
Policy Number: 103.225
Title: Fact-Finding Process and Discipline Administration
Effective Date: 12/15/20

PURPOSE: To provide procedures for fact findings into allegations of employee misconduct and for the administration of discipline.

APPLICABILITY: Minnesota Department of Corrections (DOC) employees

DEFINITIONS:

Appointing authority – a warden or manager who: (1) has been delegated authority for personnel transactions by the commissioner of corrections; and (2) makes final determinations about the appropriate discipline levels for employee misconduct.

Discipline levels – in ascending order of severity, include oral reprimand, written reprimand, suspension demotion, and discharge.

Just cause standards – criteria the DOC considers when determining whether discipline is justified and the appropriate level of discipline.

Misconduct – conduct that violates the law, administrative rules, policies, procedures, management directives, or norms of behavior; or conduct that reflects unfavorably on the department.

Work Incident Review Committee (WIRC) – a committee appointed by the appointing authority to review employee misconduct/performance issues and recommend corrective action to the appointing authority.

PROCEDURES:

A. Reporting

Any staff person who witnesses, experiences, or has knowledge of potential misconduct by staff must take immediate action by reporting it to a supervisor, manager, regional human resources director (RHRD), assistant human resources director (AHRD), the appointing authority or the director of the office of professional accountability (OPA).

1. Staff must report criminal behavior in accordance with Policy 107.100, “Internal Affairs – Office of Special Investigations.”
2. Staff must forward non-criminal misconduct complaints to the appointing authority/designee or to the OPA director.
3. Notwithstanding the above, staff must still follow mandated reporting procedures in any other policy (for example, specific reporting requirements under Policy 103.220, “Personal Code of Conduct of Employees”). **A report to the OPA does not fulfill a specific or mandated reporting requirement.**
4. In cases where safety and security is not at issue, if staff believe the report of misconduct is too sensitive to follow specific reporting requirements, they may first discuss their

obligations with the OPA director or a human resources (HR) director, who may determine that staff do not need to follow the typical procedure for reporting.

B. Assessment by the Appointing Authority

Upon receiving a report of alleged employee misconduct, the appointing authority/designee makes an initial assessment (as specified in section C of Policy 103.218, “Office of Professional Accountability”) and determines whether the matter should be addressed through performance management, the fact-finding process detailed in the following section, or an investigation by the OPA.

C. Fact-Finding Process

1. If the appointing authority/designee determines that a report of alleged misconduct should be handled through the fact-finding process, the appointing authority/designee notifies the HR fact finder of the allegations and the subject(s) of the fact finding.
2. The HR fact finder must enter a record of the fact finding into the agency investigation and discipline tracking system.
3. The assigned HR fact-finder gathers the information necessary to complete the Fact-Finding Form (link attached).
4. The HR fact-finder must provide all staff from whom information is sought with the appropriate Tennessee Advisory (attached).
5. If information regarding other potential employee misconduct emerges through the fact finding, the HR fact finder provides the additional information to the appointing authority/designee, who determines whether to expand the scope of the fact finding or to address the additional issues through a different process or different personnel.
6. The HR fact finder must reflect all information pertinent to the allegations on the Fact-Finding Form before submitting the completed form to the subject-employee’s supervisor.
7. The entire fact-finding process, from the time of assignment to issuing of disciplinary action, must be completed within 30 days.
 - a) The appointing authority may specify a shorter or longer fact-finding period or a weekly update requirement.
 - b) The HR fact finder must notify the appointing authority and RHRD/AHRD if a fact finding exceeds 30 days (or the specified period), and must provide specific reasons for the delay.
8. With the appointing authority’s approval, the HR fact finder may discontinue a fact finding if it becomes apparent that further investigation is unwarranted.
9. If a fact finding is discontinued, the HR fact finder closes out the file in the investigation and discipline tracking system.
10. If the subject of a fact finding tenders a resignation before the process is complete, it must not be accepted without review and support by the agency human resource director and the appropriate deputy/assistant commissioner.

11. Responsibilities of Staff
 - a) Staff must cooperate in the fact-finding process. Any staff person who does not cooperate with the fact-finding process or this policy may be subject to discipline, up to and including discharge.
 - b) Any individual making false allegations or statements during a fact finding may be subject to discipline, up to and including discharge.
 - c) Staff must not discuss any aspect of an ongoing fact finding with any person, other than their union representative, supervisor, or HR without prior approval from their appointing authority.
12. Information gathered during a fact-finding process must be handled in accordance with all applicable data privacy laws and policies.

D. Review of Fact Findings

1. Upon receiving the completed Fact-Finding Form, the supervisor of the subject-employee reviews the information and whether the employee has violated policy, procedures, or instructions, or has failed to satisfactorily perform the duties assigned in the position description.
2. In consultation with the RHRD/AHRD/designee, the supervisor determines what corrective action is appropriate to recommend. The supervisor must notify the appointing authority of their recommended course of action.
3. With advice from the RHRD/AHRD/designee, the appointing authority is responsible for approving or rejecting the recommended discipline or lesser corrective action.
4. The supervisor notifies the HR fact finder of the final outcome.
5. The supervisor implements the corrective action, with assistance from HR. (See Section F below.)

E. Review of OPA/OSI Investigations

1. The appointing authority will refer the OPA/OSI investigation report to a work incident review committee (WIRC) for review and recommendation. The appointing authority/designee must convene the WIRC within a reasonable period of time and may request that the investigator and/or the investigator's supervisor attend the WIRC meeting to answer questions about the report.
2. The appointing authority appoints members to the WIRC. Membership is limited to the appointing authority/designee, shared managers, the RHRD or AHRD/designee, the supervisor of the subject-employee and, as deemed essential, others in the chain of command between the supervisor and the appointing authority. If the supervisor of the subject-employee was a complainant or witness in the investigation, they may be excused from participation in the WIRC.
3. WIRC members are responsible for:
 - a) Reading the investigation report;

- b) Discussing the investigation and determining if the conduct violates policy, post order, or position description;
- c) Reviewing similar incidents in the discipline tracking system;
- d) After determining that just cause standards have been met, recommending appropriate discipline to the appointing authority; and
- e) In cases arising under Policy 202.057, “Sexual Abuse/Harassment Prevention, Reporting and Response,” ensuring that no standard higher than a preponderance of the evidence is used to determine whether the allegations have been substantiated.

F. Discipline

1. If the allegations are unsubstantiated or no discipline will be issued, the supervisor of the subject-employee must inform the employee, in writing, of the investigation’s outcome and that no discipline will be imposed. The supervisor must promptly send a copy of the notification to HR.
2. In cases where the proposed discipline is a suspension of five or more days, or where the employee’s conduct may bring discredit to the agency, the appropriate assistant or deputy commissioner must approve prior to administration of the discipline in consultation with the agency HR manager.
3. If a decision is made to issue a written reprimand or higher level of discipline, the supervisor/designee of the employee must
 - a) Draft a letter of discipline using the templates located in the HR Toolbox, and
 - b) Obtain the RHRD’s/AHRD’s approval prior to delivering the letter to the employee.
4. Disciplinary letters must be issued and signed by the supervisor of the employee receiving the discipline, with the following exceptions:
 - a) Discharge letters must be signed and delivered by the appointing authority.
 - b) If the employee’s supervisor is unavailable to issue disciplinary action, the letter must be signed by the next level supervisor within the chain of command.
5. The supervisor/appointing authority who signs the letter is responsible for promptly providing a copy to the RHRD/AHRD. Upon receipt and verification that the letter has been delivered to the employee, HR will distribute it to those copied on the letter.
6. After the imposition of discipline for any violation of Policy 103.300, “Sexual Harassment Prohibited,” or Policy 103.302, “Harassment and Discrimination Prohibited,” the appointing authority must arrange a meeting with the employee and supervisor to reinforce the department's expectations of maintaining a work environment free from discrimination, including sexual harassment. The appointing authority must notify the RHRD/AHRD in writing after the meeting has been completed.

7. Any individual who violates agency policy, including Policy 202.057, “Sexual Abuse/Harassment Prevention, Reporting, and Response,” may be subject to discipline up to and including discharge.
8. For substantiated violations of Policy 202.057, “Sexual Abuse/Harassment Prevention, Reporting, and Response”:
 - a) Termination is the presumptive disciplinary sanction for staff who engage in sexual abuse.
 - b) No standard higher than a preponderance of the evidence is used in determining whether allegations of sexual abuse or sexual harassment are substantiated.

G. Records

1. HR staff record the final decision in the agency investigation and discipline tracking system for retention purposes and in SEMA4, if appropriate.
2. Regional HR maintains the final investigation report or Fact-Finding Form in accordance with the records retention schedule.
 - a) Written disciplinary actions/non-certification letters are placed in the employee's personnel and supervisory files and may be removed only upon an employee's written request to the RHRD/AHRD in accordance with the applicable collective bargaining agreement (see Policy 106.230, “Data Protection for Human Resource Systems and Personnel Files”).
 - b) Oral reprimands and non-disciplinary corrective actions (e.g., supervisory conferences, performance improvement plans) must be documented in the supervisory file. If an oral reprimand is administered, notice of the action must be sent to the RHRD/AHRD/designee.

INTERNAL CONTROLS:

- A. Fact findings and investigations are entered, tracked, and retained in the investigation and discipline tracking system.
- B. Investigation reports and fact-finding forms are retained in the regional HR office in accordance with the applicable retention schedule.
- C. Disciplinary and lesser corrective actions are documented in the personnel and/or supervisory files as appropriate.

ACA STANDARDS: 1-ABC-1C-02 Bullet Points 19 and 20; 2-CO-1C-01 Bullet Points 7 and 17; 2-CO-1C-02; 2-CI-6D-1; 2-CI-6D-5; 4-4048 Bullet Points 8 and 9, 4-APPFS-3E-15, 4-APPFS- 3E-16, 4-APPFS- 3E-17; 4-JCF-6C-09, 4-JCF-6D-01 Bullet Points 8, 19 and 20; 4-JCF-6D-04.

REFERENCES:

[Minn. Stat. Chap. 179A, Public Employment Labor Relations Act](#)
[Minn. Stat. Chap. 13, Minnesota Government Data Practices Act](#)
[Minnesota Management and Budget, HR/LR Policy #1357, “Pre-Deprivation Hearing for Suspensions, Demotions, Discharges and Employer-Initiated Leaves”](#)
[MMB, HR/LR Policy #1376, “Right to Representation \(*Weingarten* Rights\)”](#)
[Policy 103.218, “Office of Professional Accountability”](#)

[Policy 103.300, "Sexual Harassment Prohibited"](#)

[Policy 103.302, "Harassment and Discrimination Prohibited"](#)

[Policy 107.100, "Internal Affairs - Office of Special Investigations"](#)

[Policy 106.210, "Providing Access to and Protecting Government Data"](#)

[Policy 106.230, "Data Protection for Human Resource Systems and Personnel Files"](#)

[Policy 103.220, "Personal Code of Conduct of Employees"](#)

[Policy 202.057, "Sexual Abuse/Harassment Prevention, Reporting and Response"](#)

[Applicable collective bargaining agreements and plans](#)

REPLACES: Policy 103.225, "Fact-Finding Process and Discipline Administration," 2/18/20.
All facility policies, memos, or other communications whether verbal, written, or transmitted by electronic means regarding this topic.

ATTACHMENTS: Tennessen Advisory, "Not Subject of Fact-Finding" (103.225A, [external form on HR iShare site](#))
[Right to Representation \(Weingarten Right\) Letter dated April 8, 2003](#) (103.225D)
[Step-By-Step Guide for Processing Misconduct Allegations](#) (103.225I)
Fact-Finding Form Template (103.225J, [external form on HR iShare site](#))

APPROVALS:

Deputy Commissioner, Reintegration and Restorative Services

Deputy Commissioner, Facility Safety and Security

Assistant Commissioner, Organizational and Regulatory Services

Assistant Commissioner, Research, Policy, and Organizational Performance

Assistant Commissioner, Health, Recovery, and Programming

Assistant Commissioner, Orientation, Assessment, and Program Planning