

**STOREY COUNTY ADMINISTRATIVE
POLICIES AND PROCEDURES**

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AUTHORITY: BOC
COUNTY MANAGER: AO

SUBJECT: DISCIPLINARY ACTIONS AND APPEALS

POLICY: Storey County takes seriously all complaints of misconduct under its policies. Storey County will accept and address all complaints of misconduct in accordance with this policy. It is also the policy of the county to ensure that complaints of misconduct can be reported without concern for reprisal or retaliation.

1.1 Purpose

This policy provides guidelines for noticing potential discipline, providing due process, disciplining, and providing for appeals of discipline in a justified and fair manner. Investigations of alleged misconduct will conform to Policy 1000 Investigations of Alleged Misconduct. This policy, except Sections 1.2 and 1.3 does not apply to elected officials, department heads, or the County Manager, and it is not intended to create due process rights for those specific individuals. Department heads and the County Manager are at-will employees, and nothing in this policy is intended to create due process rights for those individuals.

1.2 Justification for Discipline

Disciplinary action, up to and including termination, may be taken against an employee for unsatisfactory performance or for misconduct including, but not limited to, the following:

- a. Conduct unbecoming an employee in the employer's service, or discourteous treatment of members of the public or a fellow employee, or any other act of omission or commission that impacts negatively on the public's perception of the integrity or credibility of the employer or erodes the public confidence in the employer.
- b. Falsification of or making a material omission on forms, records, or reports including applications, time cards, and other employer records.
- c. Absence from work without permission or without notification to an appropriate supervisor or manager, habitual absence or tardiness, or misuse of sick leave.
- d. Unauthorized possession, removal, or use of the employer's property including, but not limited to, funds, records, keys, confidential information of any kind, equipment, supplies, or any other materials.
- e. Disseminating confidential information to unauthorized persons within and outside the workplace.
- f. Insubordination, refusing to follow directions, or other disrespectful conduct directed toward a supervisor or manager.

- g. Sexual harassment or other prohibited behavior directed toward another employee, member of the public, vendor, or anyone doing business with the employer, or anyone present on premises owned or controlled by the employer.
- h. Actual or threatened physical violence including, but not limited to, intimidation, overt or subtle threats, harassment, stalking, or any form of coercion, except as may be required of a peace officer in the course of his/her duties.
- i. Possession or inappropriate use of drugs or alcohol on property owned or controlled by the employer or while on duty or during an on-call status.
- j. Possession, bringing, or aiding others in bringing unauthorized firearms, weapons, hazardous biological material or chemicals, or other dangerous substances onto property owned or controlled by the employer.
- k. Violation of safety or health policies or practices, or engaging in conduct that creates a safety or health hazard to other employees, the public, vendors, or him/herself.
- l. Dishonesty, including intentionally or negligently providing false information, intentionally falsifying records, employment applications, or other documents.
- m. Willfully or intentionally violating or failing to comply with the employer's policies, rules, regulations, and/or procedures.
- n. Unsatisfactory work performance.
- o. Failure to demonstrate professionalism, courtesy, tact, and discretion in all interactions with coworkers, supervisors, and the public; use common sense discretion; remain safe, socially moral, lawful, affective, adaptive, and efficient.

1.3 Forms of Disciplinary Action

- a. Disciplinary action includes, but is not limited to, one or more of the following:
 - i. Verbal warning (document time, date, and subject)
 - ii. Written reprimand
 - iii. Suspension
 - iv. Pay reduction
 - v. Demotion
 - vi. Termination (Reference: Section D Public Hearing for Dismissed Employees of Counties, Cities and Incorporated Towns and Unincorporated Towns)
- b. A department head or the County Manager who is intending to impose disciplinary action of the above items 1.3(a)(iii-vi) shall first consult with the Administrative Officer and/or Personnel Director before any action is taken in order to ensure that all policies and procedures have been followed correctly.
- c. Employees' signed copies of the above items section 1.3(a)(i-vi) must be placed in employees master personnel file, and a copy provided to employees. The discipline will remain in the employee's master personnel file for the following durations or otherwise if specified in a collective bargaining agreement, and in accordance with records retention statutes. When the discipline is eligible to be removed from the master personnel file, the employee may submit a request in writing to the Human Resources office for the file to

be removed from that file. The Human Resources office will have 30 days from receipt of the request to remove the discipline subject to removal.

- i. Verbal warning – 12 months;
 - ii. Written reprimand – 18 months;
 - iii. Suspension – 24 months;
 - iv. Pay reduction – permanent;
 - v. Demotion – permanent;
 - vi. Termination – permanent.
- d. FLSA Exempt employees are subject to the following rules regarding disciplinary pay deductions and unpaid suspensions:
- i. Pay deductions may only be made in cases of violations of safety rules of major significance, including those rules related to the prevention of serious danger in the workplace or to other employees. An example would be violating a rule that prohibits smoking around flammable material. Deductions can be made in any amount.
 - ii. Unpaid suspensions may be imposed for infractions of workplace conduct rules, such as rules prohibiting sexual harassment, workplace violence, drug or alcohol use, or for violating state or federal laws. The suspension must be for serious misconduct, not for performance issues. Suspensions must be in full-day increments.
 - iii. Suspensions for performance issues must be made in full-week increments.

1.4 Investigation

An investigation of any employee may be conducted in response to a complaint or allegation that the employee engaged in activity or behavior that violated county administrative policies. The investigation will be performed in accordance with Policy 1000 Investigations of Alleged Misconduct. The investigation of law enforcement personnel will also conform to NRS 289.

1.5 Due Process

The employee may utilize due process provided for in this policy or s/he may utilize due process, such as the grievance process, set forth in the applicable collective bargaining agreement, but the employee may not utilize both processes.

Unless designated otherwise in a contract or collective bargaining agreement, prior to taking disciplinary action involving suspension reduction in pay, demotion, or termination against an employee, the employer will take action intended to ensure that the employee is afforded due process. Due process in regard to employment-related disciplinary action includes, among other actions, making certain the employee is provided notice of the reason for the disciplinary action and is given the opportunity to provide a response to the proposed disciplinary action prior to an appropriate supervisor making a final decision regarding the disciplinary action.

A. Notice of Intent to Discipline

Unless designated otherwise in a contract or collective bargaining agreement, in ~~in~~ situations where the proposed disciplinary action involves a suspension, a reduction in pay, a demotion, and/or termination, written notice of the proposed disciplinary action will be hand-delivered or sent certified mail to the employee. The notice will include the following information:

1. The nature of the disciplinary action proposed;
2. The effective date of the proposed disciplinary action;
3. A statement of the proposed disciplinary action with documentation, statements, and/or other evidence supporting the proposed disciplinary action;
4. A statement advising the employee of his/her right to file a written response, or to submit a written request for a pre-disciplinary conference with the Personnel Director and/or Administrative Officer within 5 work days of receipt of the notice of proposed disciplinary action; and
5. A statement that the employee's failure to file a written response or request a pre-disciplinary conference in a timely manner, or to appear at the pre-disciplinary conference after requesting such, will constitute a forfeiture of the employee's rights to any further appeal. (Reference: Section 1.6 Public Hearing for Dismissed Employees Pursuant to NRS)

B. Employee Review of Allegation and Evidence

If the regular employee requests, s/he will be given the opportunity, as soon as practical, to review the documents or other evidence, if any (except for attorney-client privileged documents), on which the proposed disciplinary action is based.

The Administrative Officer and/or Personnel Director will restrict the employee to "in-camera" (in chambers) review only, in which s/he may review the documents under close supervision of the Administrative Officer and/or Personnel Director, or his/her designee, will be allowed to take notes, but will not be allowed to photocopy, photograph, video, record, duplicate, or otherwise keep the documents or materials. The employee may have up to two representative present during the review and the representative(s) may review the documents with the employee, as allowed by the employee, under the same restrictions.

C. Pre-Disciplinary Conference

When the employee requests a conference after receipt of the proposed disciplinary action, but prior to any disciplinary action being imposed, the Administrative Officer and/or Personnel Director will schedule a meeting with the employee and his/her representative(s) (if the employee requests a representative(s) be present) and the department head in a timely manner to review the reason for and basis of the proposed disciplinary action. At this conference, the department head, and the Administrative Officer and/or Personnel Director will also provide the employee with an opportunity to present relevant information which may impact the nature or severity of the proposed disciplinary action.

The pre-disciplinary process is intended to provide the employee opportunity to present to the department head, and the Administrative Officer and/or Personnel Director a written or

oral response after having the opportunity to review the supporting materials and prior to imposed discipline. The employee must consider the following:

1. The response is not intended to be an adversarial or formal hearing;
2. Although the employee may be represented by one or more uninformed representative and/or by legal counsel, the response is not intended to accommodate the presentation of testimony or witnesses;
3. The employee may suggest that further investigation could be conducted or the employee may offer any additional information or mitigating factors for the department head and the Administrative Officer and/or Personnel Director to consider;
4. In the event that the Administrative Officer and/or Personnel Director decides to cause further investigation, the employee will be provided with a summary of the investigation results prior to imposed discipline;
5. The employee may, thereafter, have the opportunity to further respond orally or in writing to the department head and the Administrative Officer and/or Personnel Director on the limited issues of information raised in any subsequent materials.

D. Implementation of Discipline

No later than 5 work days from receipt of the employee's written response or conclusion of the pre-disciplinary conference, the department head, after consultation with the Administrative Officer and/or Personnel Director, will issue a written decision to the affected employee. The written decision will inform the employee that:

1. The proposed disciplinary action will be implemented; or
2. The proposed disciplinary action will be modified, with an explanation; or
3. The proposed disciplinary action will be rescinded, with explanation; or
4. That additional time is needed for the employer to review new evidence and/or to interview additional witnesses brought forth by the employee during the pre-disciplinary conference [see section (C) Pre-Disciplinary Conference].

Nothing in this policy, regardless of whether discipline is or is not administered, shall preclude or prevent the department head or the Administrative Officer and/or Personnel Director from requiring the subject employee to undergo additional training and professional development, participate in an Employee Assistance Program (EAP) to address job-related matters and consistency with business necessity, or undergo follow-up or ongoing consultation with the Human Resources office or other employee improvement program that is intended to correct and improve employee behavior or performance.

Disciplinary action for law enforcement personnel will also conform to NRS 289.

E. Resignation or Retirement Prior to Discipline

In the event that the accused employee tenders a written resignation or notice of retirement prior to the imposition of discipline, the situation shall be noted in the file, except as may be limited by NRS 289 for law enforcement personnel. The tender of a resignation or

retirement by itself will not serve as the grounds for the termination of any pending investigation or discipline.

F. Appeal

1. Unless the employee utilizes the appeal process set forth in a contract or the applicable collective bargaining agreement, the affected employee may appeal the disciplinary action to the County Manager by filing a written appeal with the Administrative Officer and/or Personnel Director within 5 work days of the effective date of the disciplinary action.

In the event that a conflict of interest exists with the County Manager in the case involving discipline, the Administrative Officer and/or Personnel Director will seek a qualified County Manager or City Manager from a jurisdiction outside of Storey County, preferably a county with reasonably similar staff numbers and other organizational characteristics to Storey County, located in the State of Nevada, to serve as the appellate.

2. The written appeal must state the basis of the appeal and contain a specific admission or denial of each of the material statements in the decision. If an employee fails to file a written appeal conforming to these requirements within 5 work days as shown in subsection (1) above, s/he is deemed to have waived the right to appeal. (Reference: Section 1.6 Public Hearing for Dismissed Employees Pursuant to NRS.)
3. After the employee has submitted a timely appeal to the Administrative Officer and/or Personnel Director, the Administrative Officer and/or Personnel Director will set a date for a disciplinary appeal hearing. At such hearing, the employee will have the right to be represented by an attorney or other representative retained by the employee, to present evidence and argument in response to the disciplinary action, and to question and cross-examine adverse witnesses. The hearing may be conducted informally without conforming to the formal rules of evidence and such informality of the hearing process shall not invalidate the decision rendered. The County Manager will issue to the parties a decision within 5 work days following such hearing. The decision of the County Manager is final.

1.6 Public Hearing for Dismissed Employees Pursuant to NRS

In accordance with NRS 245.065, when an employee of a county, other than a department head or the County Manager, who has been employed by the county for 12 or more months is dismissed from employment, the employee may request within 15 days of the date of dismissal a written statement specifically setting forth the reasons for the dismissal. Within 15 days of the date of the request the employee so dismissed shall be furnished the written statement. Within 30 days after receipt of the written statement, the dismissed employee may, in writing, request a public hearing before the board of county commissioners to determine the reasonableness of the action. The board of county commissioners shall grant the dismissed employee a public hearing within 15 days after receipt of the written request. At the public hearing, technical rules of evidence do not apply. Such dismissed employee is not required to utilize the established pre-disciplinary conference and appeal process in this policy before requesting a public hearing.

1.7 Administrative Leave During Disciplinary Proceeding

By notifying the employee in writing, the Administrative Officer and/or Personnel Director may place an employee (including department heads and the County Manager) on administrative leave, with or without pay pending an investigation of alleged misconduct or performance deficiencies, prior to or during a disciplinary proceeding, or during the review of the employee's response to a proposed disciplinary action. The notice of administrative leave will include a statement that the leave is not a disciplinary action. An employee placed on administrative leave without pay who is later reinstated without disciplinary action being imposed will be reimbursed for any pay and benefits lost during the administrative leave.

1.8 False Accusations

An employee who has been found to have intentionally filed a false report of wrongdoing may be subject to discipline up to and including termination.

RESPONSIBILITY FOR REVIEW: The County Personnel Director and/or Administrative Officer will review this policy every 5 years or sooner as necessary.