

RESOLUTION 2013-207

RESOLUTION ADOPTING REVISIONS TO THE FOLLOWING BOARD OF PORT COMMISSIONERS (BPC) POLICIES PURSUANT TO CHANGES IN STATE LAW: A) BPC POLICY NO. 358 – CONTRACTORS’ AND LESSEES’ COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY AND NONDISCRIMINATION; B) BPC POLICY NO. 359 – EQUAL OPPORTUNITY CONTRACTING; AND C) BPC POLICY NO. 361 – EQUAL EMPLOYMENT OPPORTUNITY AND NONDISCRIMINATION

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the legislature in 1962 pursuant to Harbors and Navigation Code Appendix 1, (Port Act); and

WHEREAS, Section 16 of the Port Act grants the Board of Port Commissioners (BPC) the authority to promulgate rules and regulations for the governance of the BPC and the District; and

WHEREAS, on October 10, 2013, Governor Jerry Brown signed into law Assembly Bill 556 which adds “military” and “veteran” status to the list of categories protected from employment discrimination under the Fair Employment and Housing Act and while “veteran” status is currently included in District policies “military” status is not; and

WHEREAS, three BPC policies address preventing and remedying numerous protected classes from discrimination in accordance with state law and existing District policy including BPC Policy No. 358 – Contractors’ and Lessees’ Compliance with Equal Employment Opportunity and Nondiscrimination, BPC Policy No. 359 – Equal Opportunity Contracting; and BPC Policy No. 361 – Equal Employment Opportunity and Nondiscrimination must be amended to comply with these recent changes to state law; and

WHEREAS, the District now intends to amend said BPC Policies by amending Policy Nos. 358, 359, and 361 to reflect the changes in law.

NOW, THEREFORE, BE IT RESOLVED that the Board of Port Commissioners of the San Diego Unified Port District, as follows:

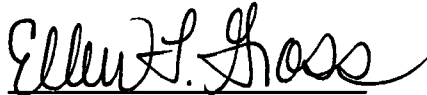
1. That BPC Policy No. 358 – Contractors’ and Lessees’ Compliance with Equal Employment Opportunity and Nondiscrimination is amended as set

forth in Attachment "A" attached hereto and incorporated by reference as though set forth in full herein.

2. That BPC Policy No. 359 - Equal Opportunity Contracting is amended as set forth in Attachment "B" attached hereto and incorporated by reference as though set forth in full herein.

3. That BPC Policy No. 361 - Equal Employment Opportunity and Nondiscrimination is amended as set forth in Attachment "C" attached hereto and incorporated by reference as though set forth in full herein.

APPROVED AS TO FORM AND LEGALITY:
PORT ATTORNEY

A handwritten signature in cursive script that reads "Ellen L. Gross". The signature is written in black ink and is positioned above a horizontal line.

By: Assistant/~~Deputy~~

2013-207

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 10th day of December, 2013, by the following vote:

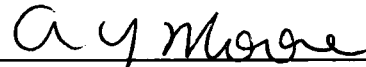
AYES: Castellanos, Malcolm, Merrifield, Moore, Nelson, Smith and Valderrama

NAYS: None.

EXCUSED: None.

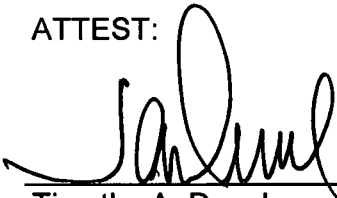
ABSENT: None.

ABSTAIN: None.



Ann Y. Moore, Chair
Board of Port Commissioners

ATTEST:



Timothy A. Deuel
District Clerk

(Seal)

(2)



BPC Policy No. 358

SUBJECT: SERVICE PROVIDERS', VENDORS', CONTRACTORS' AND LESSEES' COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY AND NONDISCRIMINATION POLICY

PURPOSE: To promulgate a formal policy statement of the Board of Port Commissioners (Board) to ensure that service providers, vendors, contractors and lessees adhere to Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1991; the California Fair Employment and Housing Act; the Americans with Disabilities Act; and any other applicable Federal, State, and local law or regulation relating to equal employment opportunity and nondiscrimination, including any such law, regulation, and policy hereinafter enacted.

POLICY STATEMENT:

It is the policy of the San Diego Unified Port District (District) that all service providers, vendors, contractors and lessees conducting business with the District shall not discriminate against any employee or applicant for employment because of age (over 40), ancestry, color, disability (mental or physical), gender (including identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with the person's sex at birth), marital status, medical condition, military status, national origin, pregnancy, race, religion, sexual orientation, genetic information or veteran status, and shall take action to assure that applicants and employees are treated without regard to age (over 40), ancestry, color, disability (mental or physical), gender (including identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with the person's sex at birth), marital status, medical condition, military status, national origin, pregnancy, race, religion, sexual orientation, genetic information or veteran status.

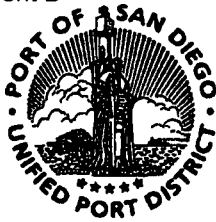
The District requires all service providers, vendors, contractors and lessees to comply with all applicable Federal, State, and local law or regulation relating to equal employment opportunity and nondiscrimination, including any such law, regulation, and policy hereinafter enacted for the promotion of equal employment opportunities and nondiscrimination.

Further, the District believes that diversity in the workforce provides a variety of perspectives, promotes the exchange of ideas, and provides the ability to respond to a diverse community. This statement is provided to reaffirm the District's commitment to equal employment opportunity and nondiscrimination, and to require its service providers, vendors, contractors and lessees to ensure that all employment actions shall be administered in a manner to further the principle of equal employment opportunity and nondiscrimination.

The Board hereby declares that from the effective date of this policy statement, there shall be included in contract and lease documents covering services or lands under the control of the District, a provision requiring the service provider, vendor, contractor or lessee to comply with all applicable Federal, State, and local law or regulation relating to equal employment opportunity and nondiscrimination, including any such law, regulation, and policy hereinafter enacted for the promotion of equal employment opportunities and nondiscrimination. The contract or lease provision shall be included in all new, renewed, and substantially amended contracts or leases. A sublessee who is the prime operator on leased premises shall be considered the lessee for the purposes and provisions of this policy.

This policy shall be reviewed annually and updated when required by law.

RESOLUTION NUMBER AND DATE: 2013-207, dated December 10, 2013 (Supersedes BPC Policy 358, Resolution 2008-139, dated August 5, 2008, Resolution 2004-16, dated February 3, 2004; Resolution 2002-265, dated October 8, 2002; Resolution 2001-62, dated July 24, 2001; and Resolution 2000-41, dated February 8, 2000)



(2)

BPC Policy No. 359

SUBJECT: EQUAL OPPORTUNITY CONTRACTING POLICY

PURPOSE: To promulgate a formal policy statement of the Board of Port Commissioners to ensure that all businesses that want to do business with the San Diego Unified Port District (District), shall have the maximum opportunity to participate in the performance of District contracting and leasing opportunities, and to ensure that, workers on public works projects of one thousand dollars (\$1,000) or more, are paid the general prevailing rate of per diem wages for regular, holiday, and overtime work as provided by California Labor Code Section 1771.

POLICY STATEMENT:

It is the policy of the District that all businesses be provided equal opportunity to participate in the performance of District contracting and leasing opportunities, and to ensure that, workers on public works projects of one thousand dollars (\$1,000) or more are paid the general prevailing rate of per diem wages for regular, holiday, and overtime work as provided by California Labor Code Section 1771.

The District is committed to take all necessary and reasonable steps to increase its utilization of small businesses for a positive economic impact to the region. District policy prohibits discrimination against any person because of age (over 40), ancestry, color, disability (mental or physical), gender (including identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with the person's sex at birth), marital status, medical condition, military status, national origin, pregnancy, race, religion, sexual orientation, genetic information, or veteran status, in the award or performance of District contracts or leases.

The District will create a level playing field on which small businesses can compete fairly for District contracts. This policy will help remove barriers to the participation of small businesses in District contracts and assist in the development of firms to compete successfully in the marketplace outside the District's Equal Opportunity Contracting Program.

The Manager, Equal Opportunity shall be responsible for managing the District's Equal Opportunity Contracting Program and ensuring that District employees, agents, lessees, and contractors adhere to the provisions of the Equal Opportunity Contracting Program. Implementation of the Equal Opportunity Contracting Program is accorded the same priority as compliance with all other legal obligations incurred by the District.

This policy shall be reviewed annually and updated when required by law.

RESOLUTION NUMBER AND DATE: Resolution 2013-207, dated December 10, 2013; (Supersedes BPC Policy 359, Resolution 2008-140, dated August 5, 2008; Resolution 2004-17, dated February 3, 2004; Resolution 2003-50, dated March 11, 2003; Resolution 2001-163, dated July 24, 2001; Resolution 2000-41, dated February 8, 2000; Resolution 89-20, dated January 24, 1989)



(9)

San Diego Unified Port District
Document No. 61129
Filed JAN 10 2014
Office of the District Clerk

BPC Policy No. 361

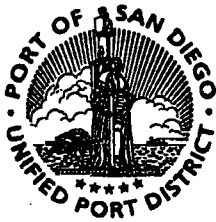
SUBJECT: EQUAL EMPLOYMENT OPPORTUNITY AND NONDISCRIMINATION POLICY

PURPOSE: To affirm the San Diego Unified Port District's ("District") commitment to equal employment opportunity and nondiscrimination in all personnel actions including: recruitment, employment, transfer, demotion, promotion, suspension or discharge of any individual based on age (40 and above), ancestry, color, disability (mental or physical), gender (including identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with the person's sex at birth), marital status, medical condition, military status, national origin, pregnancy, race, religion, sexual orientation, genetic information, or veteran status.

AUTHORITY: Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1991; the Genetic Information Nondiscrimination Act of 2008, the California Fair Employment and Housing Act; and any other applicable Federal, State, and local law or regulation relating to equal employment opportunity and nondiscrimination, including any such law, regulation, and policy hereinafter enacted.

POLICY STATEMENT:

The District firmly believes in, and is committed to, the principles and practices of equal employment opportunity and nondiscrimination. It is the policy of the District to recruit, hire, train, and promote persons in all job classifications without regard to age (40 and above), ancestry, color, disability (mental or physical), gender (including identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with the person's sex at birth), marital status, medical condition, military status, national origin, pregnancy, race, religion, sexual orientation, genetic information, or veteran status.



BPC Policy No. 361

While the District seeks to attain a work force that is inclusive of all the communities of San Diego, the District shall ensure that all personnel actions are administered in a manner so as to further the principle of equal employment opportunity and nondiscrimination.

Additionally, all employees of the District are required to conduct themselves in a professional manner at all times. Discrimination based upon the above protected classes is also prohibited by federal and state law.¹ Therefore, discrimination by any employee based upon the grounds set forth above is strictly prohibited.

Further, the District shall provide a procedure for filing of complaints of alleged discrimination by aggrieved parties, including members of the public. The District's Diversity and Inclusion Program shall prescribe the procedures for implementation of this policy. The President and Chief Executive Officer has ultimate responsibility for assuring the development and implementation of the program. Overall responsibility for implementation of the program will be with the Manager, Equal Opportunity, who is also responsible for developing the procedures which will be used to implement and monitor the program and process discrimination complaints. Accountability in achieving the objectives of the program will be shared by all District management.

Any aggrieved party who feels to have been subjected to discrimination by the District or representatives of the District, for any of those reasons cited above, can file a discrimination complaint with the Human Resources department.

The District recognizes that confidentiality is important to all parties involved in a discrimination investigation. Confidentiality will be maintained to the extent possible; however, it cannot be guaranteed. Only those individuals with a legitimate right to know or who are necessary for resolution of a complaint will be involved in the investigatory process.

Further, any witness or party involved in an investigation will be directed to keep confidential his or her involvement in the investigation and/or any information learned as

¹ A violation of this policy may not constitute a violation of federal or state law, although discrimination is prohibited by both.
BPC Policy No. 361



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a result of his or her involvement in the investigation and admonished that any breach of such direction or of the confidentiality of the investigation could constitute an independent basis for discipline and/or other corrective action.

The District will not tolerate retaliation against any employee or other person for initiating, pursuing, or assisting with a complaint of alleged discrimination to the District or to any government agency. For example, it is improper, and inappropriate, to withhold or imply to withhold, any support for appointment or recruitment, promotion, transfer, non-retention, or termination, or to suggest that a poor performance evaluation will be prepared based upon a retaliatory basis.

The District also prohibits retaliation against any employee for participating in any manner in the investigation of a complaint or report leading to investigation of discrimination. Any individual who engages in retaliation against a complainant or reporting party in violation of this policy may be subject to discipline up to and including termination.

Copies of this Policy when significant changes are made, will be provided to all employees who must sign a form acknowledging receipt of this information. A copy will be retained for their personnel records.

This policy shall be reviewed annually and updated when required by law.

Exhibit A: Policy

Exhibit B: Acknowledgment Form

RESOLUTION NUMBER AND DATE 2013-207, dated December 10, 2013 (Supersedes BPC Policy 361, Resolution 2008-141, dated August 5, 2008; Resolution 2004-18, dated February 3, 2004; Resolution 2002-266, dated October 8, 2002, Resolution 2001-164, dated July 24, 2001; Resolution 2000-41, dated February 8, 2000)



(9)

San Diego Unified Port District
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BPC Policy No. 361

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AUTHORITY: Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1991; the Genetic Information Nondiscrimination Act of 2008, the California Fair Employment and Housing Act; and any other applicable Federal, State, and local law or regulation relating to equal employment opportunity and nondiscrimination, including any such law, regulation, and policy hereinafter enacted.

POLICY STATEMENT:

The District firmly believes in, and is committed to, the principles and practices of equal employment opportunity and nondiscrimination. It is the policy of the District to recruit, hire, train, and promote persons in all job classifications without regard to age (40 and above), ancestry, color, disability (mental or physical), gender (including identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with the person's sex at birth), marital status, medical condition, military status, national origin, pregnancy, race, religion, sexual orientation, genetic information, or veteran status.



BPC Policy No. 361

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Additionally, all employees of the District are required to conduct themselves in a professional manner at all times. Discrimination based upon the above protected classes is also prohibited by federal and state law.¹ Therefore, discrimination by any employee based upon the grounds set forth above is strictly prohibited.

Further, the District shall provide a procedure for filing of complaints of alleged discrimination by aggrieved parties, including members of the public. The District's Diversity and Inclusion Program shall prescribe the procedures for implementation of this policy. The President and Chief Executive Officer has ultimate responsibility for assuring the development and implementation of the program. Overall responsibility for implementation of the program will be with the Manager, Equal Opportunity, who is also responsible for developing the procedures which will be used to implement and monitor the program and process discrimination complaints. Accountability in achieving the objectives of the program will be shared by all District management.

Any aggrieved party who feels to have been subjected to discrimination by the District or representatives of the District, for any of those reasons cited above, can file a discrimination complaint with the Human Resources department.

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BPC Policy No. 361



BPC Policy No. 361

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The District will not tolerate retaliation against any employee or other person for initiating, pursuing, or assisting with a complaint of alleged discrimination to the District or to any government agency. For example, it is improper, and inappropriate, to withhold or imply to withhold, any support for appointment or recruitment, promotion, transfer, non-retention, or termination, or to suggest that a poor performance evaluation will be prepared based upon a retaliatory basis.

The District also prohibits retaliation against any employee for participating in any manner in the investigation of a complaint or report leading to investigation of discrimination. Any individual who engages in retaliation against a complainant or reporting party in violation of this policy may be subject to discipline up to and including termination.

Copies of this Policy when significant changes are made, will be provided to all employees who must sign a form acknowledging receipt of this information. A copy will be retained for their personnel records.

This policy shall be reviewed annually and updated when required by law.

Exhibit A: Policy

Exhibit B: Acknowledgment Form

RESOLUTION NUMBER AND DATE 2013-207, dated December 10, 2013 (Supersedes BPC Policy 361, Resolution 2008-141, dated August 5, 2008; Resolution 2004-18, dated February 3, 2004; Resolution 2002-266, dated October 8, 2002, Resolution 2001-164, dated July 24, 2001; Resolution 2000-41, dated February 8, 2000)

SAN DIEGO UNIFIED PORT DISTRICT
BOARD OF PORT COMMISSIONERS POLICY
ON NONDISCRIMINATION

I.

POLICY

The San Diego Unified Port District (District) is committed to the principles and practices of equal employment opportunity and nondiscrimination as set forth in the Equal Employment Opportunity and Nondiscrimination Policy Statement. It is the policy of the District to recruit, hire, train, and promote persons in all job classifications without regard to the following protected classes:

- Age (over 40)
- Ancestry
- Color
- Disability (mental or physical)
- Gender (including identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with the person's sex at birth)
- Marital Status
- Medical Condition
- Military Status
- National Origin
- Pregnancy
- Race
- Religion
- Sexual Orientation
- Veteran Status

Additionally, all employees of the District are required to conduct themselves in a professional manner at all times. Discrimination based upon the above protected classes is also prohibited by federal and state law.¹ Therefore, discrimination by any employee based upon the grounds set forth above is strictly prohibited.

Copies of this policy and the Equal Employment Opportunity and Nondiscrimination Policy Statement of the Board of Port Commissioners will be provided to all employees at the time of hire. Each employee shall sign a form

¹ A violation of this policy may not constitute a violation of federal or state law, although discrimination is prohibited by both.

acknowledging receipt of both. Another copy will be retained in their personnel records. The policy and policy statement is also available on the District's intranet site, <http://internal>.

II.

CONFIDENTIALITY

The District recognizes that confidentiality is important to all parties involved in a discrimination investigation. Confidentiality will be maintained to the extent possible; however, it cannot be guaranteed. Only those individuals with a legitimate right to know or who are necessary for resolution of a complaint will be involved in the investigatory process.

Further, any witness or party involved in an investigation will be directed to keep confidential his or her involvement in the investigation and/or any information learned as a result of his or her involvement in the investigation and admonished that any breach of such direction or of the confidentiality of the investigation could constitute an independent basis for discipline and/or other corrective action.

III.

RETALIATION PROHIBITED

The District will not tolerate retaliation against any employee or other person for initiating, pursuing, or assisting with a complaint of alleged discrimination to the District or to any government agency. For example, it is improper, and inappropriate, to withhold or imply to withhold, any support for appointment or recruitment, promotion, transfer, non-retention, or termination, or to suggest that a poor performance evaluation will be prepared based upon a retaliatory basis.

The District also prohibits retaliation against any employee for participating in any manner in the investigation of a complaint or report leading to investigation of discrimination. Any individual who engages in retaliation against a complainant or reporting party in violation of this policy may be subject to discipline up to and including termination.

IV.

COMPLAINT PROCEDURE

- A. Any employee, former employee, applicant for employment, District vendor or tenant, or member of the public, may file a complaint alleging discrimination on any of the bases set forth in Section I.

above, including age (40 and over); ancestry; color; disability (physical or mental); gender (including identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with the person's sex at birth); marital status; medical condition; military status, national origin; pregnancy; race; religion; sexual orientation; or, veteran status. The complaint should be filed with the Human Resources (HR) department.

- B. Additionally, any employee of the District who believes that he or she, or someone else in the District, has been subjected to unlawful discrimination based upon any of the protected classes set forth in Section I above is strongly encouraged to immediately report the matter to the Director, Human Resources or the employee's immediate supervisor, via their established chain of command.
- C. A complaint or report of discrimination should be filed with HR within ninety (90) days of the date the alleged discriminatory act occurred. The complainant is also advised that there are time limitations to file a complaint of employment discrimination, which include discriminatory acts: 1) for the California Department of Fair Employment and Housing (DFEH), the time limitation is one (1) year from the date the discriminatory act allegedly occurred; and 2) for the United States Equal Employment Opportunity Commission (EEOC), charges must be filed within one hundred-eighty (180) days of the date the allegedly discriminatory act occurred.
- D. Upon the receipt of a complaint or a report of alleged discrimination, HR shall conduct a prompt and thorough investigation. The investigator will strictly adhere to the confidentiality terms of this policy; remind the complainant or reporting party, the accused, and all interviewees of the confidentiality policy and that retaliation will not be tolerated; maintain a written record of the investigation; and, keep the complainant informed of the progress of the investigation and the results of the investigation. Based upon his or her investigation, the HR investigator will determine the following:
 - 1. Whether the complaint or report of alleged discrimination is subject to the Nondiscrimination Policy;
 - 2. Whether the conduct complained of or reported occurred;
 - 3. Whether such conduct constituted disparate treatment of the complainant;
 - 4. Whether the conduct complained of or reported occurred constitutes a violation of this Policy; and,

5. Whether there exists any policies and/or practices, verbal or written related to the work situation, which may constitute disparate treatment of the complainant due to his or her protected class.

V.

REVIEW BY DIRECTOR, HUMAN RESOURCES

- A. Upon completion, the written investigation and all findings shall be provided to the Director, Human Resources for review. The Director's review shall determine whether there was evidence sufficient to support the findings made by the investigator.
- B. If the Director concurs with the investigator's findings, such concurrence shall be documented and the investigator will notify the complainant or reporting part as set forth in Section VI.
- C. If the Director does not concur with the investigator's findings, then the Director will direct the investigator to further investigate the complaint or report of discrimination in the manner set forth by the Director, which shall be made a part of the investigation. Once such investigation is completed, the investigator will submit the investigation to the Director for review consistent with Section A above.

VI.

CONSULTATION WITH COMPLAINANT

After the investigation has been completed and reviewed by the Director, the investigator will notify the complainant or reporting party, and will discuss the findings in a face to face meeting.

VII.

REMEDATION

In the event there is a determination that discrimination has occurred, the District will assess what remedial steps are required to address and correct the discriminatory conduct. Remedial measures include but are not limited to mediation, disciplinary action against the perpetrator, reorganization of personnel, training and education, counseling and other employee assistance.

VIII.

DISCIPLINARY ACTION

Any employee found to be responsible for discrimination or retaliation in violation of this policy will be subject to appropriate disciplinary action up to and including termination. False complaints may also subject an employee to discipline. The severity of the discipline will be based upon the totality of the circumstances and may include counseling, training, education, and/or other remedial steps as a condition of employment.

IX.

TRAINING

As a preventative and proactive step, all employees of the District will receive training on discrimination and knowledge and utilization of the complaint process.



SAN DIEGO UNIFIED PORT DISTRICT

**Acknowledgment of Receipt of
Equal Employment Opportunity and
Nondiscrimination Policy**

This is to acknowledge that I have received an orientation on the District's Equal Employment Opportunity and Nondiscrimination Policy. I understand that the District believes and is firmly committed to the principles and practices of equal employment opportunity and nondiscrimination for employing and developing personnel.

I acknowledge that, as an employee of the District, I have a responsibility to comply with District policies, and all applicable state and federal laws, regarding nondiscrimination against any applicant or employee, or members of the public, because of age (40 and above), ancestry, color, disability (mental or physical), gender (including identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with the person's sex at birth), marital status, medical condition, military status, national origin, pregnancy, race, religion, sexual orientation, genetic information, or veteran status.

Human Resources COPY

Employee's Printed Name

Employee's Signature

Date of Orientation

Department

Exhibit B – Policy 361

EEO \ (Form) Acknowledgment of Receipt (Rev 2/00)
(Rev. 24 July 2001)
(Rev. 8 October 2002)
(Rev. 2 February 2004)
(Rev. 10 December 2013) - Docs #606616 v1

61129

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