

**METROPOLITAN EXPOSITION RECREATION COMMISSION**

**Resolution No. 16-28**

For the purpose of adopting changes to the MERC Personnel Policies.

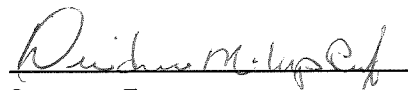
**WHEREAS**, the Metropolitan Exposition Recreation Commission (MERC) is authorized to adopt personnel policies pursuant to Metro Code Sections 2.02.010 (b) and 6.01.040 (a); and

**WHEREAS**, MERC periodically updates the MERC Personnel Policies (the Personnel Policies) in accordance with both legal requirements and agency-wide policies.

**THEREFORE BE IT RESOLVED:** That the Metropolitan Exposition Recreation Commission adopts the changes to the Personnel Policies in a form substantially similar to the attached Exhibit B.

Passed by the Commission on November 2, 2016

  
Chair

  
Secretary-Treasurer

Approved As To Form:  
Alison R. Kean, Metro Attorney

By:   
Nathan A.S. Sykes, Deputy Metro Attorney

## MERC STAFF REPORT

**Agenda Item/Issue:** For the purpose of adopting changes to the MERC Personnel Policies.

**Resolution No.:** 16-28

**Presented by:** Mary Rowe, Metro Human Resources Director

**Background and Analysis:** The MERC Commission last approved a complete personnel policy manual for venues staff in August 2007. Beginning in 2011, Metro's Human Resources Department began a project to review and update both the MERC policy manual and Metro's policy manual, Executive Order #88, with the goal of developing one set of agency-wide personnel policies and procedures. The policies are being updated and implemented on a rolling basis in an order determined by legal changes and business needs. Human Resources staff developed these policies in consultation with department managers, the Office of Metro Attorney, and the Metro Senior Leadership Team as appropriate. These policies have been updated for legal compliance. These policies were presented to the Commission for discussion on October 5, 2016.

**Resolution:** This resolution seeks the MERC Commission's approval of the following personnel policies:

- Administrative Leave for Exemplary Service and Recruitment (Non-represented)
- Whistleblower
- Rescission: Ethics Policies

**Long range fiscal impact:** There is minimal additional fiscal impact projected for implementation of these policies changes.

**Recommendation:** The Metropolitan Exposition Recreation Commission adopts the change to the Personnel Policies in a form substantially similar to the attached Exhibit B.

**EXHIBIT A: SUMMARY OF PROPOSED PERSONNEL POLICY FOR MERC COMMISSION  
NOVEMBER 2, 2016**

Below is a list of the draft policies for your review. These proposed policies are intended to supersede the ones adopted in January 2016.

<b>Policy</b>	<b>Existing All Metro or MERC Policy</b>	<b>Applicable Legal Provisions</b>	<b>Policy Summary/Explanation of Change</b>	<b>Fiscal Impact</b>	<b>Business Impact</b>
<b>Whistleblowing</b>	Whistleblowing Policy (10/14) – All Metro	ORS Ch 659A as amended by HB 4067 (2016)	Brings Policy into compliance with statute by increasing rights and remedies, and affirmative defenses for whistleblowers, and increases employee notice requirements. Deletes references to interns who are not statutorily covered. Paid interns are employees and covered, unpaid are not.	Minimal.	Minimal  Metro has very few unpaid interns.
<b>Administrative Leave for Exemplary Service and Recruitment (Non-represented Employees)</b>	Administrative Leave (12/12) – All Metro	N/A	Authorizes Department Director with HR Director approval to offer benefits eligible management and non-represented exempt new hires up to 40 hours additional leave annually for up to 3 years. Criteria for offering additional leave based on individual’s previous benefits, special skills or experience. <b>Leave may be granted in 1 hour increments, previously 8 hour blocks.</b>	Minimal.	Consistent with total compensation approach. Adds recruitment benefit increasingly used by public sector employers.
<b>Proposed Rescissions</b>					

<p><b><i>Proposed Rescission: Employee Conduct, #10. Ethics</i></b></p>	<p>MERC Personnel Policies (1997) § 12</p>	<p>N/A</p>	<p>Redundant. This simply states requirement that employees follow state ethics law. Employee Conduct Policy (All Metro) prohibits employees from violating state Ethics laws.</p>	<p>N/A</p>	<p>Streamlines policies.</p>
<p><b><i>Proposed Rescission: Ethical Requirements for Employees, Officers, Elected and Appointed Officials Policy</i></b></p>	<p>All Metro</p>	<p>Metro Code 2.02.120 Ethical Requirements for Employees, Officers, Elected and Appointed Officials</p>	<p>Duplicates Metro Code.</p>	<p>N/A</p>	<p>Streamlines policies.</p>
<p><b><i>Proposed Rescission: Code of Ethics</i></b></p>	<p>N/A</p>	<p>ORS 244 – Government Ethics; Metro Code 2.02.120 Ethical Requirements for Employees, Officers, Elected and Appointed Officials</p>	<p>Duplicates state ethics laws &amp; Metro Code.</p>	<p>N/A</p>	<p>Streamlines policies.</p>

Exhibit B to Resolution 16-28

 **Metro** | *Policies and procedures*

**Subject** Administrative Leave for Exemplary Service and Recruitment (Non-represented)  
**Section** Human Resources  
**Approved by**

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**POLICY**

Metro may, upon management’s discretion, award paid leave to non-represented, benefits-eligible, overtime-exempt regular status and limited duration employees who demonstrate extraordinary dedication by working long hours above and beyond the expectations for their position and to provide additional leave to non-represented benefits eligible employees to accomplish recruitment objectives as part of the total compensation package for new employees.

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**Applicable to**

All non-represented, benefits-eligible, overtime exempt regular status and limited duration employees: 1) who are ineligible to receive overtime compensation due to their exempt status under the Fair Labor Standards Act, or 2) who are newly hired Metro employees.

*Bonus time may be available for represented employees as determined by the applicable collective bargaining agreement.*

**Guidelines**

1. Administrative leave for exemplary service (exemplary service leave) is intended to reward employees who put in a substantial amount of work time in excess of regular work hours for a sustained period of time and are ineligible for overtime compensation.
2. The decision whether to award leave and the length of the leave awarded are at Metro’s sole discretion. Exemplary service leave is not intended to compensate employees for extra work on an hour-for-hour basis.
3. The maximum exemplary service leave that may be awarded under this policy is 40 hours per fiscal year.
4. As part of employment negotiations when recruiting a candidate outside of Metro, Department Directors with the approval of the HR Director may provide administrative leave (recruitment leave) benefits to new employees hired for regular status positions. Justification for recruitment leave should include previous leave benefits of the applicant or the individual’s special skills or experience.

5. Up to forty (40) hours of recruitment leave per year for the first three years of employment may be approved for eligible new employees for recruitment purposes.
6. Administrative leave awards under this policy are in addition to accrued paid leave and will have no effect on accrual rates or maximum accrual limits for other types of leave.
7. Metro's fiscal year runs from July 1 – June 30. Administrative leave time must be used within the fiscal year in which it is awarded, with the exception of leave time awarded during the month of June, which may be carried over to the following fiscal year. Leave time that is not used within the applicable fiscal year will be forfeited. Leave awarded in June must be used by June 30 of the following fiscal year.
8. Employees will not receive monetary payment for any unused leave awarded under this policy.

## **Procedures**

1. An award of leave must be approved in writing by the Department Director and for recruitment leave approved by the HR Director also. A supervisor who wishes to award administrative leave for exemplary service or recruitment purposes to an employee will coordinate with the Department Director. Leave will be granted to a Department Director only with the written approval of the General Manager, Chief Operating Officer (C.O.O.) or designee.
2. Leave must be awarded in full hour increments up to 40 hours. Administrative leave may be used in accordance with regular procedures for use of vacation and personal holidays.
3. Once approval is confirmed, the Department Director, General Manager, C.O.O or designee must notify the Payroll Division.
4. The Payroll Division will establish an administrative leave bank for the employee by entering the hours into the timekeeping system, and will confirm with the supervisor and Department Director when this process has been completed.
5. The supervisor will notify the employee of leave awarded under this policy.
6. Employees who have been awarded leave should follow regular procedures for requesting to use accrued leave. Employees may use leave under this policy only after receiving notification that the Payroll Division has established an administrative leave bank.

## **Responsibilities**

### Employee:

- After receiving an award of leave, follow regular procedures for requesting and coding use of leave.

### Supervisor:

- Coordinate with the Department Director to award leave under this policy.
- Notify the employee that leave has been awarded.
- Complete Administrative Leave form and submit to Payroll (exemplary leave) or Human

Resources (recruitment leave for new hires).

Department Director:

- Approve leave awards and notify the Payroll Division.
- Consult with HR Director prior to awarding recruitment leave.

Human Resources Director:

- Review and approve requests for recruitment leave.

Human Resources:

- Establish a leave bank and notify the supervisor and Department Director that leave has been awarded.

Exhibit B to Resolution 16-28

 Metro | *Policies and procedures*

**Section** Human Resources

**Approved by**

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**POLICY**

*It is Metro's policy to promote ethical behavior and to comply with Oregon's Whistleblower Law. Employees, unpaid interns, volunteers and contractors are encouraged to report improper or unlawful conduct and may do so anonymously. Such reports serve the public interest and assist Metro in meeting high standards of public accountability. No employee will be subject to disciplinary action or retaliation for making a good faith report or disclosure under this policy or for initiating or aiding in a criminal or civil proceeding.*

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**Applicable to**

All employees and contractors performing services for Metro.

Volunteers and unpaid interns are also encouraged to report improper or unlawful conduct using the procedures described in this policy.

**Definitions**

Disclosure: A formal or informal internal or extra-agency communication.

Employees: For the purposes of the Oregon whistleblower law, "employees" include contractors and their employees in addition to individuals who are employed directly by Metro.

Good faith: A sincere belief or motive.

Reckless disregard for truth or falsity: A conscious disregard of a substantial and justifiable risk that the information disclosed is false.

Reporter: An individual who makes a report or disclosure under this policy.

**Guidelines**

1. Metro encourages its employees, interns, volunteers and contractors to notify Metro of improper or unlawful government action by Metro or its officials or employees.
2. No employee will be subject to discipline or other retaliation for disclosing information he or she reasonably believes is evidence of:
  - a. A violation of any federal or state law, rule, or regulation by the agency;



- b. Serious agency misconduct that could undermine Metro’s ability to fulfill its public mission;
  - a. Gross misuse or waste of public resources or funds;
  - b. Abuse of authority in connection with the administration of a public program or the execution of a public contract; or
  - c. A substantial and specific danger to public health or safety resulting from agency action.
- 3. No employee will be subject to discipline or other retaliation for initiating or aiding in criminal, civil, or administrative legal proceedings in good faith.
- 4. Volunteers and unpaid interns will not be subject to harassment or retaliation for taking actions outlined in #2 or 3 above.

**Procedures**

**Reporting Improper or Unlawful Conduct:**

- 1. Employees, interns, volunteers and contractors are encouraged to notify Metro of improper or unlawful actions in any Metro facility or department.
  - a. Reports may be made to any Metro manager, the Human Resources (HR) Department, and/or the Office of Metro Attorney (OMA).
  - b. Reports also may be made confidentially using Metro’s Accountability Line, which can be accessed online at [metroethicsline.org](http://metroethicsline.org), or by calling (888) 299-5460.
    - i. The Accountability Line is administered by the Metro Auditor’s Office. The auditor contracts with a hotline vendor to maintain the reporting system and ensure confidentiality. The hotline vendor does not reveal the reporting party’s identity to Metro.
- 2. Metro will not discipline or retaliate against an employee for making a good faith report under this policy. Employees will be subject to discipline only if:
  - a. The information disclosed is known by the employee to be false, or is disclosed with reckless disregard for its truth or falsity; or
  - b. The disclosed information relates to the employee’s own violations, mismanagement, gross waste of funds, abuse of authority, or endangerment of the public health or safety, in which case the employee may be disciplined for the underlying conduct.
- 3. During its investigation of any disclosure listed above, Metro will not identify the individual making the disclosure without his or her written consent unless such identification is necessary to an investigation or legal process and allowable by law. In that case, Metro will protect the reporter’s confidentiality to the greatest extent possible without impairing the investigation or legal process.

**Initiating or Aiding Administrative, Criminal or Civil Proceedings**

- 4. Metro will not discriminate or retaliate against an employee because he or she has in good faith:
  - a. Reported criminal activity (or activity he or she believes to be criminal) to any person or caused criminal charges to be filed against any person;

- b. Cooperated with a criminal investigation or testified at a criminal trial;
- c. Initiated, cooperated with, or testified at a civil administrative or court proceeding;
- d. Opposed harassment, discrimination, or other conduct prohibited by civil rights laws;
- e. Discussed, inquired about, or brought a claim for unpaid wages.

### **Legislative Testimony**

- 5. Metro will not prohibit, discourage, dissuade, restrain, coerce, prevent, or otherwise interfere with an employee responding to a legislative request to discuss or disclose the activities of Metro or any other political subdivision of the state, or the activities of any person authorized to act on behalf of Metro or any other political subdivision of the state.
  - a. An employee is not required to inform Metro prior to making any disclosure or before engaging in the requested legislative discussion, unless the legislative request for information is directed to Metro and the employee is responding on behalf of Metro.
  - b. Notwithstanding this policy, employees are not permitted to:
    - i. Represent their personal opinions as the opinions of the agency;
    - ii. Disclose information required to be kept confidential by law;
    - iii. Disclose records exempt from disclosure, except as provided by law;
    - iv. Disclose information of an advisory nature to the extent that it is preliminary to any final agency determination of policy or action and covers other than purely factual materials.
  - c. Absences to testify before a legislative committee will be excused. Employees may take unpaid leave or use any type of accrued paid time off other than sick leave. Employees are not required to disclose the purpose of the absence. Employee testimony on behalf of Metro is paid work time.

### **Whistleblowing in General**

- 6. Employees are not required to notify Metro before engaging in activities protected under this policy and will not face discipline if they choose not to do so; however, Metro encourages individuals to bring problems to its attention so they can be addressed promptly. As noted above, reports may be made confidentially using the Ethics Line.
- 7. Discrimination, harassment, and retaliation are prohibited for activities undertaken in good faith under this policy even if the underlying complaint or report is ultimately not substantiated.
- 8. Anyone who experiences or observes discrimination, harassment, or retaliation on the basis protected activity under this policy should report the offending conduct using the procedures specified in this policy or in Metro's Discrimination and Harassment Policy.

### **Whistleblowing Affirmative Defense:**

- 9. An employee's good faith and objectively reasonable belief of a violation of federal, state or local law, rule or regulation by Metro shall be an affirmative defense to a civil or criminal charge related to the disclosure by the employee of lawfully accessed information related to

the violation, including information that is exempt from disclosure as provided in Oregon's Public Records Law or by Metro policy, if the information is provided to:

- a. A state or federal regulatory agency;
  - b. A law enforcement agency;
  - c. A manager employed by Metro;
  - d. An attorney licensed to practice law in the state of Oregon if a confidential communication is made in connection with the alleged violation and in furtherance of the rendition of legal services to the employee that are subject to the attorney-client privilege.
10. An employee may not assert the affirmative defense described herein if the information:
- a. Is disclosed or re-disclosed by the employee or at the employee's direction to a party other than the parties listed in paragraph 9 above;
  - b. Is stated in a commercial exclusive negotiating agreement with Metro, provided that the agreement is not related to the employee's employment or relationship with Metro; or
  - c. Is stated in a commercial nondisclosure agreement with Metro, provided that the agreement is not related to the employee's employment with Metro.
11. The affirmative defense described in paragraph 9 is available to an employee who discloses information related to an alleged violation by a coworker or supervisor if the disclosure relates to the course and scope of employment of the coworker or supervisor.
12. The affirmative defense described in paragraph 9 may not be asserted by an employee who is an attorney or by an employee who is not an attorney but who is employed, retained, supervised or directed by an attorney if the information disclosed pursuant to paragraph 9 is related to the representation of a client.
13. Disclosure made to a state or federal regulatory agency, law enforcement agency, manager employed by Metro or attorney licensed to practice law in the state of Oregon are subject to the rules of professional conduct that are binding upon Oregon attorneys.
14. Subject to the rules of professional conduct for Oregon attorneys, a public employee who is an attorney may report to the Attorney General the employee's knowledge of a violation of federal, state or local law, rule or regulation by Metro.
15. Disclosure of information pursuant to paragraph 9 does not waive the attorney-client privilege or affect the applicability of any exemption from disclosure of a public record under Oregon's Public Records Law.
16. Notwithstanding paragraph 9, information protected from disclosure under federal law, including but not limited to the federal Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191), may be disclosed only in accordance with federal law.

**Whistleblower Rights and Remedies:**

17. Any employee who invokes his/her rights under this policy shall have the rights and remedies provided for by Oregon's Whistleblower laws. To the extent an employee has been aggrieved by engaging in whistleblower activity, the employee may file a complaint with the Bureau of Labor and Industries and/or file a civil action in circuit court. Remedies available may include injunctive relief and compensatory damages among others.

## **Responsibilities**

### Employee:

- Report illegal and unethical conduct by notifying a Metro manager, the Human Resources Department or the Office of Metro Attorney, or by using Metro's Accountability Line.
- Notify a Metro manager, the Human Resources Department, or the Office of Metro Attorney if you observe or become aware of any conduct that may constitute discrimination, harassment or retaliation for protected activity under this policy.

### Supervisor/Manager/Department Director:

- Ensure that no employee, volunteer or unpaid intern is subject to discipline, harassment or other retaliatory action for engaging in protected activity under this policy. Contact Human Resources immediately if you observe or become aware of any conduct that may constitute harassment or retaliation for protected activity under this policy.
- Cooperate with ethics investigations while protecting the reporter's confidentiality.

### Human Resources Department:

- Cooperate with ethics investigations while protecting the reporter's confidentiality.
- Investigate any complaints of retaliation in violation of this policy.

## **References**

ORS 659A.199 – 659A.236 (Oregon Whistleblower Law)

ORS 659A.030(1)(f) (prohibiting retaliation for opposing unlawful conduct)

OAR 839-010-0000 – 839-010-0140 (BOLI Administrative Rules)

ORS chapter 244 (Oregon Government Ethics Law)

OAR chapter 199 (Oregon Government Ethics Commission Administrative Rules)

Metro Accountability Hotline: [www.metroaccountability.org](http://www.metroaccountability.org); (888) 299-5460

Metro Ethics Employee Q&A (on MetroNet)