DEPARTMENT OF CORRECTIONS

Policy Number: 103.219
Title: Employee Misconduct Investigation and Discipline
Effective Date: 08/01/2023

PURPOSE: To provide a uniform process for conducting employee investigations and making disciplinary decisions associated with findings of employee misconduct. The Minnesota Department of Corrections (DOC) is dedicated to promoting a culture that is conflict-competent, collaborative in problem-solving, and learns from mistakes. Employee investigations and discipline must be administered in a fair, impartial, thorough, and thoughtful manner in compliance with all applicable laws, collective bargaining agreements, and compensation plans.

APPLICABILITY: Department-wide

DEFINITIONS:
Agency Work Incident Review Committee (Agency WIRC) – an agency committee, as available, including the commissioner, chief legal counsel, agency human resource director/designee, and executives in the chain of command of the respondent such as the deputy commissioner, assistant commissioner, division head/designee, and local human resource director to review employee misconduct/performance issues and recommend corrective action to the appointing authority.

Appointing authority – for purposes of this policy, a warden or manager delegated the authority for personnel transactions by the commissioner of corrections.

Complainant – Any individual who makes a complaint.

Complaint – Any report, allegation, or information indicating that an employee may be engaged in misconduct. A complaint may be oral or in writing.

Discipline – Formal corrective measures that have been collectively bargained with unions or identified plans.

Employee – An individual acting as an agent of the department. For the purposes of this policy, "employee" is read broadly and includes contractors, interns, and volunteers.

Misconduct – Employee conduct that violates laws, regulations, or administrative rules; is inconsistent with applicable state or department policies, directives, instructions; or is otherwise contrary to the mission and goals of the department.

Work Incident Review Committee (WIRC) – a work-site committee, as available, including human resources, the division head/designee, and other executive team members as deemed appropriate by the appointing authority to review employee misconduct/performance issues and recommend corrective action to the appointing authority.

PROCEDURES:

A. Complaint Reporting

1. Reports of alleged misconduct must be brought to the attention of a DOC supervisor/manager, a human resources (HR) employee or via the "Report Potential Employee Misconduct" button on iShare.

2. Reports of alleged criminal behavior
   a) Behaviors that may be life threatening: must be reported immediately to local law enforcement (911), to the director of the office of special investigations or designee, and to the appropriate assistant or deputy commissioner who must notify the commissioner as soon as reasonably possible.

   b) Allegations of criminal behavior not considered life threatening must be reported immediately to the director of the office of special investigations or designee and to the appropriate assistant or deputy commissioner who must notify the commissioner as soon as reasonably possible.

3. The receiver of the report of alleged misconduct or criminal behavior must notify the local HR representative.

4. In addition to the reporting requirements above, staff must still follow mandated reporting requirements applicable to them in any other statute or policy.

B. Reports of Violence or Potential Violence

In addition to notifying law enforcement for acts of violence as required in A.2(a), HR must convene the work incident review committee (WIRC) when a report of violence or potential violence is received. The committee determines the level of response required.

C. Response to Complaints

The local HR manager (HRM), in consultation with the agency HR director (HRD) or others, if required, determines the appropriate response to the complaint, including such examples as: no action required, performance management, third party resolution, inquiry (to learn more in order to decide), and employee investigation.

D. Investigation

1. Initiating:
   If it is determined that an investigation is warranted, the agency HRD and inspector general (IG), or their designees, in consultation with others as necessary, will determine the scope of, and assign, the investigation.

2. Investigatory Leave
   The agency HRD in consultation with the IG, or their designees, after consultation with the appointing authority and others as necessary, determines whether an employee should be placed on investigatory leave. The decision to place subjects on investigatory leave may be made at any time during the investigatory process. The HRD and IG must provide notification of investigatory leave to the appropriate deputy or assistant commissioner.

3. Recording Interviews
   Interviews may be recorded by the interviewer only. If recording is to be used, all individuals interviewed for purposes of the investigation must be recorded.

4. Representation
   a) For subjects covered by a Collective Bargaining Agreement: When the questioning may potentially subject the employee to disciplinary action, the employee has the right to union representation during the interview. Typically, only one union representative may attend the interview. Should an employee waive union representation, a waiver must be signed prior to answering any questions.

b) For unrepresented subjects covered by plans other than the Managerial Plan: The principle of Weingarten is applied by allowing a co-worker to be present at such questioning.

c) For subjects covered by the Managerial Plan: Weingarten does not apply to managers, and therefore, at the DOC questioning of a manager will be conducted without a representative.

d) Witnesses do not have a right to representation at an interview.

E. Investigation Report and Timeliness

1. The assigned investigator has the duties of gathering evidence, conducting interviews, and reporting findings.

2. Investigations must commence as soon as practicable and must conclude in a timely manner, generally 30-60 days. The duration of an investigation depends, in part, on the scope and complexity of the situation being investigated.

3. Following the completion of the investigation, the report must be provided to the local HR who determines what action is to be taken based upon the findings in the report and if a WIRC will be convened.

F. Determination of Discipline and Disciplinary Action

1. A local work incident review committee (WIRC) is convened to review the investigation and recommend to the appointing authority or, if applicable, to an agency WIRC (see F.2.) the level of discipline and/or corrective action, if any.

2. An agency WIRC must be convened for all substantiated investigations, regardless of recommended level of discipline, involving use of force (response to resistance) violations, violations of the sexual abuse or sexual harassment policies, violations of the violence in the workplace policy, violations of the harassment and discrimination policy, criminal findings, local WIRC termination and demotion recommendations, violations of the code of ethical conduct, and other cases that have legal risk or where the appointing authority desires consultation.

3. If discipline results in the level of written reprimand or higher, the employee must be notified by letter. In situations where an employee receives a suspension, demotion, or discharge, the disciplinary letter must provide the employee notification of the opportunity for a pre-deprivation hearing (Loudermill). Where applicable, Veteran's preference information must be provided in the disciplinary letter.

4. Written disciplinary actions must be placed in the employee's personnel file and may only be removed upon the employee's written request to the regional HRM or designee in accordance with the applicable collective bargaining agreement. Oral reprimands must be documented in the supervisory file.

5. After discipline is imposed 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 staff person and their supervisor to reinforce the agency's expectation of maintaining a work environment free from discrimination and harassment.

G. Retention

1. Employee investigations are entered, tracked, and retained in the investigation and discipline tracking system.

2. Investigation files and evidence, including interview recordings, must be submitted to HR to be maintained in accordance with the agency retention schedule.

INTERNAL CONTROLS:

A. Employee investigations are entered, tracked, and retained in the investigation and discipline tracking system.

B. Investigation reports and evidence are retained in the regional HR office in accordance with the applicable retention schedule.

C. Corrective actions are documented in the personnel and/or supervisory file.

REFERENCES: Minn. Stat. § 241.026, Correctional Officers Discipline Procedures Act
Policy 107.105, "Allegations of Fugitive Apprehension Unit Employee Misconduct"
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)"
Applicable collective bargaining agreements and plans

REPLACES: Policy 103.218, "Office of Professional Accountability," 12/15/20; Policy 103.225, "Fact-Finding Process and Discipline Administration," 12/15/20; and Policy 107.100, Internal Affairs Office of Special Investigations," 4/21/20.
All facility policies, memos, or other communications whether verbal, written, or transmitted by electronic means regarding this topic.

ATTACHMENTS: None

APPROVALS:
Deputy Commissioner, Chief of Staff
Deputy Commissioner, Client Services and Supports
Assistant Commissioner, Agency Services and Supports
Assistant Commissioner, Facilities
Assistant Commissioner, Facilities
Assistant Commissioner, Health, Recovery, and Programming