

February 6, 2018

TO: Kelly Wicker, Deputy Chief of Staff  
Office of the Governor

FROM: Deborah Diamond

Subject: Workplace Investigation (Peinecke)

Following is a report of my fact-finding investigation re: complaints of sexual harassment by Employment Security Department Commissioner Dale Peinecke.

### **I. Background of the Investigation**

On 12/22/2017, I was contacted by EEO Officer Teresa Eckstein and Chief Human Resource Officer Ron Marshall and briefed on the scope of the complaint.

### **II. Investigative Process**

From January 9-29, 2018, I interviewed ESD employees.

Based on analysis of the interview statements, documentation, and ESD policies, I reached factual conclusions.

### **III. Investigation of Allegations**

#### **A. Interviews**

Witness E (Complainant)

- I have felt sexually harassed by ESD Commissioner Dale Peinecke on several occasions since he came to the agency.
- It is common knowledge among my colleagues that Mr. Peinecke has roving eyes and stares at women's breasts. On the elevator, in the hallway, in offices, or in meetings, Mr. Peinecke's eyes start at a woman's breasts and then move up to her eyes, and then back down, constantly checking her out. I recall Witness G telling me about a time when Mr. Peinecke made her very uncomfortable staring at her breasts when they were on the elevator together.
- When managers/supervisors know that Mr. Peinecke is going to be around, we remind each other to wear turtlenecks, scarves, or loose-fitting clothing. The

managers/supervisors see their positions as dependent on putting up with Mr. Peinecke's leering looks and his putting his arm around them. I tried to stay clear of Mr. Peinecke whenever I could.

- Mr. Peinecke's inappropriate behavior is pervasive and indiscriminate. He puts his arm around and/or leers at women of any age, body type, hair color, attractiveness.
- In December 2015, during a progressive potluck, I was standing at a table with Mr. Peinecke, Person R, and a fellow manager when Mr. Peinecke made me very uncomfortable talking in intimate detail about how he had met his wife on a cruise ship. Mr. Peinecke said something like, "You know what happens on cruise ships", implying the sexual antics that are associated with the Love Boat.
- Person R was laughing, but I felt it was highly inappropriate for Mr. Peinecke to making sexual innuendoes in the workplace. I should be able to enjoy a professional environment and feel safe from being subjected to sexual conversation. I am sensitive and very aware of inappropriate behavior by someone in a position of authority. (My sensitivity stems from former ESD Commissioner Vernon Stoner and his inappropriate associations with female employees during his tenure as Commissioner in the 1990's.) My fellow manager and I walked away from the inappropriate conversation. I internalized my discomfort and did not report it to anyone.
- On 01/05/2016, I made a presentation to the Executive Leadership Team (ELT) regarding the Imaging Department's LEAN initiative called The Staple Project. When I finished, Mr. Peinecke came around the conference table to where I was standing and put his arm around me. Mr. Peinecke's entire upper body was pressed against me on my right side and he had me pinned against a file cabinet on my left side. The photo shows that Mr. Peinecke was looking down toward my breasts.
- I froze and struggled to maintain my composure. My heart was pounding and I was sweating. Mr. Peinecke talked to the ELT for 3-5 minutes with me in this position. The ELT's faces were a blur to me, because I was focused internally on trying to survive the moment. I felt demeaned by Mr. Peinecke treating me (a professional woman) this way in a professional work environment.
- The photo of Mr. Peinecke cornering and leering at me was published on Inside ESD. I got comments and phone calls from male and female colleagues saying something like, "Oh, I see you have a special relationship with the Commissioner." I was so embarrassed. The comments continued throughout 2016 and into 2017.
- I worked hard during my career to reach a position of leadership in this organization and have successfully led many teams and groups of employees, based on my professional and leadership ability. Mr. Peinecke should not have put me in the position where my colleagues were sent an offensive, suggestive message.
- I did not file a complaint because of rhetoric I had heard Mr. Peinecke state on several occasions. Basically, the message was that you either get with his program or you are out of here. I did not know what workplace behaviors Mr. Peinecke expected us to tolerate. I had also seen other managers at ESD be fired. I was afraid of being retaliated against and losing my job.
- Sometime in 2017, Witness P was making a presentation at the Performance Board when Mr. Peinecke came by for an impromptu visit. When Mr. Peinecke put his arm around Witness P, her face turned bright red. I felt so sorry for her, because I knew what she was going through.

## Witness C

- When I first arrived at ESD, coworkers made me aware that Mr. Peinecke lacked personal-space boundaries. They indicated that he often attempted to put his arm around them. They also stated that Mr. Peinecke often looked at female's bodies rather than at their face when interacting with them. I was also told that complaints had been made to Human Resources.
- Mr. Peinecke seems to think he is engaging in chummy camaraderie when he puts his arm around someone's shoulders or hugs someone, but even the men on the staff have said that it is awkward and uncomfortable for them.
- I have not experienced issues with Mr. Peinecke placing his arm around me. Early on, I experienced an occasion or two where Mr. Peinecke appeared to be looking at my chest rather than at my face. I have also experienced an instance when Mr. Peinecke appeared to be looking me up and down, sizing me up, rather than looking me in the eye.
- While I feel that this behavior was not appropriate, it never escalated to anything more than one or two occasions. Because I assumed HR was aware, I did not feel the need to escalate the issue. Since I have not experienced this behavior lately from Mr. Peinecke, I assumed that he had corrected his behavior.
- In order to protect myself, I step back from Mr. Peinecke and put out the vibe that it would not be appropriate for him to enter my personal space.
- At first, I believed that Mr. Peinecke was not conscious of his behavior. I am now concerned that this may not be true, if in fact, the Chief Human Resources Officer Ron Marshall talked to Mr. Peinecke and told him it was not appropriate to touch anyone in the workplace. It seems to me that if Mr. Peinecke wanted to stop, he would.
- I think Mr. Peinecke does not consider his behavior to be inappropriate or engaged in with a sexual intent. I believe that his behavior may be coming more from asserting control. I do not believe he is aware of his behavior, or perhaps Mr. Peinecke is not concerned if anyone is uncomfortable or feels his behavior is inappropriate.
- I have had another female coworker warn me that Mr. Peinecke will make a judgement about a female if she is overweight. I was cautioned not to hire someone that is overweight, because Mr. Peinecke will automatically discount the person if she does not fit his desired body-type. I do have one female staff member who is overweight. Mr. Peinecke has made it clear that he does not like her and does not want to interact with her (without directly stating that it is because she is overweight). Mr. Peinecke has made it very clear that he believes that this employee's appearance is unattractive, which he equates with being unprofessional.
- I am very concerned that participating in this interview will result in me losing my job if Mr. Peinecke learns about my statement. I have truthfully accounted for my experience and what I am aware of occurring in the agency.
- Mr. Peinecke can be abrasive. I have been treated disrespectfully in a non-sexual way by him in the past. I have had to put up with a lot because he tends to fire, then aim. I do not feel safe. I have also not felt that it was safe to go to HR with my concerns.

## Witness J

- In late-2013, an incident occurred with Commissioner Dale Peinecke which made me very uncomfortable.
- Mr. Peinecke came in to a conference room where I was seated at the head of the table presenting a part of the layoff plan. Mr. Peinecke stood very close to me (without actually touching). I was uncomfortably aware of how close he was and did not look up. I did not like Mr. Peinecke crossing in to my personal space bubble, but it would have been awkward to say anything.
- After Mr. Peinecke left, Witness D and some of the other women in the room said Mr. Peinecke had been looking down at my chest area the whole five minutes he was there.
- Although I think Mr. Peinecke was being inappropriate, I did not feel that I wanted to pursue a complaint at that time.

## Witness D

- I was present in a late-2013 meeting when ESD Commissioner Dale Peinecke came in and stood very close to Witness J, staring down at her breasts while she was making a presentation.
- After Mr. Peinecke left, all the other women in the room (there were no men present) commented on how uncomfortable they were with how Mr. Peinecke was looking at Witness J.
- After the meeting, I told Person Q that Mr. Peinecke's behavior seemed very inappropriate. Person Q said that Mr. Peinecke did something similar to her. We commiserated about the situation.
- I told Person Q that I thought someone should say something to Mr. Peinecke or the Chief HR Officer. Person Q said she would. I do not know if she ever did. Witness J said she did not want to file a complaint at that time.
- When someone told Witness I about what happened to Witness J, Witness I said something like that had happened to her in April 2013. I told Person Q about this additional incident and told her I thought she should elevate it to the Chief HR Officer or talk to Mr. Peinecke herself. Again, I do not know if she ever did.
- Witness I told me she is still creeped out by Mr. Peinecke and will not go in to the kitchen when he is there.

## Witness I

- In April 2013, Person R introduced new Commissioner Dale Peinecke to me while I was standing in my office cubicle. Mr. Peinecke made eye contact with me and then looked down my body and back up to my eyes slowly enough to make me feel very uncomfortable.
- I was really taken aback by this and turned to Person R. She must have seen that I was shocked by Mr. Peinecke's behavior, but she did not react.
- I knew there was a process for filing a complaint, but at the time I did not feel it was severe enough to report.

- Later in 2013 and in 2014, I talked to a few coworkers about the incident. I told them it felt really creepy to be looked at that way by someone, especially someone in Mr. Peinecke's position.
- In 2015, a coworker (Witness L) told me Mr. Peinecke had made a comment to her about her being pregnant that made her feel uncomfortable. I also heard from coworkers Witness D and Witness J that Mr. Peinecke stood and looked down Witness J's top when she was seated making a presentation.
- Sometime within the last year, I was in the kitchen with my back to the doorway when Mr. Peinecke came in. Mr. Peinecke put his hand on my shoulder to alert me he was passing. The gesture was not inappropriate, but I was wary because of his past behavior.
- Since the 2013 incident, I try to avoid being near Mr. Peinecke. For example, I was in line for a flu shot when Mr. Peinecke walked up and joined the line behind me. Mr. Peinecke stood close and started chatting with me. I felt uncomfortable and left.

#### Witness O

- Sometime in 2016, I had an interaction with ESD Commissioner Dale Peinecke which made me very uncomfortable.
- Mr. Peinecke and I were talking as we walked up the stairs from the garage and took the elevator together.
- Quite frankly, I have never had a man gawk at me in such an obviously leering way, even in a bar when people are under the influence of alcohol.
- It was more than just a stare. It was as if Mr. Peinecke was undressing me with his eyes. The looks he gave me were very sexual and made me very uncomfortable.
- I was shocked at Mr. Peinecke's behavior and told a few colleagues. Some women indicated they had had similar experiences. A male colleague told me that he is uncomfortable when Mr. Peinecke frequently puts his arm around him.
- I did not report the 2016 incident, because Mr. Peinecke never actually touched me and did not say anything with sexual overtones.

#### Witness L

- In early 2015, my pregnancy was just starting to show. I was in the kitchen with ESD when Commissioner Dale Peinecke came in and said hello. Mr. Peinecke made eye contact with me, but then his eyes went down my body and up again, stopping at my belly, then stopping at my breasts, and then back to my eyes.
- I felt very uncomfortable. In my mind, I was thinking something like, "Yes, I'm pregnant. Do you have any questions?" but did not say anything.
- I felt Mr. Peinecke's behavior was especially inappropriate because of his position as ESD Commissioner.
- I did not feel like the incident was serious enough to report/file a complaint, but I did feel creeped out. I mentioned the incident to a couple coworkers who agreed that Mr. Peinecke's behavior was inappropriate.
- It is the general consensus of my male and female coworkers that Mr. Peinecke stops his glance and stares at women's breasts.

- Based on this incident, I will try to wait until Mr. Peinecke is out of the kitchen before I enter.

#### Witness G

- I have had at least two nerve-wracking encounters with ESD Commissioner Dale Peinecke in the elevator. Mr. Peinecke was standing at my side and obviously staring down at my chest.
- One time, Mr. Peinecke asked me why I was not wearing a sweater when it was so cold out. Sometime later, Mr. Peinecke said something like, "Oh, you're wearing a sweater". Mr. Peinecke's awkward small talk made me very uncomfortable in light of his having stared at my breasts in the elevator.
- After these incidents occurred, I avoided eye contact with Mr. Peinecke and tried to stay away from his creepy vibe.
- It was the general consensus of me and my coworkers that Mr. Peinecke is an extremely creepy dude in the way that he stares at women's chests, hugs, and puts his arm around people. His behavior is just not appropriate for someone in that position.

#### Witness N

- In October 2017, I was on the elevator alone with ESD Commissioner Dale Peinecke. I was very uncomfortable when Mr. Peinecke gave me a slow look down my body and then back up. Mr. Peinecke's seemed to be (unsuccessfully) struggling to keep his eyes from returning to my breasts.
- I had heard from several female colleagues that Mr. Peinecke stares at women's breasts and does not attempt to hide it. I recall Witness O telling me Mr. Peinecke had been staring at her boobs in the elevator. Someone told me that she has seen Mr. Peinecke staring at women and mentioned how inappropriately he looks at Witness C.
- I know that I should have reported the October 2017 incident, but I was afraid of retaliation and did not want to jeopardize my job.

#### Witness P

- ESD Commissioner Dale Peinecke has been totally professional around me in one-on-one meetings.
- In group settings, Mr. Peinecke put his arm around my shoulder once or twice. I am a bit uncomfortable with a male making physical contact with me in the workplace, but I did not feel it was a big enough deal to bring it up.
- I recall one time when Mr. Peinecke put his arm around my shoulder in front of a group that was gathered at the Performance Board. I was nervous and turned red, because Mr. Peinecke was asking me very direct questions, which I was not sure I was prepared to answer.
- I have seen Mr. Peinecke walk up and put his arm around other women. In Executive Leadership Team (ELT) meetings, I have noticed Mr. Peinecke looking at the chest of a woman who was speaking. Mr. Peinecke seems to do this to women who are pretty (e.g., Witness H and Witness C).

- In looking at the January 2016 photo of Mr. Peinecke with his arm around one of my former employees (Witness E), I can see where Mr. Peinecke's hand seems to be touching her high on the shoulder. I would have thought that Witness E would have expressed any concerns to me. I do not recall her doing so at the time.
- In this day and age, I question whether someone in Mr. Peinecke's position should risk engaging in physical behavior that might be considered inappropriate.

#### Witness H

- I am not uncomfortable with Mr. Peinecke putting his arm around me or his hand on my shoulder, but I can see where Mr. Peinecke's physical approach to engaging with his staff could be off-putting to some who are not huggers like me. I have noticed that some people are uncomfortable around Mr. Peinecke and seem to be put off by his mannerisms.
- Mr. Peinecke is a process-focused engineer and is not a real people-person. He is awkward in his attempts at social interactions and could come off as intimidating in the way he directly questions to people.
- Witness B and Person S have given Mr. Peinecke feedback (coaching) about these behaviors to assist him in how he engages with staff. I have seen some improvement in the way he relates to people, but he still seems to be much more comfortable with men.

#### Witness F

- ESD Commissioner Dale Peinecke is outgoing and friendly. I have seen him shake hands with individuals and then pat them on the back.
- It is not uncommon to see Mr. Peinecke put his arm around someone, with his hand on his/her shoulder.
- Mr. Peinecke makes eye contact with me when we are talking. He is very performance-oriented and direct in his communications.
- I am not aware of Mr. Peinecke staring at or checking people out with his eyes. Mr. Peinecke is always on the move and is not in one place long enough for his eyes to linger.
- I have experienced creepy interactions with men in authority before. I have not experienced any interaction with Mr. Peinecke which made me uncomfortable.

#### Witness M

- ESD Commissioner Dale Peinecke is a very boisterous, in-your-face kind of guy. He stands close to people when he talks.
- Mr. Peinecke frequently puts his arm around people's shoulders, briefly, in a collegial way. It seems to be his way of saying hello.
- Times Mr. Peinecke has hugged me were at social events, such as a Christmas party when everyone was hugging each other goodbye.
- It does not bother me when Mr. Peinecke puts his arm around or hugs me or others.
- Mr. Peinecke makes eye contact with me when we talk. I cannot recall having seen, nor has anyone reported to me, that Mr. Peinecke stares at women's chests.

- I have not seen that Mr. Peinecke interacts with women any different from the way he interacts with men.

#### Witness K

- I have not personally experienced or noticed ESD Commissioner Dale Peinecke doing anything that made me uncomfortable.
- Mr. Peinecke does stand close when he is talking, but this has not caused me any concern.
- I have noticed that Mr. Peinecke looks both men and women up and down when he encounters them. I am under the impression that he is checking out the people's clothes and shoes. I think Mr. Peinecke is just taking note of how someone is dressed that day. I do not sense any sexual overtones.
- Early on, I overheard Mr. Peinecke talking about shoes with Witness T. On a later occasion, when I complimented Witness T on his shoes, he responded that he was taking fashion lessons from Mr. Peinecke.

#### Witness B

- ESD Commissioner Dale Peinecke treats me with respect, has provided me excellent opportunities for career growth and compensates me fairly.
- Employees have told me that Mr. Peinecke seems more aloof than the prior ESD Commissioner. I have encouraged him to walk around and connect with people more.
- During a conversation about Mr. Peinecke's personality and need to connect more with employees, I mentioned that I liked how he welcomed me to the office with a hug when he hired me.
- One of my employees told me that, before I was hired, Mr. Peinecke touched her on the forearm during a discussion with other people present and that it made her a little uncomfortable. She did not frame her discomfort in terms of sexual harassment.
- Personally, I am comfortable with Mr. Peinecke putting his arm around or hugging me. I appreciate this sign of collegiality. My male and female bosses have always hugged me (and sometimes kissed me on the cheek) in a collegial way. I understand that people have different levels of comfort and we should always respect that.
- When I converse with Mr. Peinecke, he looks me in the eyes or looks at the paper we are discussing. I have not noticed Mr. Peinecke staring at women at the breast level. If I ever saw or felt that, I would have said something to him.
- I'm proud of how Commissioner Peinecke hires strong women leaders and respects our leadership.

#### Witness A

- When I initially briefed incoming Commissioner Dale Peinecke, the discussion included civil service and ESD policies on ethics and workplace behavior.
- Mr. Peinecke is very process-focused, bright, energetic, and friendly. Early on, I noticed that Mr. Peinecke was hugging women and putting his arm around the shoulder of men and women.

- Within the first year, I provided guidance to Mr. Peinecke regarding his hugging people in the workplace. I suggested that it might be okay to hug someone if he had established that kind of relationship with the person, but that in general it was not a good idea for a person in authority to hug subordinates. After I gave Mr. Peinecke this guidance, his behavior seemed change to some extent. I did not see Mr. Peinecke spontaneously hugging people after that.
- At that time, I did not provide Mr. Peinecke any feedback or guidance regarding his putting his arm around people. I do not recall anyone bringing to my attention that s/he was uncomfortable with this behavior.
- In late-2017, ESD received notification of a complaint filed with the EEOC. The complaint included a claim that Mr. Peinecke had sexually harassed Witness E. The supporting documentation included a photo of Mr. Peinecke with his arm around Witness E.
- In looking at the photo, I see that Mr. Peinecke's hand is actually resting on the Witness E's collar bone and is in contact with her hair. I see that Mr. Peinecke's torso is in full contact with Witness E's arm. I see that Witness E is standing next to a file cabinet on the other side. Mr. Peinecke appears to be looking at Witness E's chest.
- I have never personally observed Mr. Peinecke staring at women's chest areas. I do not recall that anyone reported that s/he thought/felt Mr. Peinecke stared women's chest areas until this investigation. If this had been reported to me, I would have given Mr. Peinecke feedback and guidance that this behavior was making people uncomfortable and should cease.
- I have noticed that when Mr. Peinecke's wheels start spinning (his mind is in deep thought) on something, his gaze seems to freeze for a few moments while he is thinking. It seems like Mr. Peinecke locks his eyes wherever he was looking when an idea came to him. When Mr. Peinecke is ready to talk again, he looks up and makes eye contact.
- I do not think Mr. Peinecke has any clue that he is making people uncomfortable by putting his arm around them or staring at them.

Dale Peinecke (Respondent)

- I am outgoing and gregarious, but I cannot recall doing anything that would intentionally make someone feel uncomfortable in the ESD workplace. My team and I have worked hard at employee engagement, at creating a respectful and diverse workplace, as evidenced by our recent employee engagement scores. I would not purposefully take any action to undermine this accomplishment.
- It is not uncommon for me to shake hands, put my arm around, or hug both men and women at ESD, from other state government offices, or from our stakeholder community. I think this way of relating to people may come from years of coaching and being involved with sports. Having had time to reflect on this, I imagine that there are any number of individual and group photos that show me with my arms around someone or around people in a group photo.
- I have not felt I needed to ask permission to hug or put my arm around anyone in a collegial way. I do not recall anyone objecting, recoiling, or stepping back, but I imagine if that happened I would immediately disengage. To the best of my ability to recall, no one has ever commented or provided me feedback to this effect.

- I do not recall receiving any formal feedback or guidance from Chief Human Resources Officer Ron Marshall regarding my hugging people, nor do I recall any direct feedback from an employee.
- When I put my arm around someone's back or shoulder, it is usually brief, although it may last as long as my address to them or to the group I am speaking with. My upper torso may be in physical contact with the person's side, but I do not knowingly grip or pull anyone toward me. When I put my arm around someone, I am acting like the sports coach. The message of my physical gesture is, "I am engaged in this with you. I am appreciative of what you are doing."
- To be clear, there are people who I know well, and with whom I have a longer term relationship, whom I will embrace and who may regularly embrace me in the workplace. This differs from the following incident.
- In looking at the photo presented to me in this interview, I see Witness E working really hard at making a presentation and me being encouraging. Having had time to reflect on this encounter, I recall we were reviewing incredibly good results of a LEAN project with managers and with the workgroup in a very public setting. I was excited about the outcome and their effort (including hers) and lauding their work.
- I see that I have my arm around her shoulder. It looks like my thumb might be in contact with her hair, which is long (falls to her shoulder). I see that from the position of my hip that I am leaning out away from Witness E, which brings my upper torso in contact with her arm. It was certainly not my intention to make her uncomfortable. It is hard for me to imagine that Witness E would feel demeaned (as I was told she claimed) when I was praising her project. I do not recall her pulling away, nor do I recall feedback about this incident from her or her manager.
- [The line of questioning changes here to encounters in the elevator, with the assertion that I am looking at women's breasts and physical attributes in the elevator, hall and/or lunchroom:] I am dumbfounded that any woman thinks I am staring at her breasts or dressing her down with my eyes. If I am doing that, it is not a conscious behavior. I am surprised that anyone could think that was where my head is, when in fact I am thinking about a lot of other important things. It would not surprise me to hear that people think I am not paying attention to them when I am gazing off, not looking directly at them (face-to-face), and/or conversing, but this does surprise me. I am not conscious of treating men or women differently in these situations.
- Upon reflection, I wonder if people are misinterpreting my gaze. I am good at remembering numbers but, as I have often commented, I am not as good at remembering people's names. I habitually look at people's badges to refresh my memory so I can address the person by name when I talk to them. Most people wear their badges on a lanyard around their necks, so I would be looking down to try to read the person's name.
- When I am in a group, I scan the crowd, trying to read facial expressions and body language to determine if people are engaged. It is certainly not my intention to be assessing women's physical traits or looking at women at the breast level. Again, I am "reading" both women and men in these situations.
- It is disappointing to me to get this feedback after all my and our team's hard work to move the agency forward toward engagement, respect, and diversity.

- My intention is to be a positive, supportive, engaged coach and cheerleader for my employees' efforts. If my players do not see my behavior as positive reinforcement, I need to take a different tack, particularly given the tenor of our times, today.
- I had no awareness that I was making anyone uncomfortable. I am disturbed and somewhat shocked by this feedback. (Even as I walk out the door from this session) I am ready to move forward and immediately modify my behavior, so that all feel comfortable in our workplace.

## **B. Documentation**

[Investigator's Note: Relevant sections of documents are excerpted.]

- Exhibit 1: EEOC Charge of Discrimination 551-2018-00592, filed by Witness E 12/12/2017

On January 5, 2016, Witness E was at a meeting with the Executive Leadership Team, which is comprised of the heads of all the divisions within ESD. The Commissioner of ESD, Dale Peinecke, was present at the meeting.

Witness E and Mr. Peinecke had no prior relationship other than Witness E knowing that Mr. Peinecke was the leader of ESD. During the meeting, Mr. Peinecke approached Witness E and, with Witness E pressed against a file cabinet, placed his arm around Witness E and held her against him while addressing the other members of the Executive Leadership Team. A photograph of the incident was taken and, incredibly, posted on ESD intranet website to be viewed by all ESD employees...This subjected Witness E to, among other things, insinuations from other ESD employers that she must have a "special relationship" with Mr. Peinecke.

Mr. Peinecke has exhibited the same behavior towards other ESD employees, including two other employees that Witness E has witnesses Mr. Peinecke inappropriately interact with. All of the employees that have been inappropriately touched by Mr. Peinecke have been female. On another incident, Mr. Peinecke put his arm around a female director while she was giving a presentation to a gathering of managers. This director was visibly uncomfortable. In addition to inappropriately touching female employees, Mr. Peinecke regularly stares at female employees, and particularly their breasts, to the point that employees are extremely uncomfortable. Mr. Peinecke only treats female employees in this manner. Mr. Peinecke's behavior is widely known among the employees at ESD. The female employees, including Witness E and her peers, have often discussed the need to wear loose fitting clothing whenever Mr. Peinecke is present.

- Exhibit 2: Photos of Mr. Peinecke and Witness E, dated 01/05/2016.
- Exhibit 3: ESD Required Policies List, signed by Mr. Peinecke 01/16/2013.

Policy #0014 Harassment Prevention (10/25/2011)

## Policy #0016 Employee Conduct (12/13/2016)

In keeping with Agency standards, I have reviewed these policies on-line, or I have been provided with a copy of the following policies and procedures. I have discussed these policies with my supervisor or manager and have asked any questions. By my signature, I acknowledge that I have read, understand, and agree to adhere to the standards set forth in each of these policies and procedures.

### C. Laws, Policies and Other References

[Investigator's Note: Relevant sections of references are excerpted.]

- ESD Policy 0014 Harassment Prevention (10/25/2011)

The Department will provide all employees and clients with an environment free of harassment. The Department expects all employees to treat everyone with dignity and respect. The Department will take an aggressive role in eliminating harassment and inappropriate behavior of a sexual nature from the work environment of its employees and the delivery of services to its clients by responding immediately to observed or reported incidents of harassment or inappropriate sexual behavior in the workplace. The Department will also take an affirmative role in eliminating retaliation against the accused harasser or against individuals who report/participate in the investigation of such matters.

Managers/supervisors must be aware of the potential impact regarding their social relationships with co-workers. By law, supervisors have a greater responsibility, and are also liable to be individually sued in court for acts of harassment as they hold positions of authority over other employees. Sensitivity and sound judgment must be used by managers/supervisors in order to avoid impropriety of any kind.

*Inappropriate behavior of a sexual nature:* Unwelcome sexual behavior which, could interfere with an individual's work or receipt of service, and could create an intimidating, hostile or offensive environment. Inappropriate behavior(s) of a sexual nature are those behaviors that do not rise to the level of sexual harassment because they may not be as severe or not repeated. Examples of inappropriate behavior of a sexual nature are similar to examples of sexual harassment behaviors and include, but are not limited to:

- Non-verbal behavior such as gestures, leering
- Physical behavior such as unwelcome touching, standing too close, cornering, leaning over or brushing against a person's body.

- ESD Policy 0016 Employee Conduct (12/13/2016)

#### Appearance

The manner and style of dress for all employees has a direct bearing on the confidence the citizens of the state place in the department. Employees are expected to portray an image of professionalism and competence through their appearance, and maintain

acceptable customs of personal hygiene. The department's concern with employees' appearance is limited to the effect on the work environment, employee health and safety, and the public image.

- Collective Bargaining Agreement between the State of Washington and the Washington Federation of State Employees 2017-2019 (effective 07/01/2017):

#### Article 47 Workplace Behavior

47.1 The Employer and the Union agree that all employees should work in an environment that fosters mutual respect and professionalism. The parties agree that inappropriate behavior in the workplace does not further an agency's business needs, employee well-being or productivity. All employees are responsible for contributing to such an environment and are expected to treat others with courtesy and respect.

47.2 Inappropriate workplace behavior by employees, supervisors and/or managers will not be tolerated. If an employee believes he or she has been subjected to inappropriate behavior the employee, and/or the employee's union representative, is encouraged to report this behavior to the employee's supervisor or the Human Resources Office and/or file a grievance in accordance with Article 29, Grievance Procedure.

#### **IV. Summary of Factual Conclusions**

Based on my investigation, I reached the following factual conclusions:

- Mr. Peinecke makes some employees uncomfortable when he puts his arm around them. Subordinate employees have felt they had to tolerate Mr. Peinecke's physical gestures because of his position.
- Looking employees up and down and/or staring at women at the chest level, for whatever reason, is inappropriate behavior which makes Mr. Peinecke vulnerable to claims of harassment with sexual overtones.

#### **DISCLAIMERS**

The information in this report is based on statements made by the ESD employees referenced and the documents made available to me in the course of this investigation from 12/22/2017 to 02/06/2018. This report is intended to provide you information to ascertain what corrective actions, if any, are appropriate in response to the allegations made against Mr. Peinecke.

Deborah Diamond

Attachments