

# Employee Investigations and Discipline Policy

## Overview

### Description:

The Minnesota Department of Human Services (DHS) is committed to ensuring that employee investigations are conducted in a fair, impartial, thorough, and thoughtful manner in compliance with all applicable collective bargaining agreements, compensation plans and laws.

### Reason for Policy:

To establish uniform procedures for conducting internal investigations associated with allegations of employee misconduct, including but not limited to alleged violations of federal and state laws and rules as well as DHS policies, rules, and standards of conduct.

### Applicability:

This policy applies to all DHS employees.

## Policy

### I. Investigation and Discipline of Employees

- It is the policy of the Department of Human Services that all reports of complaints, poor performance, inappropriate workplace behaviors, misconduct, or other related allegations shall be brought to the attention of a DHS supervisor/manager, office of special investigations employee, human resources employee, or other representative of DHS management. These reports will typically be reviewed by the subject employee's immediate supervisor in consultation with both the division/program manager and Human Resources ("HR") to determine if an investigation is warranted. If necessary, immediate action will be taken to assure the safety and well-being of patients, clients, employees, and other potentially affected people.

- Allegations of discrimination or sexual harassment will be investigated in accordance with the Department's Prohibition of Discrimination, Prohibition of Sexual Harassment, and/or General Harassment Policy.

## II. Data Privacy Compliance

- All staff must comply with the Minnesota Government Data Practices Act (Minnesota Statutes, Chapter 13) and the U.S. Health Insurance Portability and Accountability Act (Pub. L. 104-191) ("HIPAA") to ensure the privacy of clients, employees and other individuals. No one in DHS is authorized to release any data related to an investigation except the appropriate DHS human resources employee. Data will be released in accord with the provisions of applicable laws and provisions of collective bargaining agreements and plans. Human Resources employees may consult with the DHS data privacy official and/or representatives of the Office of the Attorney General and the office of Minnesota Management and Budget before releasing any investigative data.

## III. Timeliness of Investigations

- It is the policy of DHS that investigations will be initiated and concluded in a timely manner. The duration of an investigation will be dependent, in part, on the scope and complexity of the situation to be investigated. After the investigation is concluded, the decision-makers will also require time to review the investigative findings, determine if additional investigation is needed, make final decisions about the appropriate disciplinary action, if any, and prepare for any resultant actions.

## Procedure(s) that apply:

### Pre-investigatory Reporting and Planning

**Resources.** Depending on the event or pattern of conduct, the supervisor, manager, or HR officer may find it necessary to contact one or more of the following additional resources:

- Critical Incident Stress Management Team.
- Local Affirmative Action or DHS Equal Opportunity and Access Division.
- DHS Internal Audit Division.
- DHS Compliance Office.
- Division Director / Regional Administrator / Operations Manager / Assistant Commissioner / Commissioner.
- State of Minnesota Employee Assistance Program.

**Actions.** Depending on the nature of the event or pattern of conduct, one or more of the following actions may be necessary:

- Filing of an incident report.
- Contacting the Common Entry Point (for cases of maltreatment of a minor or a vulnerable adult).

- Determining if an Investigatory Leave (see below) is necessary, and ensuring that any such leave complies with the respective Collective Bargaining Agreement or compensation plan.

**Notification of HR.** The manager/supervisor will notify the local HR manager/designee (“HRM”) when an employee investigation has been ordered and will further inform the HRM as to the type of investigation to be conducted. The manager/supervisor will also provide the names of the investigator, the complainant (when applicable), and the subject(s) of the investigation.

**Notification of the Subject.** At such time that the notice will not be detrimental to the investigation, the investigator will give notice to an employee in accordance with bargaining agreements and plans that he/she is the subject of an investigation and the identity of the investigator or other department contact. An employee is expected to cooperate in investigations relating to the terms and conditions of employment.

**Tracking.** Each investigation ordered will be recorded by the HRM in the agency discipline and grievance tracking system and assigned a log number.

**Investigatory Leave.** The HRM, in consultation with the appropriate division/program manager, will determine if a reasonable basis exists for placing staff on investigatory leave in accordance with the applicable contract/plan. The decision to place subjects on investigatory leave may be made at any time during the investigatory process. The following factors will be evaluated in determining the necessity of such a leave:

- Does the subject’s presence in the workplace pose a clear or imminent threat to the safety and security of the worksite, staff, patients, clients, or the subject?
- Does the subject’s level of technical skill or data access present an increased risk to the Department’s technical infrastructure or related data?
- Does the subject’s presence in the workplace compromise the integrity of the investigation? (Consider whether the subject is likely to influence the testimony of other staff or destroy or tamper with evidence.)

**Consequences of Investigatory Leave.** If the subject is placed on investigatory leave, the HRM and the manager/supervisor will ensure that the subject and union (if appropriate) is provided with preliminary information regarding the nature of the allegations, the requirements of the leave, and updated about the status of the investigation.

**Determination of Scope.** Before initiating an investigation, the supervisor/manager will consult with the HRM to determine the proper scope of the investigation, identify any potential conflicts of interest, and to select the appropriate investigator. The supervisor/manager must clearly define the issue(s) to be investigated. It should be made clear that, should the investigation reveal additional issues or subjects, that the investigator will inform the supervisor/manager and the HRM to receive direction whether or not to expand the investigation.

**Outside/contract investigator:** If the scope, size, complexity exceeds the internal DHS resource capacity or skill/expertise level; a contract may be completed for an outside/contract investigator to complete the investigation. This decision will be made by the DHS HR Director or designee in consultation with the appropriate division/program manager

## Conducting the Investigation

**Gathering Evidence.** Below are the sources of evidence regularly accessed for the purpose of proving or disproving the allegations of the subject's misconduct, non-compliance, poor performance, etc. Sources of facts may include but are not limited to the following:

- Review of the physical location/site of occurrence.
- Documents such as policies, procedures, meeting minutes, etc.
- Employee-specific information such as personnel files, position descriptions, training records, work schedules, time sheets, computer records, etc.

**Planning the Interview(s).** Below are the actions commonly taken in the process of preparing to interview a subject and other relevant parties (e.g., witnesses, supervisors, claimants, etc.)

- Determine whom to interview and in what order.
- Right to Representation:
  - **For employees 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. However, if any employee is being questioned during an investigation of resident/patient abuse, the employee, upon request, shall have the right to union representation.
  - **For unrepresented employees 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.
  - **For employees covered by the Managerial Plan:** Weingarten does not apply to managers, and therefore at DHS questioning of a manager will be conducted without a representative.
- Formulate and outline the questions to be asked.
- Ensure the employee has union representation or is offered the right to representation (Weingarten Right) in accordance with the respective Collective Bargaining Agreement/Plan. Allow adequate time to arrange for such representation; however, this should not delay the investigative process. Should the employee waive union representation, ensure that a waiver is signed. If the investigation features an allegation involving the Maltreatment of Minors Act or the Vulnerable Adults Act, everyone interviewed is offered union representation. (See Minnesota Statutes, sections 626.556 and 626.557, respectively)
- **Interviewing Employees.** The proper role of the investigator is to operate without prejudice, listen carefully, remain neutral, and gather the facts surrounding a situation. The investigator will take the following steps in the process of interviewing a subject and other relevant parties:
  - At the outset of the interview, the investigator shall inform the employee:
    - Of the nature of the allegations.
    - Whether the employee is, or is not, a subject of the investigation.
- **Compelling Answers from Subjects or Witnesses:** Employment investigations are considered work assignments and employees are expected to cooperate and answer all questions truthfully. However, it may not be possible to force employees to answer questions. Employees who refuse to answer appropriate questions should be told that the Investigator will "Make our determination without input or information from you." If the allegations could include the possibility of criminal charges, Human

Resources must be consulted in advance. Employees who may face criminal charges should not be threatened with disciplinary action for failing to answer questions in an investigation. In cases where criminal charges are possible, employees should be explicitly told that they are not compelled to answer questions and will not be disciplined for failing to answer questions.

- Note that interviews may be audiotaped by the interviewer only. If audio tape is to be used, all individuals interviewed for purposes of the investigation must be audiotaped.
- Ask the employee open-ended questions to determine the following:
  - Who witnessed or heard the event (versus who got the information second hand)
  - What took place
  - When the event occurred or when the pattern of conduct began
  - Where the event occurred
  - How the event occurred
  - Whether there are any circumstances indicating why the event occurred.
  - Whether the scope of the investigation should be expanded to include other parties or other allegations.
- Provide the employee an opportunity to give additional information relevant to the investigation but which may have been overlooked during the questioning process. Provide each employee interviewed with contact numbers should they later have further information they'd like to provide.
- When concluding the interview, instruct the employee not to discuss the investigation with others, as this could be viewed as interfering with an investigation. It may be necessary to clarify that this is not a directive to avoid general contact with co-workers. Continued dialogue with the union representative is permissible.
- Before concluding the investigation, review the information you have gathered to determine if additional information is needed. It is acceptable to re-interview people if information was revealed during the investigation that has led to additional questions.

## Writing the Investigatory Report

The investigator will summarize all findings in a written report that includes, at minimum, the following information:

- **Privacy Warning.** The first page of the report must contain the following statement: Warning: This document may contain private or confidential information that is protected under the Minnesota Government Data Practices Act (Minnesota Statutes, Chapter 13). Improper release of any information contained in this report may be a violation of the statute.
- **Statement of the Issues.** The report should include a summary statement of the issues investigated and the background information regarding the incident or pattern of conduct.
- **Summary of the Interviews.** The investigatory report should include a summary of who was interviewed and what information the interviews yielded.
- **Findings.** The report must include a summary of the findings arrived at by the investigator. If findings are clear, the investigator should state them and the source of such information.
- **Documentation.** The report should include all pertinent evidence and documentation regarding an issue, whether that information supports or conflicts with the position of the subject. It must be

remembered that all relevant information, whether it proves or disproves an allegation, must be included in such a report. The report should include all relevant exhibits, sketches, diagrams, physical evidence, policies/procedures, training records, etc.

- **The report may NOT** contain the names or use reference or pronouns that could identify patients/clients/residents or any person receiving services or care from DHS. Instead, they should be identified as Person A, Person B, Person C, etc. A separate document must be created with a key that will identify the patients/clients/residents.
- **If the investigation** includes a Vulnerable Adult (VA) component, follow-up actions and documentation required for the VA investigation is NOT to be contained in the report.
- **Role of the Investigator.** Note that the investigator is assigned the duties of gathering evidence, conducting interviews, and reporting findings. The responsibilities to make conclusions and to enforce discipline, on the other hand, are not assigned to the investigator but rather to other personnel. As such, the report should not include the personal opinions, conclusions or recommendations of the investigator. In addition, do not include statements, conclusions or opinions regarding potential violation or compliance with law, statute, or rule.

## Administration of Discipline.

Below are the procedural steps which follow the investigation and the submission of the investigatory report.

- **Decision-Making Process.** Following the completion of the investigation, the subject employee's immediate supervisor in consultation with both the division/program manager and Human Resources ("HR") will determine the level of discipline and/or corrective action, if any, using Just Cause Standards. A Work Incident Review Committee (WIRC) may also be convened to review the investigation and recommend the level of discipline and/or corrective action, if any.
- **Notification of the Subject.** Following the completion of the investigation, inform the subject of the investigation that the investigation has been concluded and the result of the investigative findings (i.e.: substantiated or not substantiated). The complainant in a harassment complaint should be informed only that the investigation has been concluded.
- **Disciplinary Letter.** Once the final determination of discipline level is communicated to the supervisor, the disciplinary letter will be prepared, and if not written by HR the supervisor must review the letter with the HRM before it is issued to the employee. In situations where an employee receives a suspension, demotion or is discharged, a pre-deprivation hearing (Loudermill) must be offered. Where applicable, Veteran's Preference information must be provided.
- **Personnel File.** Written disciplinary actions are placed in the employee's personnel file and may only be removed upon employee written request to the regional HRM director/designee in accordance with the applicable collective bargaining agreement. Oral reprimands must be documented in the supervisory file. The HRM will record the final decision in the agency discipline and grievance tracking system and, if appropriate, in SEMA4.
- **Investigation File.** The investigator will submit the original investigation and all supporting documentation to HR for maintenance in accordance with the record retention schedule.

## Form(s) that apply:

- [Waiver of Union Representation form](#) (PDF)
- [Interview Advisory Subject of investigation](#) (PDF)
- [Interview Advisory Non-Subject of investigation](#) (PDF)

## Related Policies and Reference(s):

- [DHS Prevention of Workplace Violence Policy](#)
- [DHS Prohibition of Discrimination Policy](#)
- [DHS Prohibition of General Harassment Policy](#)
- [Zero Tolerance for Maltreatment of Vulnerable Adults and Minors](#) – DHS/SOS Policy 6310
- [MMB Directive on Tennessean Warnings - PERSL #1411 \(10/09\)](#) (PDF)
- [Sample Investigatory Leave Letter](#) (DOC)
- [Right to Representation \(Weingarten Right\)](#) - HR/LR Policy #1376
- [Just Cause Standards](#)
- The provisions of collective bargaining agreements and plans (see Standards) which require a determination of “Just Cause” prior to taking disciplinary action.

## Legal Authorities:

- [Minnesota Statutes, section 43A.33](#), State Personnel Management, Grievances
- [Minnesota Statutes, Chapter 179A](#), Public Employment Labor Relations
- [Minnesota Statutes, Chapter 13](#), Government Data Practices Act
- [Health Insurance Portability Accountability Act](#) (HIPAA)

## Standards

Reference the appropriate collective bargaining agreement for its provisions on employee investigations, grievances, and discipline.

## Definition(s) and Abbreviations:

**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.

**Subject:** The employee at the focus of the investigation. The subject is to be asked questions by an investigator that may result in discipline. The subject is obligated to cooperate with the investigation by the terms of his or her collective bargaining agreement.

**Witness:** A coworker of the subject, or other individual, to be asked questions during an investigation that may result in the discipline of the subject.

**Investigation:** A fact-finding report of alleged employee misconduct or non-compliance with policy or rule, or poor or unsatisfactory job performance.

**Discipline:** Formal corrective measures that have been collectively bargained with unions or identified in plans. The means of discipline include oral or written reprimand, suspension (paid or unpaid), demotion, and discharge.

**Complaint:** Any report, allegation, or information indicating that an employee, contractor, intern, or volunteer may be engaged in employee misconduct. A complaint may be oral or in writing.

**Misconduct:** Employee conduct that violates criminal law or administrative rules, department policies, directives, instructions, or any conduct that by its nature will reflect unfavorably on the department.

**Tennessen Warning:** The notice required by Minnesota state law (Minnesota Statutes, Chapter 13.04, subdivision 2) that a government entity must provide whenever it collects private or confidential data from an individual. This notice must include how the entity intends to use the data and which other entities or persons will have access to the data.

**Work Incident Review Committee:** Includes Human Resources, the division head/designee affected and other executive team members as deemed appropriate by the Appointing Authority. In Direct Care and Treatment Services, managers representing Operations, Security and Clinical will be consistent members of the committee. Other managers will attend as necessary and/or appropriate.

## Policy Contact:

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## Policy History:

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This policy and its procedures remain in effect until rescinded or updated.