

**PACIFIC COAST  
SPECIAL GRIEVANCE  
HANDBOOK**

**2014 - 2019**



**ILWU-PMA**

# ILWU-PMA HANDBOOK

## **SPECIAL SECTION 13.2 GRIEVANCE PROCEDURES AND GUIDELINES FOR REMEDIES, CLRC POLICY ON ADA COMPLIANCE AND REASONABLE ACCOMMODATION AND CLRC AGREEMENT ON USERRA**

**July 1, 2014 – July 1, 2019**

*Between*

INTERNATIONAL LONGSHORE AND  
WAREHOUSE UNION

*and*

PACIFIC MARITIME ASSOCIATION

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Name \_\_\_\_\_

Port \_\_\_\_\_

Local No. \_\_\_\_\_ Reg. No. \_\_\_\_\_



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July 1, 2014

Mr. James C. McKenna  
President and CEO  
Pacific Maritime Association  
555 Market Street, Third Floor  
San Francisco, CA 94105

Mr. McKenna:

**LETTER OF UNDERSTANDING**  
**Proper Application of Section 13 of the**  
**PCL&CA to Discrimination Complaints**

The Parties recognize that the PCL&CA protects long-shore workers, marine clerks, and casual workers against discrimination based on a limited number of protected categories and takes appropriate corrective actions when those individuals or others in relation to them engage in discrimination based on the same protected categories. One of the ways the PCL&CA accomplishes these objectives is through procedures designed to promptly investigate allegations of these kinds of discrimination. These protected categories and the ILWU/PMA general nondiscrimination policy are contained in Section 13.1, PCL&CA. Section 13.2 and Section 13.3 contain two distinct procedures for handling complaints filed pursuant to Section 13.1.

In order for a complaint to be proper under Section 13.1, the complaint must be based on at least one of the categories

specifically protected by and delineated in Section 13.1. This means that discrimination based on an unprotected category is not a violation of the PCL&CA, with the sole exception that “favoritism or discrimination in hiring or dispatching or employment” is a contract violation that is prohibited by Section 8.43, which is addressed through the regular Section 17 grievance and arbitration procedure. Additionally, in order for a complaint to be proper under Section 13.1, the discrimination complained of must relate to employment covered by the PCL&CA.<sup>1</sup>

The Section 13.2 procedure is limited to complaints by bargaining unit employees, PMA member companies, PMA, or longshore and marine clerk ILWU locals alleging discrimination in relation to PCL&CA covered employment by individuals on the basis of one or more of the protected categories specifically listed in Section 13.2; provided however, that the Section 13.2 procedure does not apply to complaints covered by the Section 13.3 procedure. Complaints filed pursuant to the Section 13.2 procedure can be brought against longshore workers, marine clerks, casual workers, walking bosses/foremen, superintendents, managers, outside truck drivers, vendors, contractors, other employees of PMA member companies (such as ILWU-represented guards), etc., but such complaints can only be brought by longshore workers, marine clerks, casual workers, PMA, the longshore and marine clerk ILWU locals, and employers covered by

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1 The geographic scope of Section 13.1 includes places where longshore workers, marine clerks, and casual workers are employed, as well as other locations, such as joint dispatch halls, training sites, and other locations, but only when the activity that occurs there is reasonably related to employment covered by the PCL&CA.

the PCL&CA. Walking bosses/foremen, superintendents, managers, outside truck drivers, vendors, contractors, other employees of PMA member companies (such as ILWU-represented guards), PMA staff, union staff, etc., do not have standing to file a complaint under the Section 13.2 procedure. Complaints alleging a violation of Section 13.1 with regard to individuals who do not have standing to file a complaint themselves can be filed by anyone with standing to file a complaint under the Section 13.2 procedure. Further, each of the Parties has standing to file or respond to any appeal under the Section 13.2 procedure. General incidents of harassment, including “hostile work environment,” do not violate Section 13.1 unless such incidents arise in connection with PCL&CA covered employment and involve one of the protected categories listed in Section 13.2. When an Arbitrator or Coast Appeals Officer determines that a complaint does not meet the above criteria, he or she must dismiss it. Arbitrators may dismiss complaints without holding a hearing only when it is clear on the face of the complaint that the Section 13.2 criteria have not been met. Such dismissals may be appealed to the Coast Appeals Officer. No remedies of any kind, including discipline and penalties, can be imposed without a finding that Section 13.1 was violated. Neither Arbitrators nor the Coast Appeals Officer can order any remedies after finding no violation of Section 13.1 or otherwise dismissing a complaint.

The Section 13.3 procedure is limited to complaints against an institutional party (such as a joint committee, PMA, the union, or a PCL&CA covered employer) and cannot be brought against individuals (such as specific management or union rep-

representatives, coworkers, or other persons). The Section 13.3 procedure is limited to complaints about actions that tangibly affect the terms and conditions of PCL&CA covered employment and is not intended for “hostile work environment” also known as “harassment” claims. The Section 13.3 procedure is to be used for any of the categories specifically protected by and delineated in Section 13.1 if the complaint alleges that a contractual provision or rule is discriminatory as written or as applied, or if the discrimination claim seeks elevation, registration, or selection for casual status. Otherwise, the Section 13.3 process is to be used only for complaints based on the categories specifically listed in Section 13.3 and not for other categories or for other contract violations. Prior to scheduling a hearing under Section 17.4, the Joint Port Labor Relations Committee is directed to review a complaint to determine if it meets the above criteria. JPLRCs may dismiss complaints without holding a hearing only when it is clear on the face of the complaint that the criteria have not been met. Before dismissing complaints on their face, JPLRCs are encouraged to meet with grievants to give them the opportunity to cure the deficiencies in their complaints. Such dismissals may be appealed pursuant to Section 17.42. In addition, any disagreement by the JPLRCs as to whether the matter is a proper 13.3 claim shall be immediately referred to the CLRC. The CLRC’s determination on whether the matter is a proper 13.3 claim shall be final and binding with no further appeal. Unless agreed to by the CLRC, no Arbitrator other than the Coast Arbitrator has authority to decide any matter arising under Sections 13.3, 17.41, 17.42, or 17.43. The remedies for

violations of the types of Section 13.1 complaints that are handled through the Section 13.3 procedure are not disciplinary in nature and neither the “Letter of Understanding ‘A’ ILWU-PMA Equal Opportunity Policy & Procedures,” the “Letter of Understanding ‘B’ ILWU-PMA Special Grievance/Arbitration Procedures for Resolution of Complaints RE Discrimination and Harassment Under Section 13.2, PCL&CA,” nor the “Letter of Understanding ‘C’ Guidelines for Remedies and Penalties in Cases of Discrimination, Harassment & Retaliation Under The Special Section 13.2 Grievance Procedures” apply to Section 13.1 complaints brought under the Section 13.3 procedure. Complaints processed through the Section 13.3 procedure are intended to provide contractual remedies, such as elevation, registration, and selection, as compared to the disciplinary nature of some of the remedies available through the Section 13.2 procedure. No remedies of any kind can be imposed without a finding that Section 13.1 has been violated.

Finally, intra-union factional quarrels over intra-union political disputes and union business that have nothing to do with PCL&CA covered employment are not covered by Section 13.1 and are not subject to resolution under either one of the procedural mechanisms contained in Section 13.2 or Section 13.3. Likewise, there is nothing contained in Section 13.1 and its subsections that permits an individual complaint challenging sections of the PCL&CA with which an individual has a general disagreement.

Sincerely,

/s/ Robert McEllrath

Robert McEllrath  
International President

Understanding confirmed:

/s/ James C. McKenna

James C. McKenna  
President & CEO  
Pacific Maritime Association

Dated: 03/03/15

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## **LETTER OF UNDERSTANDING “A” ILWU-PMA EQUAL EMPLOYMENT OPPORTUNITY POLICY & PROCEDURES**

### **1. Policy Against Discrimination, Harassment & Retaliation**

All workers in the longshore industry shall be treated with dignity, respect and courtesy. It has been for decades and continues to be the policy of the Pacific Maritime Association (PMA), its member companies and the International Longshore and Warehouse Union and its Locals (ILWU) that discrimination, harassment, and retaliation of any kind for filing or supporting a complaint of discrimination or harassment, committed by anyone, will not be tolerated in connection with any action subject to the terms of the Pacific Coast Longshore & Clerk’s Agreement (the PCLCA or Agreement) (including at work sites, joint dispatch halls, training sites, and other locations, when reasonably related to employment covered by this Agreement).

The policy against discrimination and harassment stated in Section 13 of the Pacific Coast Longshore & Clerk’s Agreement shall be administered as described in this document.

### **2. Responsibility for Following Section 13.2**

All longshore workers, clerks, walking bosses/foremen, superintendents or managers, outside truck drivers, vendors, contractors and others are required to follow this Policy and shall not engage in any Prohibited Conduct in connection with any action subject to the terms of the PCLCA (including at work sites, joint dispatch halls, training sites, and other locations, when

reasonably related to employment covered by this Agreement). It is important not to assume that the Employers, PMA or the ILWU know of particular incidents of discrimination or harassment. Discrimination and harassment can be eliminated from the workplace only if everyone working under the PCLCA who experiences or sees such problems files a grievance using the Special Section 13.2 Grievance Procedures for discrimination and harassment. It is also important if you believe you are a victim of discrimination, harassment or retaliation that you immediately inform the offending party that you find his or her conduct offensive and ask that it be stopped.

### **3. Examples of Prohibited Conduct Under 13.2**

Discrimination and harassment can take many forms. Certain actions or even words can constitute discrimination and harassment. As a general matter, it is a violation of this Policy for anyone to treat another in a way that is threatening, intimidating, embarrassing or offensive, or that denies a person equal treatment and opportunities because of his or her sex, race or other unique characteristics. So-called “good intentions” or “joking around” (as determined by the Arbitrator) does not excuse Prohibited Conduct.

To assist you in recognizing and avoiding behavior which may be considered harassing, discriminatory, or retaliatory, the following examples of Prohibited Conduct are listed:

**Physical Harassment:** Unwelcome touching or grabbing or sexual assault, blocking someone’s movement, standing unnecessarily close.

**Verbal Harassment :** Racial or sexual jokes, name-calling, using slurs, derogatory terms, belittling remarks, or abusive language related to a person’s gender, race or other

defining characteristics.

**Visual Harassment:** Displaying objects, messages, pictures, pornography, graffiti, or drawings of a sexual or racial nature; engaging in offensive and unwelcome personal conduct such as offensive gestures, staring (especially at particular body parts), mooning, leering; showing a lack of respect for privacy in toilet facilities and locker rooms.

**Unwelcome Romantic or Sexual Attention:** Unwelcome flirting, pressuring another for a date and unwelcome sexual advances; also demanding sexual favors or romantic attention as a condition of any type of employment benefit.

#### **4. Special Section 13.2 Grievance Procedures for Complaints of Discrimination, Harassment & Retaliation**

All registered and casual longshore workers and clerks have the right and responsibility to promptly report any Prohibited Conduct of which they are aware to their Local (through the ILWU business agent or a Union official) and on-the-job supervision (such as the walking boss/foreman or clerk supervisor or management). To correct any incidents of discrimination, harassment (including hostile work environment) or retaliation which violate this Policy, the longshore worker or clerk experiencing the problem must promptly file, within fifteen (15) calendar days of the incident, a grievance under the ILWU-PMA Special Section 13.2 Grievance Procedures For The Resolution of Complaints Re Discrimination and Harassment Under the Pacific Coast Longshore and Clerks Agreement (referred to as the “Special Grievance Procedures”), a copy of which is **included** (Letter of Understanding “B”). Grievances may be filed only by longshore workers, clerks, union locals, PMA and its mem-

ber companies.

In your grievance, please provide as much detail as you can, including identifying the names of witnesses and of those you believe to be responsible, describing what happened as well as when and where the Prohibited Conduct occurred. Grievances will be addressed and resolved as quickly, fairly and confidentially as reasonably possible.

Upon being notified of any complaint of Prohibited Conduct, the union Business Agent shall, as needed, identify for the grievant the grievance procedure available. Once a walking boss/foreman or clerk supervisor learns of a complaint of Prohibited Conduct, he or she shall immediately report it to management and take other appropriate action.

### **5. Grievance Procedures for Challenges to Contractual Provisions or Rules, Including Claims for Registration or Selection for Casual Status, or Other Section 13.3 Claims; and Procedures for Requests for Reasonable Accommodation of Disabilities**

Grievances and complaints alleging that a contractual provision or rule is discriminatory as written or as applied, as well as discrimination claims seeking elevation, registration or selection for casual status, and discrimination claims based on protected family care or medical leave status, veteran status, political affiliation, marital status, membership or non-membership in the Union, or activity for or against the Union or absence thereof, are not to be filed under the Special Section 13.2 Grievance Procedures, but instead are to be filed and processed with the Joint Port Labor Relations Committee (JPLRC) under the grievance procedures in Section 17.4 of the PCLCA.

Likewise, requests for “reasonable accommodation” for disabilities recognized under state or federal law will not be processed under the Special Section 13.2 Grievance Procedures but instead must be brought to the local JPLRC pursuant to separate procedures established for such requests (CLRC Policy on ADA Compliance and Reasonable Accommodation), a copy of which is included.

## **6. Special Section 13.2 Remedies & Penalties**

Longshore workers, clerks, walking bosses/foremen, superintendents or managers, outside truck drivers, vendors, contractors, or others who violate Section 13.2 of the Agreement, as described in this Policy, by engaging in Prohibited Conduct in connection with any action subject to the terms of the PCLCA (including at work sites, joint dispatch halls, training sites, and other locations, when reasonably related to employment covered by this Agreement) will be subject to discipline or penalties up to and including termination, deregistration or permanent loss of dispatch privileges or loss of access to employer sites. Likewise, PMA Employers, PMA offices and ILWU Locals are subject to all appropriate remedies for directly violating this Policy, including mandatory training, distribution of notices to employees, and changes in policies and practices found to violate this Policy. Violations of this Policy are subject to the included Guidelines for Remedies & Penalties in Cases of Discrimination, Harassment & Retaliation Under the Special Section 13.2 Grievance Procedures.

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**LETTER OF UNDERSTANDING “B”  
ILWA-PMA Special Grievance/  
Arbitration Procedures for the Resolution  
of Complaints Re Discrimination and  
Harassment Under Section 13.2 of the  
Pacific Coast Longshore & Clerks  
Agreement**

**I. Section 13.2 Complaints Covered by Special Procedures**

All registered and casual longshore workers and marine clerks, as well as PMA, all ILWU locals and employers covered by the PCLCA, have the right to file a complaint concerning incidents of discrimination or harassment (including hostile work environment) in connection with any action subject to the terms of the PCLCA (including at work sites, joint dispatch halls, training sites, and other locations, when reasonably related to employment covered by the PCLCA) based on race, creed, color, sex (including gender, pregnancy, sexual orientation), age (forty or over), disability, national origin, or religious or political beliefs, or alleging retaliation of any kind for filing or supporting a complaint of such discrimination or harassment. All grievances of this type are referred to in this document generally as “Discrimination and Harassment” grievances. A detailed statement of policy, rules of conduct and penalty guidelines for proven offenses are set forth in the ILWU-PMA Equal Employment Opportunity Policy (Letter of Understanding “A”), copies of which may be obtained from any PMA or ILWU local office and joint dispatch halls. Special complaint forms for claims of Discrimination and Harassment

shall be available to all persons upon request at all PMA and ILWU local offices and joint dispatch halls. Discrimination and Harassment grievances shall be processed pursuant to the following special grievance/ arbitration procedures:

## **II. Brief Summary of These Special Section 13.2 Procedures**

The basic steps for processing a grievance of Discrimination and Harassment under the Special Procedures are as follows. This summary only provides highlights of the Special Procedures. Please see Section III, below, for more details.

1) Grievances are to be filed within fifteen (15) calendar days of the incident by facsimile or mail with the identified Arbitrators on Special 13.2 Grievance forms, with a copy sent by facsimile or mail to the JPLRC c/o the local PMA office, as stated on the Special Section 13.2 Grievance Form. (The ARBITRATOR may, in his/her discretion, excuse late filings in certain circumstances, described below).

2) A hearing before the ARBITRATOR, recorded by a court reporter, will be held within fourteen (14) calendar days (or, in certain circumstances described below, within thirty (30) calendar days) after the grievance is received by the ARBITRATOR.

3) Any party may, no later than five (5) calendar days before the hearing, ask the ARBITRATOR to direct witnesses to appear.

4) The ARBITRATOR will issue a written decision within fourteen (14) calendar days after the close of the hearing.

5) Any party may, within fifteen (15) calendar days of being mailed the Area Arbitrator's decision, file an appeal by fac-

simile or mail with the COAST APPEALS OFFICER, with a copy sent by facsimile or mail to the JPLRC c/o the local PMA office. Appeals shall be based solely on the written record of the hearing.

6) Any party may, within ten (10) calendar days of the COAST APPEALS OFFICER's receiving the appeal, file a response or opposition.

7) A ruling on the appeal shall be sent out within fourteen (14) days of the COAST APPEALS OFFICER's receiving the appeal.

### **III. Detailed Special Grievance Procedures**

The following are the detailed provisions of the special grievance procedures for claims of Discrimination and Harassment under Section 13.2 of the PCLCA:

1) A complaint alleging discrimination or harassment (including hostile work environment) in connection with any action subject to the terms of the PCLCA based on race, creed, color, sex (including gender, pregnancy, sexual orientation), age (forty or over), disability, national origin, or religious or political beliefs, or alleging retaliation of any kind for filing or supporting a complaint of such discrimination or harassment shall be filed by the grievant, or the Union on his/her behalf, or by PMA or its member companies, by sending the Special Section 13.2 Grievance Form by facsimile or mail to the ARBITRATOR identified on the form, with a copy by facsimile or mail to the local JPLRC, c/o the local PMA office. The ARBITRATOR and/or the local PMA office shall immediately send a copy of the complaint, showing date of receipt, to the local PMA office, the involved ILWU Local Union(s),

the Joint Coast Labor Relations Committee (“JCLRC”), any person accused of any wrongdoing, and any involved Employer. Complaints must be filed within fifteen (15) calendar days of the alleged misconduct in order to be timely. The ARBITRATOR may in his or her discretion excuse any late filings only for reasons stated in Section 17.411 of the PCLCA up to six (6) months.

2) The JPLRC or the ARBITRATOR may issue temporary directives pending the grievance proceedings to protect the grievant or the integrity of the investigation, including but not limited to temporary job re-assignment, dispatch, transfer, or separation of the accused from the grievant.

3) Immediately upon receipt of a complaint, the ARBITRATOR shall issue a notice of hearing for a date not more than fourteen (14) calendar days after the date the complaint was received. The ARBITRATOR may schedule the hearing up to thirty (30) calendar days after receipt of the grievance when his or her availability or workload so requires. The ARBITRATOR shall ensure that written notice of the hearing is provided to the grievant, the accused, the involved Employer, PMA, and the appropriate ILWU Local(s).

4) The grievant and any longshore worker or clerk accused of Discrimination or Harassment may each have one registered (Class A or Class B) worker to assist and represent him/her in these proceedings. The grievant and such accused worker may also instead request in writing that their ILWU Local appoint a union representative, who is acceptable to them, to assist them, which appointment shall be made within two (2) calendar days of such request. In cases where the grievant and accused work-

er are represented by the same ILWU Local, the Local shall assign separate union representatives, who are acceptable to them, to assist them. Union representation will be provided in all cases where requested regardless of whether the Union agrees or disagrees with the merits of the complaint and such representation shall not be considered as any indication of the Local's position concerning the complaint.

5) The arbitration hearing shall be transcribed by a court reporter. All witnesses shall be duly sworn to testify truthfully. No attorneys shall be allowed to participate in any of the proceedings or be present in the hearing room. Only parties, (including two persons on behalf of, respectively, the involved ILWU Local(s), PMA, the involved Employer, those representatives designated under paragraph four (4)), and witnesses directly involved in the matter, may attend the hearing as the proceedings are to be treated as confidential to protect the privacy rights of those involved. Non-party witnesses shall be excluded from the hearing except when testifying, unless otherwise permitted by the ARBITRATOR. The ARBITRATOR may exclude participants in order to take testimony on the record of an unusually sensitive or embarrassing nature.

6) The ARBITRATOR shall, on his/her own initiative or upon request by the grievant or accused, direct in writing all material witnesses to appear at the arbitration hearing. Any individual, Employer, ILWU Local or PMA official who fails to appear at the hearing upon at least three (3) calendar days prior notice shall be subject to appropriate penalties as determined by the JPLRC or the ARBITRATOR.

7) No post-hearing briefs shall be filed with the ARBITRATOR.

8) As a condition for providing reporting services, the court reporter shall, within five (5) calendar days of each hearing date, deliver the original plus three copies of the hearing transcript, including all exhibits, as follows: The original to the ARBITRATOR, and three copies to the JPLRC, c/o the local PMA office (one copy for the ILWU Local Union, one copy for PMA, and one copy for the COAST APPEALS OFFICER's use in the event of an appeal). The parties may obtain from the JPLRC a copy of the transcript upon request. No later than fourteen (14) calendar days after the close of the hearing, the ARBITRATOR shall issue his or her written decision. The ARBITRATOR is empowered to issue all appropriate remedies, except that any request for elevation, registration or casual status shall be referred to the JPLRC, to be processed under §17.4 of the PCLCA as provided in §13.3 of the PCLCA. The ARBITRATOR shall ensure that a copy of the decision is immediately sent to all parties.

9) The decision of the ARBITRATOR in cases covered by these special procedures shall be final and binding on all parties unless a timely appeal is filed as specified below.

10) Any party may, within fifteen (15) calendar days of the date a copy of the ARBITRATOR'S decision is mailed to such person or organization, file an appeal with the COAST APPEALS OFFICER. To be timely, the appeal must be mailed or faxed to the COAST APPEALS OFFICER, with a copy by mail or facsimile to the JPLRC, c/o the local PMA office, within the fifteen (15) calendar day period, and it must contain all the argument intended as support for the appeal. The COAST APPEALS OFFICER shall ensure that copies of the appeal, if timely filed, are immediately sent to the ARBITRATOR,

Local Union(s), PMA and all other parties involved with a cover letter specifying the right to file a response or opposition within ten (10) calendar days of when the COAST APPEALS OFFICER received the appeal. Upon receiving a copy of an appeal filed with the COAST APPEALS OFFICER, the local PMA office shall immediately forward the written record of the hearing (which is the transcript of the hearing and its exhibits, and the decision received from the ARBITRATOR) to the COAST APPEALS OFFICER.

11) An appeal shall be based solely on the written record of the hearing and no appeal hearing shall be permitted. The COAST APPEALS OFFICER may affirm, vacate or modify the decision of the ARBITRATOR, including but not limited to increasing or reducing the penalty, within his/her sound discretion.

12) A ruling on the appeal shall be sent out within fourteen (14) calendar days of when the COAST APPEALS OFFICER received the appeal. An appeal may be denied before receipt or consideration of any response or opposition at the discretion of the COAST APPEALS OFFICER. No other appeal shall be available.

13) The JPLRC shall promptly implement the remedies provided in the final decision. No other appeals or proceedings, including appeals to the JCLRC or the Coast Arbitrator, shall be allowed in cases involving Section 13.2 claims in order to ensure their final resolution with all due speed.

14) In the event the ARBITRATOR is not available to hear a case within the thirty (30) calendar day time frame under these Special Procedures, the JCLRC shall appoint another Arbitrator to timely conduct the hearing for that particular case.

15) In the event any one ARBITRATOR'S workload becomes prohibitive, the JCLRC shall appoint a special arbitrator whose sole function shall be the adjudication of grievances under the Special Section 13.2 Procedures.

16) The term "days" in this document means calendar days.

17) These provisions are subject to modification by the JCLRC.

18) The procedures set forth in this Policy may be flexibly applied in particular cases when the facts and circumstances warrant it. The time lines for accomplishing particular steps of the procedure are intended as guidelines, not strict time limits, which may be extended or waived in appropriate circumstances. Failure to strictly comply with the time lines shall not constitute a violation of the Policy.

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## **LETTER OF UNDERSTANDING “C” GUIDELINES FOR REMEDIES AND PENALTIES IN CASES OF DISCRIMINATION, HARASSMENT & RETALIATION UNDER THE SPECIAL SECTION 13.2 GRIEVANCE PROCEDURES**

Longshore workers, clerks, walking bosses/foremen, superintendents or managers, outside truck drivers, vendors, contractors, or others who violate Section 13.2 of the Agreement, as described in the ILWU-PMA Equal Employment Opportunity Policy & Procedures (Letter of Understanding “A,” referred to as the Policy), by engaging in discrimination or harassment (including hostile work environment) in connection with any action subject to the terms of the PCLCA (understood to include work sites, joint dispatch halls, training sites, and other locations, when reasonably related to employment covered by this Agreement) based on race, creed, color, sex (including gender, pregnancy, sexual orientation), age (forty or over), disability, national origin, or religious or political beliefs, or by engaging in retaliation of any kind for filing or supporting a complaint of such discrimination or harassment (referred to generally as “Prohibited Conduct”) will be subject to discipline or penalties up to and including termination, deregistration or permanent loss of dispatch privileges or loss of access to employer sites. Likewise, PMA Employers, PMA offices and ILWU Locals are subject to all appropriate remedies for directly violating this Policy, including mandatory training, distribution of notices to employees, and changes in policies and practices found to violate this Policy.

The minimum discipline for any individual found guilty of violating this Policy shall be seven (7) days off work, and attending Diversity Training without pay. The minimum discipline for any individual found guilty of retaliating against someone for complaining of Prohibited Conduct or retaliating against someone for assisting another who complained, or for quid pro quo harassment (for example, demanding sexual favors for dispatch or job assignments) or for physical harassment shall be one month off work and attending Diversity Training without pay. Remedies may also include reassignment from a location where the victim works; time off without pay for longer periods (for example, thirty (30) days, ninety (90) days, one year); permanently being ineligible from supervisory and/or dispatcher positions; loss of steady positions; or other remedies as deemed appropriate in cases processed under the Special Section 13.2 Grievance Procedures. Anyone found guilty shall, prior to returning to work, be required to review an approved training video (such as “EEO Shapes”), without pay, and sign a statement agreeing to abide by the Policy and not to engage in Prohibited Conduct in the future.

Pursuant to the Special Section 13.2 Grievance Procedures, the Arbitrator is to consider all relevant factors in determining the appropriate remedy, including the nature and severity of the Prohibited Conduct, the degree of physical and/or mental harm, the weight of the evidence and testimony, whether there was a continuing course of conduct or a single incident, whether the accused previously committed Prohibited Conduct of any kind, and any mitigating circumstances. Where appropriate, given the nature of the violation and the parties’ desire to prevent and promptly rem-

edy discrimination and harassment, the Special Section 13.2 Grievance Procedures are to be used to punish misconduct as well as educate and provide an opportunity to correct behavior, consistent with principles of progressive discipline. However, serious penalties shall be imposed for serious violations of this Policy, and the maximum penalties of job termination, deregistration or permanent loss of dispatch privileges may be imposed on guilty employees, supervisors and managers, where found appropriate under the Special Section 13.2 Grievance Procedures. In determining penalties, a prior offense that predates by five years or more the dates of the current offense shall not be considered.

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## **CLRC POLICY ON ADA COMPLIANCE AND REASONABLE ACCOMMODATION**

### **I. Statement of Policy**

It is the policy of the Joint Coast Labor Relations Committee not to discriminate against disabled workers in hiring, dispatch and promotion, and to provide reasonable accommodations for applicants and incumbent workers who have covered disabilities within the meaning of state and federal law.

Further, it is the policy of the JCLRC that the Joint Port Labor Relations Committee in each port shall engage in an interactive process with applicants for industry employment and incumbent workers who claim to have covered disabilities to determine whether reasonable accommodations exist which would enable the applicant or incumbent worker to enter or continue working in the longshore industry.

Otherwise qualified applicants and employees found to be able to safely perform longshore and clerk work with or without reasonable accommodations as may be required by law will be so employed. Applicants and employees found to be unable to perform longshore work safely with or without reasonable accommodation shall not be employed and shall not be eligible for dispatch to such work.

The JPLRC will provide notice of this policy prohibiting discrimination and of the procedures for considering and resolving requests for accommodation to potential applicants for industry employment, and members of the incumbent workforce (including identified casual and registered workers) as required by law.

## **II. Accommodation Procedures**

Requests for reasonable accommodation shall be considered and resolved by the local JPLRCs in accordance with Section 17.4 of the PCLCA as modified herein. The Joint Port LRC shall be responsible for determining the following issues:

1. whether the worker in question is qualified to perform work under the PCLCA;
2. whether the worker in question has a bona fide disability that limits his or her ability to perform satisfactorily the essential functions of the job he or she holds or desires; and
3. if so, whether the disability may be reasonably accommodated without imposing an undue hardship on the Union or the Employers or without violating the bona fide seniority provisions of the PCLCA except to the extent as may be required by law.

All three issues must be found in the affirmative in order for the JPLRC to grant reasonable accommodation. The JPLRC has the discretion to select the accommodation it considers most appropriate, giving due consideration to the suggestions and preferences of the applicant or employee seeking accommodation.

### **A. Written Request for Accommodation**

Requests for accommodation by applicants for industry employment or incumbent workers who believe they are entitled to accommodation under the ADA or other applicable state law must be submitted in writing to the Joint Port LRC. In the written request, the individual seeking accommodation shall provide the Joint Port LRC with following information.

1. The nature and extent of the claimed disability;
2. The precise job-related limitations he/she believes are imposed by the claimed disability;
3. Information and/or suggestions as to any accommodation(s) that would enable the individual to overcome the job-related limitations and perform the work safely and satisfactorily.

The individual should include any medical documentation and other information which he or she believes is relevant and would assist the JPLRC in reaching a decision.

If the employee or applicant seeking accommodation requires assistance in preparing a written request for accommodation, JPLRC personnel will assist in putting the request in writing. Further, in circumstances where it is apparent that an applicant or employee is disabled and

may require reasonable accommodation, JPLRC personnel shall advise the applicant or employee of the procedure for requesting an accommodation.

## **B. Interactive Process re: Accommodation Request**

### **1) Initial Meeting**

Within 7 days after receiving a written request for accommodation, the Joint Port LRC shall provide the individual with written acknowledgment that the request has been received along with a written request to appear before the JPLRC to review the accommodation request and to discuss alternatives. At this time, the Committee may request that the individual bring additional documentation or information to this initial meeting which the Committee believes is or may be relevant and/or would assist in reaching a decision, including, in appropriate cases, a medical release. The initial meeting should be scheduled to take place as soon as is practicable, depending on the circumstances giving rise to the accommodation request, but no later than 14 days following receipt of the written accommodation request.

### **2) Opinion of Medical Specialist**

Following the initial meeting, the JPLRC may, in its discretion, obtain an opinion from a designated medical specialist regarding: 1) whether the applicant or employee suffers from a disabling condition which limits one or more major life activity, and 2) the applicant or employee's functional abilities and limitations with respect to the essential functions of the job he or she holds or seeks.

One medical specialist shall be designated in each port to assist the JPLRC in reviewing requests for reasonable accommodation. Each designated specialist shall be made aware and become knowledgeable of the nature and requirements of longshore and clerk work and the established conditions and waterfront operations in the industry. The designated medical specialist shall also be knowledgeable as to the legal standards and requirements related to the employment of disabled workers with or without reasonable accommodation.

In determining whether a particular applicant or employee has a disabling condition which limits one or more major life activity, the medical specialist will be asked to render an opinion based on any and all of the following s/he deems appropriate: an independent medical examination of the individual by an appropriate health care practitioner, the individual's medical history, medical reports from the individual's personal physician, reexamination of the individual, medical tests, x-rays, etc.

The medical specialist shall provide the JPLRC with a written report setting forth an opinion as to whether the applicant or employee has a disability which limits one or more major life activity along with an opinion as to the individual's functional abilities and limitations in relation to the essential functions of the job which the employee or applicant holds or seeks.

In the absence of unusual circumstances, the

JPLRC will schedule an appointment for the applicant or employee with the medical specialist to occur within 14 days following the initial meeting. In the absence of unusual circumstances, the medical specialist, in turn, will provide his or her written report to the JPLRC within 14 days after this appointment takes place.

### **3) Additional Meeting Before JPLRC**

Within 7 days following receipt of the medical specialist's written report, the JPLRC may, in its discretion, invite the applicant or employee to attend a further hearing before the JPLRC and/or request the individual to provide additional documentation or information relevant to the accommodation request. The JPLRC may also, in its discretion, proceed to gather any additional information it deems appropriate in determining whether a reasonable accommodation exists, including consulting with legal counsel and other technical assistance before rendering a decision.

In the absence of unusual circumstances, the JPLRC shall conclude the interactive process and prepare a written referral and recommendation to the Joint Coast LRC regarding the proper disposition of the request no later than 14 days following receipt of the medical specialists' written report. The JPLRC shall make its recommendation to the Joint Coast LRC regarding the accommodation request based on the facts developed during the interactive process.

## **C. Referral and Recommendation to the JCLRC**

In the absence of unusual circumstances, within 14

days following receipt of the JPLRC's written referral and recommendation, the JCLRC shall provide the applicant or employee involved written notification of its decision, including a written explanation of the basis for its decision.

If the Joint Coast LRC agrees on the disposition of the accommodation request, such decision shall be final and no appeal may be taken therefrom. If the Joint Coast LRC does not agree on the disposition of the accommodation request, the accommodation request shall be immediately referred to the Coast Arbitrator for decision. In such cases, the decision of the Coast Arbitrator shall be based solely on the written record of the JPLRC and Joint Coast LRC proceedings.

### **III. Training**

JPLRC members in each covered port, and the members of the Joint Coast LRC will be provided instruction as to the legal requirements related to employment of disabled employees with or without reasonable accommodations along with training as to the proper handling of requests for reasonable accommodation by disabled employees and applicants.

### **IV. Temporary Accommodation While Requests Are Being Processed**

1. Temporary accommodations may be granted to individuals who have filed a request for accommodation under the CLRC ADA policy while the accommodation request is under review. Requests for temporary accommodation shall be acted upon at the initial meeting held by the Joint Port LRC with an applicant for disability accommodation upon

receipt, review and approval by the Joint Port LRC of certification from the applicant's own health care provider -- on the JPLRC form (available at all PMA or ILWU local offices and Joint Dispatch Halls) -- that (1) the applicant has work restrictions that result from a mental or physical impairment, (2) but that he or she can nonetheless perform particular work tasks without creating a risk of injury to him/herself or others with specified accommodations.

2. Temporary accommodations granted by the Joint Port LRC shall be limited to an initial ninety (90) day period. The 90 day period may be extended by the Joint Port LRC in time increments not to exceed 30 days in length, until the CLRC accommodation process is concluded provided that delays in completing the interactive process for determining appropriate accommodations under the CLRC policy result do not result from conduct of the applicant intended keep the temporary accommodation in place for longer than necessary. It is the responsibility of the employee who has been granted a temporary accommodation to contact the Joint Port LRC before the temporary accommodation expires in order to renew it in the event that interactive process is ongoing.

3. Temporary accommodations granted by the Joint Port LRC shall be consistent with all seniority-based rules for dispatch and promotion within the industry and shall not interfere with the seniority-based expectations of other workers. For example, no applicant seeking temporary or permanent accommodations shall be promoted from one registration status or job classification to another (such as Class B to Class A registration status, or from the longshore to marine clerk or foremen's registration lists) as a disability accommo-

ation, where such promotions are fundamentally seniority based.

4. Temporary JPLRC accommodations do not need to mirror the accommodation sought under the CLRC Policy being requested by the individuals, if the JPLRC, in communication with the individual, reasonably believes the temporary accommodation will be effective and is reasonable and that, with that accommodation, the individual can safely and efficiently perform the job's essential function.

5. Temporary JPLRC accommodations do not mean the JPLRC agrees to the CLRC Policy request of the individual, nor will an individual be entitled to retain that accommodation if the JCLRC eventually decides to the contrary. The JCLRC retains the authority to decide the appropriate response to the CLRC Policy request and may revoke, amend or replace any temporary accommodation put into place by a JPLRC and may deny a request, notwithstanding that a temporary accommodation was provided by a JPLRC.

6. Nothing in the handling of a request under the CLRC Policy, including any grant of a temporary/interim accommodation, shall be construed as an admission by the PMA and its members and/or the ILWU and its local affiliates, or as evidence that an individual is disabled, is regarded as disabled, or has a record of disability within the meaning of the Americans With Disabilities Act or any federal, state or local law.

## **V. Scope of Procedures**

The procedures described above shall be utilized in all cases where accommodations have been requested by applicants for

industry employment and by incumbent workers with respect to hiring, dispatch and promotion within the industry.

This policy sets forth the procedure to be used by the local committees and the JCLRC for considering and resolving accommodation requests presented by disabled applicants and employees under the Americans With Disabilities Act and applicable state law. Nothing in this policy may be construed to require the ILWU and the PMA to provide applicants or employees with particular accommodations or to provide accommodations where, in the opinion of the Committee, none are warranted. Nor may this policy be construed as acceptance by the ILWU or the PMA of additional, greater or different legal or financial responsibilities than those which are imposed on them by law for providing accommodations to disabled applicants or employees.

The procedures set forth in this policy may be flexibly applied by the JPLRCs and JCLRC in particular cases when, in the judgment of the Committee, the facts and circumstances warrant it. The time lines for accomplishing particular steps of the procedure are intended as guidelines, not strict time limits, which may be extended or waived in appropriate circumstances. Failure of the local committees or the JCLRC to strictly comply with the time lines shall not constitute a violation of the policy.

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## **UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA, *Reference CLRC Meeting No. 11-03, Item 1 and CLRC Meeting No. 26-06, Item 1*)**

### **I. Introduction**

It is and has been the intent of the Coast Parties to comply with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and any applicable state laws. For purposes of benefits under the PCL&CA, the Coast Parties additionally intend by this Policy to provide some benefits, as stated here, greater than may be required by these laws as they currently exist. In doing so, the Coast Parties do not waive any applicable defenses to any claim which may be raised outside the context of the PCL&CA and do not intend to suggest that any greater remedies are available outside the PCL&CA than are provided by statute.

This Policy explains the benefits available to those eligible as a result of leaves of absence covered under USERRA, which became effective October 13, 1994. Any benefits sought as a result of military service pre-dating USERRA will be addressed on a case-by-case basis and with consideration of the then-applicable statute(s). This Policy clarifies, updates, and replaces Section 6.6 of the Coastwise Rules, all PCL&CA provisions, JCLRC Meeting Minutes, Arbitration Awards, etc. regarding military service.

### **II. Who Is Covered By This Policy?**

Under USERRA, a covered employee may take unpaid leave(s) “necessitated by reason of service in the uniformed

services” not to exceed a cumulative total of five years (with certain statutory exceptions, such as service required by a declared war or national emergency) (“Uniformed Services Leave”) and, upon returning and meeting certain statutory requirements, including timely reapplication/return to work, promptly be reinstated.

Covered Employees are those who, prior to Uniformed Services Leave, performed longshore or clerk work under the PCL&CA that was not for a “brief, nonrecurrent period” (for which “there is no reasonable expectation that such employment will continue indefinitely or for a significant period”). Therefore, only employees on jointly recognized lists (Unidentified and Identified Casuals, Class “B” and Class “A” Registrants) who are of active status and are eligible for dispatch at the time when they begin taking Uniformed Services Leave will be eligible for coverage under this Policy.

An employee is on a “jointly recognized list” only if Coast Labor Relations Committee or Joint Port Labor Relations Committee meeting Minutes adds the employee by name to the Casual, Class “B” or Class “A” ranks, or adopts into those ranks a written list containing the employee’s name and the employee has not subsequently been removed from those ranks. A permanent revocation of dispatch rights or the permanent placement on a non-dispatch list is conclusive evidence of an employee’s removal from the Casual, Class “B” or Class “A” ranks. However, other evidence, such as the fulfillment of the reason the parties created a “jointly recognized list,” also may be evidence of an employee’s removal from those ranks.

Covered Service means voluntary or involuntary active duty, active duty for training, initial active duty for training,

inactive duty training, full-time National Guard duty, and absences for certain related exams. This includes periodic/intermittent obligations (for example, annual National Guard and/or Reserve obligations, for weekend drills, training exercises, etc.). Covered “uniformed services” mean the Armed Forces (the Army, Navy, Air Force, Marine Corps, Coast Guard), including Reserve units, the Army National Guard and Air National Guard, the Commissioned Corps of the Public Health Service, and any other categories designated by the President in time of war or national emergency.

### **III. What Must Be Done To Obtain Benefits Under This Policy?**

To be entitled to benefits under this Policy, and consistent with USERRA, an employee (or his/her military representative) must: (1) provide advance notice of military service obligations to the JPLRC, care of PMA (preferably in writing), unless giving advance notice is impossible, unreasonable, or precluded by military necessity – in that case, notice must be provided as soon as possible; (2) complete his/her service on honorable terms and not be disqualified for various reasons set forth in USERRA; and (3) promptly (as defined below) upon completing military service seek reinstatement from the JPLRC, care of PMA (preferably in writing), and provide available documentation of the length and character of service and nature of discharge.

Requests for reinstatement, or seniority credits, must be filed with the JPLRC within ninety (90) days of completing any service. Employees are encouraged to bundle together timely requests for seniority credits, so that the JPLRC may address them all at once. However, seniority credits will only be

provided through the return-to-work-notice periods provided by statute, which are explained in Section IV below and vary depending on how long the employee was on leave.

Any employee who is injured or ill as a result of his/her Uniformed Services Leave is encouraged to contact the JPLRC at his/her earliest opportunity and to review the ADA Policy & Procedures.

To the extent provided by USERRA, reinstatement may be denied where circumstances have changed which make reemployment impossible, unreasonable or an undue hardship (where, for example, a position was eliminated for unrelated business reasons). The Coast Parties do not intend by this Section to modify their rights or obligations under the PCL&CA.

#### **IV. What Benefits Are Available Under This Policy?**

##### **A. Reinstatement, Hours Crediting, Registration**

USERRA generally provides for reinstatement to the position, along with applicable benefits, an employee would have held had s/he not taken Uniformed Services Leave. Reinstatement includes seniority and seniority-based benefits (for example, wage rates, registration, promotion, clerk transfers, welfare eligibility, pension credits) that would have been attained had the employee remained continuously employed (generally, only those which come about as a result of how long one is in or works in the Industry). USERRA does not entitle service members to any benefits to which they would not otherwise be entitled had they “remained continuously employed.”

When a JPLRC receives a request for reinstatement or other benefits under USERRA, it shall first determine whether the individual is entitled to benefits under USERRA (covered

employee, covered service, advance notice, timely request to return to work or receive credit, honorable terms of discharge, etc.). The JPLRCs have the discretion to waive the requirements for advance notice and/or to extend the 90-day time period for seeking reinstatement for leaves which began or were completed before this Policy was adopted.

Where the JPLRC determines that an employee is entitled to benefits under USERRA, reinstatement with appropriate seniority crediting shall be provided by calculating an appropriate hours credit. To determine seniority crediting, the JPLRC shall credit a hall employee with eight (8) hours of work for each time his/her plug or dispatch number came up for available work during the period of any Uniformed Services Leave, with the limitation that no more than eight (8) hours shall be credited for each 24 hour period of leave. For any period in which dispatch records are insufficiently available to conduct this review, the JPLRC shall credit a hall employee with the highest hours worked in his/her Port by a similarly situated employee during that period (so, using casual hours where a casual is on leave, Class "B" hall longshore hours where a Class "B" hall longshore employee is on leave, etc.). The JPLRC shall credit a steady employee with all hours provided by his/her steady work guarantee during the period of any Uniformed Services Leave.

The hours credit shall be considered to have accrued over the days, weeks, months or years during which the individual was absent due to Uniformed Services Leave, not to have accrued all at once when the hours credit is provided. While this Policy provides all employees with 90 days to seek reinstatement and seniority credits after returning from leave, seniority

credits will only be provided through the return-to-work-notice periods provided by statute, which vary depending on how long the employee was on leave: for leaves less than 31 days, this means the next workday falling eight hours after service ends; for leaves of 31-to-180 days, this means 14 days after service ends; for leaves of more than 180 days, this means 90 days after service ends. The JPLRC shall advise PMA promptly after completing the calculations so that the hours credit may promptly be entered into PMA's database.

Where a registration, elevation, or clerk transfer took place during the employee's Uniformed Services Leave, and/or prior to entry of his/her hours credits into the PMA database, to determine whether the employee returning from a Uniformed Services Leave should be considered for such registration, elevation or clerk transfer, the JPLRC shall, in addition to calculating the full hours credit described above, calculate how many of the hours credits or other seniority accrued before the generally applicable hours cut-off date (if any) for that registration, elevation or clerk transfer. Where the hours or seniority credit from a Uniformed Services Leave (including obligatory annual exercises – for example, National Guard or Reserve training) would have rendered an employee eligible for a registration, elevation or clerk transfer that occurred during his/her Uniformed Services Leave, the JPLRC shall promptly register, elevate or transfer him/her.

Where the JPLRC does not believe that an individual seeking reinstatement is currently qualified for the position to which s/he would otherwise be reinstated, the JPLRC shall promptly arrange for appropriate training necessary to achieve that qualification.

Appropriate documentation shall be included in the JPLRC minutes addressing USERRA requests. For example, the JPLRC shall include the amount of hours credited, the methodology used, the date range(s) reviewed and to which the credits apply.

### **B. Fringe Benefits**

Uniformed Service Members should direct questions about welfare and pension benefits (if any), to the appropriate plan. It is the intent of the JCLRC that all benefits required by USERRA be provided.

### **V. Statement of Non-Retaliation**

The ILWU and PMA prohibit discrimination or retaliation against anyone because of their past, current or future Uniformed Service Leaves, or for bringing a complaint or participating in proceedings under USERRA or applicable state statutes.

### **VI. Grievance Procedure**

Grievances regarding the treatment of Uniformed Services Leave under this Policy may be filed under Section 17 of the PCL&CA. Those seeking consideration under this Policy and/or grievants are requested to provide available documentation supporting their requests.

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## **NO DISCRIMINATION Item XXII, June 22, 1962 — Memorandum of Agreement**

The parties hereby state that during the negotiations resulting in this Memorandum of Agreement they discussed

the provisions of Section 13, No Discrimination, of the basic Agreement and agreed that the parties are jointly responsible for the total implementation of the provisions therein and the Union agrees that it will administer its internal affairs so as to fulfill its share of this joint responsibility.

### **Item XI, July 1, 1975 — Memorandum of Agreement**

To formalize the agreement that has been reached and placed in effect between the International Longshoremen's and Warehousemen's Union and the Pacific Maritime Association that there be no discrimination on the basis of "sex" in the terms, meaning, application, implementation and administration of their collective bargaining contracts, and in the exercise of control over the registered lists, the terms of each of the collective bargaining contracts between the International Longshoremen's and Warehousemen's Union and Pacific Maritime Association are amended to provide as follows:

- (a) All collective bargaining contracts shall provide that there shall be no discrimination in connection with "sex."
- (b) All words, terms or definitions of employees used in the collective bargaining contracts are used as being words of common gender, and not as being words of either male or female gender, and hence have equal applicability to female and male persons wherever such words are used.