so again."

e. Investigative Finding

Upon completion of the investigation, the Investigator will draft a finding. The finding summarizes the important factual findings of the investigation, applies the facts to the relevant law or definitions, and makes a conclusion as to whether EEO law or the Policy was violated.[29]

This finding will be reviewed by the EEO Officer. The EEO Officer may ask for revisions or that some elements of the investigation be explored further.

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[29] *See* Burdens of Proof in Chapter 1 above.

The completion of an investigation is marked by when the EEO Officer approves of the finding Report. This also applies in cases where the investigation is conducted by an outside investigator.

f. Closure, Notices, and Coordination Team

Upon acceptance of the finding, the EEO Program Manager will send the finding and a notice of investigative closure to the General Manager, Assistant General Manager, Chief Administration Officer, the Division Director(s), and the Coordination Team. In some cases, regardless of the investigation's outcome, the Investigator may present their findings at the next Coordination Team meeting to provide context, highlight areas of concern, and answer questions.

The Coordination Team members will have one week after receiving the finding to raise concerns that would justify a delay of notifying the parties of closure of the case. This period will not alter the EEO Office's findings, as those have already been finalized by the EEO Officer. This period is to ensure the roll out of any action based on the findings do not disrupt the operations of the division.

Unless otherwise instructed by the EEO Officer, after one week from issuing the finding or providing a briefing, the Investigator will send notices to the parties.

The finding should be sent directly to the parties, except in cases involving sensitive medical information where only the Complainant should receive a copy of the unredacted report. In any case, Investigators should offer to meet with the Complainant and individual Respondent(s) regarding the outcome of the investigation and to explain the findings.

g. Appeals, Reconsideration, and Dissatisfaction

The EEO Office does not have a separate appeal or reconsideration process after findings are finalized. If a party is not satisfied with the outcome, they may contact the Department of Human Resources Director per the Policy. Parties may also escalate concerns to DHR at any time during the investigation.

V. Early Resolution

Early resolution is an option to close a case after notices have been served, but before the investigation gets underway because certain actions could be taken that resolve the matter to the Complainant's and EEO Office's satisfaction. Early resolution is <u>not</u> an admission of violating EEO law or the policy.

In certain cases, such as those involving reasonable accommodations for disability and religion, the EEO Office can permit early resolution for the specific purpose of resolving the accommodation request. However, the EEO Office reserves the right to continue investigations regardless of any remedial or corrective actions taken.[30] A closure memo must be completed documenting the rationale for the resolution for approval by the EEO Officer and submission to the Coordination Team.

VI. Amending Complaints

[30] *See* Chapter 3, Part II. c, When the EEO Office Serves as the Complainant.

During an investigation, new information may become available that may require an amendment to the formal complaint. Generally, the EEO Office may amend formal complaints for two reasons:

1. Adding an unidentified Respondent to allegations found in the formal complaint.
2. Adding an allegation to the formal complaint.

In all cases, amendments are subject to the same considerations at the intake (see above). Removing Respondents and allegations is not a reason for amendment, unless there has been an obvious and gross error in drafting the complaint, in which case, it may be prudent to close the case entirely. Similarly, minor defects and errors do not warrant an amendment, as the factual record of the investigation will address those matters.

If amending is not proper, a new and separate investigation may commence in accordance with these procedures. In cases where an individual Respondent is already named, a separate investigation with a separate case number should be opened to maintain the privacy of the individuals. The investigations may be conducted simultaneously (e.g., the same interview notes and evidence may be used for both cases).

a. Procedure for Amending

To amend a formal complaint, the process is nearly identical to the procedures above starting at the formal complaint, but with slightly different templates. Additions to a formal complaint should be written with an underlined font and sent to the EEO Officer for approval. Upon approval, the Parties, GM, Deputy GM, Division Director(s), AGM for Employee Services, and Coordination Team should be sent the Amended formal complaint and a notice of amendment.

After notices are sent, the investigation may continue; however, special attention should be given to investigative timelines in coordination with TELR.

VII. Other Closure Procedures

In addition to early resolution, a matter may be closed for additional reasons found below. In these cases, the investigator should prepare a notice of closure for approval by the EEO Officer. If approved, the matter is closed and the notice should be sent to the Parties, Metro GM and Deputy GM, AGM for Employee Services, the Division Directors, and the Coordination Team.

a. Withdrawal

If at any point during the intake or the formal investigation a Complainant determines they no longer wish to continue with their complaint, the EEO Office may close the file and dismiss the complaint as withdrawn. The investigator should document and confirm that the Complainant is not withdrawing under duress or threat. The EEO Office reserves the right to serve as complainant based on the same facts alleged in the withdrawn complaint.[31]

A Complainant may not reopen their complaint based on the same facts of a withdrawn complaint unless new information becomes available.

[31] *See* Section above, "When the EEO Office Serves as a Complainant".

b. Unavailability or Impossibility

If circumstances arise where the Complainant becomes unavailable or it becomes impossible to complete an investigation, the matter may be closed. Multiple good faith attempts must be made and documented by the investigator before preparing to close a matter for unavailability.

c. Other Administrative Complaints and Lawsuits

In situations where civil action has been filed by the Complainant and is being actively litigated in a court based on the same facts as were alleged to the EEO Office, the EEO Officer may decide to close the EEO Office investigation. The investigation may also be held in abeyance pending the resolution of the action or lawsuit. The EEO Office should work with TELR to ensure that contractual obligations for timeliness are honored.

Similarly, if a Complainant has filed a complaint with the EEOC or another federal or state agency based on the same facts that were alleged to the EEO Office, the EEO Officer may decide if the EEO Office investigation should be closed. The investigation may also be held in abeyance pending the resolution of the administrative investigation.

In its decision to close, continue, or put an investigation in abeyance, the EEO Office may consider the severity of the nature of the allegations, need for Metro to build a factual record of events, administrative efficiency, due process rights of the Parties, sufficiency of outside findings/work product, and the EEO Office's obligations under Metro and County policy.

Chapter 4

Types of Discrimination

Types of Discrimination

Between EEO laws and the Policy, there are numerous types or theories of discrimination. This Chapter provides a legal framework by which claims, under both EEO law and Policy, are identified and can be analyzed.

This section is not meant to be legal advice, nor does it encompass all the considerations that can be made during an investigation. This section is a guide to understanding the types of discrimination the EEO Office will investigate and how it will generally analyze the allegations. Updates to case law will be made as appropriate. Investigators should consult EEOC Guidance when possible and appropriate: https://www.eeoc.gov/guidance

When drafting a formal complaint, each allegation for investigation should be based on one of the following kinds of discrimination. When applying the Policy, the analysis below should still be used as the Policy does recognize certain "discrete adverse employment actions" that generally mirror recognized types of discrimination under EEO law.

Inappropriate Conduct (Policy)

1. Respondent engages in conduct that communicates a hostile, derogatory, unwelcome or negative message about persons based on a protected class or engaging in a protected activity and

2. A reasonable person would find the conduct offensive.

Generally: Inappropriate conduct is a violation of the Policy and is not found in EEO law or case law. For cases involving inappropriate conduct, the conduct does not rise to the level of unlawful discrimination, harassment, sexual harassment, or retaliation. The elements listed above are the EEO Office's interpretation of the Policy based on legal research, conference with DHR, and best interpretive practices.

Element 1, Retaliation: Supervisor or Manager versus Co-Worker: The Policy makes an important distinction between retaliation by supervisors or managers and co-workers. For supervisors and managers, they must take a discrete adverse employment action. For co-workers, retaliatory behavior must be sufficiently severe or pervasive. In cases involving co-workers, the EEO Office will apply an analysis similar to element three of Harassment – Hostile Work Environment.

Element 2, Objective and Subjective Offensiveness: Note that this policy violation does not require a Complainant, nor does it require that a Complainant subjectively find specific conduct offensive. The reasonable person standard here is applied in an objective manner. For example, if a complainant who has other claims, does not believe that a respondent engaged in inappropriate conduct when they used a racial slur because they were not personally offended, the EEO Office may still proceed with a finding that respondent *did* engage in inappropriate conduct because the use of the slur is objectively offensive.

Element 3, "Not unlawful": The Policy describes Inappropriate Conduct almost as a catch-all for behavior that may not otherwise qualify as a violation of the Policy's other definitions. However, the Policy only makes a distinction for illegal conduct in the definition of "harassment", providing Title VII language of severe and pervasive (hostile work environment), and continued condition of employment (quid pro quo). See Chapter 1 above.

Individuals are the Respondent: The proper Respondent for Inappropriate Conduct should be an individual in most cases.

Retaliation, "But-For" Causation: In retaliation cases, the EEO Office must use a "but-for" causation standard. However, the "but-for" standard does not apply in inappropriate conduct cases or in the inappropriate conduct analysis.

Discrimination (Policy)

1. Employer takes a discrete adverse employment action against an employee; and

2. Employee's protected status was a substantial factor in the employer's decision.

Adverse Employment Action: The Policy defines Adverse Employment Actions as those that "sustainably affect [] the terms, conditions, or privileges of employment." It can include: discipline, discharge/layoff, and a failure to hire or promote. Because these discrete adverse employment actions are types of discrimination found in case law, the analysis in this Chapter for those kinds of discrimination should be used. A formal investigation and complaint should not be investigated as simply "discrimination".

Disability Discrimination: The Policy makes a distinction with Disability Discrimination. *See* Failure to Accommodate Disability, below.

Failure to Hire or Promote

1. Complainant is member of a protected class;
2. Complainant was qualified and applied for an available position/promotion;
3. Complainant was not offered the position;
4. Respondent hired someone outside of Complainant's protected class; and
5. Complainant's protected class was a substantial factor in the decision to not hire/promote.

Element 2, "Applied for": In cases where an employer does not advertise a position or utilize formal mechanisms for promotion opportunities (or even accept applications), Washington Courts have adopted a "relaxed federal standard" that does not require an aggrieved party to have actually applied for the position or promotion; however, the Complainant must still meet the "qualified" element. *Fulton v. State, Dept. of Social & Health Services*, 169 Wash.App. 137, 156-157 (2012).

Element 4, Age Considerations: By the federal standard, in age discrimination cases, Complainant must be 40 years or older to be in the protected class; however, that does not necessarily mean that a prima facie case is made if the individual who was awarded the job/promotion was 39, for example. *See Kirby v. City of Tacoma*, 124 Wash.App. 454, 466 (2004) (holding that Plaintiff did not state a prima facie case when the persons receiving promotions were only 7-10 years younger and were in the same protected age of 40-70 years old). See also *Kuyper v. Dep't of Wildlife*, 79 Wash.App. 732, 735 (1995) and *Brady v. Daily World*, 105 Wash.2d 770, 777(1986). KCC 12.18.020 only defines age to be 18 years old or older.

Different Terms and Conditions

1. Complainant is member of a protected class;

2. Complainant was treated less favorably in the terms or conditions of their employment than similarly-situated comparators who are not members of the Complainant's protected class; and

3. Complainant and the nonprotected "comparator" were doing substantially the same work.

Generally, Not Recognized by Policy: The Policy does not recognize different terms and conditions as its own legal theory (making it part of the definition of a discrete adverse employment action), but it does not preclude it from being a type of discrimination. However, contrary to EEO guidance as explained below, the Policy requires that discrimination must "substantially affect the terms, conditions, or privileges of employment." The EEO Office may interpret discriminatory different terms and conditions as inappropriate conduct if the treatment does not substantively affect the terms of employment.

Element 2, "Less Favorably": EEOC Guidance makes clear that in addition to the more obvious terms and conditions of employment (such as hiring, discipline, promotions, and pay), DTC discrimination "also means an employer may not discriminate, for example, when granting breaks, approving leave, assigning workstations, or setting any other term or condition of employment – *however small*." Prohibited Employment Policies/Practices | U.S. Equal Employment Opportunity Commission (eeoc.gov)

Harassment – Hostile Work Environment

1. Harassing conduct was unwelcome and offensive;

2. Harassing conduct occurred because of protected class;

3. Harassing conduct affected the terms or conditions of employment; and

4. Harassing conduct can be imputed to the employer.

Generally, Includes Sexual Harassment: Hostile work environment cases based on sex also include sexual harassment. *Glasgow v. Georgia-Pacific Corp.*, 103 Wash.2d 401 (1985). While the term "sexual harassment" does not appear in Title VII, it is a cognizable claim. *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 743 (1998); Meritor Sav. Bank, FSB v. Vinson, 477 U.S. 57 (1986). However, harassment based on sex does not need to be of a sexual nature to be actionable. *Payne v. Children's Home Society of Washington, Inc.*, 77 Wash.App. 507 (1995). The Policy provides separate definitions for Harassment and Sexual Harassment, but the analysis is generally consistent with this Handbook.

Element 1, "Offensive": The offensiveness of the alleged harassing conduct is subjective to what the Complaining Party regarded as undesirable or offensive; however, the standard is not purely subjective as explained in Element 3. *Glasgow v. Georgia-Pacific Corp.*, 103 Wash.2d 401, 406 (1985).

Element 3, affecting the terms or conditions of employment: "Casual, isolated or trivial manifestations of a discriminatory environment do not affect the terms or conditions of employment to a sufficiently significant degree . . . The harassment must be sufficiently pervasive so as to alter the conditions of employment and create an abusive working environment. Whether the harassment at the workplace is sufficiently severe and persistent to seriously affect the emotional or psychological well-being of an employee is a question to be determined with regard to the totality of the circumstances." *Glasgow v. Georgia-Pacific Corp.*, 103 Wash.2d 401, 406-407 (1985).

Element 4, Imputation: If an owner, manager, partner or corporate officer participates in the alleged harassment, this element is met. Otherwise, a Complainant must establish that the Respondent employer (1) authorized, knew, or should have known of the harassment, and (2) it failed to take reasonably prompt and adequate corrective action." *Glasgow v. Georgia-Pacific Corp.*, 103 Wash.2d 401, 407 (1985).

Element 4, Imputation: Under Metro policy an employee can be individually found to have violated the harassment policy even if the harassing conduct cannot be imputed to Metro. Thus, if there was a named Respondent identified, the conduct could have been imputed them to them individually.

Element 4, Not Required Under Policy: Under the Policy, imputation is not a required element the Policy.

Harassment – Quid Pro Quo

1. Employer requires sexual consideration from the employee for job benefits; and

2. The harassing conduct, requests, threats, or promises are made by someone with authority or has the apparent authority to enact the employment decision.

Generally: Quid Pro Quo is one of two types of sex discrimination claims, where the employer requires sexual consideration from the employee for job benefits (included continued employment). The other kind of sex discrimination is the hostile work environment claim. *Antonius v. King County*, 153 Wash.2d 256, 261 (2004). While the term "quid pro quo" does not appear in Title VII, it is a cognizable claim. *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 743 (1998); Meritor Sav. Bank, FSB v. Vinson, 477 U.S. 57 (1986).

Element 1: Regardless of whether the harassing employee had the actual authority to make the employment decisions, the apparent or perceived authority a supervisor to make an employment decision is sufficient to impose strict liability on the employer for their actions. *Thomas v. Berta Enterprises, Inc.*, 72 Wash.App. 531, 539 (1994).

Discharge

1. Complainant is a member of a protected class;

2. Complainant is discharged;

3. Complainant was doing satisfactory work when the decision to terminate was made;

4. Respondent continued to seek applicants with complainant's qualifications; and

5. Complainant's protected class was a substantial factor in the decision to terminate.

Element 3, Satisfactory Work: An employee's assertion of good performance to contradict the employer's assertion of poor performance does not give rise to a reasonable inference of discrimination. *Chen v. State*, 86 Wash.App. 183, 191 (1997); *Parsons v. St. Joseph's Hosp.*, 70 Wash.App. 804, 811, 856 (1993). "A plaintiff who violates company policy and fails to improve his performance despite a warning has not demonstrated satisfactory performance. *Diaz v. Eagle Produce Ltd. Partnership*, 521 F.3d 1201, 1208 (9th Cir. 2008), citing *Mungro v. Giant Food, Inc.*, 187 F. Supp.2d 518, 522 (D.Md.2002).

Constructive Discharge

1. Complainant is a member of a protected class;

2. Respondent deliberately makes Complainant's working conditions intolerable on account of Complainant's protected class;

3. A reasonable person would be forced to resign because of the intolerable conditions; and

4. Complainant resigned solely because of the conditions and not for some other reason.

Failure to Accommodate Disability

1. Complainant had a disability that substantially limited their ability to perform the job;

2. Complainant gave the employer notice of the disability and its substantial limitations;

3. A accommodation exists that would allow Complainant to perform the essential functions of the job, enjoy equal benefits and privileges of employment, or participate in the application process); and

4. After notice, Respondent failed to adopt (reasonable) measures that were medically necessary to accommodate the disability.

Generally, Interpretation of Policy: The Policy does not recognize failure to accommodate disability but couches it as a specific type of discrimination called "disability discrimination". The elements that can be parsed from the Policy are essentially the same as the elements above: (1) employer knows that employee is unable to perform an essential function of the job due to disability; (2) and employer fails to provide a reasonable accommodation that would enable the employee to perform the essential function. Because of this similarity, the EEO Office will use the analysis here to apply this provision of the Policy.

Pregnant Workers Fairness Act: In 2023, the federal government passed the Pregnant Workers Fairness Act (PWFA), which requires a covered employer to provide a reasonable accommodation to a qualified employee's or applicant's known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer undue hardship. Examples of reasonable accommodations under the PWFA are: (1) additional, longer, or more flexible breaks to drink water, eat, rest, or use the restroom; (2) changing equipment, devices, or workstations, such as providing a stool to sit on, or a way to do work while standing; (3) changing a work schedule, such as having shorter hours, part-time work, or a later start time; (4) telework, and more. The PWFA effectively makes it easier for pregnant persons to receive certain reasonable accommodations through a less invasive interactive process. *See* What You Should Know About the Pregnant Workers Fairness Act | U.S. Equal Employment Opportunity Commission (eeoc.gov)

Element 1, Pregnancy: Pregnancy, by itself, is not a disability for the purposes of this charge, and a disability accommodation does not have to apply, and pregnancy discrimination can be analyzed solely under a sex discrimination framework. *Hegwine v. Longview Fibre Co., Inc.*, 132 Wash.App. 546 (2006). However, EEOC guidance interpreting the Pregnancy Discrimination Act notes that if a person is pregnant and unable to perform their duties because of a medical condition related to the pregnancy or childbirth, the employer must treat them as a temporarily disabled employee. At least one Circuit Court has recognized lactation as a qualifying medical condition. *EEOC v. Houston Funding, Ltd.*, 717 F.3d 425 (5th Cir. 2013).

Element 4, Reasonable, Undue Hardship: Citing the WAC, the Washington State Supreme Court noted that "[t]he cost of accommodating an able handicapped worker will be considered to be an undue hardship on the conduct of the employer's business only if it is unreasonably high in view of the size of the employer's business, the value of the employee's work, whether the cost can be included in planned remodeling or maintenance, the requirements of other laws and contracts, and other appropriate considerations." *Dean v. Municipality of Metropolitan Seattle-Metro*, 104 Wash.2d 627, 633 (1985).

Element 4, Unreasonably Delay: EEOC provides a five factor test to determine whether there has been an unnecessary delay that weighs: (1) the reason(s) for the delay, (2) the length of the delay, (3) how much the individual with a disability and the employer each contributed to the delay, (4) what the employer was doing during the delay, and (5) whether the required accommodation was simple or complex to provide. See here.

Failure to Accommodate Religion

1. Complainant held a bona fide religious belief, the practice of which conflicted with employment duties;

2. Complainant informed the employer of the beliefs and conflict; and

3. After notice, Respondent failed to adopt (reasonable) measures that accommodated the request.

Generally: The Washington State Supreme Court more recently recognized and created a cause of action for failure to accommodate religion in *Kumar v. Gates Gourmet Inc.*, 180 Wash.2d 481 (2014) overruling *Short v. Battle Ground School Dist.*, 169 Wash.App. 188 (2012). The *Kumar* court adopted the above elements from *Lawson v. Washington*, 296 F.3d 799, 804 (9th Cir. 2002).

Informed the Employer: Similar to a disability accommodation, King County has a process for requesting a religious accommodation. *See* here: Religious Accommodation Policy, DHR Policy, 2021-0013

Retaliation

1. Complainant engaged in a statutorily protected activity;

2. Employer took adverse action against Complainant; and

3. There is a causal link between the protected activity and adverse action.

Element 1, Protected Activity: To state a prima facie case, a Complainant need only complain or report of conduct that was at least arguably a violation of law, not that the conduct would have actually violated discrimination laws or ordinances. *Estevez v. Faculty Club of University of Washington*, 129 Wash.App. 774, 798 (2005).

Element 2, Adverse Action: Adverse treatment or actions are "reasonably likely to deter employees from engaging in protected activity . . . [but do] not cover every offensive utterance by co-workers, because offensive statements by co-workers do not reasonably deter employees from engaging in protected activity." *Ray v. Henderson*, 217 F.3d 1234, 1243 (9th Cir. 2005). *See also*, Enforcement Guidance on Retaliation and Related Issues | U.S. Equal Employment Opportunity Commission (eeoc.gov)

Element 3, Causal Link: Courts have looked a number of factors to establish causation, including: proximity of time between the action and protected activity, work performance, and employer's knowledge of the activities. *Estevez v. Faculty Club of University of Washington*, 129 Wash.App. 774, 800 (2005); *Vasquez v. State, Dep't of Soc. & Health Serv.*, 94 Wash.App. 976, 985 (1999).

Element 3, Knowledge: The EEOC states that, "[r]etaliation cannot be shown without establishing that the [Respondent] knew of the prior protected activity. Absent knowledge, there can be no retaliatory intent, and therefore no causal connection." *See* https://www.eeoc.gov/laws/guidance/enforcement-guidance-retaliation-and-related-issues#_ftn4

When Metro is the Respondent, the individual who carries out the adverse employment action does not need to have personal knowledge, as long as there is knowledge by someone in the supervisory-decision making chain that had knowledge. See *Henry v. Wyeth Pharmaceuticals, Inc.*, 616 F.3d 124 (2d Cir. 2010).

Element 3, "But for": The standard for state or local government employers is the "but-for" causation, that is, "the employer would not have taken the adverse employment action but for a design to retaliate." *University of Texas Southwestern Medical Center v. Nassar*, 570 U.S. 338 (2013).
See https://www.eeoc.gov/laws/guidance/questions-and-answers-enforcement-guidance-retaliation-and-related-issues

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