



Oregon

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DATE: July 17, 2008
TO: Agency Human Resource Managers
FROM: Jerry Korson, Interim Administrator
Human Resource Services Division
SUBJECT: Policies for Agency Review and Comment

We invite your agency to review and comment on the revised policies proposed for implementation in September 2008. The policies are posted to the HR Management & Consultation (HRMC) web site and may be accessed at www.oregon.gov/DAS/HR/hrmc.shtml in the "Policy Review" section.

Please share this information with your staff and collect their comments. We would appreciate receiving your compiled comments by August 15, 2008.

Overview:

The Human Resource Services Division is planning to implement substantial changes to Division 70 of the State HR Policy Manual. Division 70 covers discipline, discharge and grievance and appeal processes for both management service and classified unrepresented employees. Currently there are separate policies for disciplinary actions (less than dismissal or removal) and for dismissal and removal. Because the process and procedural steps are so similar, we are combining the discipline policies with the dismissal policies. There will be one policy covering management service discipline and dismissal and another policy covering classified unrepresented discipline and dismissal.

HRSD worked with the Labor & Employment Section of the Department of Justice in developing these policies. In addition to combining the discipline and dismissal policies we are providing guidance and clarifying some areas where questions and issues have routinely arisen.

The following is a summary of the primary changes:

State HR Policy 70.005.02 Classified Unrepresented Discipline and Dismissal This policy has been designed to replace both State HR Policy 70.005.01 Classified Unrepresented Discipline and Discharge and State HR Policy 70.005.03 Classified Unrepresented Dismissal. The principle features of the new policy include:

- Definition of the term Constitutionally Protected Right.
- Section (1): explanation of the statutory grounds and causes for classified unrepresented disciplinary action.
- Section (1)(d)(A): clarification that reprimands are subject to appeal to the Employment Relations Board and affected employees should be notified of their appeal rights.

- Section (1)(d)(B): removal of the provision formerly in 70.005.01(2)(a)(B) that FLSA exempt employees could be suspended for full workdays in the event of a proven charge of a major safety violation. DOJ Labor & Employment recommended removal of this provision.
- Section (1)(d)(C): explanation of the disciplinary action “Reprimand in Lieu of Salary Reduction.”
- Section (2): this policy combines the process used for all disciplinary actions up to and including dismissal from state service into a single procedure.
- Section (2)(a): Provides that classified unrepresented employees may have a coworker or an attorney attend an investigatory meeting.

State HR Policy 70.005.05 Classified Unrepresented Grievance Review will be revised and renamed “Classified Unrepresented Grievance and Appeal.” The draft changes include:

- (1): clarification that the employee may file a grievance with the agency, an appeal with the Employment Relations Board (ERB); or both a grievance with the agency and an appeal with the ERB.
- (1)(d): specifying who may attend a grievance-related meeting with an employee.
- (2)(d) and (e): added provision that allows for an agency head’s designee to respond to an employee grievance.
- Grammatical and format changes to make the policy consistent with the DAS Editorial Guide.

State HR Policy 70.000.02 “Management Service Discipline and Dismissal” will be established to replace State HR Policy 70.000.01 Management Service Discipline and State HR Policy 70.000.05 Management Service Dismissal/Removal. The principle features of the new policy include:

- Definitions for the terms “Constitutionally Protected Right”; and “Management Service employee with and without immediate prior former regular status in the classified service.
- (1): explanation of the statutory standards for management service disciplinary action.
- (1)(a): clarification that reprimands are subject to appeal to the Employment Relations Board and affected employees should be notified of their appeal rights.
- (1)(c): explanation of the disciplinary action “Reprimand in Lieu of Salary Reduction.”
- (1)(d): removal of the provision that FLSA exempt employees could be suspended for full workdays in the event of a proven charge of a major safety violation. DOJ Labor & Employment recommended removal of this provision.

- (2): explanation of the statutory standard required to dismiss a management service employee with prior, former regular state service.
- (3)(a-f): procedures for investigating and taking disciplinary and dismissal actions of employees including clarification that an employee, prior to receiving the employer's final decision regarding any economic sanction, will receive prior notice of the potential action and have an opportunity to respond to the employers concerns. Provides that a management service employee may have a management service coworker or an attorney attend an investigatory meeting.

State HR Policy 70.000.10 Management Service Grievance Review will be revised and renamed "Management Service Grievance and Appeal." The draft changes include:

- Clarification in the "Policy Statement" regarding the type of employment actions subject to the policy.
- Definitions for the terms "Disciplinary Actions" and "Non Disciplinary Personnel Actions."
- (1)(a-c): a general description of an employee's rights and timelines to file a grievance concerning disciplinary action with the agency head, or an appeal with the ERB or both a grievance and appeal.
- (2)(a-c): a general description of an employee's rights and timelines to file a grievance concerning non-disciplinary personnel actions with the agency head, or an appeal with the ERB, or both a grievance and appeal.
- (3): rewording of the prohibition regarding retaliation against those who use the grievance and appeal policy.
- (4): clarification regarding who may be present with an employee during the grievance review process.
- (5): rewording the state's policy to excuse employees from work to participate in the grievance procedure.
- (6)(a): procedures to follow when an employee files a grievance or appeal concerning a disciplinary action.
- (6)(b): procedures to follow when an employee files a grievance or appeal concerning a non-disciplinary personnel action.