

Metro | *Policies and procedures*

Subject Whistleblowing (Reporting Improper Conduct)
Section Human Resources
Approved by Martha Bennett, Chief Operating Officer; MERC Commission

POLICY

It is Metro's policy to promote ethical behavior and to comply with Oregon's Whistleblower Law. Employees, 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 or intern 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.

Applicable to

All employees, interns and contractors performing services for Metro.

Volunteers 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 or intern 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 or intern will be subject to discipline or other retaliation for initiating or aiding in criminal, civil, or administrative legal proceedings in good faith.

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 Ethics Line, which can be accessed online at metroethicsline.org, or by calling (888) 299-5460.
 - i. The Ethics Line is administered by the Metro Auditor's Office. The auditor contracts with a hotline vendor, EthicsPoint, to maintain the reporting system and ensure confidentiality. EthicsPoint does not reveal the reporting party's identity to Metro.
2. Metro will not discipline or retaliate against an employee or intern 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 or intern to be false, or is disclosed with reckless disregard for its truth or falsity; or
 - b. The disclosed information relates to the employee's or intern's own violations, mismanagement, gross waste of funds, abuse of authority, or endangerment of the public health or safety, in which case the employee or intern 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 or intern 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, or otherwise interfere with an employee or intern responding to a legislative request to discuss the activities of Metro or any other political subdivision of the state.
 - a. An employee or intern is not required to inform Metro before engaging in the requested legislative discussion, unless the legislative request for information is directed to Metro and the employee or intern is responding on behalf of Metro.
 - b. Notwithstanding this policy, employees and interns 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 and interns 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 and interns 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.

Responsibilities

Employee/Intern/Volunteer:

- 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 Ethics 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 or 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 Ethics Hotline: metroethicsline.org; (888) 299-5460

Metro Ethics Employee Q&A (on Intranet)