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# Policies and Procedures

# No. 56

SUBJECT:

Enacted: 9/13/07

FRAUD IN THE WORKPLACE

PURPOSE:

To establish policies and procedures for clarifying acts that are considered to be fraudulent, describing the steps to be taken when fraud or other related dishonest activities are suspected, and providing procedures to follow in accounting for missing funds, restitution, and recoveries.

MTS is committed to protecting its assets against the risk of loss or misuse. Accordingly, it is the policy of MTS to identify and promptly investigate any possibility of fraudulent or related dishonest activities against MTS and its subsidiaries, and, when appropriate, to pursue legal remedies available under the law.

## 56.1 DEFINITIONS

For purposes of this policy, the following definitions shall apply:

56.1.1 Fraud – Fraud and other similar irregularities include, but are not limited to:

- a. Claims for reimbursement of expenses that are not job-related or authorized by MTS Policies and Procedures.
- b. Forgery or unauthorized alteration of documents (checks, promissory notes, time sheets, independent contractor agreements, purchase orders, budgets, etc.).
- c. Misappropriation of MTS assets (funds, securities, supplies, furniture, equipment, etc.).
- d. Improprieties in the handling or reporting of money transactions.
- e. Authorizing or receiving payment for goods not received or services not performed.



- f. Computer-related activity involving unauthorized alteration, destructions, forgery, or manipulation of data, documents and files, or misappropriation of MTS-owned software.
- g. Misrepresentation of information on documents.
- h. Any apparent violation of federal, state, or local laws related to dishonest activities or fraud.
- i. Seeking or accepting anything of material value from those doing business with MTS, including vendors, consultants, contractors, lessees, applicants, and grantees. Materiality is determined by MTS's Conflict of Interest Code, which incorporates the Fair Political Practices Commission's regulations.

56.1.2 Employee – In this context, employee refers to any individual or group of individuals who receive compensation, either full- or part-time, from MTS or any of its subsidiaries. The term also includes any volunteer who provides services to MTS through an official arrangement with MTS or any of its subsidiaries.

56.1.3 Management – In this context, management refers to any administrator, manager, director, supervisor, or other individual who manages or supervises funds or other resources, including human resources.

56.1.4 Internal Auditor – In this context, Internal Auditor refers to any person or persons assigned by the Chief Executive Officer to investigate any fraud or similar activity.

56.1.5 External Auditor – In this context, External Auditor refers to independent audit professionals who perform annual audits of the MTS's financial statements.

56.2 It is MTS's intent to fully investigate any suspected acts of fraud, misappropriation, or other similar irregularity. An objective and impartial investigation will be conducted regardless of the position, title, and length of service, or relationship with MTS of any party who might be or become involved in or becomes the subject of such investigation.

56.3 Each department of MTS is responsible for instituting and maintaining a system of internal control to provide reasonable assurance for the prevention and detection of fraud, misappropriations, or other irregularities. Management shall be familiar with the types of improprieties that might occur within their area of responsibility and be alert for any indications of such conduct.

56.4 The Chief Executive Officer shall designate the appropriate individual(s) to conduct any investigation of activity as defined in this policy, including, but not limited to, the Internal Auditor and/or General Counsel. Those individual(s) assigned to lead any investigations of activity as defined within the policy shall apprise the Chief Executive Officer of all pertinent findings.

- 56.5 Throughout the investigation, the Internal Auditor will inform the Chief Executive Officer of pertinent investigative findings.
- 56.6 Employees will be granted whistle-blower protection when acting in accordance with this policy. When informed of a suspected impropriety, neither MTS nor any person acting on behalf of MTS shall:
- 56.6.1 Dismiss or threaten to dismiss the employee;
  - 56.6.2 Discipline, suspend, or threaten to discipline or suspend the employee;
  - 56.6.3 Impose any penalty upon the employee; or
  - 56.6.4 Intimidate or coerce the employee.

Violations of the whistle-blower protection will result in discipline up to and including dismissal.

- 56.7 Upon conclusion of the investigation, the results will be reported to the Chief Executive Officer.
- 56.8 The Chief Executive Officer, following review of investigation results, will take appropriate action regarding employee misconduct. Disciplinary action can include termination and referral of the case to the District Attorney's Office for possible prosecution.
- 56.9 MTS will pursue every reasonable effort, including court-ordered restitution, to obtain recovery of MTS losses from the offender or other appropriate sources.
- 56.10 Procedures
- 56.10.1 Board Member Responsibilities
    - a. If a Board member has reason to suspect that a fraud has occurred, he or she shall immediately contact the Chief Executive Officer.
    - b. The Board member shall not attempt to investigate the suspected fraud or discuss the matter with anyone other than the Chief Executive Officer.
    - c. The alleged fraud or audit investigation shall not be discussed with the media by any person other than through the Chief Executive Officer in consultation with the General Counsel and the Internal Auditor.

## 56.10.2 Management Responsibilities

- a. Management is responsible for being alert to and reporting fraudulent or related dishonest activities in their areas of responsibility.
- b. Each manager shall be familiar with the types of improprieties that might occur in his or her area and be alert for any indication that improper activity, misappropriation, or dishonest activity is or was in existence in his or her area.
- c. When an improper activity is detected or suspected, management should determine whether an error or mistake has occurred or if there may be dishonest or fraudulent activity.
- d. If management determines a suspected activity may involve fraud or related dishonest activity, they should contact their immediate supervisor.
- e. Department directors should inform the Chief Executive Officer.
- f. Management should not attempt to conduct individual investigations, interviews, or interrogations. However, management is responsible for taking appropriate corrective actions to ensure that adequate controls exist to prevent reoccurrence of improper actions.
- g. Management should support MTS's responsibility and cooperate fully with the Internal Auditor, other involved departments, and law enforcement agencies in the detection, reporting, and investigation of criminal acts, including the prosecution of offenders.
- h. Management must give full and unrestricted access to all necessary records and personnel. All MTS furniture and contents, including desks and computers, are open to inspection at any time. There is no assumption of privacy.
- i. In dealing with suspected dishonest or fraudulent activities, great care must be taken. Therefore, management should avoid the following:
  1. Incorrect accusations.
  2. Alerting suspected individuals that an investigation is underway.

3. Treating employees unfairly.
  4. Making statements that could lead to claims of false accusations or other offenses.
- j. In handling dishonest or fraudulent activities, management has the responsibility to:
1. Make no contact (unless requested) with the suspected individual to determine facts or demand restitution. Under no circumstances should there be any reference to “what you did,” “the crime,” “the fraud,” “the misappropriation,” or etc.
  2. Avoid discussing the case, facts, suspicions, or allegations with anyone outside MTS unless specifically directed to do so by the General Counsel.
  3. Avoid discussing the case with anyone inside MTS other than employees who have a need to know, such as the Chief Executive Officer or Internal Auditor, unless specifically directed to do so by the General Counsel.
  4. Direct all inquiries from the suspected individual, or his or her representative, to the Chief Executive Officer or General Counsel. All inquiries by an attorney of the suspected individual should be directed to the General Counsel. All inquiries from the media should be directed to the Chief Executive Officer.
  5. Take appropriate corrective and disciplinary action, up to and including dismissal, after consulting the Director of Human Resources, in conformance with MTS’s Personnel Manual or Policies and Procedures.

56.10.3 Employee Responsibilities

- a. A suspected fraudulent incident or practice observed by or made known to an employee must be reported to the employee’s supervisor for reporting to the proper management official.
- b. When the employee believes the supervisor may be involved in the inappropriate activity, the employee shall

make the report directly to the next higher level of management and/or the Chief Executive Officer.

- c. The reporting employees shall refrain from further investigation of the incident, confrontation with the alleged violator, or further discussion of the incident with anyone, unless requested by the Chief Executive Officer, Internal Auditor, General Counsel, or law enforcement personnel.
- d. Employees also have the option of using the “fraud, waste and abuse hot line” to report the fraud. The phone number to call is 619.744.5920. The employee has the option to call the number on an anonymous basis.

#### 56.10.4 Internal Auditor Responsibilities

- a. Upon assignment by the General Counsel, the Internal Auditor will promptly investigate the fraud.
- b. In all circumstances where there appears to be reasonable grounds for suspecting that a fraud has taken place, the Internal Auditor, in consultation with the General Counsel, will contact the Director of Transit System Security or the appropriate investigating authority to conduct an investigation.
- c. The Internal Auditor shall be available and receptive to receiving relevant, confidential information to the extent allowed by law.
- d. If evidence is uncovered showing possible dishonest or fraudulent activities, the Internal Auditor will proceed as follows:
  - 1. Discuss the findings with management and the Department Director.
  - 2. Advise management, if the case involves staff members, to meet with the Director of Human Resources (or his/her designated representative) to determine if disciplinary actions should be taken.
  - 3. Report to the External Auditor such activities in order to assess the effect of the illegal activity on the MTS’s financial statements.
  - 4. Coordinate with MTS’s Risk Management Division regarding notification to insurers and filing of insurance claims.

5. Take immediate action, in consultation with the General Counsel, to prevent the theft, alteration, or destruction of evidentiary records. Such action shall include, but is not limited to:
  - a) Removing the records and placing them in a secure location or limiting access to the location where the records currently exist.
  - b) Preventing the individual suspected of committing the fraud from having access to the records.
- e. In consultation with the General Counsel and the investigating authority, the Internal Auditor may disclose particulars of the investigation with potential witnesses if such disclosure would further the investigation.
- f. If the Internal Auditor is contacted by the media regarding an alleged fraud or audit investigation, the Internal Auditor will inform the Chief Executive Officer and the General Counsel, as appropriate, and the Chief Executive Officer will respond to the media.
- g. At the conclusion of the investigation, the Internal Auditor will document the results in a confidential memorandum report to the Chief Executive Officer and the General Counsel. The Chief Executive Officer shall determine whether to forward the report to the appropriate authorities.
- h. Unless exceptional circumstances exist, a person under investigation for fraud is to be given notice in writing of essential particulars of the allegations following the conclusion of the audit. Where notice is given, the person against whom allegations are being made may submit a written explanation to the Internal Auditor no later than seven calendar days after notice is received.
- i. The Internal Auditor will be required to make recommendations to the appropriate department for assistance in the prevention of future similar occurrences.
- j. Upon completion of the investigation, including all legal and personnel actions, all record, documents, and other evidentiary material, obtained from the department under investigation shall be maintained by the Internal Auditor.

Policy enacted on 9/13/07.