Employee Relations Advisory Organization

and the Representatives' Role

Mary Luol
Dan Berryman

Mike Herbstritt
Julie Monday

Session Overview:
- Review purpose and function of the Employee Relations Advisory Organization (ERAO)
- To understand the role of the representative in the ERAW
- Review purpose and objective of the Disciplinary Action Process
- To understand the role of the representative in the Disciplinary Action Process

The ERAW exists to:
- Provide for a direct channel of communications between regular staff non-exempt employees and university officials for information and advisory purposes
- Provide university officials with an effective method of soliciting and disseminating information concerning plans and programs affecting regular staff non-exempt university employees.

Policy No: HR0630
Please Remember...

We all have a primary role at the university

Representative's Role In ERAO

- Attend monthly meetings with university officials
- Voice concerns raised by his/her constituents
- Relay information collected at the monthly meetings to his/her constituents
- Assist his/her constituents, if requested, during the university's formal Disciplinary Action Process

Purpose of Disciplinary Action Process

- Identify unacceptable behavior
- Take steps to correct unacceptable behavior
- Create a record of the actions taken
Formal Disciplinary Action Steps

- Oral warning
- First written warning
- Final written warning
- Administrative leave with pay & pre-termination hearing
- Discharge or resignation

Employee Relations Advisory Organization

Representative's Role in Disciplinary Action Process

- If requested by the employee facing disciplinary action, the representative is permitted to attend the meetings between the supervisor and employee.
- The representative's role is as a "second set of ears," i.e. to ensure the employee understands the issues being addressed and understands the consequences of the actions.
Representative’s Role in Disciplinary Action Process Continued

- May ask clarifying questions of the manager on behalf of the employee
- May request a short break if necessary
- May assist with a written rebuttal

Please Remember...
Representatives are NOT to function as a spokesperson or an advocate for the employee.

Also...
If the unit representative is unable to perform his/her role, HR Employee Relations Department should be contacted. HR will assign another representative to assist the employee.

Employee Relations Advisory Organization
Employee Relations
600 Henley Street, Suite 230
Conference Center Building
Knoxville, TN 37996-4125
(865) 946-8847

- Mike Herbstritt, herbst008utk.edu
- Mary Lucal, mlucal@utk.edu
- Julie Monday, jmonday@utk.edu
Employee Relations Advisory Organization

Human Resources Administration, Knoxville
600 Henley Street, Suite 224
Conference Center Building
Knoxville, TN 37996-4125
(865) 946-8847

- Dan Berryman, dberryman@utk.edu
UNIVERSITY OF TENNESSEE SYSTEM POLICY
HUMAN RESOURCES

POLICY NO.: HR0525
SUBJECT: DISCIPLINARY ACTION
EFFECTIVE: 07/01/2005
REVISION NO: 10

OBJECTIVE:

To provide a fair and objective means to correct the unsatisfactory work performance or work-related behavior, including gross misconduct, of regular staff who have completed any required probationary period. To provide fair and uniform procedures including due process if required by law, to correct, discipline, or terminate employees for unsatisfactory work performance or work-related behavior or for gross misconduct.

POLICY:

1. Disciplinary action of any kind and for any reason is to be taken with extreme care to assure fairness for all parties involved. Disciplinary action is defined by one of the following actions: corrective action (oral/written); suspension without pay, demotion, and termination. As warranted by circumstances, an employee may be terminated at any point in the disciplinary process.

2. If an employee is to be disciplined or discharged, supervisors must contact the human resources (HR) officer or designee prior to discharging any employee to ensure that such action is appropriate and consistent with university policy. The HR officer must determine university policy has been followed before an employee is disciplined or discharged.

Unsatisfactory Work Performance or Work-Related Behavior

3. Description. Unsatisfactory work performance or work-related behavior is the failure or refusal to carry out job responsibilities, failure to follow department or unit rules, or failure to abide by the University Code of Conduct. Human Resources shall develop a procedure to inform employees of acts or omissions on their part which are symptomatic of unsatisfactory work performance or work-related behavior and to discipline the employees if either is not corrected in accordance with university policies and procedures.

4. Every reasonable effort should be made to secure acceptable work performance and work-related behavior by employees. When disciplining an employee, supervisors should consider the nature of the unsatisfactory work performance or work-related behavior, the past record of the employee, and the appropriate penalties. Therefore, as a general rule, disciplinary action taken for unsatisfactory work performance or work-related behavior should begin with an oral or written warning, and may be followed by additional written warnings. Written warnings should be presented to the employee and should describe the unsatisfactory work performance or work-related behavior and the necessary corrective action to be taken. Should an employee fail to attain a satisfactory level of work performance or work-related behavior despite such
warning, disciplinary action up to and including termination of employment may be taken. Copies of all written warnings and other disciplinary actions should be placed in the employee's official personnel file in the HR office.

5. Depending upon the nature of the unsatisfactory work performance or work-related behavior, warnings prior to disciplinary action may be inappropriate. When these actions involve employee error causing or threatening to cause loss of life, serious bodily injury or significant property loss, or when continued employment is otherwise not in the best interest of the university, termination without written warning is appropriate.

6. **Pre-Termination/Suspension Meeting.** Before suspending without pay or discharging an employee for unsatisfactory work performance or work-related behavior, the supervisor or other authorized university official must 1) consult with the HR office, 2) advise the employee, orally or in writing, of the unsatisfactory work performance or work-related behavior of the employee, and 3) provide the employee an opportunity to respond.

7. Appeal Process. An employee desiring to appeal a disciplinary action, taken for unsatisfactory work performance or work-related behavior, must file a written request with the HR office within fifteen (15) working days following receipt of notification of the disciplinary action. Oral and written warnings cannot be appealed; however, employees may respond in writing to written warnings placed in their personnel file.

8. The appeal process for employees disciplined or discharged for unsatisfactory work performance or work-related behavior is as follows:

   a. **Staff Non-exempt:**

      A non-exempt employee may request an administrative review, which shall be in writing through the appropriate chancellor or vice president to the president. The written request should be submitted to the employee's HR officer.

      Alternatively, a non-exempt employee may choose to go through the grievance procedure described in POLICY HR0640, GRIEVANCES. If terminated or suspended without pay, the employee may choose to go directly to the hearing step and request, at the employee's option, either an informal hearing by a panel of unbiased university employees or a formal hearing under the Tennessee Uniform Administrative Procedures Act, Tennessee Code Annotated sections 4-5-301-319 (TUAPA).

   b. **Staff Exempt:**

      An exempt employee may request an administrative review, which shall be in writing through the appropriate chancellor or vice president to the president. The written request should be submitted to the employee's HR officer.

**Gross Misconduct**
9. **Description.** Gross misconduct includes the following: theft or dishonesty; gross insubordination, willful destruction of university property; falsification of records; acts of moral turpitude; reporting for duty under the influence of intoxicants; the illegal use, manufacturing, possessing, distributing, purchasing or dispensing of controlled substances or alcohol; disorderly conduct; provoking a fight; and other similar acts involving intolerable behavior by the employee. In a case of gross misconduct, immediate disciplinary action up to and including discharge may be taken. During the investigation of alleged gross misconduct, an employee may be placed on administrative leave with pay.

10. An employee suspected of theft of university property may not resign as an alternative to discharge unless the approval of the Senior Vice President and Chief Financial Officer is obtained in advance.

11. An employee terminated for gross misconduct will not receive payment for accrued unused annual leave and is not eligible for state Consolidated Omnibus Benefits Rights Act (COBRA) benefits. If an employee resigns in lieu of termination for gross misconduct, the employee will retain rights to annual leave accruals and COBRA benefits.

12. **Pre-termination/Suspension Meeting.** Before suspending without pay or discharging an employee for gross misconduct, the supervisor or other authorized university official must: 1) consult with the HR office, 2) advise the employee, orally or in writing, of the charge(s) against the employee; and 3) provide the employee an opportunity to respond.

13. **Appeal Process.** An employee desiring to appeal a disciplinary action for gross misconduct must file a written request with the HR office within fifteen (15) working days following receipt of notification of the disciplinary action taken.

14. The appeal process for employees disciplined or discharged for gross misconduct is as follows:

   a. **Staff Non-Exempt.** A non-exempt employee may request an administrative review in writing through the appropriate chancellor or vice president to the president. The review process will be coordinated by the HR office.

   Alternatively, a non-exempt employee may choose to go through the grievance procedure as described in POLICY HR0640, GRIEVANCES. If terminated, demoted, or suspended without pay for gross misconduct, the employee may choose to go directly to the hearing step and request, at the employee's option, either an informal hearing by a panel of unbiased university employees or a formal hearing under the TUAPA.

   If any employee chooses to receive an informal hearing, a waiver of the employee's right to proceed under the TUAPA must be signed by the employee.

   b. **Staff Exempt.** An exempt employee may request an administrative review in writing through the appropriate chancellor or vice president to the president. The review process will be coordinated by the HR office.

   Alternatively, an exempt employee may request an informal hearing before a panel of unbiased university employees or a formal hearing under the TUAPA.
If any employee chooses to receive an informal hearing, a waiver of the employee's right to proceed under the TUAPA must be signed by the employee.

RELATED POLICIES:

HR0355. LEAVE OF ABSENCE
HR0640. GRIEVANCES

PROCEDURES:

Knoxville: http://hr.utk.edu/pro_disciplinary_action.shtml
Health Science Center: http://www.uthsc.edu/policies/w932_document_list.php?app=HR
Space Institute: http://personnel.utsi.edu/procedures/index.html
Chattanooga: http://www.utc.edu/Administration/HumanResources/Policies/Proc525.pdf
Martin:
Exempt Staff Representatives’ Role in Disciplinary Actions

Disciplinary action is a formal process notifying the employee of deficiencies in his/her work performance. It is management’s responsibility to determine the duties and responsibilities to assign to an employee, and to identify and explain to the employee what is and what is not acceptable performance. During the course of employment, should an employee fail to meet the stated expectations, it is incumbent upon management to document these deficiencies and formally inform the employee of the deficiencies, what he/she needs to do to correct the deficiencies, and the consequences of failure to improve his/her performance. During this formal disciplinary process, the employee is permitted to be accompanied by an exempt staff representative. Under normal circumstances, the corrective disciplinary process begins with an oral warning. When the supervisor determines this step is necessary, he/she will notify the employee that a meeting will take place to discuss the employee’s performance. It is up to the supervisor to contact the employee’s exempt staff representative and request the representative’s presence at the meeting, should the employee choose. The same basic procedure will be followed if the corrective disciplinary process is escalated: the supervisor notifies the employee of the impending meeting, the supervisor then requests the representative’s presence at the meeting. Should the employee fail to improve his/her performance and/or fail to correct the stated deficiencies, the employee will proceed through the process to the eventual conclusion: termination of employment.
Once the management determines that termination is a viable outcome, the employee is afforded the opportunity to hear the reasons why the university believes termination is appropriate. Should the employee elect to attend this meeting, he/she is permitted to be accompanied by his/her exempt staff representative. Again, it is the supervisor’s responsibility to contact the employee’s representative and request the representative’s presence at the meeting.

The standard practice is for the exempt staff representative for the affected employee to accompany the employee. It is an unusual and rare occurrence that would permit a representative not from the unit to participate in the process. However, if the employee believes the circumstances of this situation warrant using an outside representative, Human Resources must be notified of the employee’s request and the rationale for the change. After reviewing the employee’s request, Human Resources will determine whether or not to permit the change of representatives.

In any event, the representative’s role in the disciplinary action process and/or complaint procedure, is to be “a set of ears” to ensure the employee has a record of and understands the discussion and its ramifications. The representative may occasionally request clarification of specific points or recommendations. The representative is not to function as a spokesperson or advocate for the employee.