

COMMENT DUE DATE: October 23, 2021

Date: October 13, 2021

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It is important that you provide your comments regarding the **draft copy** of rules by the comment due date. Comments are directed to *STO.LegalServices.Policy@okdhs.org.

SUBJECT: OKDHS:2. ADMINISTRATIVE COMPONENTS

Subchapter 1. Human Resources Management

Part 1. Internal Human Resources

OKDHS:2-1-11 [REVISED]

OKDHS:2-1-37 [REVISED]

(WF 21-R)

SUMMARY:

OKDHS:2-1-11 is revised to Implement changes to re-order paragraphs in order of primacy and to remove superfluous language.

OKDHS:2-1-37 is revised to incorporate new guidance for appropriate use of enforced leave from changes to Merit Rules and more clearly explains when enforced leave may be used.

SUBCHAPTER 1. HUMAN RESOURCES MANAGEMENT

PART 1. INTERNAL HUMAN RESOURCES

OKDHS:2-1-11. Termination

Revised ~~7-4-249-30-21~~

(a) **Purpose.** A permanent, classified employee is provided a pretermination hearing to determine whether reasonable grounds exist to believe the charges against the employee are true and whether the grounds support the proposed termination. The terms "termination" and "discharge" have identical meanings and may be used interchangeably. A pretermination hearing is not given to an employee terminated as part of a reduction-in-force.

(b) **Notice of proposed action (Notice).** A Notice is issued only by a chief officer, division director, or designee. The Notice is provided to the employee at least seven-calendar days before the pretermination hearing. Notice is provided by personal service or certified mail, restricted delivery. The Notice includes, at a minimum:

- (1) the employee's name, title, PeopleSoft number, and division;
- (2) date the notice was prepared;
- (3) a citation of the statute, policy, practice, or procedure violated;
- (4) grounds for termination, including a summary statement of the act or incident that is the cause for the termination;
- (5) a summary of the evidence supporting the proposed termination;
- (6) the certificate of prior disciplinary action(s), or a statement that the employee has no prior discipline;
- (7) a notice of the employee's right to submit a written response within ~~five-working~~ five-working days of receipt of the notice;
- (8) a statement of the employee's right to be represented at the pretermination hearing by an attorney or other person of choice; and
- (9) the date, time, and location of the pretermination hearing.

(c) **Suspension with pay leave or reassignment.** Pending preparation and delivery of the Notice and the pretermination hearing, an employee may be suspended with pay or temporarily reassigned, per OKDHS: 2-1-7(g).

(d) **Certificate of prior disciplinary action.** The chief officer, division director, or designee ensures a certificate of prior disciplinary action is filed in the employee's official Human Resource Management (HRM) personnel file at least three-calendar days before the pretermination hearing. The certificate lists the progressive disciplinary actions taken against the employee pursuant to, per OKDHS:2-1-7(b), and certifies that all mandatory progressive disciplinary actions have been taken. When the employee has not been the subject of disciplinary action, the certificate must state so.

(e) **Employee response.** If the employee submits a response to the ~~Notice of Proposed Termination~~ Notice the local administrator provides a copy of such response to:

- (A)~~(1)~~ Legal Services;
- (B)~~(2)~~ HRM corrective discipline manager; and
- (C)~~(3)~~ HRM personnel analyst.

(f) **Pretermination hearing.** The pretermination hearing is not intended to definitively resolve the propriety of the termination. Instead, the pretermination hearing provides

information from which a determination is made whether reasonable grounds exist to believe that the charges against the employee are true and whether the grounds support the proposed termination. Pretermination hearings are not full evidentiary hearings and formal rules of discovery and evidence do not apply.

~~(1) The pretermination hearing officer designates whether the hearing is held in person, by phone, or by other remote means that provide sufficient participation by the parties.~~

~~(1)(2)~~ At the outset of the hearing, the pretermination hearing officer establishes and advises the parties of the procedure for conducting the pretermination hearing. The employee and Oklahoma Human Services (OKDHS) representatives are each allowed to make a brief statement limited to the party's position and a summary of the evidence supporting that position.

~~(2)(3)~~ Argument is not evidence and is not taken or considered by the pretermination hearing officer.

~~(3)(4)~~ No witnesses other than the OKDHS representatives and the employee are heard and the hearing officer only considers evidence that bears directly on the grounds for termination. Parties are not permitted to cross-examine any witness.

~~(4)(5)~~ At After the hearing's conclusion ~~of the hearing~~, the pretermination hearing officer determines whether reasonable grounds exist to believe the charges against the employee are true, and, if true, whether those grounds support the proposed termination.

~~(5) The pretermination hearing officer designates whether the hearing is held in person, by phone, or by other remote means that provide sufficient participation by the parties.~~

(6) OKDHS may continue or reschedule a pretermination hearing for good cause.

(7) Requests for a pretermination hearing continuance are submitted to the hearing officer not less than two-working days prior to the hearing.

(8) The pretermination hearing is aurally recorded in its entirety. The employee is provided, at no cost, a copy of the recording within 14-calendar days of request if an appeal is filed with the Oklahoma Merit Protection Commission (MPC).

(9) Upon making a final recommendation, the pretermination hearing officer communicates to the appointing authority, in writing, the decision whether reasonable grounds exist to believe the charges against the employee are true and whether those grounds support the proposed termination.

(g) **Legal Sufficiency review.** Legal Services reviews the hearing officer's recommendation, the recording of the pretermination hearing, and all evidence for legal sufficiency.

(h) **Notice of final action.** Within 10-working days of the pretermination hearing, the employee is notified of the OKDHS final decision regarding termination.

(1) When determining the final action, the chief officer, division director, or designee considers the:

(A) ~~the~~ evidence contained within the Notice of Proposed Action;

(B) ~~the~~ employee's response to the Notice of Proposed Action;

(C) ~~the pretermination hearing officer's~~ recommendation ~~of the pretermination hearing officer~~; and

(D) other relevant issues to the action.

- (2) The Notice of Final Action includes, at a minimum:
- (A) the employee's name, title, PeopleSoft number, and division;
 - (B) a statement that the action is taken pursuant to, per Section 840-6.5(C) of Title 74 of the Oklahoma Statutes and Section 10-11-17 of Title 455 of the Merit Rules in the Oklahoma Administrative Code;
 - (D) the date; the notice was prepared;
 - (E) the specific final action taken and, if terminated, the effective termination date;
 - (F) a citation of the statute, policy, practice, or procedure violated;
 - (G) grounds for termination, including a summary statement of the act or incident that is the cause for the termination;
 - (H) a summary of prior discipline, or a statement the employee has no prior discipline;
 - (I) the pretermination hearing officer's recommendation;
 - (J) a notice of the employee's right to file an appeal to the MPC;
 - (K) ~~the MPC address of the MPC;~~
 - (L) the MPC filing time limit of 20-calendar days from date employee receives notice of the final action; and
 - (M) a copy of the MPC petition for appeal form.

(i) **Distribution.**

(1) The local administrator provides a copy of the Notice of ~~Proposed Action~~ proposed action to the:

- (A) employee;
- (B) Legal Services;
- (C) HRM corrective discipline manager; and
- (D) HRM personnel analyst.

(2) The local administrator provides a copy of the Notice of Final Action to the:

- (A) employee;
- (B) Legal Services;
- (C) HRM corrective discipline manager;
- (D) HRM personnel analyst;
- (E) HRM Talent Management; and
- (F) Financial Services, Payroll Unit.

DHS:2-1-37. Enforced leave

Revised ~~12-20-139-30-21~~

(a) **Appropriate use of enforced leave.** Enforced leave is defined as absences necessary:

(1) when an employee experiences an extreme personal disaster ~~defined as an unforeseeable, catastrophic event, such as the destruction of the employee's residence;~~

(2) when an immediate family member of the employee or a resident in the employee's household requires the employee's care because of illness; or injury; or ~~incapacitation~~ when an employee's son or daughter requires care and supervision due to the unavailability of the dependent's routine caregiver or caregiving facility ~~Immediate family members are defined as a spouse, children, parents, brothers, and sisters, including step, grand, half, and in-law or foster relationships; or~~

(3) in the case of the death of an immediate family member or a resident in the employee's household. Enforced leave to attend the funeral ~~of a member of the employee's immediate family or household must~~ does not exceed 10 ~~business -work days or 80 hours~~ in the ~~payroll~~ calendar year; however, the employee may request annual leave for any additional time off.

(A) Immediate Family is defined as a spouse, children, parents, brothers, and sisters, including step, grand, half, foster, or in-law relationships.

(B) Household is defined as those persons who reside in the same home, who have reciprocal duties and provide financial support for one another. This term includes foster children and legal wards even if they do not live in the household. The term does not include persons sharing the same general house or when the living style is primarily that of a dormitory or commune.

(C) Son or daughter is defined as a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is either under 18 years of age or is 18 years of age or older and incapable of self-care because of a mental or physical disability.

(b) **Computation of enforced leave.** Enforced leave is charged against an eligible employee's accumulated sick leave and may not be granted in excess of accumulated sick leave. Enforced leave may not exceed 10 ~~business -work days, or 80 hours, in any payroll calendar year, December 16th through December 15th.~~ Enforced leave may not exceed the accrued sick leave balance.

(c) **Procedure for approval of enforced leave.** Enforced leave requests are entered and processed in the same manner as sick leave requests, ~~using Form 10AD001X, Leave Request.~~ Approval of enforced ~~Enforced~~ leave may be denied when the supervisor has facts to show the employee is abusing enforced leave privileges, or when the employee has failed to satisfy a request to provide evidence that the enforced leave ~~was~~ is necessary.