REGULAR MEETING OF THE ADMINISTRATIVE COMMITTEE
OF THE BOARD OF DIRECTORS
WATER REPLENISHMENT DISTRICT OF SOUTHERN CALIFORNIA
12621 E. 166TH STREET, CERRITOS, CALIFORNIA 90703
2:00 P.M., WEDNESDAY, NOVEMBER 9, 2005

AGENDA

Each item on the agenda, no matter how described, shall be deemed to include any appropriate motion, whether to adopt a minute motion, resolution, payment of any bill, approval of any matter or action, or any other action. Items listed as "For information" may also be the subject of an "action" taken by the Board or a Committee at the same meeting.

1. DETERMINATION OF QUORUM

2. PUBLIC COMMENT

3. MINUTES OF THE REGULAR ADMINISTRATIVE COMMITTEE
   MEETING OF OCTOBER 12, 2005
   **Staff Recommendation:** Approve the minutes as submitted.

4. TRAINING REPORT
   **Staff Recommendation:** For information.

5. MEDICAL EXPENSE REIMBURSEMENT PROGRAM
   **Staff Recommendation:** For discussion and direction to staff.

6. HARASSMENT, DISCRIMINATION, RETALIATION PREVENTION
   POLICY
   **Staff Recommendation:** Recommend the Board approve changes to the Administrative Code as presented in Attachment A and receive the Harassment, Discrimination, Retaliation Prevention Policy.

7. ADMINISTRATIVE CODE REVISIONS
   **Staff Recommendation:** Discuss any Administrative Code revisions and recommend the Board consider adoption of any such revisions as recommended by the Committee.

8. DEPARTMENT REPORT
   **Staff Recommendation:** For information.

9. ADJOURNMENT

Posted by Abigail C. Andom, Deputy Secretary, November 3, 2005.
MINUTES OF OCTOBER 12, 2005
REGULAR MEETING OF THE ADMINISTRATIVE COMMITTEE
OF THE BOARD OF DIRECTORS
WATER REPLENISHMENT DISTRICT OF SOUTHERN CALIFORNIA

A regular meeting of the Administrative Committee of the Board of Directors of the Water Replenishment District of Southern California was held on October 12, 2005 at 2:21 p.m. at the District Office, 12621 E. 166th Street, Cerritos, California. Chairperson Willard H. Murray, Jr. called the meeting to order and presided thereover. Deputy Secretary Abigail C. Andom recorded the minutes.

1. DETERMINATION OF QUORUM
   Attendees included:
   Committee: Directors Willard H. Murray, Jr. and Norm Ryan
   Staff: Robb Whitaker, Tina Graham, and District Counsel J. Arnoldo Beltrán

2. PUBLIC COMMENT
   None.

3. MINUTES OF THE REGULAR ADMINISTRATIVE COMMITTEE MEETING OF SEPTEMBER 8, 2005
   The minutes were approved as submitted.

   General Manager Robb Whitaker stated he would like Chief of Strategic Planning and Initiatives Suja Lowenthal to introduce the new External Affairs staff member. Ms. Lowenthal introduced Elsa Lopez and gave a brief background of Ms. Lopez’ professional experience with the Audubon Center. Ms. Lopez stated she is looking forward to working with the WRD team and is proud of what the District has accomplished. She explained she has been aware of the District’s projects and would like to have the public be made aware of all the good work done.

   The agenda items were taken out of order.

5. ADMINISTRATIVE CODE REVISIONS
   District Counsel J. Arnoldo Beltrán stated that Counsel had prepared proposed language to the Administrative Code regarding appropriate procedures to prevent the unauthorized use of medical information. Mr. Beltrán noted the procedures comply with the requirements of the Confidential Medical Information Act.

   Discussion followed and the Committee recommended the proposed language be reviewed at the next meeting.
Director Murray asked District Counsel to provide an opinion on whether staff may be able to approve director's expenses. Mr. Beltrán stated he will provide a written opinion to the directors, but explained that staff may be delegated the responsibility to approve director's expenses. However, he stated that the register of demands must be approved by the Board.

6. DEPARTMENT REPORT
Manager of Administration and Human Resources Tina Graham provided an update of department activities. Ms. Graham stated, as instructed by the Administrative Committee, staff has been working on finding a company to administer the District's medical expense reimbursement program. She noted that it would also be ideal for the company chosen to administer the District's flexible spending account program, especially since there is a requirement that the two programs must be coordinated to ensure Internal Revenue Requirements are met. Ms. Graham stated that staff has met with a company headquartered in Costa Mesa, California and staff is in the process of defining the plan documents and summary.

Discussion followed. The Committee recommended that the medical expense reimbursement program and the flexible spending account program be administered by the same company.

Ms. Graham also provided an update on the progress of the classification and compensation study. In particular, a request for proposal was sent to eleven firms and the proposals are due to WRD by October 28.

5. ADMINISTRATIVE CODE REVISIONS
Director Ryan stated he would like to retract an earlier recommendation the Committee had made regarding the General Manager changing Assistant Controller Laura Doud's title to Controller. He stated the General Manager was already in the process of making the change. Director Murray had no objection to Director Ryan's request.

Director Murray stated he would like to express his concern that the financial auditors maintain an independent and unbiased relationship with staff, and he recommended the District change auditing firms at the end of the current contract.

Discussion followed on proposed language to the Administrative Code regarding the District's veto authority on appointments made to the WRD Technical Advisory Committee (TAC) when there is a demonstrated bias created by a conflict of interest. The Committee took no action on this item.
4. TRAINING REPORT
Ms. Graham provided an update of training programs WRD employees have participated during the month of September, and she reminded the Committee members of the sexual harassment training for directors scheduled for Monday, October 17.

7. ADJOURNMENT
With no other business to come before the Committee, the meeting was adjourned at 3:37 p.m.

________________________________________
Chairperson

ATTEST:

________________________________________
Director
DATE: NOVEMBER 9, 2005  
TO: ADMINISTRATIVE COMMITTEE  
FROM: ROBB WHITAKER, GENERAL MANAGER  
SUBJECT: TRAINING REPORT

**SUMMARY**

At the request of the Committee, this report will be a standing agenda item. Shown below is a record of training programs in which WRD employees have participated during the period July 1, 2005 to date. Training programs that have been added since the last report are noted in bold lettering.

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FISCAL IMPACT
None.

STAFF RECOMMENDATION
For information.
DATE: NOVEMBER 9, 2005

TO: ADMINISTRATIVE COMMITTEE

FROM: ROBB WHITAKER, GENERAL MANAGER

SUBJECT: MEDICAL EXPENSE REIMBURSEMENT PROGRAM

SUMMARY
As directed by the Administrative Committee, staff is pursuing the outsourcing of the District’s Medical Expense Reimbursement Program and has selected the Employee Benefits Administration & Management Corporation (eba&m) to administer the program. Under various regulations, the District’s reimbursement program is referred to as a “Health Reimbursement Arrangement” (HRA). The annual cost to outsource the HRA program, excluding document preparation costs, is expected to be approximately $5,000.

The District also offers a Flexible Spending Account (FSA) program for its employees. Various regulations require FSA and HRA to have plan documents and define within those documents, what kinds of expenses will be reimbursed from each plan. The primary difference between FSA and HRA is that FSA are funded by employees’ pretax dollars and HRA are fully funded by the employer.

Currently employees are allowed to be reimbursed for over-the-counter medicines through the FSA program. Reimbursements are excluded from gross income according to Internal Revenue Service (IRS) regulations.

The employees are not currently allowed to seek reimbursements for over-the-counter medicines through the current expense reimbursement program, even though IRS regulations do allow over-the-counter medicines to be reimbursed through HRAs. As with the FSA program, these reimbursements would be excluded from gross income.

Staff is seeking direction from the Committee on whether it wants to include reimbursements of over-the-counter medicines through the HRA. Based on the Committee direction, the plan documents will be finalized and brought to the Committee for review at the next meeting.

Attached for the Committees review is the section of the Administrative Code regarding the medical expense reimbursement program and various IRS Code sections related to HRAs.
FISCAL IMPACT
None.

STAFF RECOMMENDATION
Discuss and provide direction to staff.
14.9 Medical Expense Reimbursements

14.9.1 Eligibility

The following persons are eligible for the medical expense reimbursement program:

1. All full-time employees and current Directors of the District and their Dependents, as that term is defined by the then current insurance policy;

2. All retired employees of the District and their dependents, as that term is defined by the then current insurance policy where the employee had at least twelve years of service with the District and has reached age 55 at the time of his or her retirement from the District for employees who commenced employment on or before December 20, 2001.

3. All retired Directors who served as Directors for a minimum of twelve years and who first assumed office prior to January 1, 1995, and their dependents, as that term is defined by the then current insurance policy.

14.9.2 Covered Expenses

The following expenses are reimbursable:

1. Medical Services
   The District will pay for non-covered medical and dental expenses for eligible persons, provided, however, that reimbursement for any Director or employee shall not exceed the calendar year allotment authorized by the Board of Directors. Effective with calendar year beginning January 1, 2005, reimbursement shall not exceed $5,000 for any Director or employee and shall not exceed $3,000 per dependent during the calendar year. The amount shall be paid either directly to the medical service provider or reimbursed to the Director or employee after payment by the Director or employee. Satisfactory proof of entitlement shall be furnished.

   Effective with calendar year beginning January 1, 2006 and each calendar year thereafter, the $5,000 calendar year allotment for Directors and employees and the $3,000 calendar year allotment per dependent shall be increased by an amount equal to the November/November (published about December 15) change in the medical Care Services Index. The methodology for
determining the annual change in the Medical Care Services Index shall be the same methodology that is currently used for determining annual cost of living salary increases. The resulting calculations shall be rounded to the nearest whole dollar.

2. Eye Care
The District will reimburse each Director and full-time employee, in a total amount not to exceed $1,000 per calendar year, for actual expenses incurred by the Director or employee, or their dependents for eye diagnosis, treatment or care, including prescription glasses and lenses. Such reimbursement will not apply to any expense to the extent covered by any insurance paid for by the District or covered by Worker’s Compensation.

3. Long-Term Care Insurance
The District will reimburse Directors, employees and dependents for long-term care premiums subject to Internal Revenue Service and State tax regulations.

The benefits provided under this Section 14.9.2 are not designed nor intended to augment Director or employee income. For this reason, the parties agree to work on such additional criteria as may be necessary to prevent excesses in medical expense reimbursement. The criteria to be established shall prohibit reimbursement in all cases where the Internal Revenue Service would treat the reimbursement as income to the Director or employee. In all cases presented by the Director or employee, an “explanation of benefits” sought by the Director or employee shall be provided under the signature or recommendation of the medical professional recommending the treatment, medication or care.
FROM THE OFFICE OF PUBLIC AFFAIRS

September 3, 2003
JS-696

Treasury and IRS Announce over-the-counter Drugs
to be covered by Health Care Flexible Spending Accounts

Today, the Treasury Department and the IRS announced over-the-counter drugs can be paid for with pre-tax dollars through health care flexible spending accounts. Treasury and IRS issued guidance clarifying that reimbursements for nonprescription drugs by an employer health plan are excluded from income. Thus, reimbursements by health flexible spending arrangements (FSAs) and other employer health plans for the cost of over-the-counter drugs available without prescription are not subject to tax if properly substantiated by the employee.

"Flexible Spending Accounts are an important tool in helping people meet their health care costs," stated Treasury Secretary John Snow. "Since many prescription drugs have moved to the over-the-counter market, this action today makes paying for them a little bit easier to swallow."

"Flexible Spending Accounts were established under the tax code to provide incentives for better health care," said IRS Commissioner Mark W. Everson. "This action is a sensible expansion and simplification of the program consistent with existing law."

Drugs are increasingly becoming available over-the-counter without prescription. Many health plans no longer cover the cost of these drugs as over-the-counter. While an over-the-counter drug is less expensive than the prescription drug, the cost to many consumers increases because the price paid by the consumer for the over-the-counter drug is greater than the co-payment by the consumer when the drug was covered by insurance. This is especially an issue for individuals who remedy chronic health problems by regularly taking an over-the-counter medicine.

Revenue Ruling 2003-102 explains that the statutory exclusion for reimbursements of employee health expenses is broader than the itemized deduction for medical expenses (which does not apply to nonprescription drugs). Thus, the guidance clarifies that employer reimbursements of employee health expenses that are nonprescription drugs, including reimbursements through health FSAs and Health Reimbursement Arrangements (HRAs), are excluded from income like other employer reimbursements of employee health expenses. This will result in savings to consumers with access to employer plans who may purchase nonprescription drugs. However, for purposes of the itemized medical expenses deduction, the cost of such over-the-counter drugs continues to be non-deductible. In addition, the cost of dietary supplements that are merely beneficial to the employee's health are not excluded from income.

The text of Revenue Ruling 2003-102 follows:

Part I

Section 105. - Amounts Received Under Accident and Health Plans
(Also Section 213. - Medical, Dental, etc., Expenses)

Rev. Rul. 2003-102

ISSUE

Are reimbursements by an employer of amounts paid by an employee for medicines, drugs, or dietary supplements purchased by the employee without a physician's prescription excludable from gross income under § 105(o) of the Internal Revenue Code?

FACTS

Employer N sponsors a health flexible spending arrangement (health FSA). The health FSA provides for the reimbursement of participating employees' medical care expenses that are not covered by other insurance. Employee A is a participating employee in Employer N's health FSA.
Employee A purchases an antacid, an allergy medicine, a pain reliever, and a cold medicine from a pharmacy, none of which are purchased with a physician’s prescription. Employee A purchases these items for personal use, or for the use of Employee A’s spouse or dependents, to alleviate or treat personal injuries or sickness. Employee A also purchases dietary supplements (e.g., vitamins) without a physician’s prescription to maintain the general health of Employee A, or Employee A’s spouse or dependents. Employee A submits substantiated claims for all of these expenses, which have been incurred during the current plan year, to Employer N’s health FSA for reimbursement. Employee A is not compensated for these expenses by insurance or otherwise.

**LAW AND ANALYSIS**

Section 61(a)(1) provides that, except as otherwise provided in subtitle A, gross income includes compensation for services, including fees, commissions, fringe benefits, and similar items.

Section 105(a) provides that amounts received by an employee through accident or health insurance for personal injuries or sickness are included in gross income to the extent such amounts (1) are attributable to contributions by the employer that were not includable in the gross income of the employee or (2) are paid by the employer.

However, § 105(b) provides an exception to the general rule requiring inclusion in income. Section 105(b) provides that, except in the case of amounts attributable to (and not in excess of) deductions allowed under § 213 (relating to medical expenses) for any prior taxable year, gross income does not include amounts paid, directly or indirectly, to the taxpayer to reimburse the taxpayer for expenses incurred by the taxpayer for the medical care (as defined in § 213(d)) of the taxpayer or the taxpayer’s spouse or dependents (as defined in § 152).

Section 105(e) states that amounts received under an accident or health plan for employees are treated as amounts received through accident or health insurance for purposes of § 105. Section 105(f)(1) of the Income Tax Regulations provides that an accident or health plan is an arrangement for the payment of amounts to employees in the event of personal injuries or sickness.

Section 213(d)(1) defines “medical care” to include amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body.

Section 1.213-1(e)(1)(ii) states that an expenditure that is merely beneficial to the general health of an individual, such as an expenditure for a vacation, is not an expenditure for medical care. Section 1.213-1(e)(1)(ii) also states that expenditures for “medicines and drugs” are expenditures for medical care.

Section 1.213-1(e)(2) states that the term “medicine and drugs” includes only items that are legally procured and generally accepted as falling within the category of medicine and drugs. Section 1.213-1(e)(2) further provides that toiletries (e.g., toothpaste), cosmetics (e.g., face creams) and sundry items are not “medicines and drugs” and that amounts expended for these items are not expenditures for “medical care.”

Rev. Rul. 2003-58, 2003-22 I.R.B. 959, considers whether amounts paid by an individual for medicines that may be purchased without a prescription of a physician are deductible under § 213. The ruling notes that § 213(b) permits an amount paid for a medicine or drug to be taken into account for the purposes of the § 213 deduction for medical care expenses only if the medicine or drug is a prescribed drug or insulin. Section 213(d)(3) defines a “prescribed drug” as a drug or biological that requires a prescription of a physician for its use by an individual. The ruling concludes that amounts paid for medicines or drugs that may be purchased without a prescription of a physician are not taken into account pursuant to § 213(b) and are therefore not deductible under § 213.

Section 105(b) specifically refers to “expenses incurred by the taxpayer for . . . medical care,” as defined in § 213(d). There is no requirement in § 105(b) that the expense be allowed as a deduction for medical care under § 213(a) or that only medicines or drugs that require a physician’s prescription be taken into account.

Accordingly, the amount expended by Employee A to purchase the antacid, allergy medicine, pain reliever, and cold medicine without a physician’s prescription is an expenditure for medical care. Employer N’s health FSA reimbursement of Employee A’s cost for these items is therefore excluding under § 105(b), even though the cost would not have been deductible under § 213(a). However, the dietary supplements (e.g., the vitamins) are merely beneficial to Employee A or Employee A’s spouse or dependents’ general good health. Therefore, the cost of the dietary supplements is not an expense for medical care and is not reimbursable or excludable under § 105(b).

**HOLDING**

Reimbursements by an employer of amounts paid by an employee for medicines and drugs purchased by the employer (without a physician’s prescription) are excludable from gross income under § 105(b). However, amounts paid by an employee for dietary supplements that are merely beneficial to the general health of the employee or the employee’s spouse or dependents, are not reimbursable or excludable from gross income under § 105(b).
EFFECT ON OTHER REVENUE RULINGS


DRAFTING INFORMATION

The principal author of this revenue ruling is Barbara E. Pie of the Office of Division Counsel/Associated Chief Counsel (Tax Exempt and Government Entities). For further information regarding this revenue ruling, contact Ms. Pie at (202) 622-6080 (not a toll-free call).
Sec. 105. Amounts received under accident and health plans

TITLE 26, Subtitle A, CHAPTER 1, Subchapter B, PART III, Sec. 105.

STATUTE

(a) Amounts attributable to employer contributions
Except as otherwise provided in this section, amounts received by an employee through accident or health insurance for personal injuries or sickness shall be included in gross income to the extent such amounts (1) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (2) are paid by the employer.

(b) Amounts expended for medical care
Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses) for any prior taxable year, gross income does not include amounts referred to in subsection (a) if such amounts are paid, directly or indirectly, to the taxpayer to reimburse the taxpayer for expenses incurred by him for the medical care (as defined in section 213(d)) of the taxpayer, his spouse, and his dependents (as defined in section 152). Any child to whom section 152(e) applies shall be treated as a dependent of both parents for purposes of this subsection.

(c) Payments unrelated to absence from work
Gross income does not include amounts referred to in subsection

(a) to the extent such amounts -

(1) constitute payment for the permanent loss or loss of use of a member or function of the body, or the permanent disfigurement, of the taxpayer, his spouse, or a dependent (as defined in section 152), and

(2) are computed with reference to the nature of the injury without regard to the period the employee is absent from work. [(d) Repealed. Pub. L. 98-21, title I, Sec. 122(b), Apr. 20, 1983, 97 Stat. 87]

(e) Accident and health plans
For purposes of this section and section 104 -

(1) amounts received under an accident or health plan for employees, and

(2) amounts received from a sickness and disability fund for employees maintained under the law of a State or the District of Columbia, shall be treated as amounts received through accident or health
insurance.

(f) Rules for application of section 213
For purposes of section 213(a) (relating to medical, dental, etc.,
expenses) amounts excluded from gross income under subsection (c) or
(d) shall not be considered as compensation (by insurance or otherwise)
for expenses paid for medical care.

(g) Self-employed individual not considered an employee
For purposes of this section, the term "employee" does not include an
individual who is an employee within the meaning of section 401(c)(1)
(relating to self-employed individuals).

(h) Amount paid to highly compensated individuals under a
discriminatory self-insured medical expense reimbursement plan

(1) In general
In the case of amounts paid to a highly compensated individual
under a self-insured medical reimbursement plan which does not
satisfy the requirements of paragraph (2) for a plan year, subsection
(b) shall not apply to such amounts to the extent they constitute an
excess reimbursement of such highly compensated individual.

(2) Prohibition of discrimination
A self-insured medical reimbursement plan satisfies the
requirements of this paragraph only if-

(A) the plan does not discriminate in favor of highly compensated
individuals as to eligibility to participate; and

(B) the benefits provided under the plan do not discriminate in
favor of participants who are highly compensated individuals.

(3) Nondiscriminatory eligibility classifications

(A) In general
A self-insured medical reimbursement plan does not satisfy the
requirements of subparagraph (A) of paragraph (2) unless such
plan benefits -

(i) 70 percent or more of all employees, or 80 percent or more
of all the employees who are eligible to benefit under the
plan if 70 percent or more of all employees are eligible to
benefit under the plan; or

(ii) such employees as qualify under a classification set up by
the employer and found by the Secretary not to be
discriminatory in favor of highly compensated
individuals.

(B) Exclusion of certain employees
For purposes of subparagraph (A), there may be excluded from
consideration -

(i) employees who have not completed 3 years of service;

(ii) employees who have not attained age 25;

(iii) part-time or seasonal employees;

(iv) employees not included in the plan who are included in a
unit of employees covered by an agreement between employee representatives and one or more employers which the Secretary finds to be a collective bargaining agreement, if accident and health benefits were the subject of good faith bargaining between such employee representatives and such employer or employers; and

(v) employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)).

(4) Nondiscriminatory benefits
A self-insured medical reimbursement plan does not meet the requirements of subparagraph (B) of paragraph (2) unless all benefits provided for participants who are highly compensated individuals are provided for all other participants.

(5) Highly compensated individual defined
For purposes of this subsection, the term "highly compensated individual" means an individual who is -

(A) one of the 5 highest paid officers,

(B) a shareholder who owns (with the application of section 318) more than 10 percent in value of the stock of the employer, or

(C) among the highest paid 25 percent of all employees (other than employees described in paragraph (3)(B) who are not participants).

(6) Self-insured medical reimbursement plan
The term "self-insured medical reimbursement plan" means a plan of an employer to reimburse employees for expenses referred to in subsection (b) for which reimbursement is not provided under a policy of accident and health insurance.

(7) Excess reimbursement of highly compensated individual
For purposes of this section, the excess reimbursement of a highly compensated individual which is attributable to a self-insured medical reimbursement plan is -

(A) in the case of a benefit available to highly compensated individuals but not to all other participants (or which otherwise fails to satisfy the requirements of paragraph (2)(B)), the amount reimbursed under the plan to the employee with respect to such benefit, and

(B) in the case of benefits (other than benefits described in subparagraph (A) paid to a highly compensated individual by a plan which fails to satisfy the requirements of paragraph (2), the total amount reimbursed to the highly compensated individual for the plan year multiplied by a fraction -

(i) the numerator of which is the total amount reimbursed to all participants who are highly compensated individuals
under the plan for the plan year, and
(ii) the denominator of which is the total amount reimbursed
to all employees under the plan for such plan year. In
determining the fraction under subparagraph (B), there
shall not be taken into account any reimbursement which
is attributable to a benefit described in subparagraph (A).

(8) Certain controlled groups, etc.
All employees who are treated as employed by a single employer
under subsection (b), (c), or (m) of section 414 shall be treated as
employed by a single employer for purposes of this section.

(9) Regulations
The Secretary shall prescribe such regulations as may be necessary
to carry out the provisions of this section.

(10) Time of inclusion
Any amount paid for a plan year that is included in income by
reason of this subsection shall be treated as received or accrued in
the taxable year of the participant in which the plan year ends.

(i) Sick pay under Railroad Unemployment Insurance Act
Notwithstanding any other provision of law, gross income includes
benefits paid under section 2(a) of the Railroad Unemployment Insurance
Act for days of sickness; except to the extent such sickness (as
determined in accordance with standards prescribed by the Railroad
Retirement Board) is the result of on-the-job injury.

FOOTNOTES

1. So in original. Probably should be followed by a closing parenthesis.

SECTION REFERRED TO IN OTHER
SECTIONS

This section is referred to in sections 22, 51A, 213, 3401, 6039D, 7701, 7871
of this title.

SOURCE
AMENDMENTS
EFFECTIVE DATE OF 1989 AMENDMENT
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EFFECTIVE DATE OF 1976 AMENDMENT
EFFECTIVE DATE OF 1964 AMENDMENT
EFFECTIVE DATE OF 1962 AMENDMENT
NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99-514 FOR FISCAL YEAR 1990
REVOCATION OF ELECTION
PERIOD FOR ASSESSING DEFICIENCY
EFFECTIVE DATE OF CHANGES IN EXCLUSION FOR SICK PAY
SPECIAL RULE FOR EXISTING PERMANENT AND TOTAL DISABILITY CASES
SPECIAL RULE FOR COORDINATION WITH SECTION 72 OF THIS TITLE
REFERENCES IN TEXT

Web edition produced by John Walker
Sec. 213. Medical, dental, etc., expenses

TITLE 26, Subtitle A, CHAPTER I, Subchapter B, PART VII, Sec. 213.

STATUTE

(a) Allowance of deduction
There shall be allowed as a deduction the expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent (as defined in section 152), to the extent that such expenses exceed 7.5 percent of adjusted gross income.

(b) Limitation with respect to medicine and drugs
An amount paid during the taxable year for medicine or a drug shall be taken into account under subsection (a) only if such medicine or drug is a prescribed drug or is insulin.

(c) Special rule for decedents
(1) Treatment of expenses paid after death
For purposes of subsection (a), expenses for the medical care of the taxpayer which are paid out of his estate during the 1-year period beginning with the day after the date of his death shall be treated as paid by the taxpayer at the time incurred.

(2) Limitation
Paragraph (1) shall not apply if the amount paid is allowable under section 2053 as a deduction in computing the taxable estate of the decedent, but this paragraph shall not apply if (within the time and in the manner and form prescribed by the Secretary) there is filed -

(A) a statement that such amount has not been allowed as a deduction under section 2053, and

(B) a waiver of the right to have such amount allowed at any time as a deduction under section 2053.

(d) Definitions
For purposes of this section -

(1) The term "medical care" means amounts paid -

(A) for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body,

(B) for transportation primarily for and essential to medical care referred to in subparagraph (A),

(C) for qualified long-term care services (as defined in section
7702B(c)), or

(D) for insurance (including amounts paid as premiums under part B of title XVIII of the Social Security Act, relating to supplementary medical insurance for the aged) covering medical care referred to in subparagraphs (A) and (B) or for any qualified long-term care insurance contract (as defined in section 7702B(b)). In the case of a qualified long-term care insurance contract (as defined in section 7702B(b)), only eligible long-term care premiums (as defined in paragraph (10)) shall be taken into account under subparagraph (D).

(2) Amounts paid for certain lodging away from home treated as paid for medical care. - Amounts paid for lodging (not lavish or extravagant under the circumstances) while away from home primarily for and essential to medical care referred to in paragraph (1)(A) shall be treated as amounts paid for medical care if:

(A) the medical care referred to in paragraph (1)(A) is provided by a physician in a licensed hospital (or in a medical care facility which is related to, or the equivalent of, a licensed hospital), and

(B) there is no significant element of personal pleasure, recreation, or vacation in the travel away from home. The amount taken into account under the preceding sentence shall not exceed $50 for each night for each individual.

(3) Prescribed drug. - The term "prescribed drug" means a drug or biological which requires a prescription of a physician for its use by an individual.

(4) Physician. - The term "physician" has the meaning given to such term by section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)).

(5) Special rule in the case of child of divorced parents, etc. - Any child to whom section 152(e) applies shall be treated as a dependent of both parents for purposes of this section.

(6) In the case of an insurance contract under which amounts are payable for other than medical care referred to in subparagraphs (A), (B), and (C) of paragraph (1) -

(A) no amount shall be treated as paid for insurance to which paragraph (1)(D) applies unless the charge for such insurance is either separately stated in the contract, or furnished to the policyholder by the insurance company in a separate statement,

(B) the amount taken into account as the amount paid for such insurance shall not exceed such charge, and

(C) no amount shall be treated as paid for such insurance if the amount specified in the contract (or furnished to the policyholder by the insurance company in a separate statement) as the charge for such insurance is unreasonably large in relation to the total charges under the contract.
(7) Subject to the limitations of paragraph (6), premiums paid during the taxable year by a taxpayer before he attains the age of 65 for insurance covering medical care (within the meaning of subparagraphs (A), (B), and (C) of paragraph (1)) for the taxpayer, his spouse, or a dependent after the taxpayer attains the age of 65 shall be treated as expenses paid during the taxable year for insurance which constitutes medical care if premiums for such insurance are payable (on a level payment basis) under the contract for a period of 10 years or more or until the year in which the taxpayer attains the age of 65 (but in no case for a period of less than 5 years).

(8) The determination of whether an individual is married at any time during the taxable year shall be made in accordance with the provisions of section 6013(d) (relating to determination of status as husband and wife).

(9) Cosmetic surgery. -

(A) In general. - The term "medical care" does not include cosmetic surgery or other similar procedures, unless the surgery or procedure is necessary to ameliorate a deformity arising from, or directly related to, a congenital abnormality, a personal injury resulting from an accident or trauma, or disfiguring disease.

(B) Cosmetic surgery defined. - For purposes of this paragraph, the term "cosmetic surgery" means any procedure which is directed at improving the patient's appearance and does not meaningfully promote the proper function of the body or prevent or treat illness or disease.

(10) Eligible long-term care premiums. -

(A) In general. - For purposes of this section, the term "eligible long-term care premiums" means the amount paid during a taxable year for any qualified long-term care insurance contract (as defined in section 7702B(b)) covering an individual, to the extent such amount does not exceed the limitation determined under the following table: In the case of an individual with an attained age before the The limitation close of the taxable year of: is: 40 or less $ 200 More than 40 but not more than 50 375 More than 50 but not more than 60 750 More than 60 but not more than 70 2,000 More than 70 2,500.

(B) Indexing. -

(i) In general. - In the case of any taxable year beginning in a calendar year after 1997, each dollar amount contained in subparagraph (A) shall be increased by the medical care cost adjustment of such amount for such calendar year. If any increase determined under the preceding sentence is not a multiple of $10, such increase shall be rounded to the nearest multiple of $10.

(ii) Medical care cost adjustment. - For purposes of clause (i),
the medical care cost adjustment for any calendar year is the percentage (if any) by which -

(I) the medical care component of the Consumer Price Index (as defined in section 1(f)(5)) for August of the preceding calendar year, exceeds

(II) such component for August of 1996. The Secretary shall, in consultation with the Secretary of Health and Human Services, prescribe an adjustment which the Secretary determines is more appropriate for purposes of this paragraph than the adjustment described in the preceding sentence, and the adjustment so prescribed shall apply in lieu of the adjustment described in the preceding sentence.

(II) Certain payments to relatives treated as not paid for medical care. - An amount paid for a qualified long-term care service (as defined in section 7702B(c)) provided to an individual shall be treated as not paid for medical care if such service is provided -

(A) by the spouse of the individual or by a relative (directly or through a partnership, corporation, or other entity) unless the service is provided by a licensed professional with respect to such service, or

(B) by a corporation or partnership which is related (within the meaning of section 267(b) or 707(b)) to the individual. For purposes of this paragraph, the term "relative" means an individual bearing a relationship to the individual which is described in any of paragraphs (1) through (8) of section 152 (a). This paragraph shall not apply for purposes of section 105 (b) with respect to reimbursements through insurance.

(e) Exclusion of amounts allowed for care of certain dependents
Any expense allowed as a credit under section 21 shall not be treated as an expense paid for medical care.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35, 56, 67, 68, 72, 104, 105, 152, 162, 220, 223, 419A, 501, 2503, 4980B, 6041, 7702B, 9832 of this title; title 29 section 1167.

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EFFECTIVE DATE OF 1958 AMENDMENT
REFERENCES IN TEXT
ADJUSTMENT OF LONG-TERM CARE PREMIUM LIMITATION FOR TAXABLE YEARS BEGINNING IN 2004

Web edition produced by John Walker
DATE: NOVEMBER 9, 2005

TO: ADMINISTRATIVE COMMITTEE

FROM: ROBB WHITAKER, GENERAL MANAGER

SUBJECT: HARASSMENT, DISCRIMINATION, RETALIATION PREVENTION POLICY

SUMMARY
The District has a legal responsibility to prevent harassment, discrimination and retaliation from occurring in the workplace. Training is one tool the District can use to help ensure this responsibility is met. In addition to training, the District should have a comprehensive written policy outlining the measures the District will take to prevent harassment.

Attached for the Committee’s review is a comprehensive harassment, discrimination and retaliation prevention policy (Attachment B). The policy is similar to the sample policy the employment law firm of Liebert Cassidy Whitmore has prepared for use by public agencies, and the policy contains the requirements recommended by the Equal Employment Opportunity Commission. The policy is designed to be a “stand-alone” policy that will be incorporated in to a comprehensive employment manual.

In conjunction with the written policy, staff is recommending that Section 16 of the Administrative Code be revised. In particular, Section 16 should be revised to reflect the Board's policy to prevent harassment, discrimination and retaliation, and it should include directives to management to establish management policies, practices and training to ensure the Board’s policy is fulfilled.

FISCAL IMPACT
None.

STAFF RECOMMENDATION
Recommend the Board approve changes to the Administrative Code as presented in Attachment A and receive the Harassment, Discrimination, Retaliation Prevention Policy.
16.1 District Policy

It is the policy of the District to provide each employee with an employment opportunity and workplace environment that is free from unlawful or improper discrimination or harassment by any other employee or by any person on the District's premises or with whom the District has a business relationship, on account of the employee's race, color, religion, marital status, age, physical handicaps, medical conditions, gender or sexual orientation, including refusal, failure or disinclination to have or engage in any form or kind of sexual relationship with another person. All applicants and employees will be treated equally by the District and without favoritism based upon any of these factors or conditions.

16.2 Discrimination

"Discrimination" means making a decision or determination relating to the operation or business of the District and affecting one or more employees, based in whole or in significant part upon any of the improper factors set forth above, such as race, color, creed, etc.

16.3 Harassment

16.3.1 Verbal Harassment

Verbal harassment involves the use of the spoken or written word, and may include epithets, derogatory comments, harassing e-mail, or slurs based upon a person's race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, sexual orientation, age, political opinion or affiliation.

16.3.2 Physical Harassment

Physical harassment involves physical acts, including assault, impeding or blocking movement or any physical interference with normal work or movement when directed at an individual based upon a person's race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, sexual orientation, age, political opinion or affiliation.

16.3.3 Sexual Harassment

Sexual harassment includes, but is not limited to, unwelcome sexual advances, requests for sexual favors, sexually suggestive comments, jokes of a sexual nature, or verbal, physical, and/or other non-verbal conduct of a sexual nature when: a) submission to such conduct is made either explicitly or implicitly a term or condition of employment; b) submission to, or rejection of, such conduct is used as a basis for employment decisions; c) such conduct has the purpose or effect of substantially interfering with
an individual's work performance; or d) such conduct has the
effect of creating an intimidating, hostile, or offensive work
environment.

While the District does not seek to limit or restrict freedom of
association or to control social contacts between any two
employees, whether or not in a supervisory or management
position, it cannot tolerate any conduct falling within the definition
stated above. When sexual harassment is committed by an
employee of the District, the appropriate supervisor or manager
shall take action as provided in Section 16.4, below. Where a
non-employee of the District or the supervisor of the employee
who is the object of the harassment commits sexual harassment,
the General Manager shall take immediate investigative and
corrective action to the extent possible under the circumstances.
Where the General Manager commits sexual harassment, the
Board President shall take immediate investigative and
corrective action to the extent possible under the circumstances.

In addition to the remedy and complaint procedure provided by
the District, an employee who has been the victim of sexual
harassment has legal remedies with administrative agencies of
the State of California: the Department of Fair Employment and
Housing and the Fair Employment and Housing Commission. If
an employee feels that he or she has been the victim of sexual
harassment, he or she may file a complaint with the Department
of Fair Employment and Housing within one year of when the
incident occurred. The Department will then investigate the
claim and may order remedies in favor of the employee. The
Los Angeles area office of the Department of Fair Employment
and Housing is located at 611 W. 6th Street, Ste. 1500, Los
Angeles, CA 90017. The telephone number is (213) 439-6799.
The claim process begins with employee calling the Claim
Communication Center in Sacramento at 1-800-884-1684.

16.4 Complaint Procedure

An employee who believes that he or she has been subject to
any impermissible discrimination or harassment should give
written notice to any manager or supervisory employee, or to the
General Manager. If the complaint is against the General
Manager, written notice should be given to a member of the
Board of Directors or to the District’s General Manager, Board
members, or General Counsel, as the case may be. Matters
involved in the complaint or in the investigation shall be
disclosed only to management personnel who need to know
such matters in order to conduct company business or to take
remedial action with respect to the complaint, and, in appropriate
circumstances, to the accused employee or duly designated agent.

Upon receipt of any complaint of discrimination or harassment, within three business days the District will commence a thorough and fair, but discreet investigation of the facts surrounding the complaint, as is necessary to reach a sound, businesslike conclusion. If it is found that an employee has been subject to unlawful or improper discrimination or harassment in violation of this policy, the District will take steps believed to be appropriate to deal with the offender and prevent a recurrence of the violation.
16. DISCRIMINATION AND HARASSMENT PREVENTION POLICY

16.1 District Policy

It is the policy of the District to ensure a work environment free from discrimination or harassment of any kind. Discrimination and harassment undermines the integrity of the employment relationship, interferes with work productivity and is illegal under federal and state laws.

All employment decisions such as hiring, promoting, training and rewarding will be made exclusively on the basis of job-related criteria. Disciplinary action will be taken solely on the basis of employees' behavior and job performance.

Discrimination or harassment of any kind based on race, religion, sex (including gender and pregnancy), national origin, ancestry, disability, medical condition, genetic characteristic, marital status, age or sexual orientation will not be tolerated.

16.2 Prevention Measures

WRD shall establish management policies, practices and training programs to ensure the prevention of discrimination and harassment in the workplace. The prevention measures shall apply to all terms and conditions of employment, including, but not limited to, hiring, placement, promotion, disciplinary action, layoff, recall transfer, leave of absence, compensation and training. Furthermore, the prevention measures shall contain the following elements:

16.2.1 Identification of prohibited conduct, in particular, identification of all forms of discrimination and harassment.

16.2.2 Methods of communicating the prevention measures to ensure they will be understood by all employees and effectively disseminated to all employees.

16.2.3 Description of the complaint process, particularly who can receive complaints.

16.2.4 Description of the investigation process, which shall be prompt, thorough and impartial.

16.2.5 Assurance that the confidentiality of individuals bringing claims of discrimination or harassment will be maintained to the extent possible.
16.2.6 Assurance that immediate and appropriate corrective action and disciplinary action will be taken when discrimination or harassment conduct occurs.

16.2.7 Assurance that complainants, witnesses and others who provide information concerning claims of discrimination or harassment will be protected from retaliation.

16.2.8 Description of the training programs related to preventing discrimination and harassment in the workplace.

16.3 PROHIBITION AGAINST RETALIATION

Anyone who, in good faith, reports what they believe to be discrimination or harassment, or who cooperates in any investigation or associates with an individual who is involved in reporting discrimination or harassment will not be subject to retaliation. Any person found to have retaliated against a person who cooperates in an investigation or who associates with a person who is involved in reporting discrimination or harassment will be subject to disciplinary action.
HARASSMENT, DISCRIMINATION, RETALIATION PREVENTION POLICY

I. PURPOSE

The purpose of this Policy is to establish a strong commitment to prohibit and prevent harassment, discrimination and retaliation in employment, to define those terms, and to set forth a procedure for investigating and resolving internal complaints. The Water Replenishment District of Southern California (WRD) encourages all covered individuals to report, as soon as possible, any conduct that is believed to violate this Policy.

II. OVERVIEW

WRD has zero tolerance for any conduct that violates this Policy. Conduct need not rise to the level of a violation of law in order to violate this Policy. Instead a single act can violate this Policy and provide grounds for discipline or other appropriate sanctions.

Harassment or discrimination against an applicant or employee by a supervisor, management employee, co-worker, contractor, official, officer or member of the public on the basis of race, religion, sex (including gender and pregnancy), national origin, ancestry, disability, medical condition, genetic characteristics, marital status, age or sexual orientation (including homosexuality, bisexuality or heterosexuality) will not be tolerated.

This Policy applies to all terms and conditions of employment, including, but not limited to, hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, compensation and training.

Disciplinary action or other appropriate sanction up to and including termination will be instituted for prohibited behavior as defined below.

Any retaliation against a person for filing a complaint or participating in the complaint resolution process is prohibited. Individuals found to be retaliating in violation of this Policy will be subject to appropriate sanction or disciplinary action up to and including termination.
III. RESPONSIBILITIES

Management shall:
- Publicize and enforce this Policy.
- Model appropriate behavior.
- Monitor the work environment and take all steps necessary to prevent harassment, discrimination or retaliation from occurring.
- Assist in the investigation of complaints involving employee(s) in their department and protect the confidentiality of the investigative process.
- Take immediate and appropriate remedial and corrective action when it is determined that harassment has occurred.
- Follow up with those who have complained to ensure that the behavior has stopped and that there are no reprisals.
- Implement appropriate disciplinary action.
- Report potential violations of this Policy of which he or she becomes aware.
- Participate in periodic training and scheduling employees for training.

Employees shall:
- Be familiar with this Policy, including reading the Policy and attending periodic training on the Policy.
- Model appropriate behavior.
- Fully cooperate with an investigation by responding fully and truthfully to all questions posed during the investigation.
- Maintain the confidentiality of any investigation that WRD conducts by not disclosing the substance of any investigatory interview, except as directed by the General Manager or Manager of Administration and Human Resources.
- Report an act he or she believes in good faith constitutes harassment, discrimination or retaliation as defined in this Policy, to his or her immediate supervisor, department manager or Manager of Administration and Human Resources.

IV. DEFINITIONS

a. Protected Classification: This Policy prohibits harassment or discrimination because of an individual’s protected classification. Protected Classification includes race, religion, color, sex (including gender and pregnancy), sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin, ancestry, citizenship status, uniformed service member status, marital status, pregnancy, age medical condition, genetic characteristics, and physical or mental disability.

b. Policy Coverage: This Policy prohibits employer officials, officer, employees, contractors or members of the public from harassing or discriminating against applicants, officers, officials, employees, or contractors because: 1) of an individual’s protected classification;
2) of the perception that an individual has a protected classification; or 3) the individual associates with a person who has or is perceived to have a protected classification.

c. Discrimination: This Policy prohibits treating individuals differently because of the individual’s protected classification as defined in this Policy.

d. Harassment may include, but is not limited to, the following types of behavior that is taken because of a person’s protected classification. Note that harassment is not limited to conduct that WRD employees engage in. Under certain circumstances, harassment can also include conduct taken by those who are not employees, such as elected officials, appointed officials, persons providing services under contracts, or members of the public:

Speech, such as epithets, derogatory comments or slurs, and propositioning on the basis of a protected classification. This might include inappropriate comments on appearance, including dress or physical features, or dress consistent with gender identification, or race-oriented stories and jokes.

Physical acts, such as assaults, impeding or blocking movement, offensive touching, or any physical interference with normal work or movement. This includes pinching, grabbing, patting, propositioning, leering, or making explicit or implied job threats or promises in return for submission to physical acts.

Visual insults, such as derogatory posters, cartoons, emails or drawings related to a protected classification.

Unwanted sexual advances, requests for sexual favors and other acts of a sexual nature, where submission is made a term or condition of employment, where submission to or rejection of the conduct is used as the basis for employment decisions, or where the conduct is intended to or actually does unreasonably interfere with an individual’s work performance or create an intimidating, hostile or offensive working environment.

e. Guidelines for Identifying Harassment: To help clarify what constitutes harassment in violation of this Policy, the following guidelines shall be used:

i. Harassment includes any conduct which would be “unwelcome” to an individual of the recipient’s same protected classification and which is taken because of the recipient’s protected classification.

ii. It is no defense that the recipient appears to have voluntarily “consented” to the conduct at issue. A recipient may not protest for many legitimate reasons, including the need to avoid being insubordinate or to avoid being ostracized.

iii. Simply because no one has complained about a joke, gesture, picture, physical contact, or comment does not mean that the conduct is welcome. Harassment can evolve over time. Small, isolated incidents might be tolerated up to a point. The fact that no one is complaining now does not preclude anyone from complaining if the conduct is repeated in the future.
iv. Visual, verbal, and/or physical conduct between two employees who appear to welcome it can constitute harassment of a third applicant, officer, official, employee or contractor who observes the conduct or learns about the conduct later. Conduct can constitute harassment even if it is not explicitly or specifically directed at an individual.

v. Conduct can constitute harassment in violation of this Policy even if the individual engaging in the conduct has no intention to harass. Even well-intentioned conduct can violate this Policy if the conduct is directed at, or implicates a protected classification, and if an individual of the recipient’s same protected classification would find it offensive (e.g. gifts, over attention, endearing nicknames).

f. Retaliation: Any adverse conduct taken because an applicant, employee, officer, official or contractor has reported harassment or discrimination, or has participated in the complaint and investigation process described herein, is prohibited. Adverse conduct includes but is not limited to: taking sides because an individual has reported harassment or discrimination, spreading rumors about a complaint, shunning and avoiding an individual who reports harassment or discrimination, or real or implied threats of intimidation to prevent an individual from reporting harassment or discrimination. The following individuals are protected from retaliation: those who make good faith reports of harassment or discrimination, and those who associate with an individual who is involved in reporting harassment or discrimination or who participates in the complaint or investigation process.

V. PROCEDURE

No person shall restrain, interfere with, coerce, attempt to intimidate, or take any reprisal against a participant under these procedures. Failure to comply with this expectation may result in the imposition of disciplinary action.

A. SUBMITTING A COMPLAINT

1. Any employee who has a complaint of harassment, discrimination or retaliation with respect to the workplace by anyone including officers, officials, department managers, supervisors, co-workers, visitors or contractors may make a complaint, orally or in writing, with any of the following. There is no need to follow the chain of command:
   a. Immediate supervisor
   b. Any department manager
   c. Manager of Administration and Human Resources
   d. General Manager

2. Any supervisor or department manager who receives a harassment complaint shall notify the Manager of Administration and Human Resources immediately. The Manager of Administration and Human Resources shall notify the General Manager
of all harassment complaints, and shall notify the President of the Board in the event the complaint is against the General Manager.

3. Upon receiving notification of a harassment complaint, the Manager of Administration and Human Resources shall:
   a. Authorize and supervise the investigation of the complaint and/or investigate the complaint. The investigation will include interviews with: 1) the complainant; 2) the accused harasser; and 3) other persons who have relevant knowledge concerning the complaint.
   b. Review the factual information gathered through the investigation to determine whether the alleged conduct constitutes harassment, discrimination or retaliation giving consideration to all factual information, the totality of the circumstances, including the nature of the conduct, and the context in which the alleged incidents occurred.
   c. Report a summary of the determination as to whether the alleged conduct was in violation of this Policy to the General Manager and recommend prompt, effective remedial action, and appropriate disciplinary action. The action will be commensurate with the severity of the offense.
   d. Communicate a summary of the determination of the investigation to the complainant, alleged harasser and the department manager. If discipline will be imposed, it will not be communicated to the complainant.
   e. Take reasonable steps to protect the complainant from further harassment, discrimination or retaliation.

4. Options to Report to Outside Administrative Agencies: An individual has the option to report harassment, discrimination or retaliation to the U.S. Equal Employment Opportunity Commission or the California Department of Fair Employment and Housing.

B. CONFIDENTIALITY

Every possible effort will be made to assure the confidentiality of complaints made under this Policy. Complete confidentiality cannot occur, however, due to the need to fully investigate and the duty to take effective remedial action. As a result, confidentiality will be maintained to the extent possible. An individual who is interviewed during the course of an investigation is prohibited from discussing the substance of the interview, except as otherwise directed by the General Manager or Manager of Administration and Human Resources. Any individual who discusses the content of an investigatory interview will be subject to discipline or other appropriate sanction. WRD will not disclose a completed investigation report except as it deems necessary to support a disciplinary action, to take remedial action, to defend itself in adversarial proceedings, or to comply with the law or court order.
WRD will retain confidential documentation of all allegations and investigations related to violations of this Policy.

C. OTHER PREVENTIVE AND CORRECTIVE MEASURES

In determining whether the alleged harassing, discriminating, or retaliating conduct warrants corrective action, all relevant circumstances, including the context in which the conduct occurred, will be considered. Facts will be judged on the basis of what is reasonable to persons of ordinary sensitivity and not on the particular sensitivity or reaction of an individual.

Any WRD employee who is found to have engaged in conduct that violates this Policy will be subject to disciplinary action up to and including dismissal. The conduct does not need to reach the level of unlawful harassment, discrimination or retaliation to violate this Policy or for an employee to be subject to disciplinary action.

Any department manager or supervisory employee who knew about the harassment and took no action to stop it or failed to report the harassment to the Manager of Administration and Human Resources may be subject to disciplinary action.

Conduct by an employee that is harassment, discrimination or retaliation in violation of this Policy is considered to be outside the normal course and scope of employment.

VI. TRAINING

The Manager of Administration and Human Resources shall ensure this Policy is widely disseminated to employees by posting the Policy on WRD intranet site, provided copies of this Policy upon request and coordinating effective training programs for all employees. Training program shall at a minimum be provided as follows:

1. All new employees shall receive a copy of this Policy and shall receive initial training on the contents of this Policy upon hire.
2. Supervisory employees shall receive effective interactive training and education regarding the prevention of harassment, discrimination and retaliation a minimum of once every two years. New supervisory employees shall receive training within six months of their assumption of a supervisory position.
3. All employees shall receive periodic refresher training.

The Human Resources Department shall maintain the training records associated with this Policy a minimum of three years and shall ensure the records are electronically archived prior to destruction.
DATE: NOVEMBER 9, 2005

TO: ADMINISTRATIVE COMMITTEE

FROM: ROBB WHITAKER, GENERAL MANAGER

SUBJECT: ADMINISTRATIVE CODE REVISIONS

SUMMARY
Changes to the Administrative Code will be presented and discussed at the meeting.

FISCAL IMPACT
None.

STAFF RECOMMENDATION
Discuss any Administrative Code revisions and recommend the Board consider adoption of any such revisions as recommended by the Committee.
MEMORANDUM

ITEM NO. 8

DATE: NOVEMBER 9, 2005

TO: ADMINISTRATIVE COMMITTEE

FROM: ROBB WHITAKER, GENERAL MANAGER

SUBJECT: DEPARTMENT REPORT

SUMMARY
Staff will provide an update of department activities.

FISCAL IMPACT
None.

STAFF RECOMMENDATION
For information.