

Number 17.0 – PROCEDURE FOR ALLEGATIONS OF EMPLOYMENT MISCONDUCT

Effective Date: June 1, 2023

Subject: Procedure for Allegations of Employment Misconduct

Applicable To: All employees within the Executive Branch of the State of Vermont

Issued By: Department of Human Resources

Approved By: Kristin Clouser, Secretary of Administration

PURPOSE AND POLICY STATEMENT

It is critical that the State of Vermont maintain a workforce that serves the best interests of all Vermonters. To that end, allegations of employee misconduct must be resolved effectively and efficiently such that employees are confident that reports of employee misconduct are being treated appropriately.

The purpose of this Policy is to establish the framework for Appointing Authorities and the Department of Human Resources to conduct employment related investigations and the requirements associated with the processing of complaints involving employee misconduct. This policy does not apply to investigations authorized by specific statutes or regulations, such as Auditor's Office inquiries, the Department of Public Safety Internal Affairs Investigations, law enforcement investigations, or regulatory investigations conducted by State or Federal entities, etc.

DEFINITIONS

“*Appointing Authority*” means the person authorized by statute or lawfully delegated authority to appoint and/or dismiss employees.

“*Complainant*” means the person reporting an allegation of misconduct, except for a person making a report in their official capacity (e.g., supervisor).

“*Covered Employee*” means a state employee whose employment relationship is governed by a collective bargaining agreement with the State of Vermont.

“*Investigator*” means the person conducting an official investigation, inquiry, or engaging in fact-finding into an allegation of employee misconduct. This person may be a professional investigator, a member of management, or an HR professional.

“*Misconduct*” means failure to comply with the requirements of the State workplace (see Personnel Policy 8.0).

“*Non-covered Employee*” means a state employee whose employment relationship is not governed by a collective bargaining agreement with the State of Vermont. Non-covered Employees include temporary employees, most exempt employees, and classified managerial and confidential employees.

“*Notice of Right of Representation*” means the notification issued to a covered employee informing that employee of the right to request the presence of a union representative, and, upon such request, the union representative shall have the right to accompany the employee to any such meeting.

“*Subject*” means a State employee who is alleged to have committed misconduct.

FILING A COMPLAINT

Any employee who believes they have witnessed or been subjected to employee misconduct is strongly encouraged to report the alleged act(s) as soon as possible to any one of the following:

1. An immediate supervisor;
2. Any agency management staff;
3. Any Appointing Authority; or
4. Any member of the Department of Human Resources.

All complaints shall be referred immediately to the Department of Human Resources personnel assigned to support the respective Agency/Department. Any manager, supervisor, or employee of the Department of Human Resources who fails to timely report a complaint of alleged employee misconduct may be subject to disciplinary action, up to and including dismissal.

COMPLAINT PROCESSING PROCEDURE

The Department of Human Resources and Appointing Authority will evaluate complaints to determine whether an employee misconduct investigation is appropriate. This determination is based on numerous factors, including, but not limited to: (1) whether the alleged conduct, if true, rises to the level of employee misconduct; (2) whether there is sufficient information to initiate an investigation; and (3) whether there is a named subject.

NOTIFICATION

A. Complainants: The following notifications must be given to complainants:

Acknowledgment Letter. Upon receiving a complaint, the Department of Human Resources will coordinate with the Appointing Authority to issue a written acknowledgment letter to the complainant. The letter shall include the following:

1. A brief description of the investigatory process.
2. Reference to this Personnel Policy 17.0.
3. A statement indicating that the complainant will receive a closure letter when the investigation has been complete.

Closure Letter. The Department of Human Resources will coordinate with the Appointing Authority to issue a closure letter to the complainant. If the complaint was not investigated, the closure letter shall be issued once the decision not to investigate is finalized. If the complaint was investigated, the closure letter shall be issued once the investigation has concluded and consideration of the allegations of misconduct are completely resolved. The closure letter shall only include the following:

1. A statement indicating whether the complaint was investigated, and if not, why the case was not investigated (e.g., lack of information).
2. If investigated, a statement indicating that the investigation has concluded.

- B. Subjects.** Notification of certain rights must be given to covered employees who are the subjects of investigations, in accordance with applicable collective bargaining agreements.

Covered Employees: An investigator who wishes to interview a covered employee suspected of misconduct must provide the covered employee with notice of the right to request union representation prior to conducting the interview. Such a request may not be refused except on advice of the Department of Human Resources Legal and/or Labor Relations Divisions. Covered employees also may be permitted to have their legal counsel present during the investigative interview if the counsel's attendance would not unduly delay or disrupt the interview. The notification letter should be obtained from the Department of Human Resources.

Non-covered Employee: Non-covered employees suspected of misconduct are not entitled to the right to representation and no such notice will be provided to them as part of the employment investigation. However, non-covered employees **may** be permitted to have their legal counsel present during an investigative interview if the counsel's attendance would not unduly delay or disrupt the interview. The notification letter should be obtained from the Department of Human Resources.

Closure Letter: The Department of Human Resources will coordinate with the Appointing Authority to issue a closure letter to the subject if the complaint was investigated and the investigation results in a finding that the allegations were unsubstantiated. Such letter shall include the following:

1. A statement indicating that the investigation has concluded.
2. A statement indicating that no further action will be taken on the complaint, absent additional information.

The closure letter shall not identify the complainant or any witnesses involved in the investigation. If the complaint was not investigated, no closure letter to the subject is required. If the complaint results in disciplinary action, the subject will receive appropriate notice through the disciplinary process.

- C. Witnesses.** When seeking to interview witnesses as part of an employee misconduct investigation, the investigator should issue each witness a witness letter. The witness letter should be obtained from the Department of Human Resources.

An investigator is not required to provide notification of the right to representation to any witness who is not suspected of wrongdoing. However, if at any point a covered employee is suspected of having engaged in misconduct which may lead to disciplinary action, the investigator must contact the Department of Human Resources before questioning can proceed, to ensure that the covered employee is notified of their right to request union representation prior to being questioned about their conduct. Should this situation arise during a witness interview, the interview should be interrupted for the purpose of providing notification, if required, and appropriate allowance made for the covered employee to secure representation, if requested, before continuing the interview.

RESPONSIBILITIES

- A. Appointing Authorities (and/or designees).** All Appointing Authorities, in coordination with the Department of Human Resources, shall:

- Notify and coordinate with the Department of Human Resources whenever they have reason to suspect an employee has engaged in, or is currently engaging in, misconduct.

- Authorize investigations into allegations or suspicions of employee misconduct promptly to establish facts necessary to make informed decisions regarding discipline or other remedial measures in the workplace.
- Determine the scope of misconduct investigations.
- Determine whether investigations will be carried out by professional State investigative units, managers, or human resources staff.
- Sign complainant acknowledgment and closure letters.
- Sign letters notifying employees that they will be witnesses or subjects in investigations or delegate the authority to do so.
- Follow procedures outlined in Personnel Policy 3.1 and 3.3 when they receive allegations of illegal discrimination or harassment in employment, or otherwise become aware that illegal discrimination or harassment in employment may have occurred.
- Notify subject(s) when an investigation has concluded.

B. Investigators. All investigators, in coordination with the Department of Human Resources, shall:

- Afford representation, if applicable, in accordance with statutes, regulations, applicable collective bargaining agreements, and the State Personnel Policies.
- Impartially gather relevant facts using legal methods deemed suitable for the circumstances, such as in-person or telephonic recorded or unrecorded interviews, requests for sworn statements, requests for documents, review of State records including those contained on State devices such as phones, tablets, or computers, or in email or other information systems, etc.
- Consult with the Department of Human Resources Legal Division if witnesses or subjects request legal rights, such as *Garrity*, or assert legal privileges during an interview or investigation.
- Provide appointing authorities with reports of investigation.
- Coordinate as necessary with law enforcement officials.
- Carry out digital forensic examinations or coordinate as necessary with external Digital Forensic Examiner.

C. Department of Human Resources. The Department of Human Resources shall:

- Assist and advise Appointing Authorities and investigators in carrying out their responsibilities as described in this Policy.

D. Employees. All State of Vermont employees shall:

- Cooperate with investigations and provide truthful and complete information in accordance with State Personnel Policies and local Work Rules. Refusing to answer, answering incompletely, or answering untruthfully, questions relating to work is considered misconduct for which an

employee may be disciplined up to and including dismissal from their employment with the State.

- Refrain from taking any action which may undermine the integrity of the investigation, including but not limited to threatening, coercing, or harassing witnesses, or disclosing confidential information.

RECORDING

The decision to record investigative interviews is reserved for the sole discretion of the State. If the State does not record an interview, no other recording will be permitted without the State's consent. However, if the State does record an investigative interview, it must allow the employee to also record the interview, using the same medium, and provide him or her with a duplicate copy upon the employee's request, and in accordance with applicable collective bargaining agreements and/or State Personnel Policies.

INVESTIGATIVE REPORTS

Investigative reports are considered confidential personnel documents that may only be released after coordination with the Department of Human Resources. Employees who are subjects of employment investigations may be entitled to reports and associated exhibits as required by due process.

Approved:

Kristin Clouser
Secretary of Administration

Date: May 1, 2023