



**SHAW LAW GROUP PC**  
WORKPLACE ADVICE • TRAINING • INVESTIGATIONS

**WORKPLACE CLIMATE ASSESSMENT:**

**REPORT OF OBSERVATIONS AND  
RECOMMENDATIONS**

**PREPARED FOR:**

**METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA**

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**EXHIBIT LIST**

- EXHIBIT 1** Metropolitan Water District of Southern California “Board Action,” dated November 10, 2020
- EXHIBIT 2** Summary of SurveyMonkey responses for the “Confidential Workplace Assessment for Metropolitan Water District Employees,” prepared by Shaw Law Group, PC
- EXHIBIT 3** Shaw Law Group, PC’s “List of Documents Reviewed”

## I. INTRODUCTION

Metropolitan Water District of Southern California (the “District”) retained Shaw Law Group, PC (the “Firm”) to provide the following services: (1) “conduct an independent review of allegations of systemic discrimination, harassment, and retaliation, and related concerns” (“EEO<sup>1</sup> Issues”); (2) evaluate the District’s current policies and processes for handling EEO Issues; and (3) make recommendations to improve the efficacy of the District’s EEO policies and processes (collectively, the “Review”).<sup>2</sup>

The Review focused on the District’s internal practices and culture to identify the sources of its EEO Issues, and opportunities for improvement. We analyzed information provided by current and former District employees and members of the District’s Board of Directors (the “Board”) through a targeted Confidential Workplace Assessment and confidential one-on-one interviews, reviewed thousands of pages of documents, and visited several District sites (collectively, the “Review data”).

This Report summarizes the Review process and our methodology, observations and recommendations for the District effectively to prevent, investigate, and resolve violations of its EEO policies.<sup>3</sup>

## II. RELEVANT BACKGROUND INFORMATION

Below is background information relevant to the Review. Except as otherwise noted, this information is not in dispute.

### A. About the Metropolitan Water District of Southern California

In 1928, the California Legislature established the District to construct and operate the 242-mile Colorado River Aqueduct (the “CRA”). The District imports and stores water from the Colorado River and other sources in Northern California, and delivers treated and untreated water to 26 member public agencies (the “member agencies”). The member agencies, consisting of 14 cities, 11 municipal water districts, and one county water authority, deliver water to 19 million people in Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura counties.

A 38-member Board, consisting of representatives from each of the member agencies (the “Directors”), is responsible for establishing the District’s policies. The Board includes several standing committees. The Organization, Personnel and Technology (“OP&T”) Committee makes

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<sup>1</sup> The term “EEO” refers to “equal employment opportunity.” As used in this Report of Observations and Recommendations (the “Report”), the terms “discrimination,” “harassment,” and “retaliation” do not refer to legal conclusions or findings. We do not make any legal conclusions or findings related to the Review.

<sup>2</sup> The District’s EEO policies are described below in **Section VI.A.**

<sup>3</sup> On July 12, 2021, the Firm submitted to the Board an earlier version of this Report under the attorney-client privilege. On July 13, 2021, the Board voted to waive the attorney-client privilege with respect to the Report. This Report reflects minor edits to the initial report.

recommendations related to personnel issues. Board and committee meetings are open to the public and provide opportunities for public comment.

## **B. The District's Locations**

The District employs over 1,800 people.<sup>4</sup> The District's headquarters are located in downtown Los Angeles in a building at Union Station ("Union Station"). Approximately 50% of the District's employees work at Union Station. The remaining 50% work at "field" facilities, including pumping plants, reservoirs, and water treatment plants.

### **1. Pumping Plants**

The District owns and operates the CRA to convey water from the Colorado River at Lake Havasu to reservoirs in Southern California. Five pumping plants along the CRA in the California Mojave Desert move water through a distribution system of canals, tunnels, and concrete pipe. The pumping plants (from east to west: Intake, Gene, Iron Mountain, Eagle Mountain, and Hinds) generally are referred to as the District's "desert" facilities.

Approximately 80 employees work at Gene, the largest of the pumping plants. Between eight and 30 employees work at each of the other pumping plants. The District provides housing and common recreation areas (e.g., swimming pools, dining halls) for employees who work at desert facilities, in part because most of those locations are relatively remote.<sup>5</sup> In some cases, the nearest grocery store is approximately 65 miles away.<sup>6</sup> Employees living in District housing enter into a lease agreement and pay minimal rent. Some desert facilities also provide lodging for guests (and employees when necessary).

### **2. Reservoirs and Water Treatment Plants**

The District stores fresh water in nine reservoirs, the largest of which are Diamond Valley Lake, Lake Mathews, and Lake Skinner. The District also maintains the Wadsworth Pumping/Hydro-generating facility, the largest of the District's 16 hydroelectric power plants, at Diamond Valley Lake.

The District owns and operates five treatment plants throughout its service area: Diemer, Jensen, Mills, Skinner, and Weymouth. The District also operates a water quality laboratory at the Weymouth facility, where scientists regularly test the water supply.

District employees generally refer to the reservoirs and treatment plants as "town," to distinguish these facilities (and Union Station) from the desert facilities.

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<sup>4</sup> As of December 31, 2020, the District employed 1,780 regular, full-time employees. In addition, the District employs a fluctuating number of temporary employees, retired annuitants, and recurrent employees.

<sup>5</sup> There are recreational shooting ranges at some of the desert facilities. It is unclear if these ranges were provided by the District.

<sup>6</sup> Gene and Intake are near more populated areas, including Parker Dam and Lake Havasu.

### C. The District's Employees

The District provides its employees with a relatively generous compensation and benefits package, as compared to other employers in and around Southern California and Western Arizona. This package makes employment with the District relatively attractive. As a result, employees tend to have long careers with the District. In addition, employees frequently refer friends and family for open District positions. Several employees reported during the Review that candidates must know or be related to a current District employee to be hired.<sup>7</sup>

#### 1. Apprenticeship Program

The District's Apprenticeship Program provides one avenue for applicants to obtain employment with the District. The program, which is approved by the State of California, trains participants to become journey-level mechanics or electricians. The District hires individuals selected for the program, and pays them during their classroom coursework and on-the-job training, which is provided by journeypersons at one of the District's pumping or water treatment plants. When employees graduate from the program, they become journeypersons, and may begin mentoring apprentices.

#### 2. Demographics

The District's "Semi-Annual Report on EEO Policy and Affirmative Action Plan," dated July 13, 2021, shows that the District employed 1,780 regular employees as of December 31, 2020.<sup>8</sup> The report includes the following demographic information:

Demographic	Number
<b>Total Employees</b>	<b>1,780</b>
Female	499 (28%)
Male	1,281 (72%)

Demographic	Number
<b>Total Employees</b>	<b>1,780</b>
<b>White</b>	<b>787 (44%)</b>
<b>People of Color<sup>9</sup></b>	<b>993 (56%)</b>

<sup>7</sup> The District's recruiting and hiring practices are discussed below in **Section VI.A.1**.

<sup>8</sup> The District posted the report in advance of the July 13, 2021, Board meeting. We also reviewed similar reports that the District provided to the Board in 2019 and 2020.

<sup>9</sup> The District used the term "people of color" in the report. The Board used the term "racial and ethnic minorities" in defining the scope of the Review. For consistency, we use the latter term in this Report.

<b>Demographic</b>	<b>Number</b>
Two or More Races	25 (1%)
Asian	356 (20%)
Black or African American	112 (6%)
Hispanic or Latino	489 (28%)
American Indian or Alaskan Native	7 (1%)
Native Hawaiian or other Pacific Islander	4 (>0%)

### **3. Employee Resource Groups**

Employee resource groups (“ERGs”) are employee-led groups that connect individuals who share common interests, backgrounds, or demographic factors. ERGs generally exist to build community, support career development, and provide an opportunity to discuss work issues and experiences. The District sponsors eight different ERGs: the Armenian American Employee Group, the Asian American Employee Organization, the Black Employees’ Association (“BEA”), the Hispanic Employees’ Association, MWD – Society of Women Engineers, the Native American/Alaskan Native Employee Association, the Persian American Employee Organization, and Women at Metropolitan.

### **4. Women in Trade Classifications**

The District’s “Report on Females in Apprenticeship Program and Trades,” dated October 27, 2020, shows that from 2003 to 2019, 218 employees participated in the District’s Apprenticeship Program. Of those participants, nine (4%) were female and 209 (96%) were male. Of the nine female participants, four did not complete the program, two were still in the program as apprentices as of the date of the District’s report, and three had graduated from the program.<sup>10</sup>

The report also shows that from 2005 to 2019, the District employed 18 females in trade classifications.<sup>11</sup> As of the date of the report, nine of these employees had separated from the District, seven remained employed with the District in trade classifications, and two remained employed with the District in other classifications.<sup>12</sup>

<sup>10</sup> One of the two female employees included in the report as an apprentice has since resigned her employment with the District.

<sup>11</sup> “Trade classifications” are positions included in the “Skilled Craft Workers EEO4 category” (e.g., electricians, coaters, heavy equipment operators, linemen, mechanics, pump plant specialists, and water treatment plant operators), and in the “Service-Maintenance EEO4 Category” (e.g., apprentices, coaters, commercial truck drivers, electricians, maintenance assistants, and mechanics). As part of the Review, the District provided a list of the 18 females in trade classifications, which includes females in Dispatcher positions.

<sup>12</sup> One of the two employees included in the report as a female employed in a non-trade classification has since resigned their employment with the District.

Additionally, the report reveals that, of the 18 females employed in trade classifications from 2005 to 2019, six (33%) submitted EEO complaints to the District. Five of the six complaints contained allegations of sexual harassment and/or gender-based discrimination.<sup>13</sup> All five women who complained of sexual harassment and/or gender-based discrimination have submitted more than one internal complaint to the District.

#### **D. The District's Bargaining Units**

Most of the District's employees are represented by one of four bargaining units:

- The American Federation of State, County, and Municipal Employees Local 1902 ("AFSCME") represents employees in the "general employee" unit, most of whom work in rank-and-file positions.<sup>14</sup> AFSCME Local 1902 members comprise approximately 80% of the District's employee population. The District releases the AFSCME President and Vice President from their regular work assignments to handle AFSCME business on a full-time basis.
- The Association of Confidential Employees ("ACE") represents employees in both rank-and-file and supervisory/managerial positions who work in confidential units, including Ethics, Human Resources ("HR"), and Legal.
- The Supervisors Association, an affiliate of the International Brotherhood of Electrical Workers, represents employees in supervisory and entry-level managerial positions.
- The Management and Professional Employees Association ("MAPA") represents employees in both rank-and-file and supervisory/managerial positions who work in professional units, including Engineering and Information Technology ("IT"). MAPA also represents employees in "middle" management positions, including Section Managers and Unit Managers.

Each bargaining unit has a five-year Memorandum of Understanding ("MOU") with the District. The current MOUs for each bargaining unit expire on December 31, 2021. The bargaining units and the District will begin negotiating new MOUs in the near future. Employees generally perceive an adversarial relationship between AFSCME and managers, but not with the other unions.

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<sup>13</sup> The sixth complaint contained allegations of age-based discrimination. After the District prepared the report, a seventh female in a trade classification submitted an internal complaint claiming age-based discrimination.

<sup>14</sup> The term "rank-and-file" refers to employees who do not work in supervisor or manager positions. In the Review, we often compared Review data from rank-and-file employees and employees in management/supervisory positions, whom we refer to collectively in this Report as "managers."



## **E. The District's Management Structure and Management Training Programs**

### **1. Executive Management**

The District's General Manager oversees the District's day-to-day operations and reports to the Board.<sup>15</sup> Three department heads also report directly to the Board: General Auditor Gerald Riss, General Counsel Marcia Scully, and Ethics Officer Abel Salinas.

Four Assistant General Managers ("AGMs") report to the General Manager: Chief Operating Officer ("COO") Deven Upadhyay, Chief Administrative Officer ("CAO") Shane Chapman, Chief Financial Officer ("CFO") Katano Kasaine, and Chief External Affairs Officer Dee Zinke.<sup>16</sup>

### **2. Groups, Sections, Units, and Teams**

Most AGMs oversee one or more functional groups, all of which are led by a "Group Manager." The COO oversees the Engineering, Water Resource Management ("WRM"), and Water Systems Operations ("WSO") groups. Approximately 50% of the District's employees work in WSO, the largest group in the organization. The CAO oversees the IT, HR, and Real Property groups.

Most Group Managers oversee one or more sections, which in turn are managed by a "Section Manager." Most Section Managers oversee one or more units, each of which has a "Unit Manager." Most Unit Managers oversee one or more teams, each of which has a "Team Manager." Team Managers are entry-level management positions.

### **3. Management Training**

Several years ago, the District determined that a significant number of employees statistically were nearing retirement age. To prepare for future staffing needs, the District implemented a number of succession planning strategies.

To that end, in 2014, the District created a "Management Academy" open to WSO non-supervisory employees interested in progressing to a management position. Because it was so well-received, the Management Academy is now a District-wide program called the "Leadership Academy." The Leadership Academy, which is operated by the District's Training Unit, emphasizes emotional intelligence skills and self-awareness. Each time the District accepts applications for the Leadership Academy, approximately 170 employees apply for 30 available

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<sup>15</sup> As we discuss more fully below, Adel Hagekhalil succeeded Jeffrey Kightlinger as the General Manager on June 30, 2021.

<sup>16</sup> We refer to the four department heads and the four AGMs collectively as "Executive Management." We refer to Executive Management and Group Managers as "District Leadership."

spots. A panel of managers and union representatives selects 50% of the participants; the other 50% are selected through a lottery process.<sup>17</sup>

The District's Training Unit also offers a program called "Metropolitan Management University," to help new managers develop skills in strategic thinking, generating trust, and developing employees. The program's modules cover various topics, including "Policy & Compliance," "Business Acumen," "Managing & Leading Others," "Performance Management," "Interpersonal Effectiveness," and "Decision-Making."<sup>18</sup>

#### **F. Significant Changes to the District's Management Structure Since 2018**

Since 2018, the District's management structure has undergone several significant changes.

First, in January 2018, Upadhyay promoted from WRM Group Manager to COO, and Chapman returned to the District as the CAO.<sup>19</sup> The CFO, the Ethics Officer, and most of the Group Manager positions also have turned over in the last five years.<sup>20</sup>

Then, in September 2018, the District initiated an investigation into internal complaints regarding the workplace conduct of then-Unit Manager Don Nash. Nash managed the Desert Unit, one of two units reporting to the Conveyance & Distribution ("C&D") Section Manager in the WSO group. In October 2018, the District placed Nash on administrative leave, and Glen Boyd replaced Jim Kostelecky as the C&D Section Manager.<sup>21</sup> The District's Security Unit conducted the investigation. In March 2019, the Security Unit submitted a final investigation report substantiating the majority of the allegations against Nash, including misuse of District funds, abusive conduct toward employees, and misuse of alcohol and firearms. The District subsequently terminated Nash's employment based on the findings of the investigation.<sup>22</sup>

In early 2019, Upadhyay elevated the desert from a unit to a section by dividing C&D into two sections: C&D-Desert Region and C&D-Eastern and Western Regions. Effective March 10, 2019, former Unit Manager Gene Patricio promoted to the new C&D-Desert Region Section

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<sup>17</sup> Many employees perceive that only favored employees are selected for the program, and do not realize that 50% of the spaces available in each cohort are selected through the lottery.

<sup>18</sup> The District also provides comprehensive EEO compliance training, among other topics, to its rank-and-file employees.

<sup>19</sup> Chapman was an Assistant Group Manager in WSO until 2010, when he left the District to work as the General Manager of one of the District's member agencies.

<sup>20</sup> The current HR Group Manager, Diane Pitman, assumed her role in 2015.

<sup>21</sup> Kostelecky is now the Unit Manager at Jensen.

<sup>22</sup> During the District's investigation, Nash continued to reside in the District-provided housing unit he occupied. On May 16, 2019, the District issued to Nash a Notice of Intent to Discharge and a 60-day notice to vacate his residence. The District subsequently reached an agreement that required Nash to vacate his housing unit by July 16, 2019, the date of his termination. On or about July 15, 2019, Nash died by suicide in the housing unit.

Manager position. Although Patricio works out of Gene, he does not live in District-provided housing.

On March 29, 2019, former WSO Group Manager Jim Green retired. Then-Assistant Group Manager Brent Yamasaki served as the interim Group Manager for approximately eight months before his official appointment to the position on November 3, 2019.

In March 2020, Kightlinger announced his intention to “step down” at the end of the year. The Board retained The Hawkins Group to assist with the recruitment of a new General Manager. The successful candidate, Hagekhalil, assumed the role on June 30, 2021.

#### **G. Internal Responsibility for EEO-Related Investigations**

In or around 2010, former HR Group Manager Fidencio Mares restructured the District’s EEO Office. EEO Manager Olivia Sanchez retained her duties related to the District’s affirmative action and outreach programs. Mares moved then-Senior HR Analyst Alicia King from Sanchez’s team to HR Section Manager Stephen Lem’s team, and assigned Sanchez’s EEO investigation duties to Alicia King.<sup>23</sup>

In early 2019, Pitman created three new “Strategic Partner” positions in HR. As a result, a Strategic Partner is assigned to each group. The Strategic Partners provide guidance and support on HR issues. Alicia King was selected for one of the three Strategic Partner positions, and currently supports the WSO group. At that point, Pitman returned responsibility for EEO investigations to Sanchez.

Because Sanchez’s workload does not allow her to conduct EEO investigations, she conducts intake of internal complaints, and then forwards to Legal those complaints that she determines require an investigation. If Legal agrees that the complaint requires investigation, Legal then assigns the investigation to an external investigator, and manages the investigation. Upon receipt of the external investigator’s report, Legal sends Sanchez a summary. Sanchez then delivers the investigation findings to the employees involved, and, if appropriate, refers the matter to Employee Relations to implement corrective action.

Pitman intends to hire an internal investigator in the near future who will report directly to her.

#### **H. Historical Context Related to the Review**

Several internal District developments provide context for the Review.

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<sup>23</sup> Although we generally refer to individuals in this Report using only their last name after their first mention, we refer to Alicia King by her first and last name to distinguish her from Lee King, a former District employee introduced later in this Report, whom we also refer to by their first and last name and/or their pronouns “they/them/their.”

### **1. Ethics Survey**

In November 2019, the Ethics Office surveyed all District employees regarding ethics-related issues (the “Ethics Survey”). Approximately 65% of District employees at the time participated in the survey. Of those participants, 49% responded favorably to the statement, “I can disclose a suspected violation without fear of reprisal.”

### **2. Formation of the AFSCME Women’s Caucus**

On April 16, 2020, AFSCME formed a new subcommittee, the AFSCME Women’s Caucus, to advocate for issues unique to female and LGBTQ+ employees. Environmental Specialist Ellen Mackey, a District Employee, is the Chair of the Caucus.

### **3. Formation of the DE&I Council**

In July 2020, in the wake of the global focus on racial inequity and injustice following the murder of George Floyd, the District launched a DE&I initiative that includes a DE&I Council. Chapman leads the DE&I Leadership Advisory Team, which oversees the District’s DE&I initiative. The Leadership Advisory Team provides information, advice, and support to the DE&I Council. The DE&I Council is comprised of two representatives from each of the bargaining units and ERGs, and additional representatives from some of the bargaining units to represent employees who work at field facilities.

The District retained Scottie Oliver, CEO of The Scottie Group, to facilitate the DE&I Council’s monthly meetings and assist Council members in the “development of core ‘building blocks’ for sustained change and organizational effectiveness.” As part of their efforts, the Council created the following “Mission Statement”:

The DE&I Council’s purpose is to promote and enhance diversity, equity and inclusion throughout the organization and ensure accountability in [the District]’s commitment to create an inclusive culture and work environment that values diversity and equity for all [District] employees.

The Council will work collaboratively to identify, define and recommend best practices and strategies in organizational culture, workforce recruitment, development and retention that are the hallmark of innovative and high-performing organizations.

On October 13, 2020, Mackey informed the OP&T Committee that the AFSCME Women’s Caucus intended to “boycott” the DE&I Council because the Council is led by “the same chain of management” that created and perpetuated the “internal discrimination and harassment” the District formed the Council to examine.<sup>24</sup>

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<sup>24</sup> As we discuss in **Section VI.B.** below, the DE&I Council’s purpose is in dispute.

On October 26, 2020, AFSCME President Alan Shanahan informed Board Chairwoman Gloria Gray that AFSCME “must remove itself from DE[&]I participation,” due to concerns that the Council was “just another exercise by management to appease and quiet symptoms to make them disappear, instead of looking at the cancer that is destroying the insides of the District.”

On October 27, 2020, the BEA President Tuannee Holmes informed the OP&T Committee that the BEA was resigning from the Council because the Council did not intend to produce tangible results leading to cultural change.

AFSCME and BEA have since rejoined the DE&I Council, but the Women’s Caucus has not.

#### **4. Relevant Public Comments to the Board**

On March 9, 2020, Shanahan spoke to the OP&T Committee regarding favoritism in the District’s hiring practices. He stated that HR does not have appropriate recruitment or promotion procedures in place.

On July 13, 2020, Mackey spoke to the OP&T Committee regarding the then-newly-formed AFSCME Women’s Caucus. She explained that the mission of the Caucus is “to proactively address a culture of sexism, racism, misogyny, ageism, nepotism, favoritism, harassment, and sexual harassment that permeates much of [the District],” and its goals include protecting women and LGBTQ+ employees from retaliation for reporting workplace concerns. Mackey explained that the District’s culture “protects perpetrators,” either by summarily dismissing or improperly investigating complaints of harassment, including sexual harassment.

At the same meeting, two members of the AFSCME Women’s Caucus, former Operations and Maintenance (“O&M”) Technician IV Lee King, and O&M Technician IV Gina Chavez, told the OP&T Committee about the sexual harassment, abuse, and retaliation they encountered while working at desert facilities as the District’s first female journey-level electrician and mechanic, respectively.<sup>25</sup>

On August 18, 2020, AFSCME representative Jeff Cable addressed the OP&T Committee to share his concern about the District’s practice of requiring employees who agree to settle complaints against the District to sign agreements containing non-disclosure provisions.<sup>26</sup> On September 15, 2020, Cable informed the OP&T Committee that employees are fearful to report concerns because they suffer retaliation when they do so, and HR and Legal represent the interests of the District, not the employees.

On October 13, 2020, Water Treatment Plant Operator II and AFSCME Women’s Caucus member Miranda Grow told the OP&T Committee that 10 years ago, a month after she entered the

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<sup>25</sup> At the time Lee King began the Apprenticeship Program, they were recognized as the District’s first female apprentice. In or around February 2020, Lee King disclosed that they are transgender/non-binary.

<sup>26</sup> In our experience, this practice is common when an employer resolves an employee’s complaint with monetary terms.

District's Apprenticeship Program, a male co-worker sexually assaulted her. She stated that the District investigated and substantiated her claims, but then forced her to work with her assailant for three more years until she left the Apprenticeship Program and transferred to a different facility. In late 2019, her assailant transferred to that same facility, which made Grow feel unsafe. In the meeting, Grow complained that managers did not take her complaints seriously, and she felt isolated. At the same meeting, Shanahan stated that female District employees who work in trade classifications experience discrimination.

On October 20, 2020, Kightlinger issued a memorandum to all District employees regarding "Employee Public Comments at 10/13/20 OP&T and Board Meetings" (the "October 20 Memo"). The October 20 Memo contains information about the District's response to the 2010 incident Grow shared with the OP&T Committee on October 13, 2020, and expressed the District's intolerance of "inappropriate conduct of a sexual nature of any form in the workplace," and commitment to providing a "diverse, equitable, and inclusive work environment."<sup>27</sup> The October 20 Memo does not address Grow's comments about her safety concerns.

On October 27, 2020, Mackey and AFSCME Vice President-elect Laura Garcia requested that the OP&T Committee advise the Board to investigate the District's working environment. Mackey and Shanahan stated that the October 20 Memo was intended to "silence" Grow from making additional public comments by "publicly shaming" her. Former Senior Engineer Amy Dorado reported that the District's internal mechanisms to ensure a professional and respectful workplace are "broken." Chavez and Lee King commented that managers retaliate against and blame employees who complain to HR about workplace issues, including both of them.

On November 9, 2020, AFSCME representative Jeff Froehlich announced to the OP&T Committee his support of an independent review of EEO Issues at the District, and asked the Committee to include favoritism in hiring practices in the review. Chavez told the Committee that Grow, Lee King and she were on administrative leave partly because they had experienced retaliation for making comments to the Committee.

## **5. November 2020 Board Action**

After the October 27, 2020, OP&T Committee meeting, Directors and former District employees Sylvia Ballin, Adán Ortega, and Charles Treviño sent a memorandum to OP&T Committee Chairman John Murray regarding "Addressing Allegations of Systemic Workplace Harassment and Fear of Retaliation at [the District] Through an Independent Review & Evaluation" (the "Review Request Memo"). The Review Request Memo contains a recommendation to authorize the Ethics Officer to retain outside legal counsel to conduct an independent review of various issues, including the DE&I Council boycotts, harassment claims, Board oversight of policies addressing EEO issues, employment and promotion practices, and the working environment at the District for women, racial and ethnic minorities, and LGBTQ+ employees.

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<sup>27</sup> On that same date, Kightlinger also issued a communication to the Board containing additional details regarding the District's response to Grow's 2010 complaint.

On November 10, 2020, the Board approved an action item, based on the Review Request Memo, authorizing Salinas to retain outside legal counsel “to conduct an independent review of allegations of systemic Equal Employment Opportunity related discrimination, harassment, and retaliation and related concerns.”<sup>28</sup> The Board instructed Salinas to direct the outside counsel’s work without the involvement of District Leadership or Legal.

**I. The Board’s Retention of Shaw Law Group, PC**

**1. Selection Process**

On December 7, 2020, Salinas provided the OP&T Committee an update regarding the Review. He explained that a panel consisting of two Assistant Ethics Officers and himself determined that the outside legal counsel retained for the Review should specialize in workplace investigations; have no prior history of contracting with the District; and be experienced working with public agencies, presenting to Boards of Directors, and making post-investigation recommendations. After interviewing five law firms, the Ethics Officer selected the Firm to conduct the Review.<sup>29</sup>

**2. The Task Order Investigations**

In March 2021, the District retained the Firm to investigate four separate matters related to the Review, involving EEO-related complaints raised by or on behalf of [REDACTED] (the “task order investigations”).<sup>30</sup> The Firm assigned an attorney-investigator who is not involved in the Review to conduct these investigations. The Firm will provide separate reports regarding the task order investigations as each investigation is completed.

**J. Significant Events During the Review**

Several significant events occurred during the Review.

**1. New Appointments to the Board of Directors**

On January 27, 2021, the Upper San Gabriel Valley Municipal Water District appointed a new representative to the Board, replacing Treviño, one of the Review Request Memo authors. On February 2, 2021, the Fullerton City Council appointed a new representative to the Board, replacing Ortega, the second of the three Review Request Memo authors. In February 2021, the third author, Ballin, who also is the Mayor of San Fernando, resigned her seat on the Board, and

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<sup>28</sup> Copies of the action item and Review Request Memo are enclosed as **Exhibit 1**.

<sup>29</sup> The Firm is woman-owned, with decades of experience providing employment law services to public and private California employers of all sizes. Our attorney-investigators regularly conduct workplace climate assessments and investigations of workplace complaints (including EEO, whistleblower, and workplace violence issues) involving employees at all levels.

<sup>30</sup> The Ethics Officer directed the Firm’s work on the task order investigations.

recommended that Ortega be appointed to replace her. On March 1, 2021, the San Fernando City Council appointed Ortega as its representative on the Board.

## **2. Media Interest**

On February 12, 2021, the Los Angeles Times published an article Adam Elmahrek authored with the headline, “‘They thought I was so low’: Women say they were harassed, bullied, ignored at powerful water agency.” In the article, Elmahrek included information obtained from the District through a California Public Records Act request and interviews with employees, including, Chavez, Grow, Lee King, and Mackey.

On February 23, 2021, KUCI 88.9 FM aired an episode of its “Ask a Leader” podcast during which host Claudia Shambaugh interviewed Chavez and Mackey.

On March 12, 2021, Shambaugh interviewed Mackey for the “Ask a Leader” podcast. The podcast aired on March 16, 2021.

On March 18, 2021, the Los Angeles Times published an article Elmahrek authored with the headline, “He was the king of water in the desert. His abusive reign revealed a troubling culture.” The article focused on Nash’s management style and suicide.

On May 15, 2021, Shambaugh interviewed Chavez and Mackey for the “Ask a Leader” podcast. The podcast aired on May 18, 2021.

## **3. Legislative Activity**

On February 17, 2021, California State Senator Henry Stern introduced Senate Bill 480 (“SB 480”), with AFSCME’s support. The bill would require the District to adopt rules relating to inappropriate conduct by Directors, officers, and employees. On June 3, 2021, the bill passed in the Senate, and moved on to the Assembly.<sup>31</sup>

On February 18, 2021, AFSCME called on the California Legislature’s Joint Legislative Audit Committee (“JLAC”) to review allegations District employees had raised at Board and OP&T Committee meetings in summer and fall 2020. On April 1, 2021, several California Legislators sent a letter to JLAC Chair Rudy Salas supporting an audit of the District’s personnel policies and practices. On June 17, 2021, AFSCME launched a digital campaign urging Legislators to support the audit. On June 30, 2021, JLAC authorized the audit.<sup>32</sup> That evening, the Los Angeles Times published an article Elmahrek authored with the headline, “State launches audit of sexual harassment policies at powerful Southern California water agency.”

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<sup>31</sup> As of the date of this Report, the bill had passed out of the Assembly Appropriations Committee on consent and was referred to the Assembly Floor.

<sup>32</sup> The California State Auditor’s Office will conduct the audit.



#### **4. Employee Petition**

On March 8, 2021, certain employees circulated a document entitled, “Petition from Metropolitan Water District Employees Focused on Solutions for a Better Future.” The petition expressed support for Kightlinger, and disagreement with Mackey’s complaints about the District, and recent negative media coverage about the District. The Board discussed the petition at subsequent meetings.<sup>33</sup>

#### **5. General Manager Recruitment**

On May 8, 2021, in closed-session, the Board selected Hagekhalil as the District’s new General Manager. On May 26, 2021, the Los Angeles Times published an article Sammy Roth authored with the headline, “As drought worsens, tensions erupt over control of SoCal’s largest water supplier.” In the article, Roth described the respective positions of Hagekhalil’s supporters and detractors, both on the Board and in the community, and included information about the Board’s narrow vote regarding whether to extend Hagekhalil a contract.

On June 8, 2021, the Board finalized Hagekhalil’s selection and voted to approve his contract. Subsequently, several media outlets reported on the Board’s action. For example, on June 9, 2021, the Orange County Register published an article Teri Sforza authored with the headline, “After rancorous meeting, Metropolitan Water District board hires new general manager.” In the article, Sforza described Directors as “bitterly divided,” and stated that nearly 50% of them abstained from the vote.

On June 21, 2021, KCRW host Steve Chiotakis’ “Greater LA” program focused on the District’s new General Manager. Chiotakis interviewed Hagekhalil regarding his ideas to ensure a reliable water supply, and Roth regarding his coverage of the General Manager selection. In the interview, Roth explained, “[Hagekhalil] kind of got swept up in this power struggle between these different factions [on the Board].”

### **III. THE REVIEW PROCESS**

#### **A. Scope of the Review**

The Review focused on the following issues as written in the Action Item that the Board approved on November 10, 2020:

1. How EEO-related discrimination, harassment, and retaliation claims are handled by senior management, human resources staff, legal department, and other levels of management. Include examination of processes utilized in:  
(1) the case that was the subject of the General Manager’s October 20, 2020 communication to the Board of Directors;

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<sup>33</sup> ██████ made an internal complaint against District employees who created and distributed the petition. ██████ allegation is the subject of one of the task order investigations.

and (2) cases reported by claimants during meetings of Committee and Board members throughout 2020.

2. Effectiveness of processes related to the DE&I Council, including confidential interviews of participants.
3. Degree of employees' fear of reprisal for reporting violations, including results of Ethics Office employee survey and independent climate assessment.
4. Compliance with best practices in these and related areas.<sup>34</sup>
5. Level of Board of Directors oversight of issues and concerns related to: (1) diversity, equity, and inclusion; (2) handling of EEO-related complaints; (3) fairness and favoritism in employment practices; (4) management accountability; and (5) fostering a safe working environment for women, ethnic and racial minorities, and LGBTQ employees.

Our observations and recommendations in each of these areas are set forth below in **Section VI** below.<sup>35</sup>

#### **B. Impartiality**

The Firm exercised independence and discretion in conducting the Review. Although we worked closely with the Ethics Office on an employee survey and interview logistics, none of the employees in the Ethics Office attempted in any manner to influence or direct the outcome of the Review.

#### **C. Confidential Workplace Assessment**

On February 8, 2021, we sent a Confidential Workplace Assessment (the "Survey") to 1,854 District employees directly to their District email addresses.<sup>36</sup> The Survey initially closed

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<sup>34</sup> Our primary source of best practices in workplace investigations is the Association of Workplace Investigators "Guiding Principles for Conducting Workplace Investigations," which are available at [https://www.awi.org/page/Guiding\\_Principles](https://www.awi.org/page/Guiding_Principles).

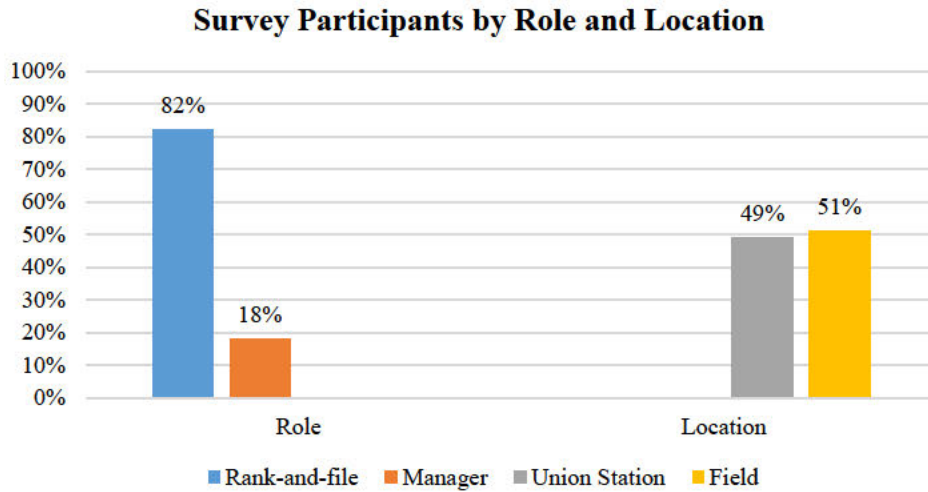
<sup>35</sup> We did not determine whether any individual violated the law, or acted in a manner inconsistent with the District's policies, procedures, or practices.

<sup>36</sup> The 1,854 employees who received the survey invitation included 1,785 regular, full-time employees, 49 annuitants, and 20 recurrent employees.

The Survey questions and a summary of responses are enclosed as **Exhibit 2**. Blank pages indicate text-only responses that, for confidentiality purposes, are not appropriate to provide in this Report. Question 15 was intended to provide a "Net Promoter Score." However, the numerical responses were inconsistent with text responses to other questions, which indicates that we did not phrase the question to achieve the intended result. Therefore, we did not

on February 19, 2021. Subsequently, the Board learned that work demands may have hindered participation. At the Board’s request, we re-opened the Survey on February 25, 2021, and closed it on March 11, 2021.

Of the 1,854 employees who received the Survey invitation, 1,598 employees (86%) responded. The chart below provides demographic information about the Survey participants.



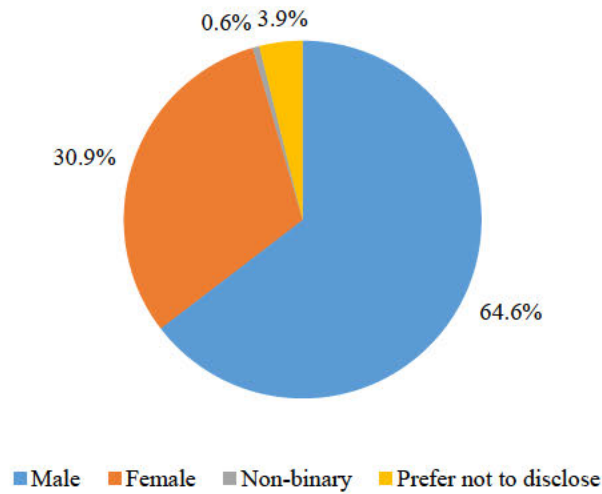
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rely on the data from Question 15. Removing the data from our analysis did not negatively affect the outcome of the Review.

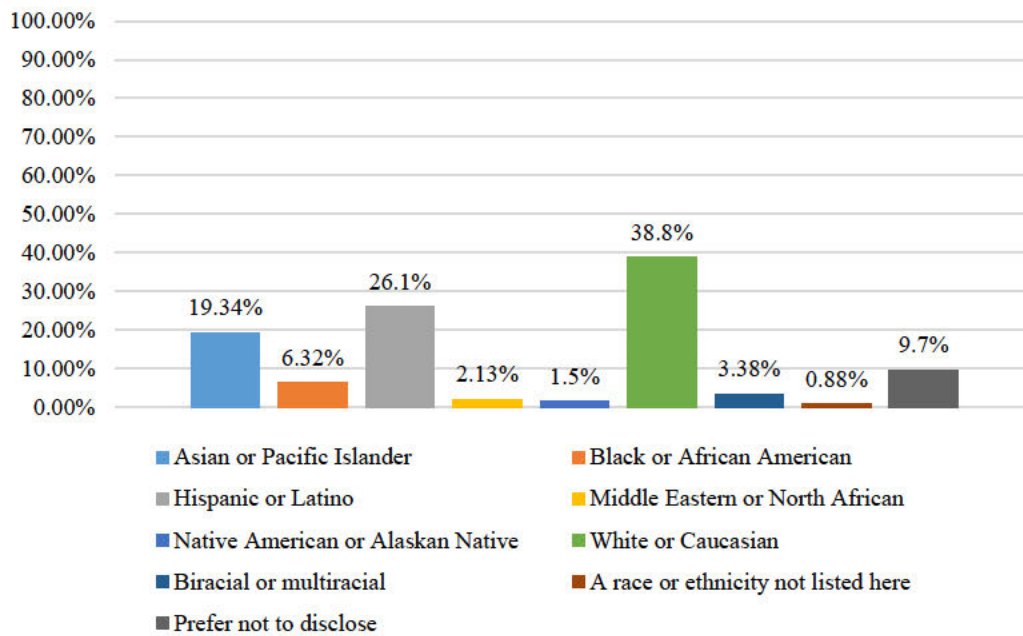
We initially sent the Survey with the title “Confidential Climate Assessment for Metropolitan Water District Employees.” We later changed the title to “Confidential Workplace Assessment for Metropolitan Water District Employees,” based on feedback that some employees did not complete the Survey because they misunderstood it to be related to the weather.

The survey tool we used, SurveyMonkey, sent a unique survey link to each email address to prevent employees from completing the survey more than once. SurveyMonkey also tracked whether the recipient completed the survey. We used that information to send email reminders to employees who had not yet responded. However, to ensure confidentiality, SurveyMonkey did not associate the unique link or email address with any of the survey responses. Therefore, although we can identify if a particular employee completed the survey, we cannot link responses to particular employees, unless the employee chose to include personally identifying information to schedule a confidential interview, or for some other reason.

### Survey Participants by Sex/Gender



### Survey Participants by Race/Ethnicity



Consistent with our representations to employees regarding confidentiality, in this Report we reference Survey responses only in aggregate form.

## **D. Interviews and Review of Documents and Other Evidence**

### **1. Interviews**

During the Review, we interviewed 194 individuals.<sup>37</sup> We advised every individual about the confidential nature of the Review, and the District's policy prohibiting retaliation.

In the Survey, employees could elect to participate in a confidential interview with one of the Firm's attorney-investigators. We also provided methods for employees to contact us directly to share their perspectives about working with the District. One hundred and eighty employees requested confidential interviews, either through the Survey or by contacting us directly. Of those employees, 124 (69%) actually participated in interviews. We completed our last Survey-related interview on June 15, 2021.

On May 12, 2021, at the request of the Board, the Firm invited Directors with relevant information to schedule an interview. We interviewed 13 Directors during the Review.<sup>38</sup>

In addition to interviews with the 124 employees and 11 Directors who requested and scheduled interviews, we interviewed 57 employees and two Directors whom we identified as subject matter experts or individuals likely to be most knowledgeable about a group or location. We interviewed at least one individual from each group, each section within the WSO group, and each pumping plant and water treatment plant. We also interviewed all but one of the employees designated in January 2021 as ERG or bargaining unit representatives on the DE&I Council.

Several District employees were represented during their interviews, either by attorneys or union representatives.<sup>39</sup> Some individuals we identified for interview declined to participate.

The charts below provide demographic information about the interviewees.

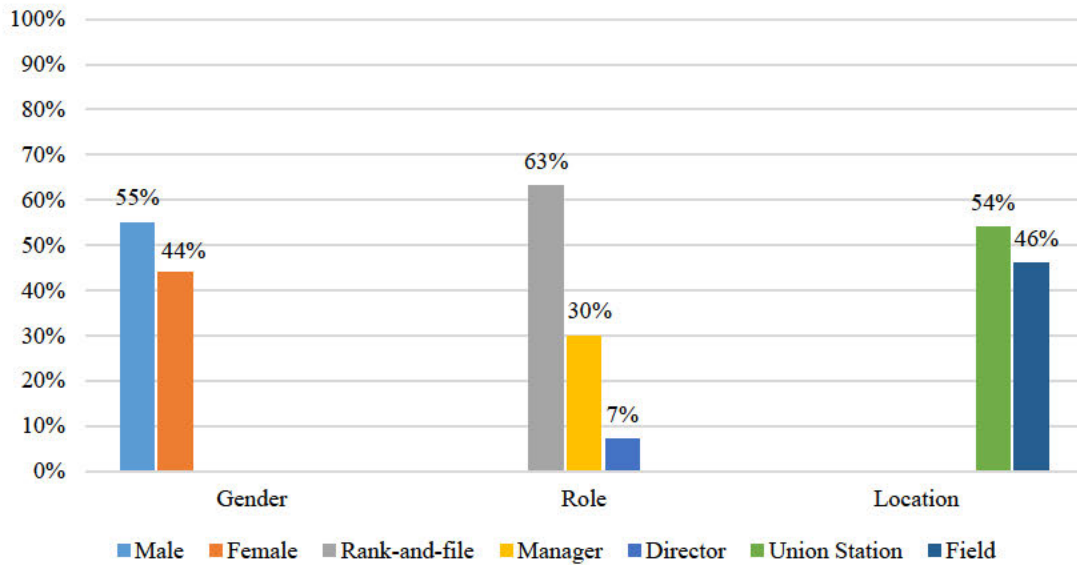
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<sup>37</sup> Due to COVID-19, we conducted all interviews via telephone or videoconference. Consistent with our representations to employees regarding confidentiality, we do not provide a list of the interviewees in this Report.

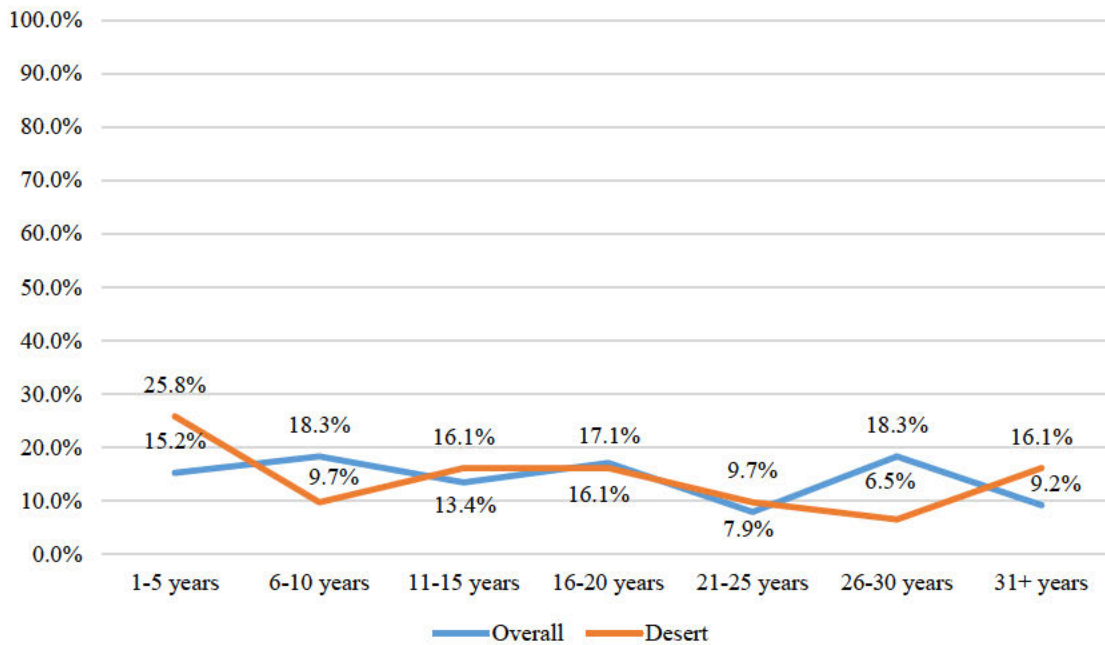
<sup>38</sup> Eleven of the 13 Directors we interviewed requested an interview. The other two, the Chairwoman of the Board and the OP&T Committee Chairman, participated at our request.

<sup>39</sup> Some of the District managers we identified for interviews (including certain employees in Legal) participated only on the condition of the District providing legal representation during their interview.

### Interviewees by Gender, Role, and Location



### Years Employed with the District



## 2. Documents

We requested that the District provide to us numerous documents to facilitate the Review. Due in part to the workloads of the employees responsible for assisting us, we experienced significant delays in obtaining certain documents.

Among the documents we requested were all of the District’s EEO case files from 2015 to present. We received and reviewed 75 case files.<sup>40</sup> Consistent with our representations to employees regarding confidentiality, we do not provide details of the cases in this Report. Our analysis below generally is presented in aggregate form.

We invited interviewees to provide documents and other evidence for consideration during the Review. In total, we examined over 24,000 pages of documents provided by the District and interviewees.<sup>41</sup>

### **3. Other Evidence**

We reviewed several hours of audio and video evidence, including public comments from Board and committee meetings and the “Ask a Leader” podcasts.

On July 6, 2021, Patricio and Salinas accompanied attorney-investigator Brooke Kozak on a tour of the Gene, Intake, Iron Mountain, and Eagle Mountain pumping plants. On July 7, 2021, Yamasaki and Salinas accompanied Kozak on a tour of the Weymouth water treatment plant and the Water Quality Laboratory at La Verne.

## **IV. ANALYSIS OF THE DISTRICT’S INVESTIGATION AND RESOLUTION OF EEO ISSUES RAISED BY GINA CHAVEZ, MIRANDA GROW, AND LEE KING**

We requested and reviewed all EEO case files for complaints submitted by Chavez, Grow, and Lee King during their employment with the District. Our analysis of the District’s response to their complaints is summarized below.<sup>42</sup>

### **A. Gina Chavez**

On or about October 12, 2012, Chavez submitted an internal EEO complaint against [REDACTED], alleging discrimination and harassment based on pregnancy and gender. Alicia King investigated the complaint, and completed an investigation report on February 12, 2013. Although Alicia King determined that some of the conduct Chavez alleged occurred, Alicia King found there was “insufficient evidence” to support any violation of District policy. We have some concerns about Alicia King’s use of terminology in her report, but her findings were well-reasoned and supported by evidence. In addition, although Chavez complained that Alicia King did not interview all of the individuals Chavez identified as witnesses, it appears Alicia King interviewed

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<sup>40</sup> We also requested and reviewed the EEO case files regarding Chavez’s 2012 and 2013 complaints, and Grow’s 2010 complaint. Information from these cases informed our observations and recommendations in this Report, but we did not include these cases in our quantitative analysis of EEO case files from 2015 to present.

<sup>41</sup> A list of key documents reviewed is enclosed as **Exhibit 3**.

<sup>42</sup> As stated above, we do not provide details about EEO cases in this Report where confidentiality was expected. However, Chavez, Grow, and Lee King discussed their experiences in public comments to the Board and the OP&T Committee and in the media, which apparently prompted the Board’s interest in information about the District’s response in their specific cases.

all witnesses with relevant information and used appropriate discretion in declining to interview witnesses who likely did not have relevant information.

Shortly after submitting the complaint, Chavez requested [REDACTED]. The District granted her request, and transferred Chavez to a position at Eagle Mountain.

On October 17, 2013, Chavez's [REDACTED], reported a retaliation complaint on Chavez's behalf. Alicia King investigated the complaint and completed an investigation report on January 22, 2014. In the report, Alicia King found she was "unable to conclude" that the conduct alleged occurred. Although Chavez declined to participate in the investigation, it appears Alicia King thoroughly investigated the complaint.

On December 12, 2018, Chavez submitted an internal complaint against [REDACTED] claiming sexual harassment. Stacy Sullivan, with law firm Liebert Cassidy Whitmore, investigated the complaint and submitted an investigation report dated September 5, 2019. Sullivan determined that the allegations were "sustained in part," and otherwise "not sustained."<sup>43</sup>

According to Chavez, she informed Sullivan about a co-worker who had directly observed the conduct Chavez alleged. However, Sullivan made findings without interviewing the witness. Later, when Sullivan interviewed Chavez as a witness in a different investigation, Chavez asked her why she did not interview the witness Chavez identified. According to Chavez, who provided a recording of the conversation, Sullivan stated that the District instructed her not to interview the witness. However, the recording of the interview does not support Chavez's assertion.

Upon review of the case file for Chavez's 2018 EEO complaint, we determined that after Chavez asked Sullivan about her failure to interview the witness, Sullivan interviewed Chavez's witness. On November 24, 2020, Sullivan submitted an addendum to her investigation report, explaining that the information she obtained from the witness did not change her original findings. However, we did not find any evidence that the District informed Chavez of these subsequent events.

On October 29, 2020, [REDACTED] reported to Patricio that one of Chavez's co-workers caused Chavez to feel concerned for her personal safety. The District retained Manny Tau, Psy.D., CTM to conduct a threat assessment. On November 8, 2020, Chavez elected to be placed on voluntary paid administrative leave ("PAL"), pending the results of the assessment. On January 11, 2021, Dr. Tau submitted a consultation report in which he assessed the respondent to be a "low" threat potential of targeted violence upon Chavez. He further found that Chavez's allegation about her co-worker creating a physical danger to her safety was "unfounded (not based on fact) and unsubstantiated (without evidence)."

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<sup>43</sup> In the report, Sullivan defined "sustained" as, "The alleged conduct occurred," and "not sustained" as, "There is insufficient evidence to determine whether the alleged conduct occurred."



On February 3, 2021, the District notified Chavez of the assessment results. [REDACTED]

**B. Miranda Grow**

On or about November 8, 2010, Grow submitted an internal EEO complaint against a co-worker, claiming “sexual/inappropriate touching.” At the time, Grow was a Pre-Apprentice at Diemer. Barbara Dalton, with Public Interest Investigations, Inc., investigated the complaint, and submitted an investigation report on December 31, 2010. Dalton substantiated the allegations, and the District disciplined the respondent.

In 2013, Grow left the Apprenticeship program and transferred to Mills as a Water Treatment Plant Operator. In late 2019, the respondent in Grow’s 2010 case transferred to Mills. Grow complained that she felt unsafe. When she did not receive a satisfactory response, she left work on voluntary unpaid administrative leave. She remains on leave as of the date of this Report.

**C. Lee King**

On or about February 11, 2019, Lee King submitted an internal EEO complaint against [REDACTED] claiming sexual harassment. The District retained Sullivan to investigate the complaint.

Around the same time, Lee King sent a nine-page letter to the Board, describing various concerns related to their experience working with the District, and the general work environment. The District provided the letter to Sullivan for investigation along with the EEO complaint.

On October 18, 2019, Sullivan submitted an investigation report, in which she substantiated some, but not all, of Lee King’s allegations. She also reached the legal conclusion that the respondent “did not subject [Lee] King to a hostile work environment[.]” Due to miscommunication, Sullivan did not investigate the concerns Lee King raised in the letter to the Board.<sup>46</sup>

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<sup>44</sup> On or about February 4, 2021, [REDACTED] submitted an EEO complaint claiming that the District retaliated against her for [REDACTED]. The complaint is within the scope of one of the task order investigations, which are in progress as of the date of this Report.

<sup>45</sup> Heider defined “founded” as, “When there is sufficient evidence that the conduct alleged occurred,” and “unsubstantiated” as, “When there is insufficient evidence to determine whether the conduct alleged actually occurred.”

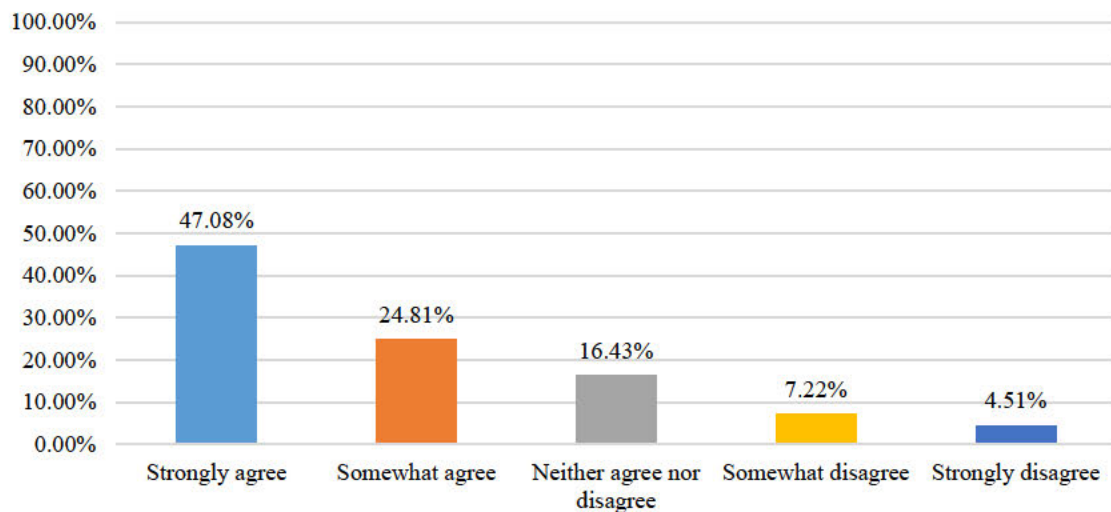
<sup>46</sup> The allegations in Lee King’s letter to the Board are within the scope of one of the task order investigations, which are in progress as of the date of this Report.

## V. THE DISTRICT'S CURRENT WORKING ENVIRONMENT

In the Survey, we asked several questions related to the District's working environment and individual experiences with EEO Issues.

Overall, Survey participants provided the highest favorable score in response to whether the District provides a safe and respectful working environment for women, racial and ethnic minorities, and LGBTQ+ employees. In response, 72% of participants answered favorably (either "strongly agree" or "somewhat agree"). However, 28% answered unfavorably ("neither agree nor disagree," "somewhat disagree," or "strongly disagree").

### **"The District provides a safe and respectful working environment for women, racial and ethnic minorities, and LGBTQ+ employees."**

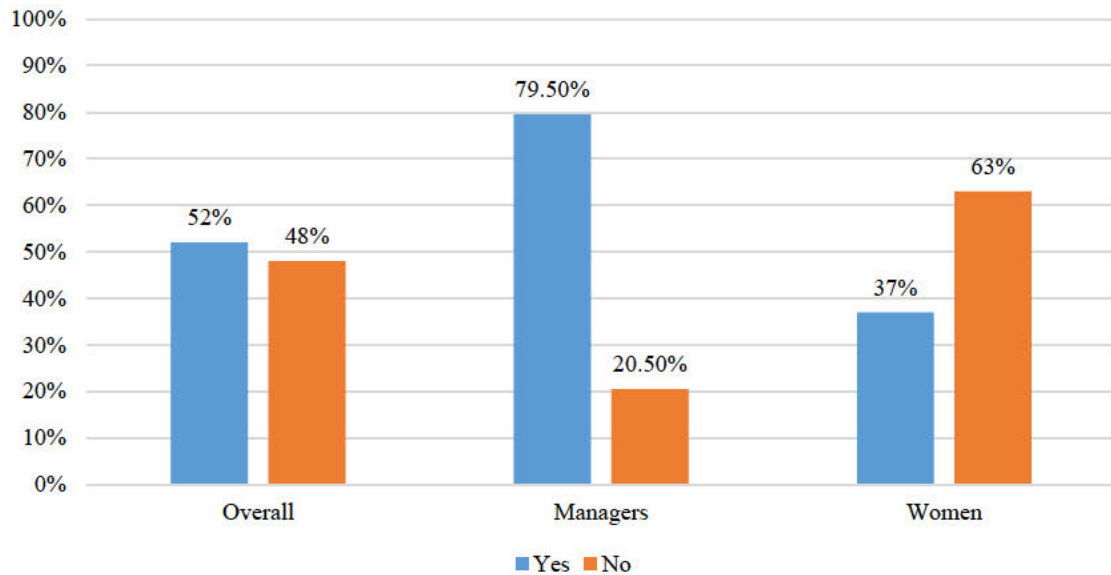


The interviews we conducted during the Survey revealed some trends about the District's working environment for women, racial and ethnic minorities, and members of the LGBTQ+ community.<sup>47</sup>

We discussed with 84 interviewees whether the working environment is safe and respectful for women. The chart below illustrates that 52% of interviewees answered favorably. Notably, managers responded more favorably (79.5%) than rank-and-file employees, and only 33% of female employees who work at desert facilities answered favorably.

<sup>47</sup> Persons who requested interviews shared information that they considered relevant to the Review. As a result, unlike the Survey, in which all participants answered the same set of questions, we discussed different topics with different interviewees. For that reason, we caution that although interview data is instructive, it is not necessarily representative.

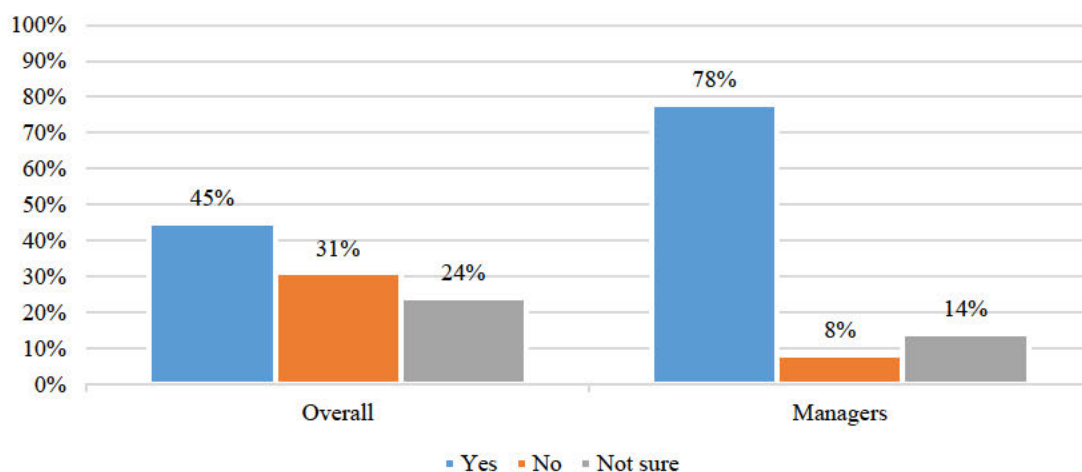
### “Is the working environment safe and respectful for women?”



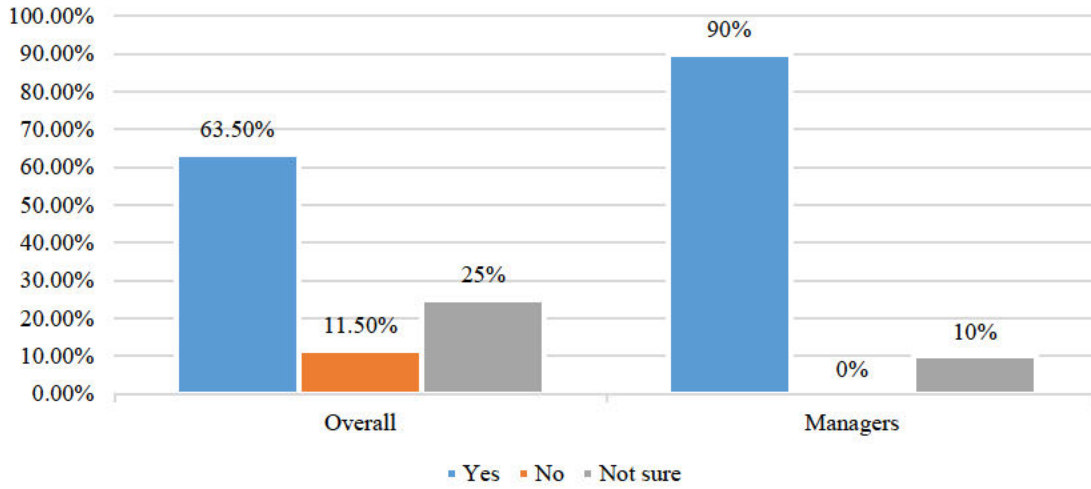
Many female Survey participants and interviewees shared stories of various “microaggressions” they routinely experience in the workplace. For example, they described being regularly interrupted or talked over in meetings, having their ideas dismissed, being assigned administrative tasks that are not assigned to their male counterparts, and being described using gendered-language (e.g., “emotional”) when they raised objections. As a result, these women do not feel safe or comfortable speaking up.

Similarly, managers also responded more favorably than other interviewees when asked whether the working environment is safe and respectful for racial and ethnic minorities and LGBTQ+ employees.

### “Is the working environment safe and respectful for racial and ethnic minorities?”

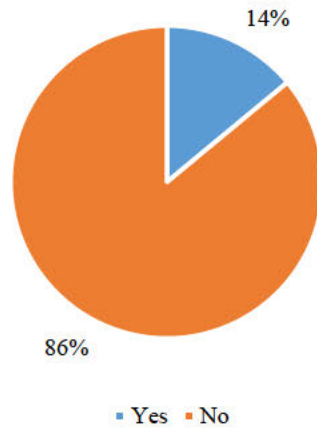


**“Is the working environment safe and respectful for LGBTQ+ employees?”**



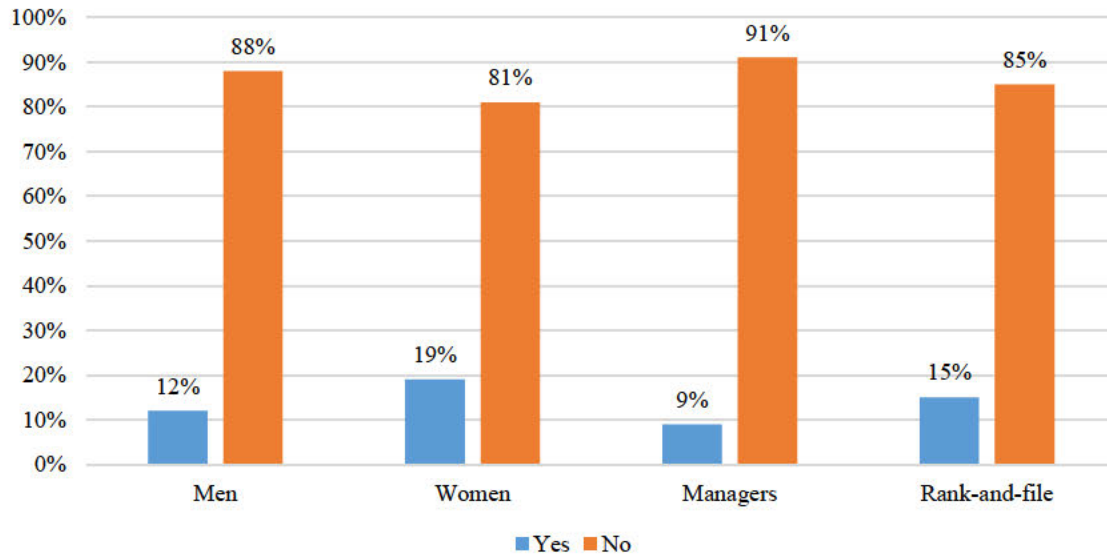
In addition to questions about the working environment, we also surveyed employees about their experiences with EEO Issues. Only 14% of Survey participants indicated they had experienced unfair treatment based on a protected characteristic in the last three years.

**“In the last 3 years, have you had any experiences at the District during which someone at work treated you unfairly because of your race, ethnicity, national origin, sex, gender, sexual orientation, and/or any other characteristic protected by law?”**

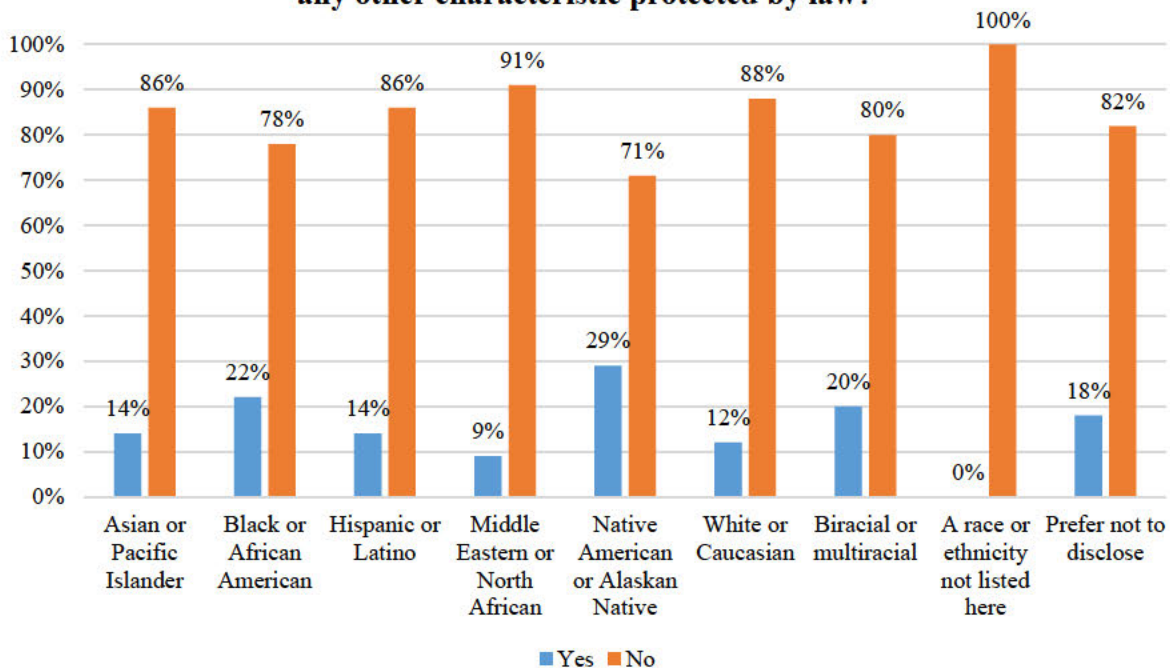


Managers were less likely to perceive unfair treatment than rank-and-file employees, and underrepresented groups (Native American/Alaskan Native and Black employees, in particular) were more likely to perceive unfair treatment.

**“In the last 3 years, have you had any experiences at the District during which someone at work treated you unfairly because of your race, ethnicity, national origin, sex, gender, sexual orientation, and/or any other characteristic protected by law?”**

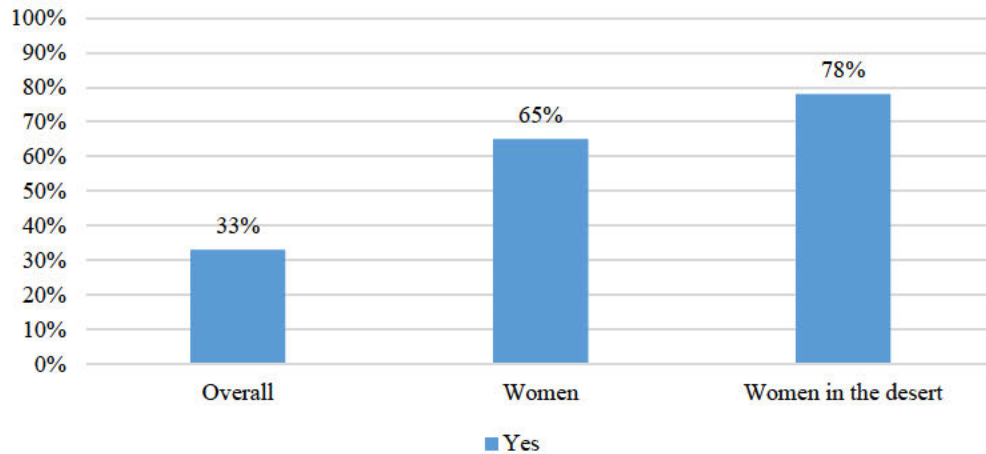


**“In the last 3 years, have you had any experiences at the District during which someone at work treated you unfairly because of your race, ethnicity, national origin, sex, gender, sexual orientation, and/or any other characteristic protected by law?”**



We discussed with 104 interviewees whether they had experienced discrimination or harassment based on their sex and/or gender. The chart below illustrates that female employees who work at desert facilities are more than twice as likely to identify as having experienced such conduct than other interviewees.

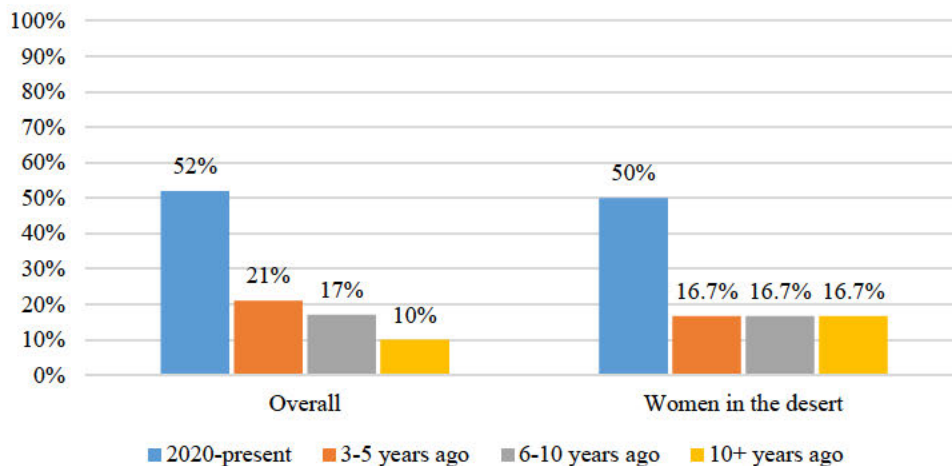
**“Have you experienced discrimination or harassment based on sex or gender?”**



Thirty-three interviewees shared their personal experiences with discrimination and/or harassment at the District based on their race or ethnicity. Although the Board directed us to examine EEO Issues experienced by women, racial and ethnic minorities, and members of the LGBTQ+ community, several interviewees stated that they have experienced discrimination and/or harassment based on their age, disability, and/or marital/parental status.

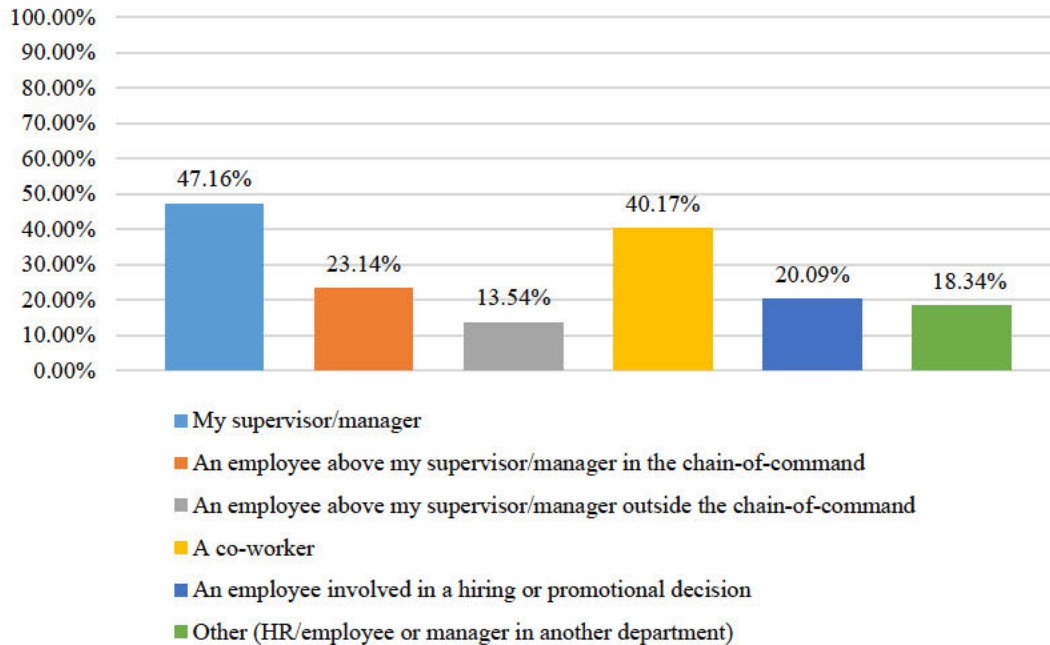
The chart below illustrates the timing of interviewees’ most recent experiences with EEO Issues at the District. Although female employees who work at desert facilities reported recent incidents at a percentage similar to other interviewees, they also reported a higher percentage of incidents that occurred more than 10 years ago.

**Date of Most Recent Incident**



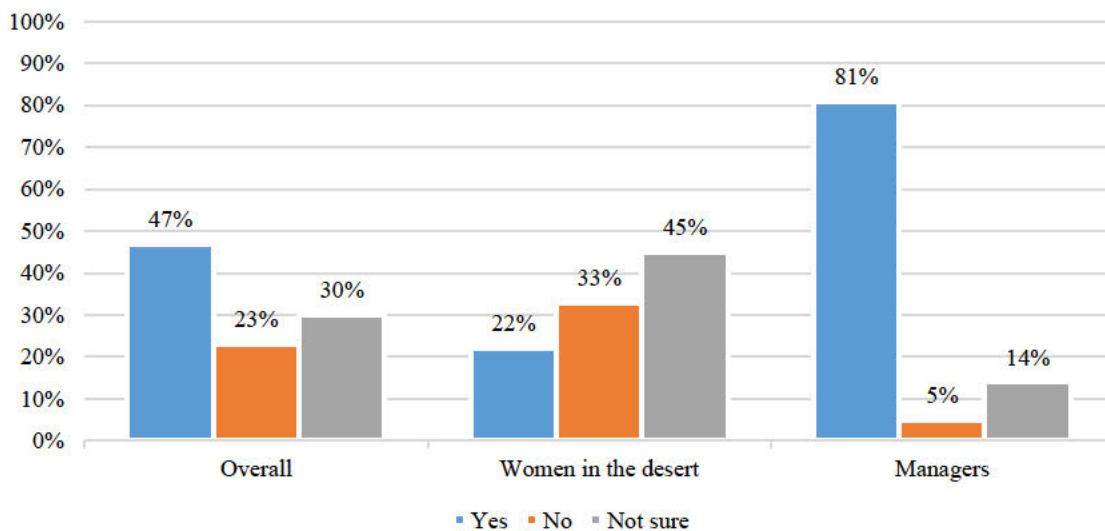
Slightly less than 50% of Survey participants who stated they had experienced unfair treatment named their manager as the offender. Approximately 40% of participants attributed the mistreatment to co-workers.

**“Who treated you unfairly?”**

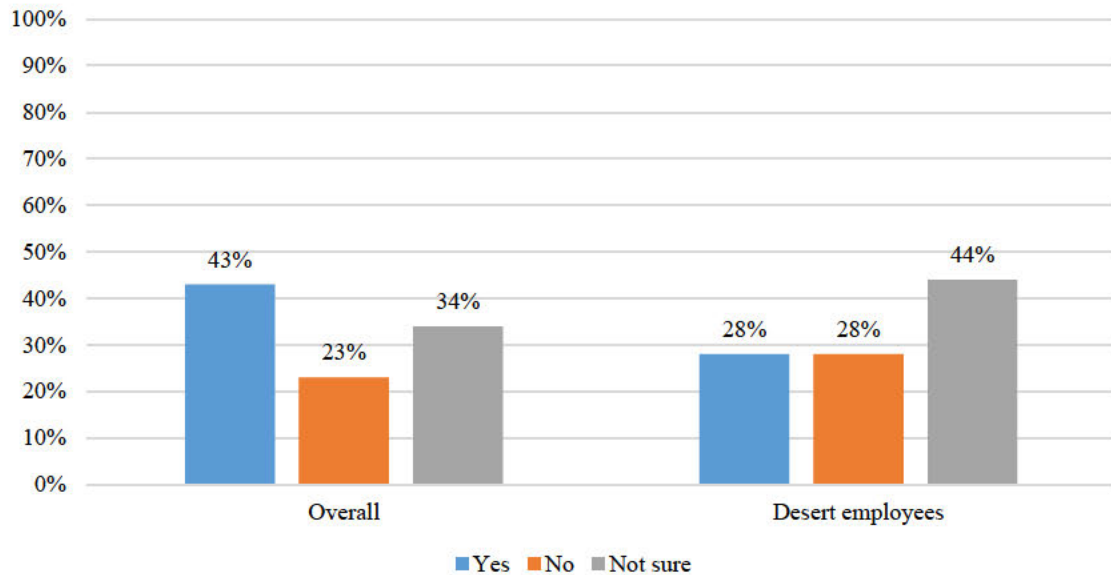


Approximately 47% of interviewees perceive that the District’s working environment is improving, and 43% perceive that new managers at the desert facilities are committed to making improvements. The charts below illustrate that managers are more optimistic than rank-and-file employees, and 78% of female employees at desert facilities are less certain of positive developments in this area.

**“Are things getting better at the District?”**



### “Are the new desert managers making improvements?”



Based on the Review data, we made several observations regarding the District’s working environment.

- A. **Currently, the District generally provides a safe and respectful working environment for women, racial and ethnic minorities, and members of the LGBTQ+ community. However, that has not been the case historically, and the District has significant work to do.**

Approximately 72% of Survey participants agreed that the District generally provides a safe and respectful working environment for women, racial and ethnic minorities, and members of the LGBTQ+ community. Only a minority of employees (14%) believe they have experienced unfair treatment in the last three years based on a protected characteristic.

However, the historical culture at the District, particularly at the desert facilities, did not consistently reflect equal employment opportunities for women, racial and ethnic minorities, and/or members of the LGBTQ+ community. We heard examples of past District managers tolerating, and in some cases, encouraging, conduct in violation of the District’s EEO policies. Female employees working in non-traditional roles, including in trade classifications and other positions at desert facilities, were expected to adjust their conduct to “fit in” with the male employees, and the District did not take appropriate steps to create an environment in which women would be accepted and treated with dignity and respect.

The District is working to reverse this ethos. For example, the four management employees with current oversight of the desert facilities at the unit level or above, including Yamasaki, Patricio, and Assistant Unit Managers Justin Davis and Scott McMullen, assumed their roles after Nash’s removal. They all are driving new expectations for EEO compliance and accountability. We also found examples of the District taking corrective action against managers who engaged in



misconduct, or failed to report employee misconduct. Additionally, HR's Strategic Partners are building relationships with managers and becoming trusted resources and coaches, and managers are responding positively.

A minority of employees still struggle under managers with poor management skills, or with co-workers who have not adapted to changing social norms in the workplace. HR's Training Unit has partnered with WSO managers, the HR Strategic Partners, and Employee Relations to provide high-quality training to improve the leadership skills of new managers. Additionally, although the DE&I Council currently lacks expertise in DE&I issues to make rapid progress, it has the potential to effect sustained, positive change in the organization.

**B. The District's working environment varies by location and group.**

The District's working environment is perceived differently by employees who work at certain locations and/or in certain groups.

For instance, the Survey revealed that most (86%) of District employees do not believe they have experienced unfair treatment in the last three years based on a protected characteristic. Female employees at desert facilities (33%) and water treatment plants (35%) are more likely to perceive unfair treatment than female employees at Union Station (18%).

Of the 223 Survey participants who responded that they have experienced unfair treatment at the District, 60 (27%) requested a confidential interview with us. Relative to the total District employee population, we interviewed disproportionately more females and individuals working at desert facilities. Based on recent media coverage regarding the District's working environment for women at desert facilities, we expected this result. Also, a significant number of female employees in the Engineering group and employees (both male and female) in WSO's Operations Support Services and Water Treatment sections complained of unfair treatment in their working environments.

Interviewees reported that there is a perception among some field employees that profanity "goes with the territory," which is not necessarily appropriate in a working environment. Field employees also appear more reluctant to change their behavior, even with the training provided by the District. This is an area in which employee accountability is critical.

The employee demographics at most of the desert facilities pose additional challenges. These locations generally operate with small teams comprised of predominantly White, male, heterosexual, cisgender employees. In most cases, a woman, LGBTQ+, and/or racial or ethnic minority joining the team is an "other" or an "only," which can be an isolating experience. In addition, these employees are physically isolated in a remote area, where their co-workers also are neighbors and part of the social structure. These factors understandably make it more difficult for employees in these locations to report misconduct.

The District's numerous locations also appear to foster a "town vs. desert" mentality for some employees. This attitude is understandable, particularly considering the significant challenges that employees at desert facilities face. Some employees at desert facilities indicated a

desire to connect with employees at other desert facilities to receive resources and support for field-specific cultural issues.

**C. Some employees remain negatively affected by poor past management.**

Unfortunately, some employees experienced extreme examples of unacceptable management in the past, which is well-publicized. Some of these employees are having difficulty moving forward and trusting new managers. They also are having difficulty recognizing and appreciating positive developments in the District's culture.

Responsibility for the working environment starts at the top. The District's new General Manager, Hagekhalil, has a unique opportunity to remedy this situation by recognizing past mistakes in responding to EEO Issues, and clearly communicating to all District employees his expectations for appropriate workplace conduct.

**VI. SUMMARY OF RECOMMENDATIONS**

Although the District appears to be moving in the right direction, there still is much work to be done. We summarize below our observations and recommendations based on the Review data.

**A. Recommendations Regarding the District's Prevention and Resolution of EEO-Related Discrimination, Harassment, and Retaliation Claims**

The District is responsible for preventing EEO Issues, and responding appropriately to conduct that may violate its EEO policies. We recommend that the District take the steps outlined below to improve its practices in these areas.

**1. Prevention of EEO Issues**

To effectively prevent EEO Issues, the District must promote a positive working environment, effectively manage employee performance, and provide sufficient resources to the EEO Office.

**a. Promote a Positive Working Environment**

**Update current EEO-related policies to reflect best practices.**

The District's Operating Policy H-07 ("Equal Employment Opportunity") and Operating Policy H-13 ("Sexual Harassment Prohibition Policy") are out-of-date, and do not contain certain key provisions. For instance, H-07 does not list all of the characteristics protected by law (e.g., political activities or affiliation), focuses on legal compliance rather than setting a higher standard to encourage the prevention of EEO Issues, and does not accurately describe the District's current structure related to the EEO Office. Similarly, H-13 addresses only sexual harassment prevention, and not the prevention of other forms of harassment.

If the District modifies H-07 to include a more detailed discussion of harassment (including harassment based on gender and sexual orientation, which currently are not addressed in H-13), then H-13 could be eliminated.

In addition, H-07 should contain a more robust discussion of retaliation prevention, and more expressly require managers to contact the EEO Office immediately if they become aware of a potential EEO Issue.

**Implement a policy to address abusive conduct, even if not EEO-related.**

To our knowledge, none of the District's current policies specifically address the prohibition of "abusive conduct," as defined by California Government Code section 12950.1, which includes repeated infliction of verbal abuse, the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of an employee's work performance. This conduct, even if not based on a protected characteristic covered by the law, can negatively affect the working environment and lead to EEO Issues.

The District may implement a stand-alone policy, or revise Operating Policy H-04 ("Violence in the Workplace") to incorporate abusive conduct.

**Continue promoting and hiring individuals for management positions who demonstrate emotional intelligence and the commitment to creating and maintaining a positive and respectful work environment.**

Managers set the tone in terms of the working environment. When filling management positions, the District should ensure successful candidates embrace their EEO-related responsibilities. For example, even if a manager disputes the merits of an employee's complaint, they should listen actively to the employee and follow the appropriate internal procedures. Employee complaints can provide opportunities for managers to develop more trusting relationships with their teams, and demonstrate their commitment to EEO compliance.

To provide managers with the tools they need in these areas, the District should consider requiring successful completion of its Leadership Academy as a condition of completing probation in management positions.

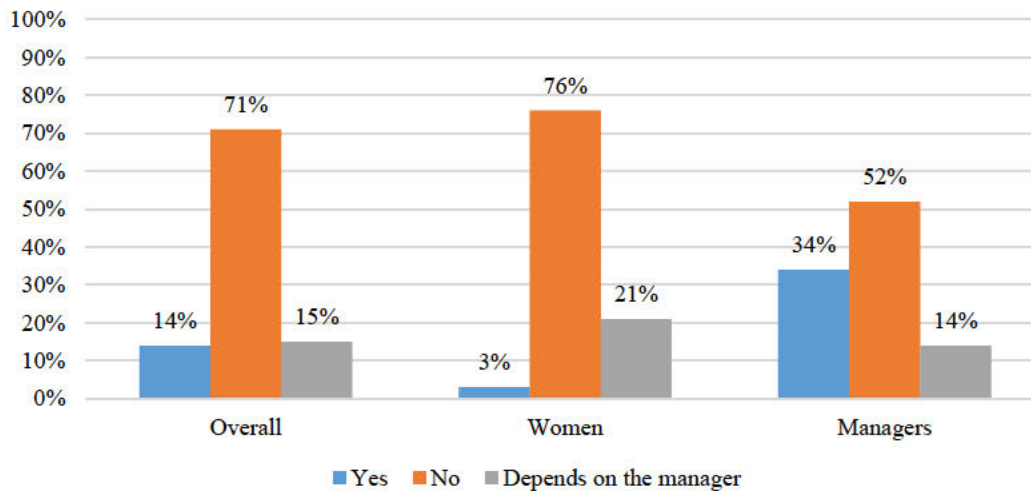
**Hold managers accountable for modeling professional and respectful behavior, and demanding the same of their teams.**

It is critical for managers to reinforce their expectations regularly regarding appropriate workplace conduct, and to ensure their conduct is consistent with District policy.

However, a majority of interviewees, including managers, perceive that managers do not clearly articulate their expectations regarding respectful workplace conduct. Notably, even higher percentages of interviewees who stated that they have experienced retaliation for raising a

workplace concern (86.2%), and female employees at desert facilities (87.5%), agree with this perception.

**“Do managers clearly articulate expectations about respectful workplace conduct?”**



For example, some individuals tolerate or encourage the use of inappropriate terms for equipment and profanity. We learned during the Review that some employees use equipment called “dykes.” The term “dyke” is the name commonly used when referring to diagonal cutting pliers (“side cutters” or “diagonal cutters”) electricians use to cut wire. This term is used industry-wide, and is not a District-specific term.<sup>48</sup> That said, the District should discourage employees from using this term, because of its alternative derogatory meaning.<sup>49</sup>

A minority of District employees still embrace outdated gender and social beliefs. For example:

- A Black female employee told us that an “older, White” male co-worker told her, “I’ve never been around Negroes before.” She explained, “We don’t use that word anymore.”
- A White male employee told us, “[District employees have] formed little associations for every culture. But you can’t have one if you’re Caucasian. It’s turned into, like, you’re bad if you’re White.”
- A manager told us that he wanted to “see things return to the way things were” when managers could ask candidates questions including, “Are you

<sup>48</sup> Indeed, our search for “dykes” on Amazon.com generated 398 results for diagonal cutting pliers.

<sup>49</sup> The term “dyke” is a slang term that “originated as a homophobic and misogynistic slur for a masculine, butch, or androgynous girl or woman.” (Source: [www.urbandictionary.com](http://www.urbandictionary.com))

married?” and, “Are you Christian?” because he “wanted guys who would fit in.”

- A Latino male employee told us, “I drop an f-bomb now and then. I know I shouldn’t. But that’s how we talk, as real men in the field.”

Some employees are outspoken in their criticism of working with particular groups of employees. For example:

- A Black male employee told us that a co-worker made comments to him about going “down to the border to shoot illegals” and “shooting Black people in the head if they’re Democrats.”<sup>50</sup>
- On June 17, 2020, a transgender employee sent a work-related email to several co-workers with a rainbow Pride fist in their signature block. An employee who received the email replied to all, “DO NOT EVER AGAIN send an email to me with ANY Political/Activist symbols, quotes, or ANY personal ideals and beliefs that you promote or advocate... QUIT SHOVING IT DOWN MY THROAT!”<sup>51</sup>

When managers fail to intervene and correct demeaning language, disparate treatment, hostility, and other inappropriate conduct, they are contributing to, and even worsening, the problem. The District should focus on selecting managers who will interrupt these behaviors, and then hold the managers accountable when they fail to do so.

Managers also can model respectful behavior by using more inclusive language (e.g., “parental leave” instead of “maternity leave”; “journeyperson” instead of “journeyman”; and “spouse” or “partner” instead of “husband” or “wife”).

**Require District Leadership to visit field locations on a regular basis, and facilitate town-hall-like events to solicit feedback and input from employees.**

There is a significant gap between what managers believe is happening in the workplace, and employees’ actual experiences. Part of the reason for the disconnect between the managers’ perception and the field employees’ reality is the rarity of senior management presence at field locations. During the Review, field employees consistently expressed a desire for District Leadership to be more present at field locations.

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<sup>50</sup> An external investigator investigated these and other allegations. The investigator substantiated many of the factual allegations, but determined that the conduct did not violate District policy. However, Legal referred the matter to Employee Relations to address.

<sup>51</sup> On July 6, 2020, Kightlinger issued a memorandum to all District employees regarding, “Correspondence Standards and Use of Electronic Signature Standard,” announcing parameters limiting the information that may be included in email signature blocks.

Although COVID-19 has complicated visits to field locations, several Survey participants stated that senior management's lack of direct interaction with them contributes to field employees feeling isolated and unseen. Regular field visits are critical to continuing to build trust between District Leadership and field employees. These visits allow District Leadership to have further dialogue about the District's culture and working environment in an open, professional, and constructive manner.

**Continue to enhance the District's current EEO training program.**

California employers must provide regular EEO training to all employees. To meet its obligations in this area, the District's training materials should be up-to-date, and reflect current best practices. Several employees told us that the District's harassment prevention training is delivered via a computer module, and it is not uncommon for employees to get coffee, chat with co-workers, or check email while the program is running. The most impactful training programs use role plays and scenarios to communicate concepts in an entertaining and understandable manner, and are delivered in a "live" format (even if by webinar) to allow participants to ask questions in real-time.

We reviewed the District's "How Was Your Day? Getting Real about Bias, Inclusion, Harassment and Bullying" training launched earlier this year. The training contains four modules: "Overcoming Unconscious Bias," "Embracing Diversity and Inclusion," "Preventing Workplace Harassment," and "Standing Up to Bullying." Although the training is a computer module, it is well done. The program requires frequent interaction to keep the viewer engaged, and presents a solid overview of these concepts.

We are pleased that the program addresses "sex stereotyping," which is relevant to the concerns expressed by Chavez, Grow, and Lee King regarding female employees in trade classifications.<sup>52</sup> An even stronger program would include customized content providing practical guidance about how to report concerns, rather than generic content such as, "Report harassment to a senior manager or other appropriate person."

We also are pleased that the bullying module includes bystander intervention content. Bystander intervention is one of the most important aspects of an EEO training program. Chavez, Grow, and Lee King all described situations in which other District employees observed their mistreatment, but failed to take any action. The District's EEO case files and information provided by interviewees also revealed numerous instances of EEO complainants being subjected to bullying or other abusive conduct in group settings, without any intervention.

Generally, the "How Was Your Day? Getting Real about Bias, Inclusion, Harassment and Bullying" training was well-received by employees. However, several employees told us that

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<sup>52</sup> Several male employees informed us that female employees in the trade classifications are not as capable of certain tasks because men are stronger than women. For instance, these employees perceive difficulty lifting heavy objects as a sex/gender issue, and not a safety issue, which indicates that the messages in the training did not resonate with everyone.

although they understood the concept of, “When bullying shows up, speak up,” they wanted more practical guidance on how to do so.

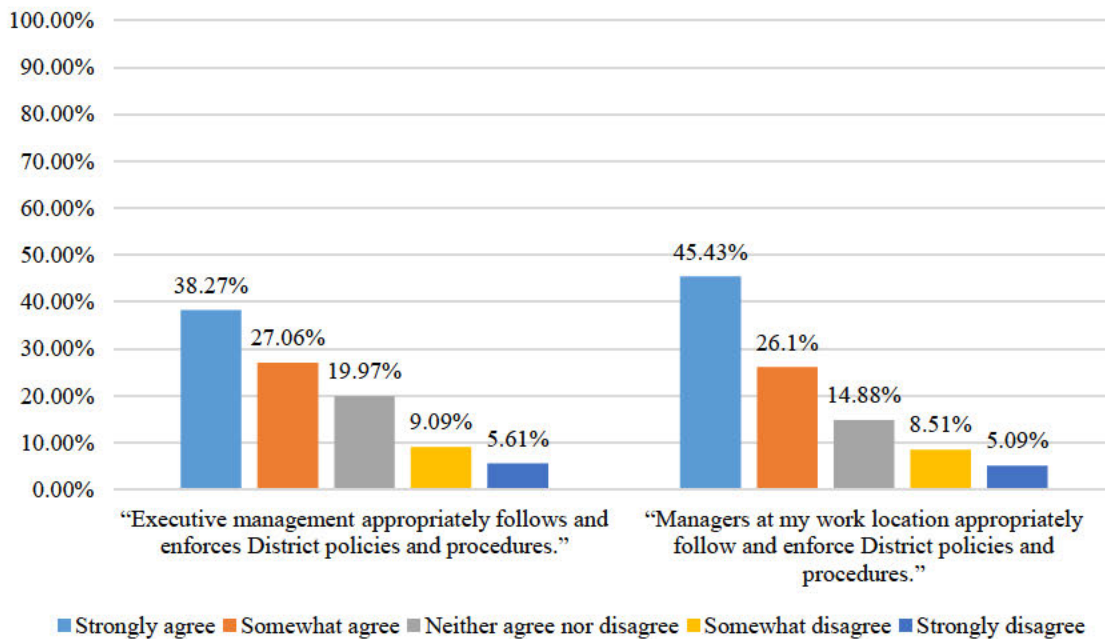
Given the challenges the District faces, a one-time training is not sufficient. The District should reinforce the messages about managing biases and bystander intervention through other means so these concepts become cultural norms. In addition, the District should provide employees at all levels with the tools necessary to proactively address the discussion of challenging social and political issues (e.g., COVID-19 vaccinations, police brutality) in a positive manner.

**b. Effectively Manage Employee Performance**

**Require managers to follow and enforce District policies and procedures.**

We asked Survey participants whether managers appropriately follow and enforce District policies and procedures. The chart below illustrates their responses, differentiated by Executive Management and managers at the participants’ work locations. The responses reveal that participants have less confidence that Executive Management follows policies and procedures than managers at their work locations.

**Beliefs Regarding Enforcement of Policies and Procedures**

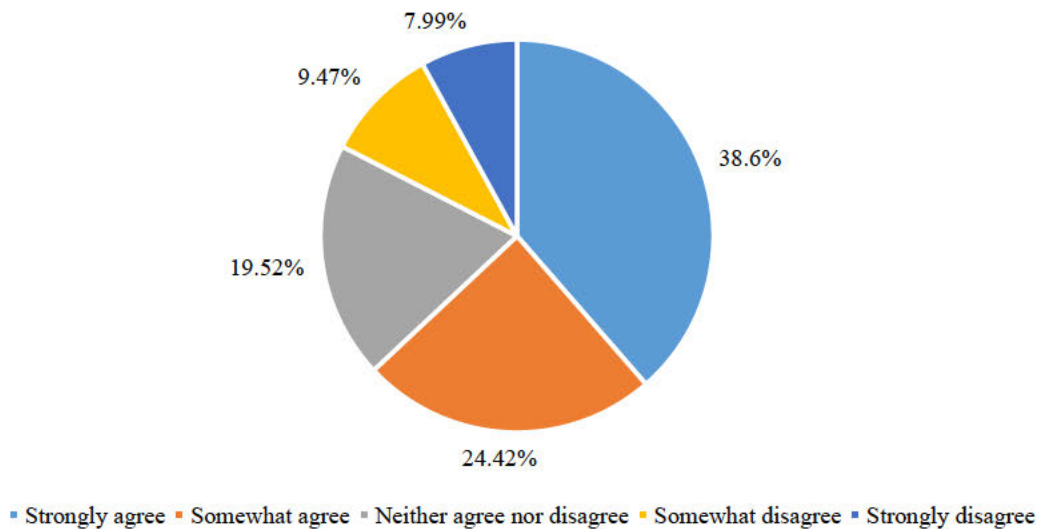


The District must be willing to hold managers accountable for following policies and procedures. This commitment is particularly important for Executive Management, who set the tone for the rest of the organization, and in field locations, where staffing issues and other resource shortages make it tempting to take shortcuts.

**Require managers to promptly and consistently address EEO Issues and other employee concerns.**

In response to whether “management at my work location takes appropriate action to address employees’ concerns,” 63% of Survey participants answered favorably (either “strongly agree” or “somewhat agree”). However, 37% did not answer favorably (“neither agree nor disagree,” “somewhat disagree,” or “strongly disagree”). Notably, when we asked Survey participants whether managers hold employees accountable, and the District holds managers accountable, employees at desert facilities were more likely than average to indicate that their answer would depend on the manager.

**“Managers at my work location take appropriate action to address employees’ concerns.”**



District managers must embrace their responsibility for preventing, responding to, and supporting employees who perceive themselves as victims of discrimination, harassment, retaliation, and bullying. The District should hold managers accountable for the climate at their work locations, and their adherence to the District’s EEO policies.

In addition, when an employee raises an EEO Issue, managers must take proactive steps to address the situation and prevent bullying and other forms of retaliation against that individual.

Contrary to the Survey results, our review of EEO case files revealed numerous instances of managers immediately reporting EEO concerns; in one case file, Alicia King noted when a manager was held accountable for failing to do so.

Of course, some EEO Issues (e.g., an employee with no history of EEO misconduct making one off-color comment), may not warrant corrective action, but rather coaching. When appropriate, coaching results in growth for the employee and builds trust with managers. Coaching still requires



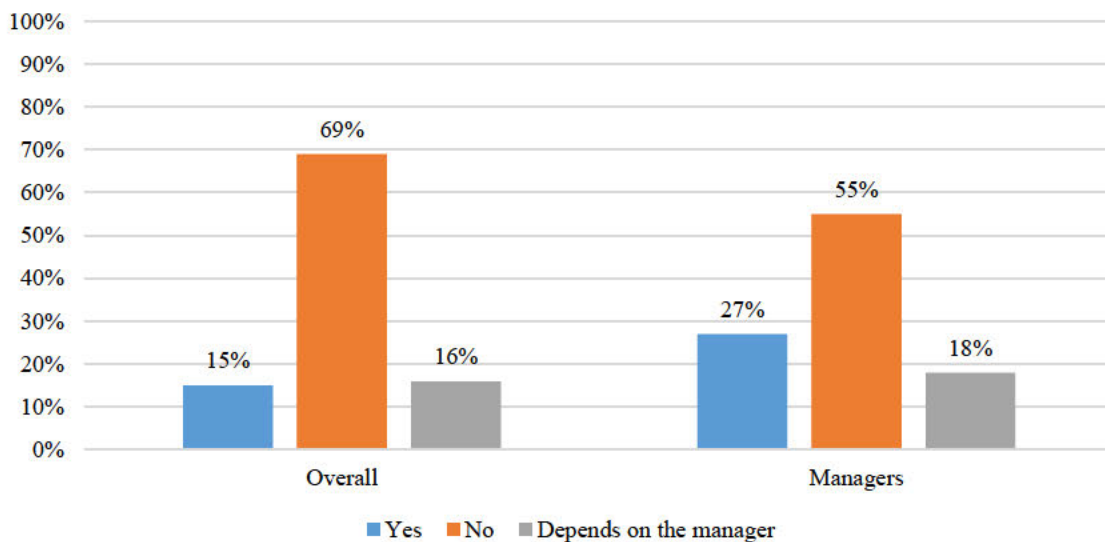
follow up, though, either in direct communication to the employee or documentation in the manager’s file (not in the employee’s official personnel file).

To determine whether an EEO Issue requires coaching or more serious corrective action, managers should consult with their HR Strategic Partner.

**Evaluate the performance of managers and compensate them based on their ability to drive positive interactions on their team, hold employees accountable, demonstrate an appropriate “tone at the top,” and further the District’s DE&I initiatives.**

The chart below illustrates that a majority of interviewees, including managers, do not perceive that managers hold employees accountable for inappropriate workplace conduct. Ninety-four percent of interviewees who stated that they have experienced retaliation for raising a workplace concern agreed with this perception, and 29% of female employees at desert facilities stated that whether employees are held accountable for misconduct depends on the applicable manager.

**“Do managers hold employees accountable for their work performance and workplace conduct?”**

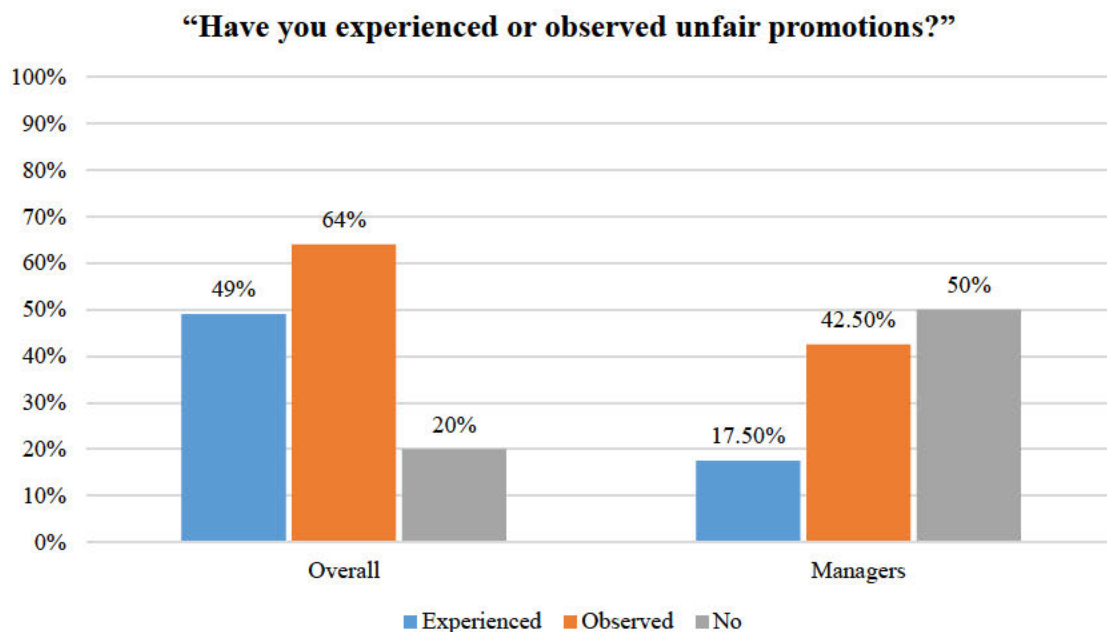


Accountability is about continuous improvement. The District’s progressive discipline process is intended to be a tool for managers to address inappropriate workplace conduct in a manner that will hopefully result in improvement. However, many managers do not feel supported by HR in their efforts to address inappropriate workplace conduct using progressive discipline. They perceive the District frequently “backs down” to an aggressive union. The District should ensure each manager has the tools and support necessary to hold employees accountable when appropriate.

Further, managers need to understand that EEO compliance is a key component of their workplace responsibilities. They should face financial and other consequences if they fail to act consistent with this responsibility, provided the District makes its expectations clear.

**Require managers to provide written, position-specific training and advancement plans to all employees to prepare them for internal promotional opportunities.**

The Review data reveals that many employees perceive favoritism in promotional decisions. We discussed with 116 interviewees whether they had experienced or observed unfair promotions. A majority of interviewees (64%) reported that they had observed unfair promotions, and 49% of interviewees reported that they had experienced unfair promotions. Managers generally had a more favorable view of hiring practices, and those who responded unfavorably frequently spoke to past practices.

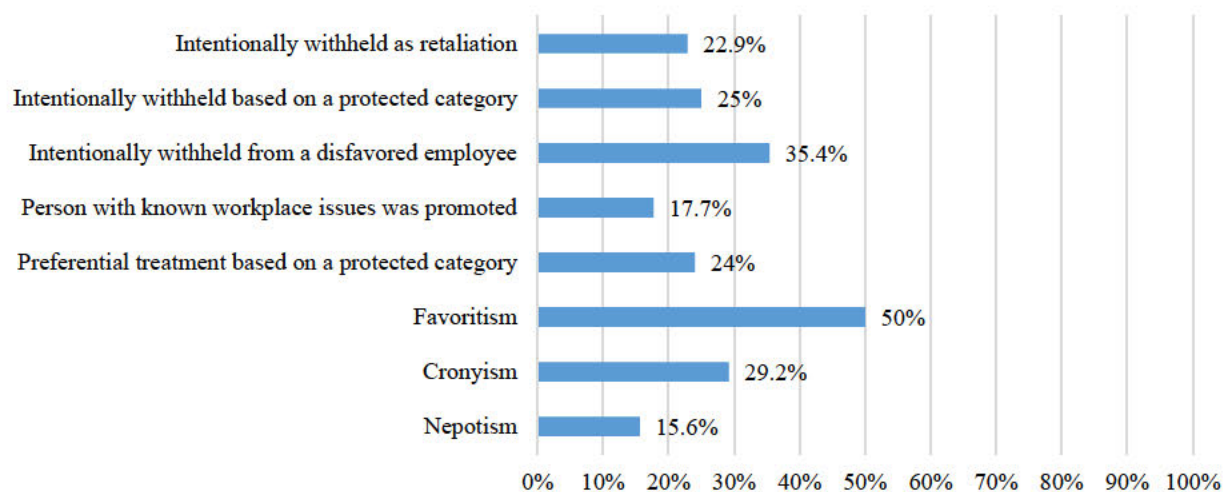


Interviewees repeatedly brought up two examples of “unfair promotions.” The first involved a manager who participated on the interview panel for a position in 2014 while romantically involved with one of the candidates. HR Unit Manager Brandon Patrick, who manages the District’s recruiting team, acknowledged the incident, and explained that HR took steps to avoid the situation in the future. For example, now, before interviews begin, all members of the interview panel complete and sign a document attesting that they reviewed the candidate list and have no conflicts of interest. Patrick provided documentation to support his explanation. Additionally, we reviewed documentation that shows the District investigated the incident and took corrective action.

The second example multiple interviewees mentioned is the perception that one manager gives preferential treatment in promotions to employees with whom he has a common national origin and/or religion. The District retained an external investigator to investigate these allegations, and we reviewed the EEO case file. The investigation report details evidence obtained through witness interviews and documents, and describes situations in which the complainants reached conclusions based on incomplete and/or inaccurate information. The investigator did not substantiate the allegations. We are satisfied that the investigator conducted a thorough investigation, and reached reasonable findings based on interviews and documents. Additionally, the Department of Fair Employment and Housing (“DFEH”) investigated these allegations in response to an employee’s complaint, and dismissed the complaint for insufficient evidence.

In addition to the two examples above, interviewees provided a variety of reasons for their belief that the promotions at issue were unfair. The most common response was a description of “favoritism.”<sup>53</sup> More than one-third of interviewees also described situations in which a hiring manager selected a less-qualified candidate over a disfavored employee. Approximately 29% of interviewees described situations involving cronyism. Employees who work at desert facilities were more than twice as likely (33.3%) than other interviewees (15.6%) to perceive that promotions were based on nepotism. Female interviewees were less likely than other interviewees to have perceived favoritism, but more likely to have perceived that a promotion was intentionally withheld because of a protected characteristic, such as sex or gender.

### “Why was the promotion unfair?”



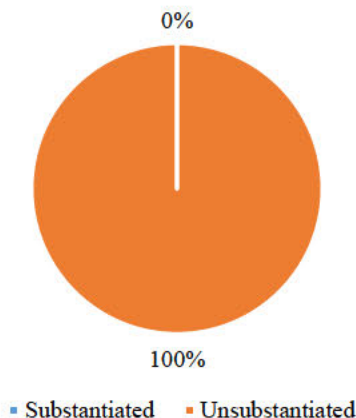
In 2019, Patrick analyzed 2018 recruiting data after AFSCME representatives expressed concern that hiring managers frequently did not offer open positions to the candidate with the

<sup>53</sup> Interviewees tended to use the words “favoritism,” “nepotism,” and “cronyism” interchangeably. In analyzing interview data, we defined “favoritism” as giving unfair preferential treatment to an employee, “cronyism” as giving preferential treatment to a friend, and “nepotism” as giving preferential treatment to a relative.

highest average interview score. Patrick’s analysis showed that hiring managers offered positions to the highest-scoring candidate in 223 of the 246 (90.6%) recruitments analyzed.

Further, the EEO case data does not support the employees’ perceptions of favoritism or unfair employment practices. We reviewed 11 EEO case files with recruitment-related allegations. In each case, the allegations were unsubstantiated.<sup>54</sup>

### The 11 EEO Cases Involving Recruitment-Related Allegations



Based on the Review data, it appears that some employees are conflating “most experienced” with “most qualified” for a position. However, the District’s recruiting process evaluates a candidate’s education, experience, and licenses to determine whether they meet the minimum qualifications for the position and should be interviewed. An employee with more experience should be able to draw on that experience to perform well in the interview, but the experience alone does not entitle them to the position.

Some employees do not understand that they are responsible for managing their own careers. They need to be their own advocate—communicate with their managers about their career goals, take advantage of learning opportunities and opportunities to increase skills, prepare for interviews, and ask the panel members for feedback after the interview.

Similarly, some managers do not understand that they have a responsibility to help their employees reach their career goals. Managers need to take initiative to understand their employees’ goals and support them by providing learning opportunities and regular, honest feedback on their work performance.

Managers we interviewed provided inconsistent information about their approach to performance evaluations. The District should ensure that managers understand the District’s

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<sup>54</sup> Three EEO cases with recruitment-related allegations are pending results.

expected approach to performance evaluations and provide adequate tools to support managers in providing effective and frequent feedback to employees.

Preparing employees for promotional opportunities requires joint effort on the part of the employee, the manager, and the District. Professional development should be an ongoing aspect of every employee's relationship with their manager. Managers should consider rotational assignments when appropriate, and prepare written training and development plans for each employee to prepare for growth opportunities.

**Continue management forums and leadership breakfasts, with a focus on providing opportunities for managers to learn from one other.**

We understand the District coordinated management forums and leadership breakfasts before the COVID-19 pandemic. Once it is safe to do so, we encourage the District to continue these events. They provide an important opportunity for managers to learn from one another's successes and failures and gain helpful tips. It is much more efficient for a manager to learn from a colleague who already has solved the problem the manager is experiencing, than spend time trying to solve the problem independently.

Additionally, some managers reported that management can be lonely. This sentiment is particularly true for managers in desert facilities, who recognize that it is inappropriate to socialize regularly with their subordinates (especially when alcohol is involved). These manager-oriented events can help alleviate some of the feelings of isolation.

Also, building relationships with other managers will make facilitating rotational assignments easier.

**c. Dedicate Sufficient Resources to EEO Compliance**

**Create additional positions in the Training Unit and Employee Relations to ensure both areas are properly staffed and resourced.**

The District's Training Unit appears committed to providing cutting-edge training for professional development to help managers (and potential managers) develop the skills to be successful. Further, the Training Unit includes staff who are skilled coaches, which makes them valuable partners for Employee Relations and the HR Strategic Partners. We understand demand for this skill is growing as the stigma around coaching is diminishing, and managers are increasingly seeing coaching as a benefit. However, the Training Unit is under-resourced, considering the District's size and geographical reach.

Similarly, the HR Strategic Partners are too frequently pulled away from their strategic work by Employee Relations issues. Each HR Strategic Partner works with an Employee Relations Specialist, but there is more work than they can handle. The District should create additional positions in Employee Relations to support the HR Strategic Partners.

Currently, there is only one Strategic Partner and one Employee Relations Specialist to support the entire WSO group. The District should assign one Employee Relations Specialist to employees in the desert facilities. Ideally, the Employee Relations Specialist would be located at Gene, and expected to visit the other desert facilities on a regular basis.

The Training Unit, the HR Strategic Partners, and Employee Relations will be instrumental to the success of the District's EEO Office and improvements to the District's working environment. Together, they can encourage employees and managers to accept personal responsibility for their actions, keep an open mind about contrary perspectives, and move forward despite past EEO Issues.

**Provide in-depth and regular training to relevant HR personnel regarding laws, regulations, and best practices regarding responding to accommodation requests and handling confidential medical documentation.**

The Review data regarding the basis of EEO complaints revealed that the District receives more disability complaints than we normally see in our practice. The District should ensure that employees responsible for responding to and processing requests for medical leave and disability accommodations are properly trained on new laws, regulations, and best practices.<sup>55</sup>

## **2. Investigation and Resolution of EEO Issues**

EEO Case Files. We requested all of the District's EEO case files from 2015 to present. We received and reviewed 75 case files.<sup>56</sup> We also included quantitative data from the four task order investigations in our EEO case analysis.

The chart below illustrates the categories of allegations in the 79 cases.<sup>57</sup> Thirty-three percent of the cases included a retaliation claim—the most of any category. Eighteen percent of these cases included claims of alleged improprieties in recruitment. There were considerably more race-based complaints than complaints of sexual harassment or gender discrimination (although combining the sexual harassment and gender discrimination complaints into one category yields a total that exceeds any other category).

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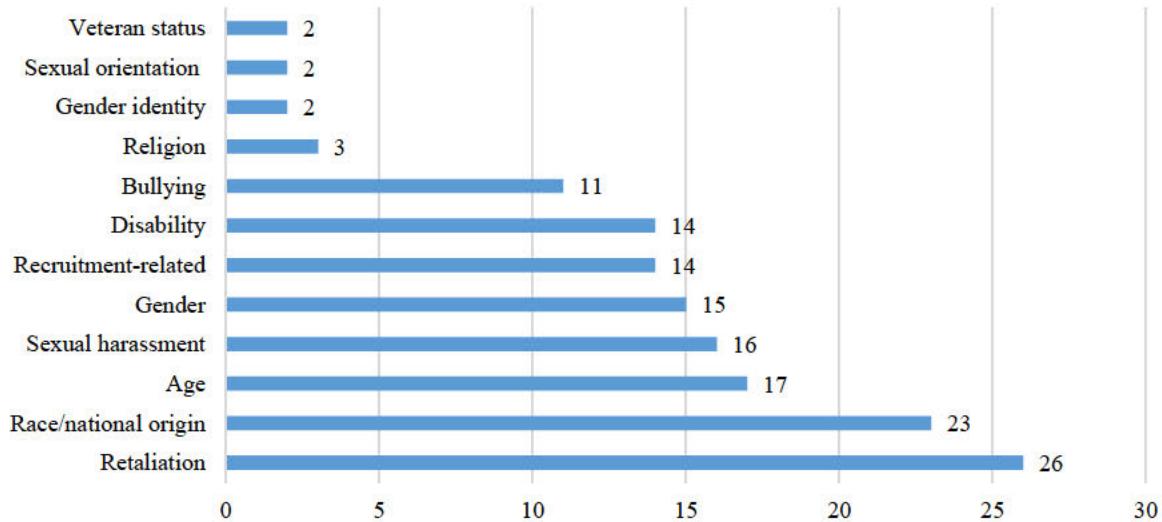
<sup>55</sup> It came to our attention during the Review that the District retains the services of a physician to review reasonable accommodation requests and other medical documentation. The District should obtain legal guidance regarding whether this practice is compliant with state and federal law.

<sup>56</sup> We also reviewed the EEO case files regarding Chavez's 2012 and 2013 complaints, and Grow's 2010 complaint. As stated above, information from these cases informed our observations and recommendations included in this Report

<sup>57</sup> Many of the cases contain allegations in multiple categories. For example, if an employee claimed a hiring manager did not select them for a position because of their age, we included the case in the "age" and "recruitment-related" categories.

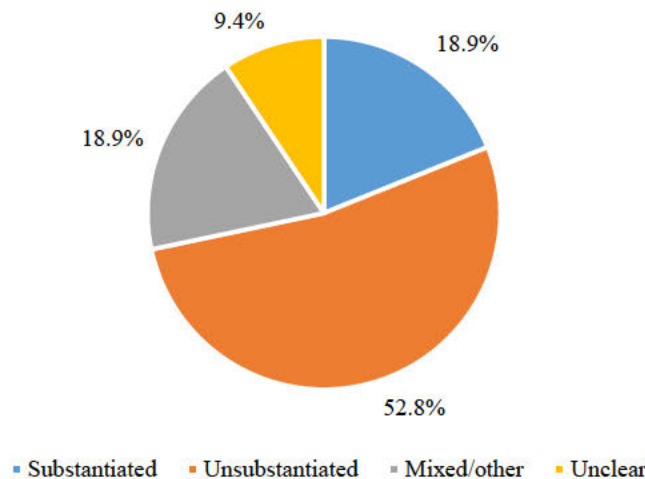
Although "bullying" is not an EEO Issue, we included it as an allegation category if a bullying allegation was investigated along with EEO-related allegations.

### Categories of Allegations on EEO Cases (2015–Present)



Twenty-six of the 79 cases we reviewed are still pending.<sup>58</sup> The chart below illustrates the results in the other 53 cases.<sup>59</sup> The perception among some employees that the District does not substantiate EEO Issues is inconsistent with the Review data. Anecdotally, the percentage of substantiated cases is not out of line with what we generally observe in our practice.

### EEO Investigation Results (2015–Present)



<sup>58</sup> The pending cases include the four task order investigations discussed above in **Section II.I.2**.

<sup>59</sup> “Mixed results” means that some of the allegations were substantiated, and some were unsubstantiated. This result includes some cases in which the allegations were unsubstantiated, but the investigation revealed other issues that were referred for remedial action.

“Unclear outcome” means the file did not contain sufficient information to determine whether an investigation was conducted, and if so, the outcome.

We analyzed the data from several perspectives. The table below illustrates the results by allegation category, and reveals that investigators substantiated a greater percentage of racial and sexual harassment complaints than other allegation categories.<sup>60</sup>

<b>Allegation Category</b>	<b>Substantiated</b>	<b>Unsubstantiated</b>	<b>Unclear Outcome</b>	<b>Pending</b>	<b>Total</b>
Retaliation	4	12	3	7	26
Race/National Origin	6	11	1	5	23
Age	1	11	0	5	17
Sexual Harassment <sup>61</sup>	5	8	0	3	16
Gender	1	7	0	7	15
Recruitment-related	0	11	0	3	14
Disability	3	3	3	5	14
Bullying	6	3	0	2	11
Religion	2	1	0	0	3
Gender Identity	0	2	0	0	2
Sexual Orientation	0	1	0	1	2
Veteran Status	1	0	0	1	2
<b>TOTAL</b>	<b>29</b>	<b>70</b>	<b>7</b>	<b>39</b>	<b>145</b>

The table below illustrates that more complainants are male than female. The table also illustrates that AFSCME’s assertion to us that the District “almost summarily dismisses” EEO complaints submitted by male employees is inconsistent with the Review data.

<b>Complainant(s)</b>	<b>Substantiated</b>	<b>Unsubstantiated</b>	<b>Mixed Results</b>	<b>Unclear Outcome</b>	<b>Total</b>
Male	6	14	3	4	27
Female	4	11	6	1	22

<sup>60</sup> The number of unsubstantiated sexual harassment complaints is somewhat misleading. In several cases, the conduct alleged was substantiated, but the investigator found that the conduct did not violate District policy (and in some cases, the investigator made legal findings that the complainant did not suffer from a “hostile work environment”).

<sup>61</sup> Four of the five complainants in the substantiated sexual harassment cases are female. Only one (the male complainant) worked at a desert facility. Of the other four, two worked at Union Station, and two worked at a water treatment plant.

Seven of the eight complainants in the unsubstantiated sexual harassment cases are female. Three (all females) worked at desert facilities. Of the other five, one worked at Union Station, and four worked at other field locations.

All three of the complainants in the pending sexual harassment cases are female. Two worked at desert facilities, and one worked in another field location.



Complainant(s)	Substantiated	Unsubstantiated	Mixed Results	Unclear Outcome	Total
Anonymous or multiple complainant(s)	0	3	1	0	4
<b>TOTAL</b>	<b>10</b>	<b>28</b>	<b>10</b>	<b>5</b>	<b>53</b>

Significantly more complaints are submitted against managers than rank-and-file employees. Investigators substantiated a majority of cases against rank-and-file employees. By contrast, a majority of cases against managers were unsubstantiated.

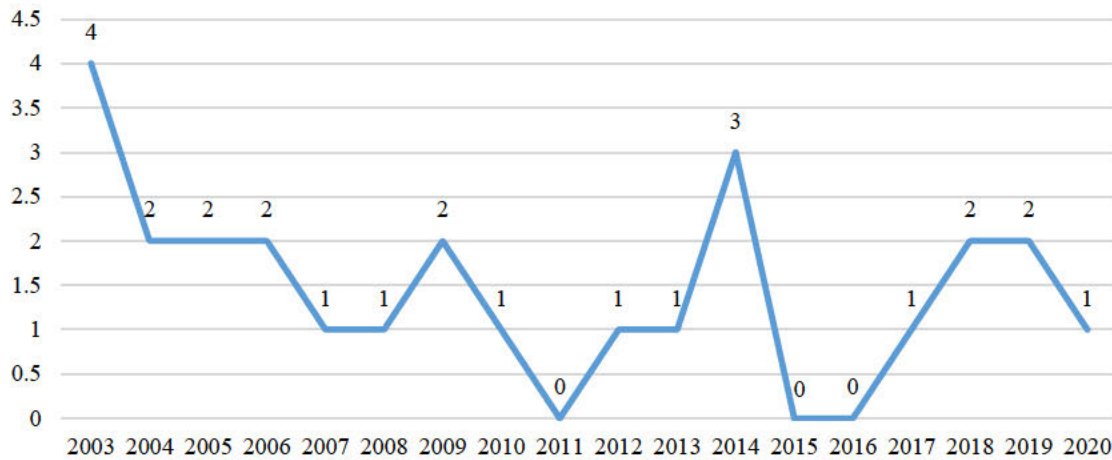
Respondent(s)	Substantiated	Unsubstantiated	Mixed results	Unclear Outcome	Total
Rank-and-file employee(s)	7	2	2	0	11
Manager(s)	3	25	7	5	40
Both	0	1	1	0	2
<b>TOTAL</b>	<b>10</b>	<b>28</b>	<b>10</b>	<b>5</b>	<b>53</b>

The table below compares results from cases Alicia King investigated and cases external investigators investigated. The table does not include the five “unclear outcome” cases because in some cases, it was unclear who, if anyone, investigated the complaint.

Investigator	Substantiated	Unsubstantiated	Mixed results	Total
Internal (A. King)	8	15	4	27
External	2	13	6	21
<b>TOTAL</b>	<b>10</b>	<b>28</b>	<b>10</b>	<b>48</b>

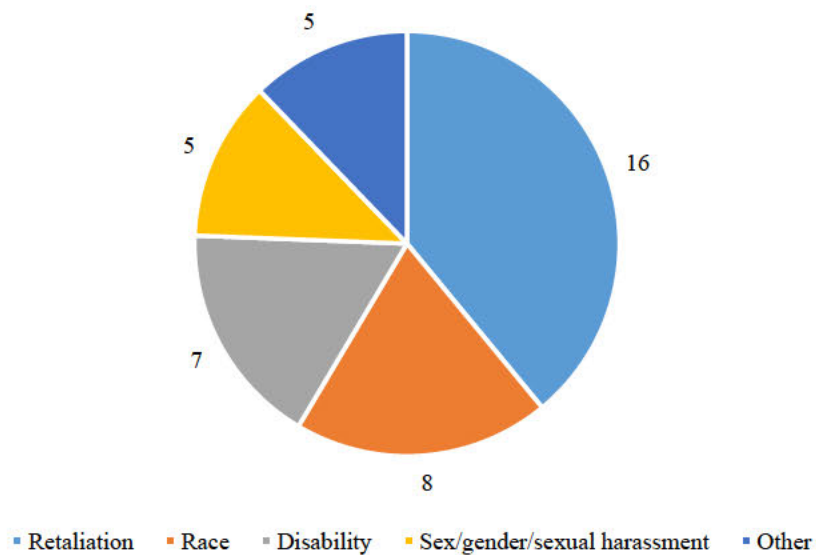
Employment-Related Lawsuits. We reviewed data the District provided regarding employment-related lawsuits. From 2003 to present, employees or former employees filed 26 lawsuits against the District. The chart below illustrates the number of lawsuits filed each year, ranging from zero (2011, 2015, 2016) to a maximum of four (2003).

### Employment-Related Lawsuits Filed (2003–Present)



In these lawsuits, 15 of the plaintiffs (58%) were male, and 11 (42%) were female. The chart below summarizes the claims at issue in the lawsuits, 61.5% of which included a retaliation claim.<sup>62</sup>

### Basis of Lawsuits (2003–Present)



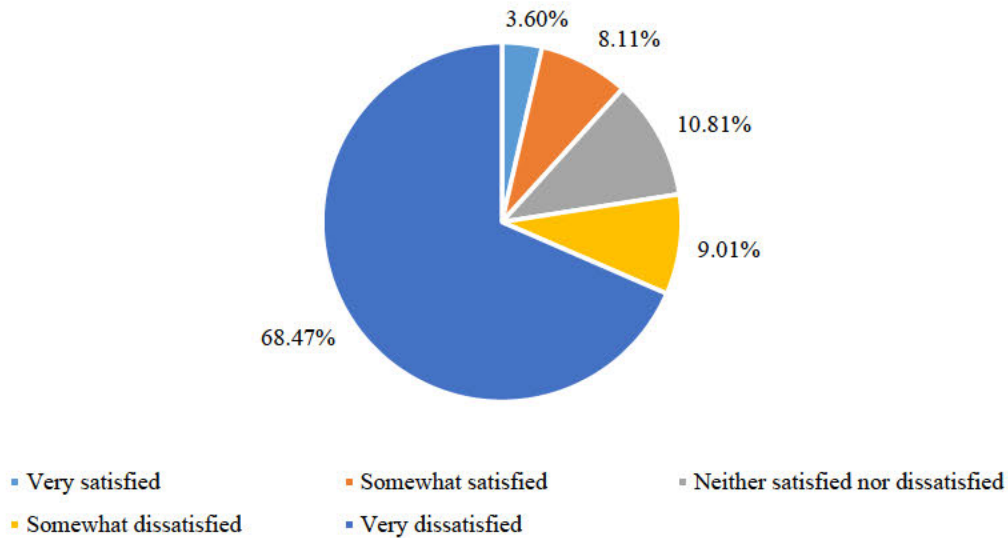
The court dismissed seven of the lawsuits (27%), and the District settled the remaining 19 (73%).

<sup>62</sup> Some of the lawsuits included more than one claim.

As discussed above, 223 (14%) Survey participants indicated they have experienced EEO Issues in last three years.<sup>63</sup> Of those participants, approximately 49% reported their experience to a District employee; slightly more than 50% did not.

The chart below illustrates that 77% of the 112 participants who reported EEO Issues internally were dissatisfied with the District’s treatment of their concerns. Notably, female employees at the District’s desert facilities were dissatisfied unanimously with the District’s treatment of their concerns.

**“How satisfied or dissatisfied are you with the way the District responded to your report?”**



Survey participants most frequently reported the following reasons for their dissatisfaction with the District’s treatment of their concerns: (1) they did not feel “heard” (i.e., they perceived that the District did not take their concerns seriously); (2) they perceived that the District did not take action to address their concerns; and (3) they experienced retaliation after raising their concerns. To the contrary, participants who were satisfied with the District’s treatment of their concerns felt that they were “heard” and supported, that the District solved the problem at hand, and that the District prevented any further misconduct.

We recommend that the District take the steps outlined below to improve its effectiveness in responding to potential EEO Issues.

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<sup>63</sup> In the Survey, we did not ask employees if they have experienced “discrimination,” “harassment,” or “retaliation,” because these terms have specific legal meaning. Rather, we asked employees, “In the last 3 years, have you had any experiences at [the District] during which someone at work treated you unfairly because of your race, ethnicity, national origin, sex, gender, sexual orientation, and/or any other characteristic protected by law?”

a. **The Structure of the EEO Office**

**Elevate the EEO Office to an independent department, and eliminate Legal's direct involvement in most investigations.**

Elevating the EEO Office to an independent department will demonstrate the District's commitment to EEO compliance, and engender confidence in the integrity of the Office's activities to encourage employees to report potential EEO Issues. Although some Survey participants and interviewees suggested moving the EEO Office to the Ethics Office, those programs serve different functions, and combining them likely would create confusion among employees.

The new EEO Office should be managed by an EEO Officer who reports directly to the Board, just like the Ethics Officer.<sup>64</sup> The successful candidate must be experienced in managing all aspects of EEO programs, and be able to directly supervise internal and external investigators.

It is critical that the EEO Officer is viewed as neutral in resolving EEO Issues. The EEO Officer should not be eligible for bargaining unit representation, so the potential conflicts of interest with the current EEO Manager also acting as the President of ACE will be eliminated. In the meantime, the current EEO Manager should recuse herself as the EEO Officer from any case involving an ACE member to avoid even the appearance of a conflict of interest.

Currently, Legal selects and manages external investigators for EEO investigations. However, the EEO Officer should have authority to select and manage external investigators when it is not appropriate or feasible to conduct an internal investigation, just as the Ethics Officer does for Ethics investigations. Legal should be consulted only for advice as needed. In a small number of the EEO cases we reviewed, Legal overrode the EEO Manager's recommendation to investigate a complaint, which should not be a decision within Legal's purview. Additionally, Legal is not sufficiently selective regarding the qualifications of external investigators. Although many of the external investigators the District retains are competent, Legal repeatedly retains some investigators who do not follow best practices.

The EEO Officer also should define the scope (i.e., the issues under review) of investigations. This practice is particularly important for external investigators to reduce cost and eliminate duplication of effort (e.g., if internal investigators will handle a portion of the investigation, and the external investigator is not aware of that fact).

**Create additional internal EEO investigator positions.**

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<sup>64</sup> We recognize this recommendation is a departure from the structure in a majority of the organizations the District uses as comparators for compensation and other decisions (e.g., East Bay Municipal Utility District, Los Angeles County Metropolitan Transportation Authority, Los Angeles Department of Water and Power, Orange County Water District, and San Diego County Water Authority). However, we see many parallels between the District's EEO function and Ethics function. Additionally, in our experience, the EEO Office (or Office of Civil Rights) in many state agencies is an independent office that reports directly to the agency head.

Considering the District's size and geographical scope, the EEO Office should have at least three internal investigators to review potential EEO Issues. These investigators should be a team within the EEO Office, reporting to the EEO Officer. As discussed more fully below, the District should hire internal investigators who are properly trained in workplace investigation best practices and trauma-informed practices.

**b. The District's Current Investigation Practices**

**Regularly communicate with all employees regarding the separate components of the EEO Office and the Ethics Office, including direct messaging from the General Manager, the CAO, and the Ethics Officer.**

Some employees do not understand the difference between the Ethics and EEO Offices, and everyone will benefit from more transparency regarding their respective functions. The presentation by Pitman and Salinas to the OP&T Committee regarding "Human Resources and Ethics Office Roles in Addressing Complaints," dated March 8, 2021, is an excellent resource.

**Implement a hotline program to allow for anonymous reporting of EEO Issues.**

As described in **Section VI.2.** above, the Review data revealed that the most frequently reported reasons for employees to feel dissatisfied with the District's treatment of their concerns is they perceived that the District did not take their concerns seriously. Several interviewees described interactions with members of the EEO Office, HR, or Legal that lacked empathy, and left them feeling "dismissed" or "blamed."

For the complainant, how they were treated in the process affects them as much, if not more, than the outcome of the investigation. As a result, many employees perceive that the District, and HR and Legal in particular, is overly focused on defending managers' actions rather than addressing employees' true concerns.

Given the employees' current level of distrust, providing a method for employees to anonymously report perceived EEO Issues would encourage employee participation in the EEO compliance process.

**Update the District's "EEO Discrimination Complaint Procedures," and provide copies to complainant(s) and respondent(s) in each investigation.**

The District's current EEO procedures should be updated to reflect the District's actual practices. In addition, the EEO Officer should provide the parties to an investigation a copy of the practices at the beginning of every investigation to ensure they understand how the investigation process will work.

Although the procedures state that the District will maintain investigation files that contain any corrective action taken as a result of the investigation, the EEO case files we reviewed do not

contain such documentation. Instead, Employee Relations maintains those records. Although Employee Relations drives the corrective action process, the EEO case files also should reflect the District’s post-investigation actions.

The procedures also should include language explaining that the corrective action taken after an investigation is intended to address the substantiated behavior and prevent future occurrences. Many employees perceive that termination is the only appropriate remedy for a violation of the District’s EEO policies, which is not the case.

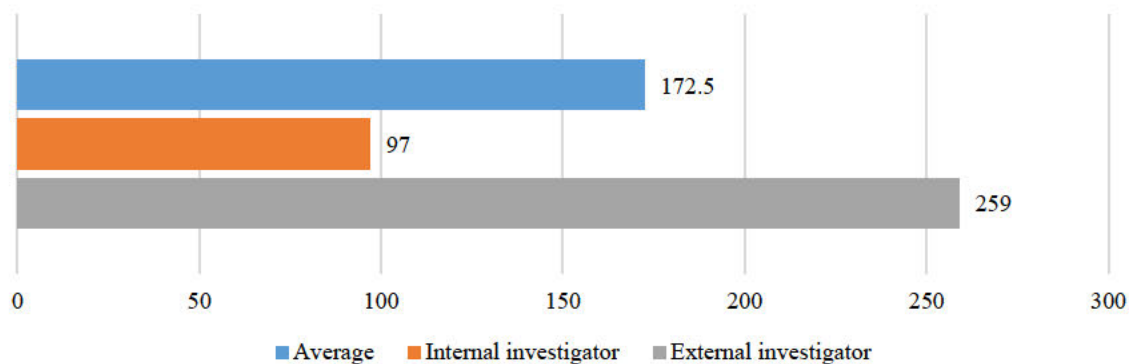
**Create a process for investigating and resolving complaints against department heads and Directors.**

The Ethics Office recently proposed a process to apply when potential EEO Issues involve department heads and Directors (which will need to be revised to include the EEO Officer position if the Board accepts our recommendation to upgrade the EEO Manager position to an EEO Officer title). Based on our review of the proposed process, the District should adopt proposed “Administrative Code § 2416. Duties and Functions. [Executive Committee].”

**Initiate and complete investigations of EEO Issues in a timely manner.**

Our review of EEO case files revealed that the average length of time from the date an employee reported a complaint to the date the investigator submitted the investigation report was 172.5 days.<sup>65</sup> This is far too long for the average case to be open. We observed that when Alicia King was investigating EEO complaints, she generally conducted thorough investigations in a relatively timely manner. After Pitman reassigned the EEO investigation function back to the EEO Office in 2019, the time to resolve internal complaints increased significantly.<sup>66</sup>

**Days from EEO Complaint to Final Report (2015–Present)**



<sup>65</sup> In the “Days from EEO Complaint to Final Report (2015–Present)” chart, “Internal Investigator” means Alicia King conducted and managed the investigation process. “External Investigator” means the District retained an external investigator to conduct the investigation, and Legal managed the investigation process.

<sup>66</sup> As previously discussed, the current EEO Manager does not manage EEO investigations; she refers them to Legal to manage.

The District is required to initiate and complete investigations in a timely manner. Generally, the investigation process should take no longer than 60 days for internal or external investigations, absent unusual circumstances. This data supports our recommendation above that the District should hire additional EEO investigators.

In addition, the EEO Office should not delay the initiation of an investigation pending receipt of a written complaint, which we observed in a small number of cases. Once the District is on notice of a potential EEO Issue, the District should begin the investigation process.

Of course, the District need not conduct a formal investigation for every EEO complaint. Some complaints can be resolved by having a conversation with each of the parties. Additionally, the purpose of an investigation is to determine what happened when the organization does not already have that information. If the District already knows what happened, the EEO Office can refer the matter to Employee Relations for further action. Regardless of whether the EEO Office handles complaints in an informal manner or by conducting a formal investigation, every relevant document, conversation, and decision should be documented in the EEO case file.

**Immediately identify during investigations of EEO Issues whether interim measures are appropriate.**

In certain situations, it may be appropriate for one of the parties involved to be reassigned temporarily or placed on PAL. PAL should be used rarely, and only in circumstances when an employee should not remain in the workplace. It is appropriate to place an employee on PAL, for example, when the employee has threatened physical violence or as needed to protect sensitive information.

PAL temporarily relieves an employee of their normal job duties; it is not the same as teleworking. When an employee is on PAL, it is a best practice to collect all District property (e.g., keys, computer devices), and disable the employee's access to the District computer network and email system while on PAL.

**Prioritize investigations if any employee is placed on PAL pending completion of the investigation.**

The Review data reveals multiple examples of employees remaining on PAL for several months. If the District places an employee on PAL, the investigation should be prioritized, and completed as quickly as possible. This practice will reduce costs, and the District's potential liability if an employee remains on PAL for a substantial period of time, is eventually exonerated, and then later claims that the leave negatively affected their employment opportunities.

**Take appropriate steps to prevent any form of retaliation against individuals involved in the complaint process.**

We address this issue more fully in **Section VI.C.** below.

**Provide in-depth and regular training to all EEO Office personnel regarding complaint intake and investigation best practices, and ensure internal EEO investigators are trained in trauma-informed practices, including interview techniques and credibility assessments.**

Because of the complexities of the District's workplace, all EEO Office personnel must be properly trained and competent in all aspects of the investigation process. The knowledge and understanding of trauma-informed interview practices can be helpful in any investigation, but they are particularly important for investigations involving complaints of violence, sexual misconduct, or prolonged bullying. The presence of trauma changes the way a person encodes and stores memory. Using trauma-informed interview techniques will aid the investigator in obtaining more reliable information, and more importantly, avoid causing secondary trauma.

**Make only factual findings during investigations, not policy and/or legal findings, and use the appropriate evidentiary standard.**

The District's current practice of permitting external investigators to make policy and/or legal findings is inconsistent with best practices. Investigators should focus only on factual issues, and leave policy findings to HR and corrective action to Employee Relations.

In addition, the current use of the terms "unfounded" and "insufficient evidence" in investigation reports is inconsistent with best practices. All investigators should use a binary standard (e.g., "sustained"/"not sustained," or "substantiated"/"unsubstantiated").

**c. Post-Investigation Practices**

**Adopt restorative practices, including creating a conflict resolution team, requiring transparency about the District's remedial actions to the extent consistent with employee rights, and ensuring appropriate follow-up after an investigation is complete.**

Employees who had submitted EEO complaints frequently complained that they did not receive a copy of the investigation report. Further, corrective action taken, if any, is generally intended to address the policy violation, and does not consider the harm to the employee or to the working environment. The District's current lack of restorative processes leaves many employees involved in the complaint process feeling unheard, disrespected, and unsure of how to work together. The District should consider creating a conflict resolution team to address this issue.

Although transparency is an important part of restorative practices, we do not recommend providing copies of reports to the parties outside of any legal obligation to do so (e.g., when the District relies on a report for disciplinary action, the respondent is likely entitled to a copy of the report before their Skelly hearing). Curiosity about consequences is understandable, but full transparency could constitute a violation of an employee's privacy.



Ultimately, employees know a problem is solved because the conduct has stopped. Complainants seeking more information are setting themselves up for disappointment, which eventually becomes resentment. The more resources the District dedicates to restorative processes, the more likely employees will accept the results of investigations, even if they disagree with those results.

The District is fortunate to have some employees who are particularly skilled in this area and could be influential if, as recommended above, the District dedicates sufficient resources to the Training Unit and Employee Relations.

**Implement a process for Employee Relations and/or the EEO Office to inform internal recruiters about information relevant to transfer requests, such as an employee's prior complaint against an employee working at the potential new location.**

The District maintains a Transfer List of employees who desire to transfer to a different location or position within their classification. Employees may complete a Transfer Request form, which adds them to the list for one year. When a position becomes available, the Recruiter managing the recruitment consults the transfer list for any eligible employees. The hiring manager must consider these employees for the position before accepting other internal and/or external applications. If the Recruiter selects an employee on the Transfer List for the position, the Recruiter asks Employee Relations if the employee is "eligible" to transfer. Employees are eligible to transfer if their manager rated them as "Meets Expectations" or higher on their most recent performance evaluation, and the employee has no appealable disciplinary action. Employee Relations provides only a "yes" or "no" answer to the Recruiter's eligibility inquiry. Employee Relations does not provide any additional details.

Managers generally do not know when employees from other locations have a history of disciplinary action or conflict with other employees, nor should they. The District should implement a process that allows Employee Relations and/or the EEO Office to inform Recruiters who inquire about an employee's eligibility for transfer that the employee has history with their office that should be considered. Such history does not necessarily make the employee ineligible for the transfer. However, the District has a responsibility to ensure that an employee with a history of conflict or EEO Issues with another employee does not transfer to that employees' location when the transfer would be traumatizing or disruptive.

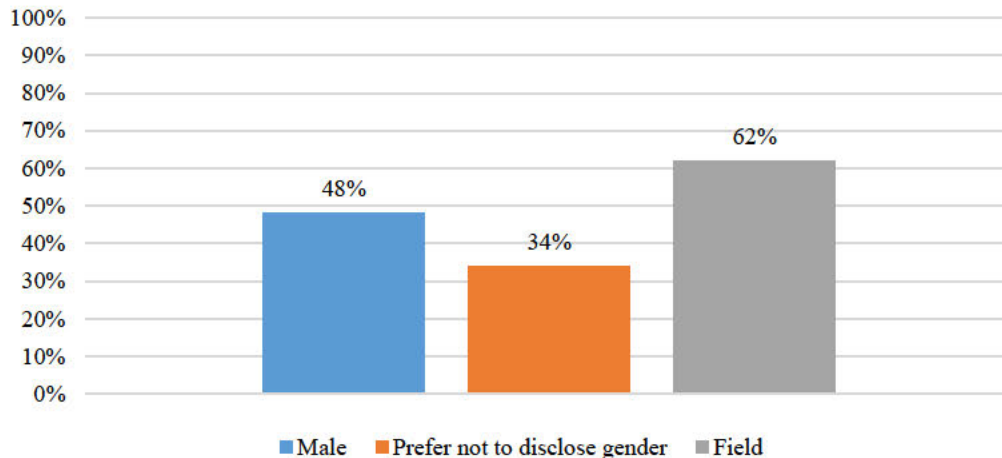
**Consider eliminating confidentiality/non-disclosure provisions in settlement agreements with employees who will remain employed with the District after the investigation is completed.**

Although generally lawful, the District's practice of including non-disclosure and/or confidentiality provisions in settlement agreements with current employees encourages mistrust and speculation.

## B. Recommendations Regarding the DE&I Council

As shown in **Section III.C.** above, we asked Survey participants, “Which of the following best describes your race/ethnicity?” Approximately 10% of Survey participants selected “prefer not to disclose.” Of the 155 participants who preferred not to disclose their race, 62% work in field locations, 48% identified their gender as male, and 34% preferred not to disclose their gender.

**Survey Respondents Who Selected “Prefer Not to Disclose Race”**



This data explains why the DE&I Council’s work is so important. As discussed in **Section V.** above, the District still has work to do to improve the working environment for racial and ethnic minorities. However, with 10% of District employees avoiding the conversation about race altogether, the District will find it challenging to accomplish that work.

We recommend that the District take the steps outlined below regarding the DE&I Council.

**Create a DE&I Manager position to be filled by an individual with prior DE&I experience to create a DE&I Office, lead the DE&I Council, and guide Council members and District Leadership to identify and implement best practices.**

DE&I issues are complex and often misunderstood. For example, we asked interviewees if the working environment is safe and respectful for racial and ethnic minorities. A common answer was something to the effect of, “It seems diverse,” an answer that conflates the concepts of diversity and inclusion.

DE&I Council members interviewed provided inconsistent explanations of the DE&I Council’s purpose, even after the Council adopted its mission statement. Further, they reported that six months into the launch of the Council, no one ever defined the terms “diversity,” “equity,” or “inclusion” relative to the work they were expected to do. Although most of the DE&I Council

members are enthusiastic about the opportunity to influence a more diverse, equitable, and inclusive workplace, they admit they lack knowledge of how to do so.

These volunteers cannot effectively solve a problem they are unable to define without guidance from an expert in DE&I issues. The District should create a DE&I Manager position to create a DE&I Office, lead the DE&I Council, and provide necessary guidance to the Council and District Leadership as they seek to identify and implement best practices for a DE&I initiative.<sup>67</sup> The District's DE&I Office should encompass the District's Affirmative Action and outreach functions.

The DE&I Manager must be viewed as independent, and have the ability to establish trust and work collaboratively with employees. Because of the nature of the Council's functions, we discourage the District from making the DE&I Manager position eligible for membership in a bargaining unit.

**Take steps to further develop the DE&I Council.**

The District launched the DE&I Council with positive intentions, but little planning. As a result, the Council's start was a bit rocky. Council members were eager to begin discussing DE&I issues and making recommendations that would lead to positive change, and quickly became frustrated with the lack of clarity on the Council's structure and purpose. The Council is working through some of the growing pains of launching a new initiative. The members are laying a foundation for the important work to be done, and they should continue to be patient and diligent in further developing the Council's structure and goals.

Once the District hires a DE&I Manager, one of their first priorities should be collaborating with the DE&I Council to define the terms "diversity," "equity," and "inclusion" for purposes of furthering the Council's work. Next, the DE&I Manager should guide the Council to identify appropriate initiatives, and set specific and measurable quarterly and annual goals for the Council to implement and evaluate the initiatives identified.

The Council recently established five subcommittees: Communications & Outreach, Recruitment, Recruitment Outreach, Training & Development, and Promotions. The Council should further refine the scope and purpose of the subcommittees, and consider adding a subcommittee focused on supporting ERGs and outreach to form ERGs for groups not currently represented (e.g., members of the LGBTQ+ community and allies, employees with disabilities, and veterans).

Some interviewees expressed concern over the lack of transparency about the Council's activities. For example, there is a "microsite" for the Council on the District's intranet ("IntraMet") where employees can find information about the Council's activities. However, the employee who provides administrative support for the Council prepares a document that summarizes the events

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<sup>67</sup> Some of the District's detractors would prefer for a Director to lead the DE&I Council because they distrust District Leadership. We do not support this desire. Our recommendations are designed to support the intent of creating an employee-led forum.

at each meeting, rather than detailed meeting notes. The Council should consider how to make their activities sufficiently transparent for all District employees to trust the process.

**Only permit Executive Management to attend DE&I Council meetings when invited by the Council.**

Currently, Executive Management attends all Council meetings. A majority of Council members reported that their presence is intimidating, and makes them reluctant to participate in Council discussions. Once the District hires a DE&I Manager, we recommend that the DE&I Manager serve as Executive Management's liaison to the Council and report progress as needed. However, the Council should invite Executive Management to attend full Council meetings periodically for the opportunity to continue dialogue about DE&I issues and show support for the Council's efforts.

**Ensure that participation on the DE&I Council is voluntary.**

When the District launched its DE&I initiative, Chapman asked each of the ERG Presidents to designate two members to serve as representatives on the DE&I Council. Although many of the DE&I Council members volunteered to represent their bargaining unit or ERG on the Council, some feel obligated to participate simply because they hold a leadership position in their ERG. It is important that Council members genuinely want to participate in the Council's efforts. If a member chooses to resign from the Council, they must be able to do so without repercussions.

**Continue to support DE&I Council participation by releasing Council members from their regular work assignments to attend Council meetings and perform Council work.**

Some of the DE&I Council members expressed concern about the time they are investing in Council work, at the expense of their regular duties. The District took steps to allocate time for Council members to attend Council meetings and perform Council work, similar to the way bargaining unit officers and representatives can designate time spent on union activities as "union release." The District should continue this practice to support the Council's efforts.

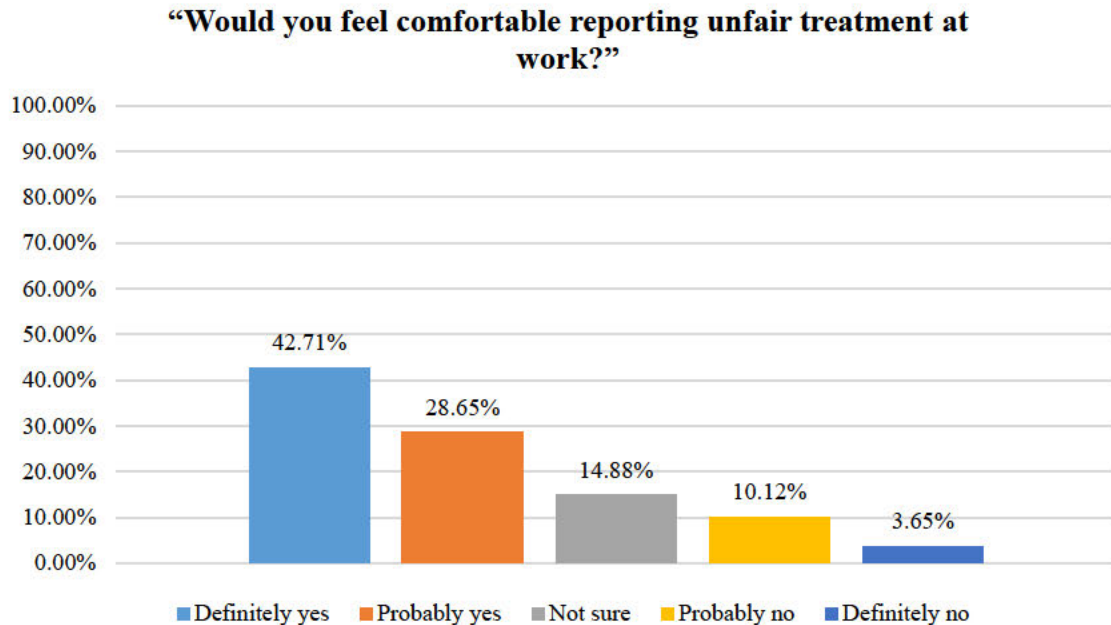
**Include the DE&I Council in the implementation of the recommendations in this Report as appropriate.**

Many of the recommendations in this Report for preventing EEO Issues are aligned with the DE&I Council's interests. The District should include the Council in the implementation of the recommendations as appropriate.

**C. Recommendations Regarding Employees’ Fear of Retaliation Related to EEO Issues**

Employees who fear reprisal or retaliation often are discouraged from raising EEO Issues, which is consistent with the Review data discussed below.

The chart below illustrates that 71% of Survey participants would feel comfortable reporting EEO Issues internally.<sup>68</sup>



The 29% of Survey participants who expressed discomfort with reporting EEO Issues internally most frequently noted the following reasons for their discomfort: (1) fear of retaliation and/or other damage to their career; (2) a perception that no one will care about their concerns and/or the District would not take action to address their concerns; and (3) a perception that HR and/or managers with knowledge of the complaint would not maintain appropriate confidentiality. A smaller number of participants attributed their discomfort to a previous negative reporting experience.

The Survey yielded the following additional insights regarding perceived EEO Issues:

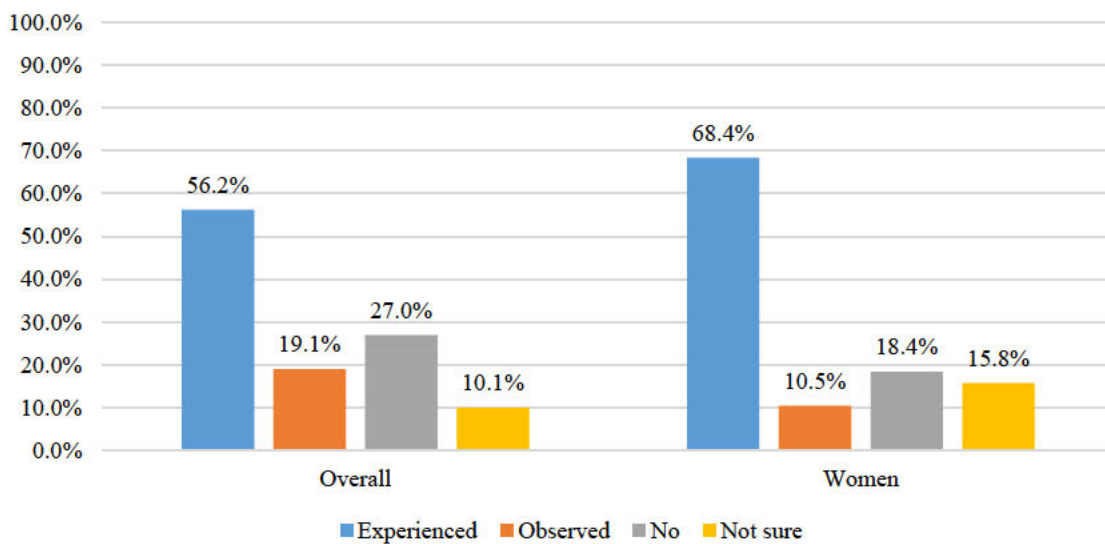
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<sup>68</sup> At first glance, this result appears to be inconsistent with the results of the Ethics Survey. It is important to note, however, that the surveys asked different questions. The Ethics Survey asked whether participants agreed with the statement, “I can disclose a suspected violation without fear of reprisal.” In our Survey and follow-up interviews, we intended to determine why employees fear reprisal or retaliation for reporting concerns, and related facts to support their fears, if any. We did not determine if employees are more or less comfortable reporting EEO Issues than suspected ethics violations.

- Managers are more comfortable with the concept of reporting their concerns than rank-and-file employees, but less likely actually to report their concerns. This result is particularly evident for managers at Union Station. To the contrary, managers at desert facilities are significantly less comfortable with the concept of reporting than other managers in the District.
- Female employees are less comfortable with the concept of reporting than male employees, but more likely to actually report their concerns.
- Employees who work at desert facilities are less comfortable with the concept of reporting than other employees.

To learn more about these trends, we asked interviewees whether they had experienced retaliation after making a complaint, or knew of another employee who had been retaliated against. The chart below illustrates that approximately 75% of interviewees responded affirmatively.

**“Have you experienced or observed retaliation after making a complaint?”**



This questioning revealed several insights:

- Female employees are more likely than male employees to have experienced conduct they perceive as retaliation after making a complaint, and female employees who work at desert facilities unanimously reported such experiences.
- Managers are significantly less likely to report retaliation than rank-and-file employees.

- Approximately 54% of interviewees who experienced conduct they perceived as retaliation have worked at the District for more than 16 years. Only two such interviewees (4%) have worked for the District for five or fewer years.
- Approximately 56.5% of the alleged incidents reported by interviewees occurred in 2020 or 2021.
- Approximately 42% of interviewees reported that the District withheld a promotion because of their complaint.

As we discussed in **Section VI.A.2.** above, 33% of the District’s EEO cases from 2015 to present included a retaliation claim.

If the District implements the recommendations detailed in **Sections VI.A. and B.** above, District employees will be less likely to experience EEO Issues, and more likely to report if they become aware of EEO Issues.

In addition, we recommend the District take the additional steps outlined below.

**Implement a District-wide communication program regarding what conduct may constitute retaliation under the District’s policy, and the District’s commitment to protecting employees from retaliation.**

Engaging in protected activity, including submitting an EEO complaint, does not give an employee a “free pass” on poor performance or misconduct. Nor does it relieve the employee’s manager of their duty to manage. However, after employees engage in protected activity, they often interpret as retaliation any action that they perceive as negative.

The District should implement a communication program to educate employees about what conduct does, and does not, constitute retaliation. There may be circumstances in which a manager must take reasonable and necessary action to manage an employee’s work performance during and after an investigation. The action is not considered retaliation unless it was intended to punish the employee because of the protected activity. The program also should advise managers who are the respondent in a complaint to consult with their HR Strategic Partner about how to continue managing an employee during and after an investigation.

**Strictly limit the dissemination of information regarding internal complaints of potential EEO Issues.**

Some employees absolutely must know about internal complaints. For example, the EEO Officer must collaborate with Employee Relations to implement appropriate corrective action and restorative practices. However, the District should ensure that investigation reports and information about complaints is disseminated only on a true “need to know” basis. The fewer people who know about the complaint, the smaller the chances are that someone will retaliate against the complainant or anyone else involved in the complaint process.

Additionally, on a regular basis, the District should reinforce the expectation that employees in confidential positions must not discuss complaints with anyone who does not need to know about them.

**Establish a system to ensure that the EEO Office maintains ongoing communication with the complainant(s) and the respondent(s) during an investigation.**

Ongoing communication with the complainant(s) and the respondent(s) during an investigation reduces anxiety, builds trust, and decreases the likelihood of retaliation against the parties and other participants in investigations. The EEO Office should establish a system to ensure such communication happens at regular intervals.

As a standard procedure, the EEO Office should explain to complainants what is, and is not, considered retaliation, and encourage complainants to report anything that happens that the employee considers adverse.

It is appropriate for the employees in the EEO Office to have empathy with both complainants and respondents. It is natural for a respondent to be upset about being the subject of a complaint. The EEO Office should coach respondents to view the complaint as an indication of a problem that needs to be solved, not a personal attack. Remind respondents that employees have a right to complain, the District has an obligation to investigate the complaint, and the respondents will have an opportunity to tell their side of the story.

The District's existing practice of scheduling meetings or calls with complainants and respondents to deliver opening/closing memoranda and answer questions encourages trust between the EEO Office and employees. We encourage the District to continue this best practice.

**Inform every employee interviewed during an investigation that District policy prohibits retaliation against any employee who submits a complaint, and against any witness who participates in the investigation, including the respondent.**

As a standard procedure, EEO investigators should inform every employee interviewed during an investigation that confidentiality is expected. Explain that when employees talk about the investigation, it could increase the chances of retaliation, and compromise the integrity of the investigation.

Additionally, EEO investigators should inform interviewees that District policy prohibits retaliation against any employee who submits a complaint, and against any witness who participates in the investigation, including the respondent.



**D. Recommendations Regarding Board of Directors' Oversight of the Issues and Concerns Addressed in this Report**

We recommend that the Board take the steps outlined below regarding the Board's oversight of the issues and concerns discussed in this Report.

**Require the District to provide monthly and annual reports to the OP&T Committee that include quantitative data regarding EEO Issues.**

As discussed further below, the District provides the Board and Board committees a considerable amount of information regarding HR issues and personnel matters. However, the District currently does not provide reports on EEO Issues, except as requested. We recommend that the Board require the District to provide quantitative data on EEO Issues to the OP&T Committee on a monthly and annual basis.

The Ethics Office's monthly report to the Board's Audit and Ethics Committee currently includes data regarding the number and general nature of complaints received, investigations opened, and investigations pending. The EEO Office should provide a similar monthly report to the OP&T Committee.

On September 15, 2020, and November 9, 2020, the EEO Office provided information requested by the Board regarding EEO cases over a given period of time, including aggregate data regarding the basis of the complaints, complainant demographics, and investigation results (i.e., substantiated or unsubstantiated).<sup>69</sup> The EEO Office should provide to the OP&T Committee an annual report with similar information for EEO complaints made each calendar year. In addition to the type of information provided in the September 15, 2020, and November 9, 2020, reports, the annual report should include data on the average length of time to resolve complaints, and a summary of any disciplinary actions taken.

Reports should include quantitative data only, and should not include the names of any of the employees involved or details of the complaint beyond the general nature (e.g., sexual harassment, age discrimination, etc.).

**Require the District to obtain education and employment verifications for external candidates selected through the recruitment process for employment with the District.**

For each position in the District, HR prepares a job description that specifies the minimum qualifications for the position, such as a specific educational degree, years of experience, or mandatory certificates or licenses. Our interviews with employees revealed that some employees believe the District hires or promotes candidates who are not qualified for their position because

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<sup>69</sup> The EEO case results the District reported generally are similar to the results of our analysis discussed above. However, where we noted the results were "mixed," the District reported the results as "unsubstantiated."

the District accepts candidates' representations of their education or experience on employment applications as true, without verifying said information.

HR runs background checks (i.e., criminal history) on external applicants who are selected through the recruitment process for employment with the District. However, we were unable to determine whether the background check process includes education and employment verifications (e.g., obtaining verification from former employers, educational institutions, and licensing bodies that the information applicants provided to the District is accurate). If the District's background checks do not include verifications, the District should consider adding verification services to its background check requests, or assign this function to an employee on the recruiting team.

**Continue to evaluate the District's recruiting policies and procedures, including for the Apprenticeship program, and recommend adjustments as appropriate.**

As discussed in **Section VI.A.1.b.** above, some employees believe the District engages in unfair hiring practices, particularly with regard to promotions and transfers. However, we generally found little merit to these concerns. Other than the issues already discussed in this Report, we do not see substantial problems with the District's recruitment processes for the Apprenticeship program or other District positions.<sup>70</sup>

As previously discussed, the District has made significant improvements to its processes in recent years, including implementing procedures to support a fair process. For example, managers do not have access to the transfer list; hiring managers are discouraged from participating on the interview panel for the first round of interviews; interview panels pose the same questions to every candidate and score every candidate using the same rubric; panelists' scores must be within one rating level of each other; and hiring managers must complete a "Final Hiring Interview Recommendation" form with narrative justifying their selection for HR to review. However, many employees are unaware of these requirements, and continue to have misconceptions about how the recruiting process works.

The District should continue to evaluate and adjust its recruitment process as needed, and consider ways to clarify misinformation about the process.

**Continue carefully and thoroughly to evaluate information provided by District Leadership that provides insight into patterns of EEO Issues.**

Most Director-interviewees stated that the District provides the Board sufficient information regarding HR issues and personnel matters, and is responsive to Directors' requests for additional data. Our review of reports and presentations provided to the Board corroborated these statements. For example, the "Human Resources" section of the General Manager's monthly

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<sup>70</sup> Many interviewees complained that the recruitment process takes too long. Recommendations to improve the efficiency of the District's recruitment process are beyond the scope of this Review.

report includes “HR Metrics” showing quantitative data regarding headcount, recruitments, job audit requests, and personnel transactions (e.g., hires, promotions, separations, and transfers). The General Counsel’s monthly report includes details about employment-related litigation. The report also lists outside counsel agreements and the purpose for each agreement, including agreements for EEO investigations and HR litigation. Legal’s quarterly report lists settled claims and separation agreements.

Assuming the District complies with our recommendation above to provide additional reporting on EEO Issues, the reports listed above and the new EEO reports in combination provide insight into potential EEO Issues and other working environment issues. Directors, particularly those on the OP&T Committee, are responsible for reviewing the information provided, recognizing trends in the numbers that may indicate an issue, and asking questions.

**Encourage management transparency by providing appropriate support and resources to resolve EEO Issues.**

Several interviewees told us about incidents in which managers felt pressured to withhold negative information from the Board. The majority of these incidents involved pressure from a manager who is no longer employed with the District. However, some employees still sense that managers may be reluctant to share negative information with the Board.

District Leadership and other managers we interviewed overwhelmingly reported that they do not feel pressured to withhold negative information from the Board. To the contrary, they stated that, although it has not always been the case, Executive Management currently encourages transparency. They generally understand the importance of sharing “good news” and “bad news” with the Board.

It is important that District Leadership and managers have confidence that if they notify the Board of an issue, the Board will collaborate with them in a positive manner to resolve the issue. The Board should be mindful that their response is instrumental in encouraging or discouraging transparency.

**Continue to be mindful of the Board’s role related to EEO Issues and the District’s day-to-day operations.**

Although District Leadership should keep the Board apprised of key developments and the resolution of high-profile EEO Issues that have long-term effects on the District, the Board should not be involved in the District’s day-to-day operations or its EEO processes.

**Require Directors to model professionalism and respectful behavior at all times, and reinforce these expectations on a regular basis.**

It is unhealthy for members of a Board to always be on the same page; robust debate of issues is necessary for a Board to do its important work. Directors who express strong opinions do

so because they care. However, a Board cannot progress beyond debate and make reasoned decisions when the debate becomes overly heated.

It is apparent that in-fighting on the Board is perpetuating the District’s culture and working environment challenges, and damaging the District’s reputation. It is difficult for employees to feel confident about the District’s commitment to change when the Board is factionalized.

We recommend the Chairwoman of the Board take additional steps to re-establish trust and encourage a more cohesive Board, and the District should provide support and resources as needed to support the Chairwoman’s efforts.<sup>71</sup>

**Designate a committee and allocate funds for the District to implement the recommendations detailed in this Report.**

Although some of the recommendations in this Report are simple, many are complex, and span multiple areas of responsibility. The Board should designate a committee to request and review the District’s response to each recommendation, allocate funds for the District to implement the recommendations the Board chooses to accept, and track the District’s progress on implementing the accepted recommendations.

**Conduct an annual employee survey for at least the next five years to evaluate the District’s progress in implementing the recommendations in this Report, and the effectiveness of those recommendations.**

If nothing else, we learned in this Review that most District employees—even the unhappy ones—are committed to the mission of providing safe, reliable drinking water to Southern California. They know they deserve a workplace that allows them to contribute to this mission while being treated with dignity and respect, and they want to be heard when that is not happening.

The issues that triggered this Review are serious, and require a genuine and sustained response. The District cannot consider the issues resolved once it has completed implementation of the recommendations in this Report. Conducting an annual employee survey will help the District ensure that changes are effective, and reveal any unintended consequences or new issues. Further, soliciting feedback generates trust and shows genuine interest in the well-being of the employees.

## **VII. OTHER ISSUES RAISED**

In this section, we provide a brief summary of additional issues raised by employees during the course of the Review. We did not make findings or recommendations regarding these issues.

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<sup>71</sup> In the spirit of modeling inclusive language, as recommended elsewhere in this Report, we also recommend that the District refer to Chairwoman Gray as “Chairperson Gray.”

**A. Questions Regarding the Board’s Motivation**

Several interviewees, including Director-interviewees, speculated that certain Directors “orchestrated” the public comments that triggered this Review in an effort to affect the General Manager recruitment.

**B. Questions Regarding Use of District Resources for Union Activities**

Several interviewees questioned the allocation of District resources to union activities, including the long-term release of employees to work full-time in union leadership positions.

**C. Security Team Investigations**

It is a best practice in workplace investigations for an investigator to “create an environment that maximizes the likelihood of obtaining reliable information.” Investigators should strive to establish a rapport with witnesses to encourage them to fully share all relevant information.

In the course of our Review, we reviewed files related to the District Security Section’s investigation of allegations regarding misconduct by Nash. The files included copies of a document entitled, “Administrative Investigation Statement Guidelines” that witnesses sign. The document establishes the investigator’s “ground rules” for the interview, such as, “Only one of us talks at a time,” and, “I am not here to argue with you or anyone else. If I don’t get your cooperation or if I get nothing but interference, I will just call it a day and let you get further instruction from either your management or the General Counsel.”

This approach to witness interviews is not appropriate in workplace investigations. The combative and condescending tone of the document does not set the tone for productive interviews, and workplace investigators are expected to employ more effective techniques for managing difficult witnesses.

**D. Placement of the Environmental Compliance and Safety and Regulatory Service Functions within the Organizational Structure**

Currently, the District’s Environmental Program Support Team (“EPS”) and Safety and Regulatory Services Team (“SRS”) are in the Operational Safety and Regulatory Services Section within WSO. Both teams serve regulatory compliance functions.

A few interviewees stated that the EPS and SRS should report to the CAO instead, for two reasons. First, they believe reporting to managers within the same group as the functions they regulate is a conflict of interest. Second, they stated that employees in groups outside of WSO, such as Engineering and WRM, do not recognize that they support the entire District, not just WSO.

Although we did not review this issue, at least one manager in WSO raised the issue in the context of disagreeing with this position.

**E. Safety Issues**

Several employees expressed concern about safety issues in the District, particularly in field facilities. A majority attributed the safety issues to understaffing or a lack of managerial accountability.

One employee complained that SRS defers to managers in the Water Quality Section regarding laboratory safety and chemical hygiene issues, and managers delegate these issues to employees who are unfamiliar with the regulations. The employee believes the District should create appropriate safety protocols (e.g. storage protocols for different kinds of water treatment samples), and train employees on the protocols.

**VIII. CONCLUSION**

Currently, the District generally provides a safe and respectful working environment for women, racial and ethnic minorities, and members of the LGBTQ+ community, although that was not the case historically, and the District has significant work to do.

This Report provides recommendations for promoting a positive working environment, and best practices in responding to employee concerns and preventing retaliation. Attention to these issues cannot be viewed as a distraction from the mission to provide adequate and reliable supplies of high-quality water to Southern California. The water flows as a direct result of the contributions of the District's 1,800-plus employees. If the District is to succeed in its mission, it must focus on creating a safe and respectful workplace for every employee, every day.

Based on the Review data, it appears that the District is committed to preventing future EEO Issues, and encouraging a more positive and respectful working environment. Of course, change takes time, and changing the culture will require effort on the part of everyone at the District.

We wish to thank all of the employees who trusted us with their stories.

Very truly yours



Jennifer Shaw



Brooke Kozak

## **EXHIBIT 1**



● **Board of Directors**  
**Organization, Personnel and Technology Committee**

11/10/2020 Board Meeting

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8-2

**Subject**

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Authorize and direct the Ethics Officer to enter into a contract with an outside legal counsel in an amount not-to-exceed \$200,000 to conduct an independent review of allegations of systemic Equal Employment Opportunity related discrimination, harassment, and retaliation, and related concerns; the General Manager has determined that the proposed actions are exempt or otherwise not subject to CEQA

**Executive Summary**

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In response to public comments at Committee and Board meetings in recent months alleging systemic harassment and retaliation at Metropolitan, the Organization, Personnel and Technology Committee (OP&T Committee) held a special meeting on October 27, 2020 to hear from staff about Metropolitan's efforts to evaluate and address the concerns. The OP&T Committee approved a motion to add an action item to the November 10, 2020 Board agenda to consider and approve an independent review of Equal Employment Opportunity (EEO), Diversity, Equity, and Inclusion, and related concerns at Metropolitan as described in a letter submitted by Directors Sylvia Ballin, Adán Ortega, and Charles Treviño (**Attachment 1**). As requested, the Ethics Officer prepared this letter to facilitate consideration of this matter.

**Details**

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**Background**

In public comments at Committee and Board meetings over the past several months, employees and employee associations expressed concerns about systemic workplace harassment, retaliation, and related issues at Metropolitan. At the October 27, 2020 OP&T Committee meeting, staff detailed various ongoing efforts by Metropolitan to evaluate and address the concerns:

**1. Establishment of Diversity, Equity, and Inclusion Council and related outside consulting services**

In the spring of 2020, the General Manager established the Diversity, Equity, and Inclusion Council (DE&I Council) comprised of representatives of bargaining units, employee resource groups, and management. The DE&I Council's stated purpose is development and consideration of ideas and policies for enhancing the work environment at Metropolitan in the areas of diversity, equity, and inclusion.

In October 2020, Metropolitan issued Request for Proposals (RFP) No. 1258 for outside consulting services to conduct a climate assessment and related analyses of diversity, equity, and inclusion issues at Metropolitan. The Scope of Services in the RFP was developed with input from DE&I Council members to assess areas they deemed appropriate. On a collaborative basis, the DE&I Council intends to guide the work of this consultant. Responses to this RFP were due on November 2, 2020. Assistant General Manager Shane Chapman gave a presentation about this scope of services at the October 27, 2020 OP&T Committee meeting.

**2. External climate assessment administered by the General Counsel**

On October 1, 2020, the General Counsel entered into Agreement No. 193454 with Van Dermyden Maddux Law Corporation (VMLC). Under this agreement, the firm would "conduct and administer a climate review to address allegations of EEO-based systemic discrimination, harassment, and retaliation brought forward by Metropolitan employees regarding but not limited to: (a) Metropolitan's Desert operations; and (b) Metropolitan's



apprenticeship program.” The scope of this agreement does not currently include review of specific cases or investigations. Assistant General Counsel Henry Torres gave a presentation about this agreement at the October 27, 2020 OP&T Committee meeting. The firm has begun work under the direction of the Legal Department and has begun submitting invoices. In addition to personnel from the Legal Department, the Human Resources Group Manager has been participating in meetings with VMLC mainly for background information regarding Metropolitan employees, facilities, and structure.

### **3. Ethics Office evaluation of Metropolitan’s EEO complaint policies and processes**

In August 2020, Ethics Office staff began a review of Metropolitan’s policies and procedures for handling EEO complaints. Ethics Office staff gave a presentation on this review at the October 27, 2020 OP&T Committee meeting.

#### **Motion at October 27, 2020 Committee meeting**

Director Ballin made the following motion at the October 27, 2020 Committee meeting:

“I would like to make a motion to add an action item on the agenda for the OP&T Committee in November, for action recommended to the Board of Directors also in November, consistent with the memorandum that Directors Ortega, Treviño, and myself distributed to the Board yesterday, October 26.

We would like to move that the Board consider and approve in November 2020 a review of the DEI initiative, procedures in place to investigate workplace harassment, concerns about workplace retaliation as reflected in the Ethics Officer’s survey earlier this year, as well as by the employees, and any other related matters through an independent outside legal counsel, working with the Ethics Officer and the OP&T Committee, in a manner that protects confidentiality of the members of our workforce who are part of the review.

The results of the review will go to the OP&T Committee and the Board, with recommendations for policies and management actions that may be necessary.”

Director Camacho seconded the motion, and the OP&T Committee approved the motion unanimously. The memorandum referenced in Director Ballin’s motion is included as **Attachment 1**.

#### **Proposed action item**

Based on the recommendations in the aforementioned memorandum, director and employee comments at the October 27, 2020 OP&T Committee meeting, and staff’s comments about ongoing efforts by Metropolitan to evaluate and address these issues, the Ethics Officer has proposed this item for consideration as described below.

#### **Option #1**

This alternative would authorize and direct the Ethics Officer to enter into a contract with an outside legal counsel in an amount not to exceed \$200,000 to conduct an independent review of allegations of systemic EEO-related discrimination, harassment, and retaliation, and related concerns as described in **Attachment 1**.

Under this alternative, the scope of work would include examination of the elements identified in **Attachment 1**, summarized below:

- a. How EEO-related discrimination, harassment, and retaliation claims are handled by senior management, human resources staff, legal department, and other levels of management. Include examination of processes utilized in: (1) the case that was the subject of the General Manager’s October 20, 2020 communication to the Board of Directors; and (2) cases reported by claimants during meetings of Committee and Board members throughout 2020.
- b. Effectiveness of processes related to the DE&I Council, including confidential interviews of participants.
- c. Degree of employees’ fear of reprisal for reporting violations, including results of Ethics Office employee survey and independent climate assessment.
- d. Compliance with best practices in these and related areas.

- e. Level of Board of Directors oversight of issues and concerns related to: (1) diversity, equity, and inclusion; (2) handling of EEO-related complaints; (3) fairness and favoritism in employment practices; (4) management accountability; (5) fostering a safe working environment for women, ethnic and racial minorities, and LGBTQ employees.

The Ethics Officer would direct the outside counsel's work without involvement of management or Office of the General Counsel personnel. Outside counsel would provide a confidential written report of findings and recommendations and present the report concurrently to the Ethics Officer and the OP&T Committee.

The Board of Directors would waive any limitation in the Administrative Code restricting the role of the Ethics Officer with regard to these matters or contrary to this action.

## **Policy**

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Metropolitan Water District Administrative Code Section 11104: Delegation of Responsibilities

Administrative Code, section 1300 (Board Governance Principles)

Administrative Code, section 1301 (Board Product)

Administrative Code, section 6470 (Ethics Officer; Powers and Duties)

## **California Environmental Quality Act (CEQA)**

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### **CEQA determination for Option #1:**

The proposed actions are not defined as a project under CEQA (Public Resources Code Section 21065, State CEQA Guidelines Section 15378) because the proposed actions will not cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment and involve continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, the proposed actions are not defined as a project under CEQA because they involve the creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment (Section 15378(b)(4) of the State CEQA Guidelines).

### **CEQA determination for Option #2:**

None required

## **Board Options**

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### **Option #1**

Authorize and direct the Ethics Officer to enter into a contract with an outside legal counsel in an amount not to exceed \$200,000 to conduct an independent review of allegations of systemic Equal Employment Opportunity related discrimination, harassment, and retaliation and related concerns.

**Fiscal Impact:** \$200,000 for consulting services.

**Business Analysis:** Committee's motion called for immediate consideration of this matter.

### **Option #2**

Take no action.

**Fiscal Impact:** Not applicable.

**Business Analysis:** Defer subject matter of item.

**Staff Recommendation**

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**Option #1**



Abel Salinas  
Ethics Officer

11/6/2020

Date

**Attachment 1 - Letter submitted by Directors Ballin, Ortega, and Treviño**

Ref# e12680905

**TO:** Chairman John Murray, MWD OP&T Committee

**Cc:** Chairwoman Gloria Gray, Ethics Chairwoman Marsha Ramos; and members of the Board of Directors

**FROM:** MWD Directors Sylvia Ballin, Charles Trevino, Adán Ortega

**SUBJECT:** **Addressing Allegations of Systemic Workplace Harassment and Fear of Retaliation at MWD Through an Independent Review & Evaluation**

Over the past several months, the Board of Directors of the Metropolitan Water District of Southern California (MWD), has heard disturbing reports and statements alleging individual and systemic workplace harassment and fear of reprisals affecting our workforce. As former MWD employees who are now members of the Board of Directors, we have been asked to provide our opinions regarding steps that will assure the workforce that the Board of Directors takes their comments about systemic issues with the workplace environment seriously.

Metropolitan's Board Governance Principles require that the Board of Directors establish written policies to protect Metropolitan as an organization, including development of terms and conditions of employment and maintaining a safe and inclusive workplace environment. Administrative Code §1301. Duties of the OP&T Committee include oversight of relations between the District and its employees, and especially, equal employment opportunity, affirmative action and work rules pertaining to the health and safety of employees. Administrative Code §2481(c) and (d). Duties of the Audit and Ethics Committee include responsibility for the ethical conduct of the business of Metropolitan and oversight of investigations.

We believe that the board must act fast to assure all employees including management, that the Board will proceed in an objective manner to determine whether the facts behind the allegations of distrust and fear of reprisals for reporting workplace harassment, and conduct the of Diversity, Equity and Inclusion Council, may warrant action by the Board with regards to MWD policies and management. Thus, we propose the following areas of inquiry to be considered by the Organization, Personnel and Technology Committee in November, for recommended action by the Board of Directors on November 10, 2020:

**Recommendation:** Authorize the Ethics Officer to retain independent outside legal counsel to support the work of the OP&T Committee and conduct a confidential independent review of related programs and investigations including but not limited to the following areas of inquiry, with monthly reports on progress beginning in December's OP&T Committee meeting:

**Ethics Office Employee Survey:** The Ethics Officer recently reported the results of an MWD employee survey demonstrating that less than half of the respondents affirmatively responded to the following question: "I can disclose a suspected violation of any law, rule or regulation without fear of reprisal." We recommend that the independent legal counsel and Ethics Officer analyze the survey results to determine if details in the survey point to patterns in terms of the levels of the workforce that harbor high levels of fear over workplace reprisal for reporting wrongdoing.

**DEI Council:** Given the boycott of the Diversity, Equity and Inclusion Council announced by a caucus of MWD female employees, we recommend that the inquiry include confidential meetings with the individual members of the council to assess their understanding of their roles, their confidence in the Council's structure and mission; directives given by management to the participants collectively and individually (officially and unofficially); role of the general counsel's office; fairness in facilitation; and degree of focus in addressing issues relevant to the broader workforce, especially

as it pertains to issues found in the ethics survey addressing the fear of reprisals; as well as other questions as deemed appropriate by the independent outside counsel in consultation with the Ethics Officer.

**Harassment Claims:** We recommend that the inquiry include a confidential examination of how sexual and other workplace harassment claims are handled by senior management, human resources staff, district legal counsel, and managers at all levels and provide a report on the level to which best management, legal and human resources practices are met; as well as compliance with industry standards and the law. This should also include a focus on measures taken to protect LGBTQ complainants. We would specifically request examination of the process utilized in the case reported by the General Manager in his communication to the Board of Directors on October 20<sup>th</sup>, as well as those reported by the claimants themselves during meetings of the OP&T Committee and the Board throughout 2020, and any others that can help establish patterns of good or bad practices.

**Other Related Activities:** The review and inquiries may include any other related administrative, legal, and organizationally related activities being carried out by any and all departments of the district and their respective groups, sections, and teams, as carried out by any individual(s) in the line of management, related to diversity, equity and inclusion; anti-harassment trainings; and general employee relations.

**Oversight by The Board:** We would like to request an examination of board agendas, minutes, recordings of meetings as necessary of the Board of Directors, the OP&T, Legal & Claims, and the Audit & Ethics Committee to determine the level at which the Board is exercising proper oversight and implementation of policies addressing issues of Diversity, Equity, and Inclusion, including but not limited to the adequacy of policies and procedures dealing with complaints of harassment; fostering fairness and discouraging favoritism in employment and promotion practices; provisions for management accountability; as well as for fostering a safe environment for women, ethnic, racial minorities, and LGBTQ employees.

**Role of the Ethics Officer:** We recommend that the Ethics Officer be provided with a budget to oversee this matter and facilitate the work of the Committee, and be designated to be the support staff to facilitate the work of the Committee, as assisted by independent outside legal counsel. In order to ensure the complete impartiality and objectivity of the Committee and its work, no other member of management or General Counsel's office shall participate or be privy to the confidential work of the independent outside counsel, preparation of reports to the Committee regarding best management, legal and HR practices, degree of effectiveness and/or recommended policies; as well as reviews of the performance of senior management and district counsel, and recommended actions to address any deficiencies that are found.

Finally, we recommend that any limitations found in the administrative code restricting the role of the Ethics Officer with regards to these matters or to the contrary be hereby waived by the Board of Directors.

Sylvia Ballin  
San Fernando  
Former Employee

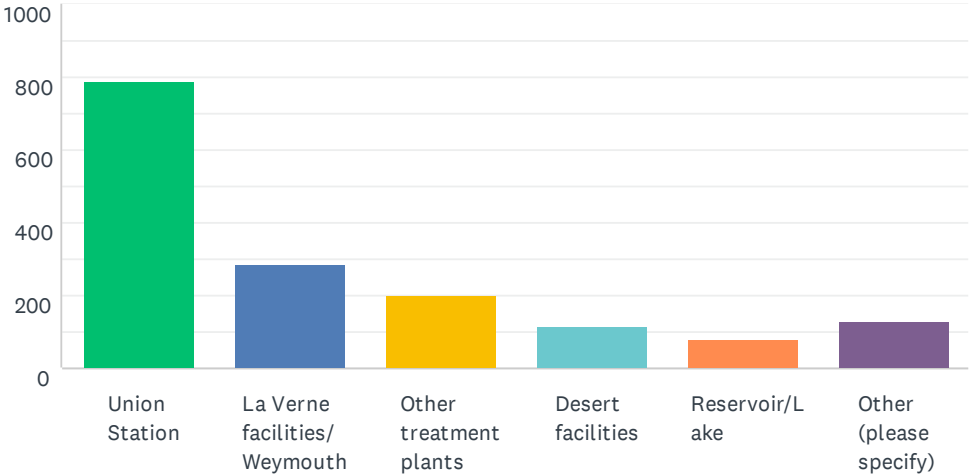
Charles Trevino  
Upper San Gabriel Municipal  
Water District  
Former Employee

Adán Ortega  
City of Fullerton  
Former Employee

## **EXHIBIT 2**

### Q1 Where is your primary work location?

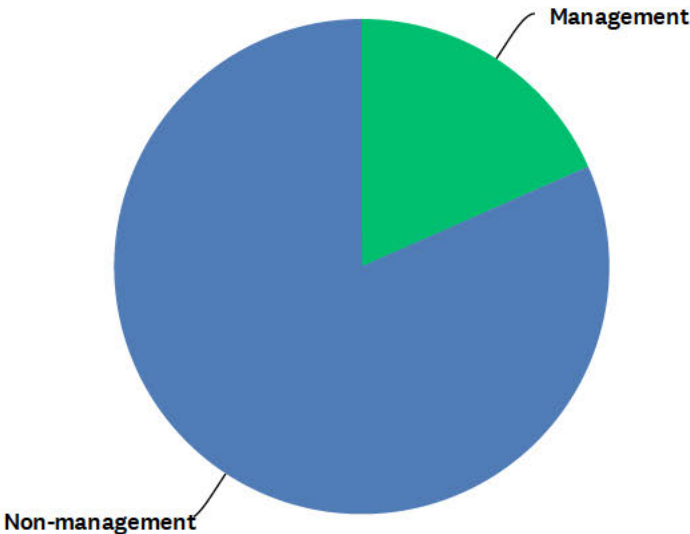
Answered: 1,598 Skipped: 0



ANSWER CHOICES	RESPONSES	
Union Station	49.37%	789
La Verne facilities/Weymouth	17.77%	284
Other treatment plants	12.64%	202
Desert facilities	7.07%	113
Reservoir/Lake	4.88%	78
Other (please specify)	8.26%	132
<b>TOTAL</b>		<b>1,598</b>

## Q2 Are you in a management or non-management position?

Answered: 1,598 Skipped: 0

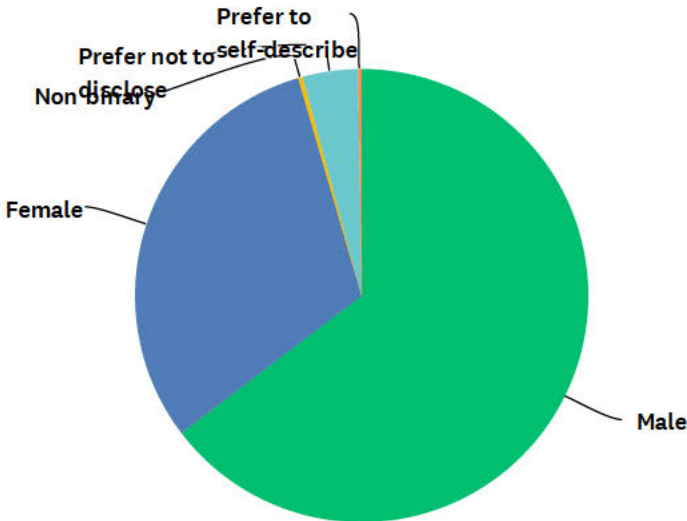


ANSWER CHOICES	RESPONSES	
Management	18.40%	294
Non-management	81.60%	1,304
TOTAL		1,598



### Q3 Which of the following best describes your gender?

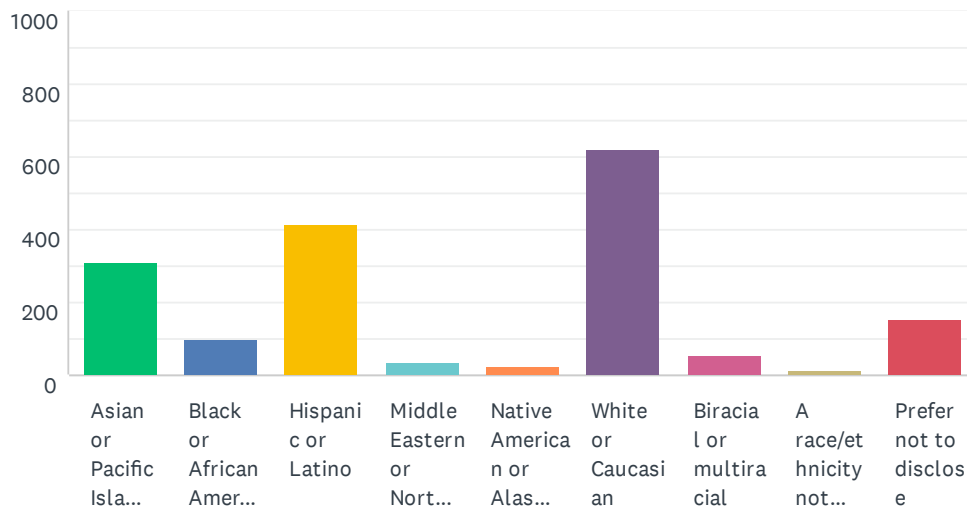
Answered: 1,598 Skipped: 0



ANSWER CHOICES	RESPONSES	
Male	64.64%	1,033
Female	30.85%	493
Non-binary	0.31%	5
Prefer not to disclose	3.94%	63
Prefer to self-describe	0.25%	4
TOTAL		1,598

### Q4 Which of the following best describes your race/ethnicity? (Please select all that apply)

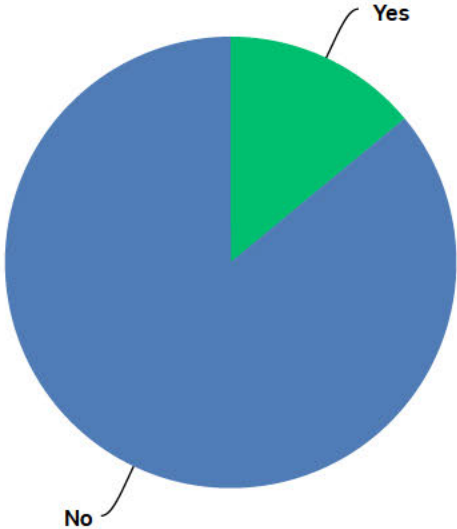
Answered: 1,598 Skipped: 0



ANSWER CHOICES	RESPONSES	
Asian or Pacific Islander	19.34%	309
Black or African American	6.32%	101
Hispanic or Latino	26.10%	417
Middle Eastern or North African	2.13%	34
Native American or Alaskan Native	1.50%	24
White or Caucasian	38.80%	620
Biracial or multiracial	3.38%	54
A race/ethnicity not listed here	0.88%	14
Prefer not to disclose	9.70%	155
Total Respondents: 1,598		

Q5 In the last 3 years, have you had any experiences at Metropolitan during which someone at work treated you unfairly because of your race, ethnicity, national origin, sex, gender, sexual orientation, and/or any other characteristic protected by law?

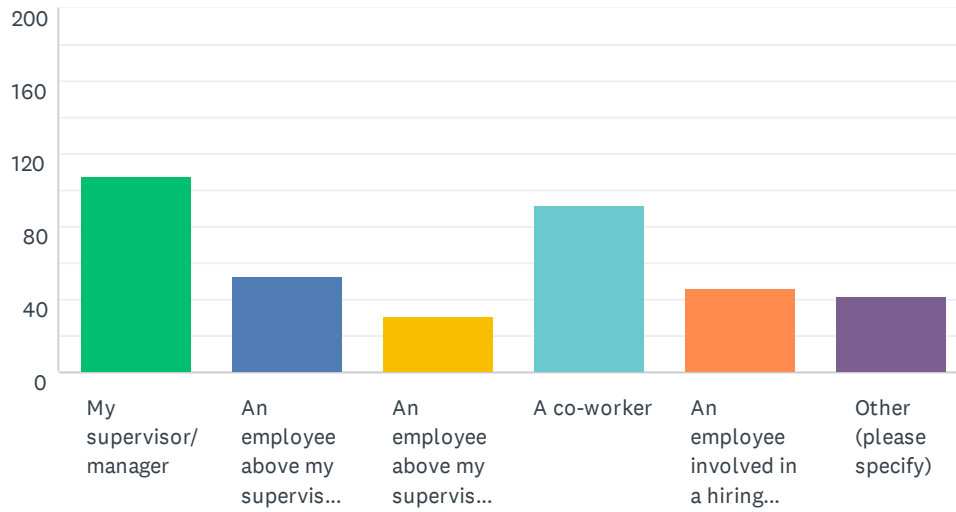
Answered: 1,590 Skipped: 8



ANSWER CHOICES	RESPONSES	
Yes	14.03%	223
No	85.97%	1,367
TOTAL		1,590

## Q6 Who treated you unfairly? (Please select all that apply)

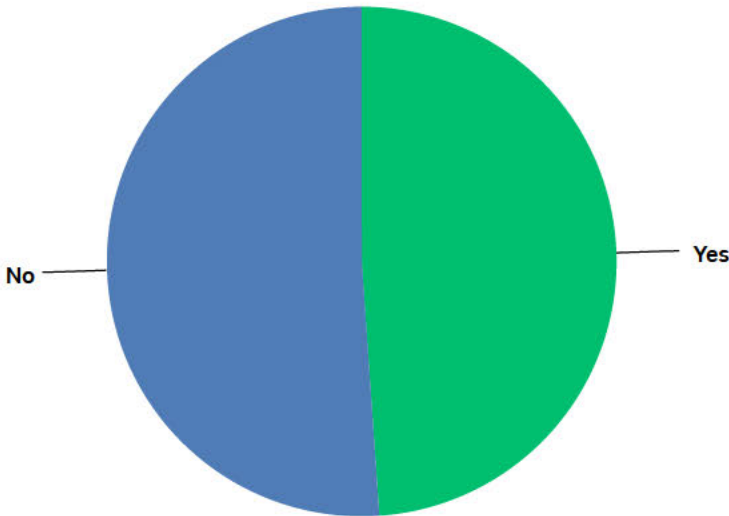
Answered: 229 Skipped: 1,369



ANSWER CHOICES	RESPONSES	
My supervisor/manager	47.16%	108
An employee above my supervisor/manager in the chain-of-command	23.14%	53
An employee above my supervisor/manager outside the chain-of-command	13.54%	31
A co-worker	40.17%	92
An employee involved in a hiring or promotional decision	20.09%	46
Other (please specify)	18.34%	42
Total Respondents: 229		

### Q7 Did you report your experience to anyone at Metropolitan?

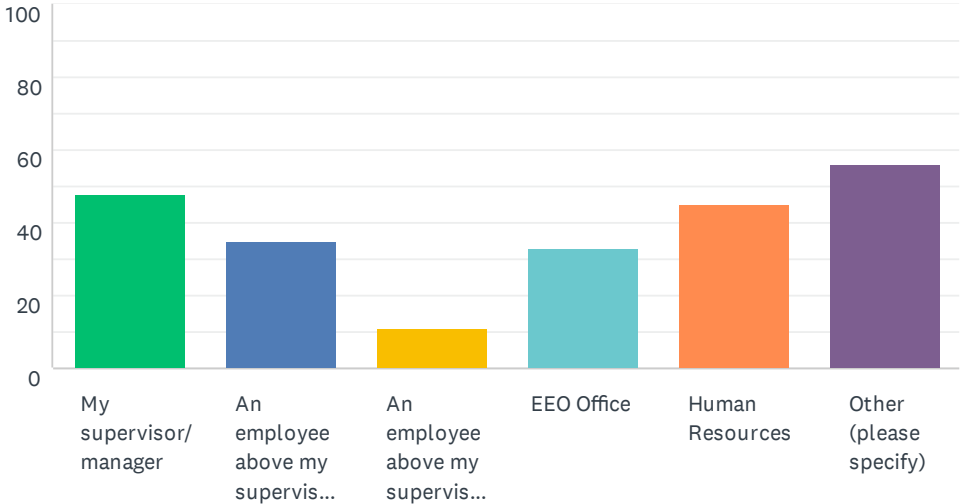
Answered: 229 Skipped: 1,369



ANSWER CHOICES	RESPONSES	
Yes	48.91%	112
No	51.09%	117
TOTAL		229

### Q8 To whom did you report your experience? (Please select all that apply)

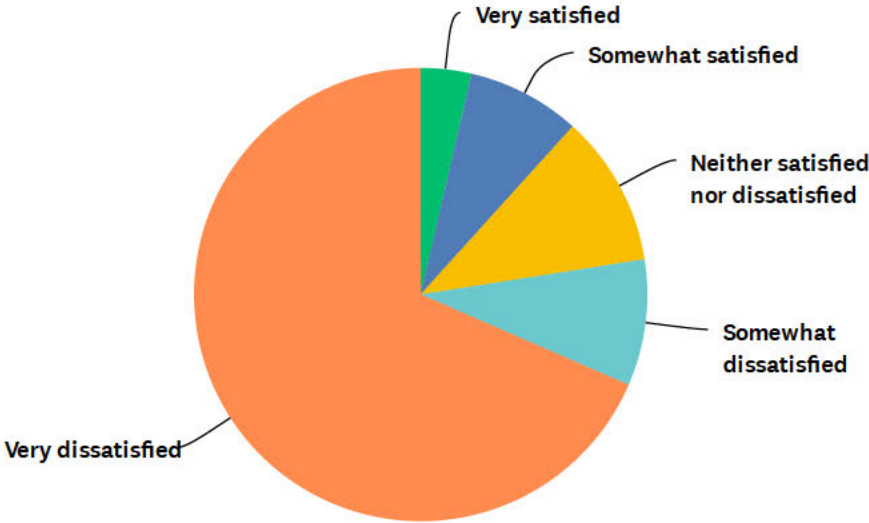
Answered: 111 Skipped: 1,487



ANSWER CHOICES	RESPONSES	
My supervisor/manager	43.24%	48
An employee above my supervisor/manager in the chain-of-command	31.53%	35
An employee above my supervisor/manager outside the chain-of-command	9.91%	11
EEO Office	29.73%	33
Human Resources	40.54%	45
Other (please specify)	50.45%	56
Total Respondents: 111		

### Q9 How satisfied or dissatisfied are you with the way Metropolitan responded to your report?

Answered: 111 Skipped: 1,487



ANSWER CHOICES	RESPONSES	
Very satisfied	3.60%	4
Somewhat satisfied	8.11%	9
Neither satisfied nor dissatisfied	10.81%	12
Somewhat dissatisfied	9.01%	10
Very dissatisfied	68.47%	76
TOTAL		111

## Q10 Please explain.

Answered: 111 Skipped: 1,487

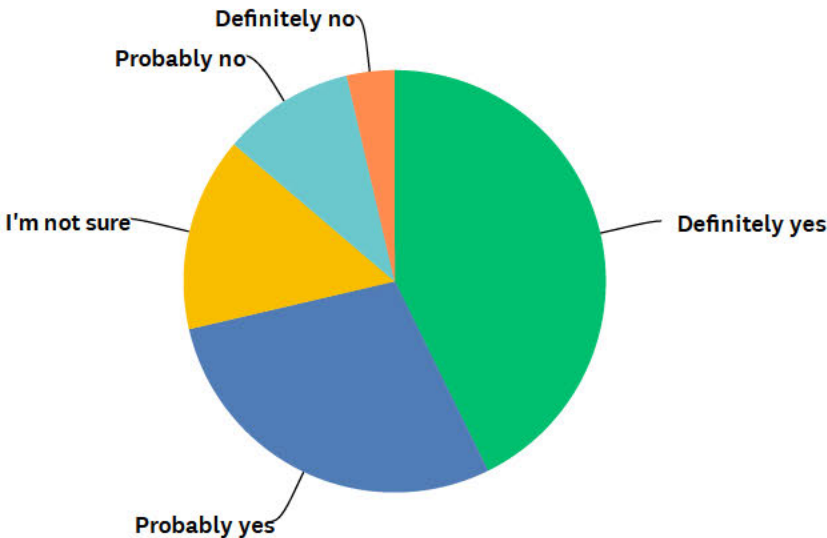


## Q11 Why did you decide not to report your experience to anyone at Metropolitan?

Answered: 110 Skipped: 1,488

# Q12 Would you feel comfortable reporting unfair treatment at work?

Answered: 1,344 Skipped: 254



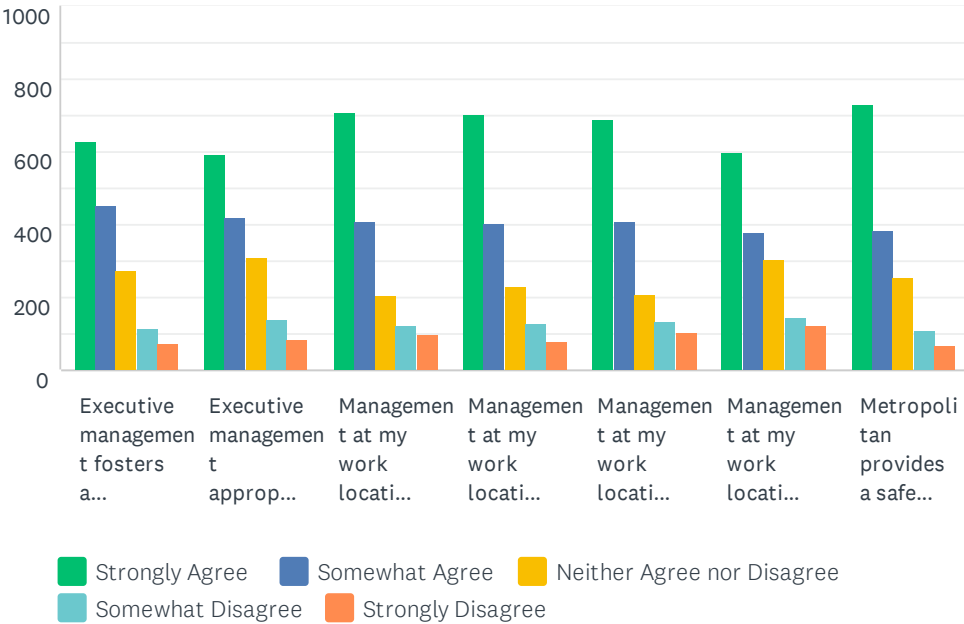
ANSWER CHOICES	RESPONSES	
Definitely yes	42.71%	574
Probably yes	28.65%	385
I'm not sure	14.88%	200
Probably no	10.12%	136
Definitely no	3.65%	49
TOTAL		1,344

## Q13 Please explain.

Answered: 1,344 Skipped: 254

### Q14 To what extent do you agree or disagree with the following statements?

Answered: 1,552 Skipped: 46



Confidential Workplace Assessment for Metropolitan Water District Employees

	STRONGLY AGREE	SOMEWHAT AGREE	NEITHER AGREE NOR DISAGREE	SOMEWHAT DISAGREE	STRONGLY DISAGREE	TOTAL	WEIGHTED AVERAGE
Executive management fosters a positive working environment.	40.72% 632	29.25% 454	17.85% 277	7.47% 116	4.70% 73	1,552	2.06
Executive management appropriately follows and enforces Metropolitan's policies and procedures.	38.27% 594	27.06% 420	19.97% 310	9.09% 141	5.61% 87	1,552	2.17
Management at my work location fosters a positive working environment.	45.68% 709	26.48% 411	13.14% 204	8.18% 127	6.51% 101	1,552	2.03
Management at my work location appropriately follows and enforces Metropolitan's policies and procedures.	45.43% 705	26.10% 405	14.88% 231	8.51% 132	5.09% 79	1,552	2.02
Management at my work location is open to employees' concerns.	44.46% 690	26.29% 408	13.66% 212	8.83% 137	6.77% 105	1,552	2.07
Management at my work location takes appropriate action to address employees' concerns.	38.60% 599	24.42% 379	19.52% 303	9.47% 147	7.99% 124	1,552	2.24
Metropolitan provides a safe and respectful working environment for women, racial and ethnic minorities, and LGBTQ+ employees.	47.04% 730	24.81% 385	16.43% 255	7.22% 112	4.51% 70	1,552	1.97

### Q15 Based on your experience at Metropolitan, how likely are you to recommend family and friends apply to work there?

Answered: 1,552 Skipped: 46



ANSWER CHOICES	AVERAGE NUMBER	TOTAL NUMBER	RESPONSES
	2	2,797	1,552
Total Respondents: 1,552			

## Q16 What changes, if any, would improve the overall culture at Metropolitan?

Answered: 1,184 Skipped: 414

## Q17 What changes, if any, would improve the culture at your work location?

Answered: 1,100 Skipped: 498

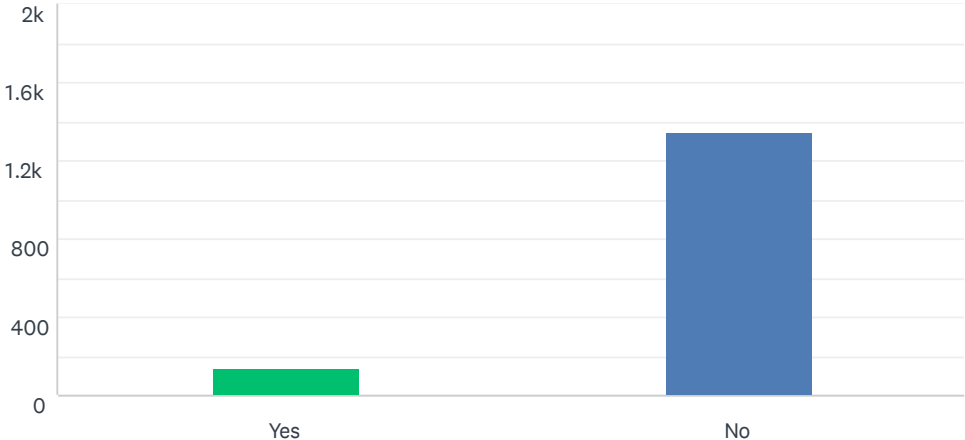


Q18 Is there any other information you would like to provide as part of this survey?

Answered: 984 Skipped: 614

# Q19 Do you have any additional information you would like to share with our investigators?

Answered: 1,484 Skipped: 114



ANSWER CHOICES	RESPONSES	
Yes	9.16%	136
No	90.84%	1,348
TOTAL		1,484

Q20 Please provide your name and an email address or phone number where we may contact you. (You do not need to use your Metropolitan email.) If you do not wish to provide this information, you may contact us directly at: Shaw Law Group, [PCMWDSurvey@shawlawgroup.com](mailto:PCMWDSurvey@shawlawgroup.com) (916) 640-2240

Answered: 129 Skipped: 1,469

ANSWER CHOICES	RESPONSES	
Name	99.22%	128
Company	0.00%	0
Address	0.00%	0
Address 2	0.00%	0
City/Town	0.00%	0
State/Province	0.00%	0
ZIP/Postal Code	0.00%	0
Country	0.00%	0
Email Address	93.02%	120
Phone Number	92.25%	119

## **EXHIBIT 3**

## LIST OF DOCUMENTS REVIEWED

We reviewed over 24,000 pages of documents and other evidence that informed the recommendations set forth in this Report. Key documents are listed below. Consistent with our representations to employees regarding confidentiality, many of the documents we reviewed (e.g., EEO case files, emails from employees) are not listed here.

<b>District Documents</b>	<b>Dates</b>
<b>Organizational Documents</b>	
District "Organization Charts"	February 2020
District flowchart regarding "Transfer Process"	June 2020
District flowchart regarding "Recruitment and Selection Process"	June 2020
District "Biennial Budget Fiscal Years 2020/21 and 2021/22"	July 2020
District "Master Transfer List"	May 18, 2021
"DE&I Initiative" organizational chart	Undated
<b>Policies and Procedures</b>	
District "Equal Employment Opportunity Discrimination Complaint Procedures"	July 1, 2011
Operating Policy H-04 "Violence in the Workplace"	January 14, 2003
Operating Policy H-10 "Recruitment Policy"	January 12, 2005
Operating Policy H-11 "Job Analysis/Job Audit"	December 19, 2005
Operating Policy H-03 "Ethics Policy"	April 27, 2009
Operating Policy H-07 "Equal Employment Opportunity"	November 5, 2012
Operating Policy H-13 "Sexual Harassment Prohibition Policy"	May 3, 2013
Memorandum of Understanding Between the District and MAPA	February 28, 2017
Memorandum of Understanding Between the District and Supervisor's Association	May 31, 2017
Memorandum of Understanding Between the District and ACE	June 19, 2017
Memorandum of Understanding Between the District and AFSCME	October 11, 2017
Metropolitan Water District Administrative Code	August 18, 2020
District "Conflict of Interest Questionnaire for Recruitment Panel Members"	Undated

**LIST OF DOCUMENTS REVIEWED**

<b>District Documents</b>	<b>Dates</b>
<b>Memoranda</b>	
Memorandum from Jeffrey Kightlinger to “All Metropolitan Employees” regarding “Diversity, Equity and Inclusion”	June 18, 2020
Memorandum from Jeffrey Kightlinger to “All Metropolitan Employees” regarding “Correspondence Standards and Use of Electronic Signature Standard”	July 6, 2020
Memorandum from Jeffrey Kightlinger to “All Metropolitan Employees” regarding “Employee Public Comments at 10/13/20 OP&T and Board Meetings”	October 20, 2020
Memorandum from Jeffrey Kightlinger to “Board of Directors” regarding “Employee Public Comments at 10/13/20 OP&T and Board Meetings”	October 26, 2020
Memorandum from Jeffrey Kightlinger to “All Employees” regarding “Additional Resources and Information Regarding MWD Employee Concerns”	March 3, 2021
Memorandum from Jeffrey Kightlinger to “Board of Directors” regarding “Employee Petition”	March 9, 2021
Memorandum from Jeffrey Kightlinger to “All Metropolitan Employees” regarding “Employee Petition”	March 11, 2021
<b>Presentations, Notes, and Reports</b>	
District report regarding “Succession Planning Workforce Excellence”	undated
District “2019 Ethics Survey”	undated
District presentation to the OP&T Committee regarding “Equal Employment Opportunity: Preventing Workplace Harassment and Discrimination”	April 9, 2019
District presentation to the OP&T Committee regarding “Equal Employment Opportunity Program Update”	July 8, 2019
“Legal Department Quarterly Reports” to the Board	February 11, 2020- May 11, 2021
District presentation to the Audit & Ethics Committee regarding “2019 Ethics Survey Results”	February 25, 2020
Audio files and transcripts, and related written submissions, of public comments to the Board and relevant committees of the Board, including the OP&T Committee	March 2020- June 2021

**LIST OF DOCUMENTS REVIEWED**

<b>District Documents</b>	<b>Dates</b>
District presentation to the Audit & Ethics Committee regarding “Ethics Survey Results Part 2”	June 23, 2020
DE&I Council meeting notes	August 19, 2020- April 7, 2021
District presentation to the OP&T Committee regarding “Equal Employment Opportunity Program Update”	September 15, 2020
District report to the OP&T Committee regarding “Semi Annual Report on EEO Policy and Affirmative Action Plan”	September 15, 2020
District presentation to the OP&T Committee regarding “Update on Equal Employment Opportunity Issues”	September 15, 2020
District presentation to the Audit & Ethics Committee regarding “Supplemental Analysis of the 2019 Ethics Survey”	October 27, 2020
District presentation to the OP&T Committee regarding “Report on Females in Apprenticeship Program and Trades”	October 27, 2020
District presentation to the OP&T Committee regarding “Diversity Equity and Inclusion Council Update”	October 27, 2020
District report to the OP&T Committee regarding “Follow-up on Equal Employment Opportunity issues”	November 9, 2020
District presentation to the OP&T Committee regarding “Diversity Equity and Inclusion Update”	December 7, 2020
“General Counsel’s Monthly Activity Reports” to the Board	January 12, 2021- June 8, 2021
“Ethics Office Monthly Reports” to the Board	January 12, 2021- June 8, 2021
District presentation to Metropolitan Management University participants regarding “Avoiding Litigation Landmines for [District] Managers: Top 10 Ways”	January 19, 2021
District presentation to the OP&T Committee regarding “Diversity, Equity and Inclusion (DE&I) Council Update”	February 9, 2021
District presentation to the OP&T Committee regarding “Human Resources and Ethics Office Roles in Addressing Complaints”	March 8, 2021
District presentation to the OP&T Committee regarding “Diversity, Equity and Inclusion (DE&I) Council Update”	April 12, 2021

## LIST OF DOCUMENTS REVIEWED

<b>District Documents</b>	<b>Dates</b>
District presentation to the OP&T Committee regarding “Diversity, Equity and Inclusion (DE&I) Council Update”	June 8, 2021
District report to the OP&T Committee regarding “Semi-Annual Report on EEO Policy and Affirmative Action Plan”	July 13, 2021

<b>Third-Party Documents</b>	<b>Dates</b>
Report regarding “Metropolitan Water District of Southern California: Its Administrative Controls Need to Be Improved to Ensure an Appropriate Level of Checks and Balances Over Public Resources,” prepared by the California State Auditor	June 3, 2004
“Workforce Demographic Comparison,” prepared by Biddle Consulting Group, Inc.	November 18, 2020
<u>Los Angeles Times</u> article by Adam Elmahrek entitled, “‘They thought I was so low’: Women say they were harassed, bullied, ignored at powerful water agency”	February 12, 2021
<u>Los Angeles Times</u> article by Adam Elmahrek entitled, “He was the king of water in the desert. His abusive reign revealed a troubling culture”	March 18, 2021
<u>Los Angeles Times</u> article by Sammy Roth entitled, “As drought worsens, tensions erupt over control of SoCal’s largest water supplier”	May 26, 2021
<u>Los Angeles Times</u> article by Adam Elmahrek entitled, “State launches audit of sexual harassment policies at powerful Southern California water agency”	June 30, 2021