



**DISTRICT OF COLUMBIA
WATER AND SEWER AUTHORITY**

Board of Directors

Human Resources and Labor Relations Committee

Wednesday, July 10, 2013
11:00 a.m.

1. Call to Order..... Kathleen Boucher
Chairperson

2. [Workplace Violence Update](#).....Randy Hayman, General Counsel

3. [CDL Exception](#).....George Hawkins, General Manager

4. Interviewing & Resume Writing Workshops Update.....Denyse Jeter-Williams
Manager, Talent Management

5. Hiring/Promotion Statistics.....Steve Rogers, Manager, Compensation

6. Open Discussion

7. Executive Session – To discuss collective bargaining under Section 2-575(b)(4) and
personnel matters under D.C. Official Code Section 2-575(b)(10)..... Kathleen Boucher

8. Adjournment..... Kathleen Boucher



Office of the General Counsel's Opinion Regarding the Workplace Violence Policy

Human Resources/Labor Relations
Committee

July 10, 2013



Outline of Current Workplace Violence Policy

- **Purpose of Workplace Violence Policy:** promote safe work environment for all employees.
- **Workplace Violence:** includes but not limited to: behavior resulting in violence, harassing, intimidating, or other disruptive behavior that communicates a direct or indirect threat of physical or emotional harm; property damage, and/or disruption of business operations.
- **Violence:** exertion of physical force or power calculated or intended to alarm or result in physical or emotional harm; term 'violence' includes 'harass', 'threat' and 'verbal abuse'.



Outline of Current Workplace Violence Policy (cont.)

Responsibilities

- **Office of Security:** investigates complaints and reports of workplace violence.
- **Directors, Managers, and Supervisors:** take action to defuse workplace violence situations; conduct initial review of occurrences; and contact Office of Security to assist and investigate.
- **Violence Prevention Coordinator:** reviews all incidents of workplace violence to access the causes and identify steps to reduce; monitors workplace violence prevention efforts; makes recommendations; solicits ideas for prevention from employees.

Consistent with applicable collective bargaining agreements, DC Water to seek collaboration and support of union representatives to prevent workplace violence.



Outline of Current Workplace Violence Policy (cont.)

Reporting and Investigating Claims of Workplace Violence

- All claims investigated immediately by Office of Security, written report due within 30 days of receipt of complaint.
- Investigative findings forwarded to Human Capital Management, affected Department Director(s) and Violence Prevention Coordinator.



Outline of Current Workplace Violence Policy (cont.)

Reporting and Investigating Claims of Workplace Violence (cont.)

- Employee filing complaint provided written findings.
- Department Director(s), in conjunction with Human Capital Management, determines timely disciplinary/corrective action necessary to prevent future violence.
- If findings involve consultant, contractor or vendor, corrective action taken in accordance with contract.
- Individual found in violation of Policy subject to disciplinary action up to and including termination and criminal penalties.
- If individual making complaint makes false statement/acts in bad faith, subject to disciplinary action up to and including termination.



Outline of Current Workplace Violence Policy (cont.)

Leave Pending Investigation

- Employee accused of violent conduct may be placed on administrative leave pending investigation.
- Upon completion of investigation, Human Capital Management may require fitness for duty exam prior to return to work.
- If employee does not cooperate fully, employee may be placed on leave without pay and/or disciplined up to and including termination.
- Employee not allowed to return to work without written permission from Human Capital Management.



Improvements to Workplace Violence Policy

Improvements to Ensure Equity/Fairness

- That the fact and practice of the accused being informed of the allegations at the time of the investigation be placed in writing in the policy.
- That DC Water is required to attempt to interview the accused as part of the investigative process be placed in writing in the policy.
- That workplace violence reports are due within thirty (30) days of receipt of the complaint or report of an incident; every effort should be made to meet this deadline or complete the investigation sooner if at all possible. However, the policy should also state that under limited circumstances additional time may be granted to conduct a thorough investigation.
- That the accused is provided written notice of the findings.



Improvements to the Workplace Violence Policy (cont.)

Improvements to Ensure Clarity

- **Section 5.5** should be reworded to clarify that department managers and supervisors assist the Office of Security in investigations, but the Office of Security takes the lead and is responsible for the investigations.
- **Section 6.0** discusses the responsibilities of the Violence Prevention Coordinator. The Coordinator is designated by the General Manager and the designation is announced to all employees. If this has not been done lately, DC Water may wish to do so.
- The term “Violence Prevention Coordinator” should be used consistently throughout the Policy.
- Under Section 9 regarding Leave Pending Investigation, if an employee is placed on administrative leave the policy should be revised to clearly state that said leave is with pay.



Significant Issues Associated with Implementation of Workplace Violence Policy

- Union Employees
- Non Union Employees



OGC's Response to AFGGE Union Local 872 Recommendation

Human Resources/Labor Relations
Committee

July 10, 2013



A.) DC Water and Sewer Authority must establish a Violence Prevention Coordinator. The duties must be independent, with no administrative, political, financial or legal obligation to DC Water’s management’s team, the Office of Security, the accused, the complainant, and/or the Union President or his/her designee or elected official.

Response:

Per the Workplace Violence Policy the General Manager has appointed Mustaafa Dozier as the Violence Prevention Coordinator (“Coordinator”) . As the Coordinator he is not responsible for conducting the investigation, which is handled by the Office of Security. The Coordinator simply reviews the investigative reports of workplace violence to assess the cause of the workplace violence and identify steps that can be taken to reduce or eliminate future incidences. In addition he monitors the Authority’s workplace violence prevention effort and recommends appropriate actions for preventing workplace violence to the General Manager. He also solicits suggestions on violence prevention from employees, both union and non-union.



B.) The Coordinator shall be responsible, but independent of any input from all the significant parties and reasons as named above, for the administration and enforcement of the Workplace Violence Policy at DC Water. **(apply in Section 5.0)**

Response:

Upon reviewing the administrative role of the Coordinator and investigative role of the Office of Security it is the Office of the General Counsel's (OGC) position that the role of the Coordinator as contained in the policy is fair and proper. The current policy is sufficient.



C.) The Violence Prevention Coordinator shall determine the investigatory methods to be employed in each Workplace Violence investigation. All of the significant parties, the manager, the accused, the complainant, and the union, upon request, shall receive an official copy of the investigatory methods used in each case. **(apply in Section 5.0)**

Response:

As noted above, the Coordinator does not conduct the investigation. The investigation is handled by the Office of Security. As with any investigation, the investigators will speak with all relevant parties and witnesses, and will review all relevant documents. The current policy is sufficient.



D.) The Coordinator must meet with management and the union, initially, and discuss the significant factors in the matter and determine the merits of the complaint and then determine the investigatory methods. **(apply in Section 5.0)**

Response:

OGC disagrees with this request. Each complaint must be investigated independent of input from non-witness third parties. Each investigation is different and has its own underlying facts, but the basic methodology of speaking to the parties, all relevant witnesses and reviewing all relevant documents is elementary. The current policy is sufficient.



E.) The Coordinator shall examine, guide and monitor the Office of Security during the investigation process and must coordinate and be present during all interview sessions. **(apply in Section 5.0)**

Response:

As noted above, the investigation is handled by the Office of Security and not the Coordinator. The current policy is sufficient.



F.) The Coordinator shall be responsible for any and all violence prevention programs and Workplace Violence training programs in coordination with the Office of Security, management, the union, DC Metropolitan Police Dept. **(apply in Section 6.0)**

Response:

Per the policy, training is under the domain of Human Capital Management (Human Resources) and not the Coordinator.



G.) Only the Coordinator and the Office of Security can advise the accused of the complaint with his/her Union representative present in accordance with the applicable article of the current Master Agreement. **(apply in Section 8.0)**

Response:

It is important to note that the Workplace Violence Policy applies to all employees. The Union's proposed "8.0" is directed only to represented staff. Also, the proposed language is not necessary because Article 5 of each agreement on working conditions provides for the union to be present during investigatory interviews. There is no need for the Coordinator to be present. The current policy is sufficient.



H.) All Workplace Violence complaints must be reported, only, to the Workplace Violence Coordinator by witness(es) and/or the victim.
(apply in Section 7.0)

Response:

As noted above, all workplace violence investigations are conducted by the Office of Security. The current policy is sufficient.



I.) **Section 8.2**, “Where there is a clear (remove “perception”) act by any DC Water employee/manager of imminent danger

Response:

It is the OGC’s position that the word “perception” best defines the policy’s intent.



J.) Any alleged witness/victim shall be allowed to withdraw their complaint up to the date and/or time, but no later than the close of business after the initial interview session with the Violence Prevention Coordinator has been convened. Any request to withdraw the complaint after the day of the initial interview session shall require a full investigation with the possibility of discipline.
(apply in Section 8.2)

Response:

This addition is unnecessary. The policy under Section 10.0 contains disciplinary language addressing anyone who makes a false statement. Said discipline is up to and includes termination. The current policy is sufficient.



K.) **Apply Section 8.3**, “All claims or complaints of workplace
.....with a report due within thirty (30) work days.....”

Response:

The OGC accepts the change from 30 days to 30 work days. Also, every effort should be made by the Authority to complete the investigation reports in lesser time, if possible.



- L.) The Coordinator shall decide, based on the merits of the significant factors, if the accused shall be removed from DC Water with administrative leave with pay or if the accused shall remain on official duty pending the outcome of the case overall. Upon the Coordinator’s decision to remove the accused, the accused shall be placed on administrative leave with pay upon completion of the investigation and disciplinary action is deemed warranted. The accused shall not be placed on leave without pay unless the alleged act is deemed a crime by the local law enforcement. **(apply in Section 9.0)**

Response:

Under Section 9 (“Leave Pending Investigation”) during a Workplace Violence Investigation it is within the Authority’s discretion to place the accused on administrative leave. OGC suggests that the policy be revised such that when administrative leave is required, it is noted as paid leave unless otherwise stated within the policy.



M.) Any act of retaliation, by any DC Water employee, during or subsequent to the investigation will result in discipline up to termination. In addition, if/when it is determined at any time, before or subsequent to the investigation and/or the outcome, that the complaint is/was an act of retaliation, by any DC Water employee, discipline up to termination. **(apply in Section 10.0)**

Response:

The suggestions contained in Paragraph M are already contained in the policy under Section 10.0. The current policy is sufficient.



N.) Any modifications and/or exceptions granted by the General Manager or his/her designee to this policy shall be accompanied with a detailed, written explanation to the union and management throughout DC Water unless exceptions are specific to an official investigation, then the detailed, written explanation will be provided only to the accused, management, the union, the Coordinator and the Office of Security.

Response:

In granting an exception the GM is acting within his authority. An exception is granted on a case by case basis. For the most part exceptions would inherently be administrative and narrowly tailored to address the underlying facts associated with a given situation. DC Water will continue to follow best practices in implementing the Workplace Violence Policy.



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MEMORANDUM

To: Randy E. Hayman
Katherine Cahill

From: Robert I. White

Date: July 1, 2013

Subject: Commercial Driver's License

This memorandum addresses questions you have raised concerning Commercial Driver's License (CDL) regulations.

Question 1: Who is required to have a CDL?

Answer: Federal law, primarily the Commercial Motor Vehicle Safety Act of 1986, as amended, 49 U.S.C. chapter 313, and DC Municipal Regulations, 18 DCMR Chap. 13, require that operators of commercial motor vehicles (CMV), as defined at 18 DCMR 1305.1, hold a valid CDL. The DC regulations prohibit DC residents from driving a CMV without first obtaining a CDL from the DC Department of Motor Vehicles and prohibit any person, resident or not, from driving a CMV in DC unless the person holds a valid CDL issued by the appropriate authority from some state for the type of CMV being driven in DC.

Question 2: Are there exceptions to DC's requirement that a person who does not hold a CDL is prohibited from operating a CMV?

Answer: Yes, the exceptions are set forth at 18 DCMR 1329 as follows:

1329.1 Persons on active military duty; members of the military reserves; members of the national guard on active duty, including personnel on full-time national guard duty, personnel on part-time national guard training, and national guard military technicians (civilians who are required to wear military uniforms); and active duty U.S. Coast Guard personnel are exempt [from the CDL requirements].

1329.2 Drivers of vehicles operated exclusively for personal use, such as recreational vehicles and rental trucks, used only to transport the driver's family, or personal or household property, shall be exempt [from the CDL requirements].

1329.3 Drivers of emergency or fire equipment, which is necessary for the preservation of life or property, or for the execution of emergency governmental functions, shall be exempt from [from the CDL requirements].

Question 3: Are there physical qualifications for obtaining a CDL?

Answer: Yes. 18 DCMR 1327 provides as follows:

No person shall be issued a new or renewed commercial driver's license unless he or she is physically qualified and, except as provided in the Federal Motor Carrier Safety Regulations . . . , possesses an original of a medical examiner's certificate, not more than two (2) years old, reflecting that he or she is physically qualified to drive a commercial vehicle.

Question 4: If the person who holds a CDL (CDL holder) has been injured or has some other medical condition, may the holder continue to operate CMVs, i.e. may the CDL holder obtain a waiver of the CDL medical requirements in the event of an injury?

Answer: The DC regulations do not prohibit a CDL holder who has sustained an injury or has some other medical condition from continuing to operate CMVs unless the impairment affects the holder's ability to perform his or her normal duties. If the impairment has affected the CDL holder's ability to perform normally, the CDL holder is required to be reexamined and to submit a certification from a licensed doctor of medicine that the CDL holder meets the physical qualifications to operate a CMV.

Question 5: If a DC Water employee who holds a CDL is unable to perform his or her normal duties, may another DC Water employee who does not hold a CDL operate the CMV on a temporary basis without first obtaining a CDL?

Answer: No, except in situations involving "the execution of emergency governmental functions." (See the answer to Question 2.)

Question 6: DC Water requires that employees who occupy positions that require operation of CMVs are required to possess and maintain the appropriate CDL. Do the CDL regulations address a situation where DC Water has determined to make holding a CDL a requirement for a position that does not, in actual practice, require the employee to operate a CMV?

Answer: No, neither the Federal nor the DC CDL regulations impose any restraints on an employer's authority to have a CDL requirement for a position that does not, in actual practice, require the employee to operate a CMV.