

COMMENT DUE DATE: June 18, 2021

Date: June 8, 2021

Brent Oldland	405-522-6008
Holli Kyker, Policy Specialist	405-885-7805
Dena Thayer, Programs Administrator	405-693-6542

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]
(WF 21-D)

SUMMARY:

OKDHS:2-1-11 is revised to update OKDHS Regulations regarding termination of agency employees with current practice.

SUBCHAPTER 1. HUMAN RESOURCES MANAGEMENT

PART 1. INTERNAL HUMAN RESOURCES

OKDHS:2-1-11. ~~Discharge~~ Termination

Revised ~~6-15-14~~ 7-1-21

(a) **Purpose.** ~~An employee is discharged when his or her conduct or performance warrants. A permanent, classified employee is provided a pretermination hearing to provide information to determine whether or not reasonable grounds exist to believe the charges against the employee are true and whether or not the grounds and support discharge the proposed termination. For the purposes of this~~ In this section, the terms "termination" and "discharge" shall both mean the same thing and may be used interchangeably in any document required by or referenced in this section. A pretermination hearing is not given to an employee terminated as part of a reduction-in-force. ~~The notice of proposed discharge is issued only by a chief officer, division director, or designee.~~

(b) **Proposed Termination Notice (Notice).** ~~A Notice of the proposed discharge, pretermination hearing, and final action Proposed Termination is issued only by a chief officer, division director, or designee. The Notice must be is provided to the employee at least seven (7) calendar days before the pretermination hearing. Service Notice is made by personal service or certified mail, restricted delivery. Pending completion of the notice and the pretermination hearing, an employee may be suspended with pay or temporarily reassigned as provided in policy. The notice must be provided to the employee at least seven working days before the pretermination hearing. The Notice of proposed discharge includes, at a minimum:~~

- (1) the employee's name, title, job family descriptor, pay band, user identification (ID) number, PeopleSoft number, and division;
- (2) ~~date of the notice~~ date the notice was prepared;
- (3) a citation of the statute, policy, practice, or procedure violated;
- (4) grounds for ~~discharge~~ termination, including a summary statement of the act or incident that is the cause for the ~~discharge~~ termination;
- (5) a summary of the evidence supporting the proposed ~~action~~ termination; ~~Witness statements and investigative reports are listed in the proposed discharge and provided the employee under separate cover~~;
- (6) the certificate of prior disciplinary ~~action~~ 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~~ 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) **~~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 Resources Management Division (HRMD) personnel file at least three calendar days before the hearing. The certificate lists the progressive disciplinary actions taken against the employee pursuant to OKDHS:2-1-7(b) and certifies that all mandatory~~

~~progressive disciplinary actions have been taken.~~ **Leave or Reassignment.** Pending preparation and delivery of the Notice and the pretermination hearing, an employee may be suspended with pay or temporarily reassigned as provided in policy 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 Resources ~~Resource~~ Management Division (HRMD/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 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) **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 as that is used to determine whether reasonable grounds exist to believe that the charges against the employee are true and whether the grounds support the proposed discharge termination. Pretermination hearings are not full evidentiary hearings and formal rules of discovery and evidence do not apply.

~~(1) Pretermination hearings are not full evidentiary hearings and formal rules of evidence do not apply.~~

~~(2) At the outset of the hearing, The the pretermination hearing officer establishes and advises the parties of the procedure for conducting the pretermination hearing. The employee and agency representative are each allowed to and allows each party or his or her representative to make a brief statement at the opening or closing of the proceedings, or both. Statements are limited to the party's position and a summary of the evidence supporting that position.~~

~~(3)(2) Argument is not evidence and will is not be taken or considered by the pretermination hearing officer may limit or exclude argument.~~

~~(4)(3) The pretermination hearing officer may also limit or exclude non-relevant witnesses, testimony, or documentation. No witnesses other than the agency representative 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.~~

~~(5)(4) Parties and witnesses are not permitted to read prepared testimony into the record or cross-examine any witness. At the conclusion of the hearing, the pretermination hearing officer determines whether or not reasonable grounds exist to believe the charges against the employee are true, and, if true, whether those grounds support the proposed termination.~~

~~(6)(5) Parties may request that the pretermination hearing officer ask specific questions relevant to specific issues. The pretermination hearing officer shall designate designates whether the hearing takes place is held in person, by telephone phone, or by other remote means that provide sufficient participation by the parties.~~

~~(7) The pretermination hearing officer may designate cases for telephonic hearing.~~

~~(8)(6) A Oklahoma Human Services (OKDHS) may continue or reschedule a pretermination hearing may be continued or rescheduled by the Oklahoma Department of Human Services (OKDHS) for good cause.~~

~~(9)~~(7) Requests for a pretermination hearing continuance are ~~made~~ submitted to the OKDHS Legal Division hearing officer not less than two ~~(2)~~ working days prior to the hearing.

~~(10)~~(8) The pretermination hearing is aurally recorded in its entirety ~~by audiotape~~. The employee is provided, at no cost, a copy of the ~~tape~~ recording within 14 days of request and ~~filing an appeal 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 or not reasonable grounds exist to believe the charges against the employee are true and whether those grounds support the proposed termination.

~~(e)~~(f) **Legal Sufficiency review.** ~~When a recommendation for discharge is made, the Legal Division reviews the audiotapes of the pretermination hearing and all evidence for legal sufficiency. Legal Services reviews the hearing officer's recommendation, the recording of the pretermination hearing, and all evidence for legal sufficiency.~~

~~(f)~~(g) **Notice of Final final action.** ~~Within ten 10 working days of the pretermination hearing, the chief officer, division director, or designee notifies the employee is notified of the final action agency's final decision regarding termination. The pretermination hearing officer's decision is included with the final action. When determining the final action, The the chief officer, division director, or designee considers the employee's response, the pretermination hearing decision, the employee's performance evaluation, and other relevant issues to the action. evidence contained within the Notice of Proposed Termination, the employee's response to the Notice of Proposed Termination, the recommendation of the pretermination hearing officer, and other relevant issues to the action. The notice of final action of discharge Final Action of Termination Notice includes, at a minimum:~~

- ~~(1)~~ the employee's name, title, ~~job family descriptor, pay band, user ID number, PeopleSoft number, and division;~~
- ~~(2)~~ a statement that the action is taken pursuant to ~~74 O.S. §~~ 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 OAG Oklahoma Administrative Code 455:10-11-17;
- ~~(3)~~ the date;;
- ~~(4)~~ the specific final action taken; and, if ~~discharge~~ terminated, the effective termination date of discharge;
- ~~(4)~~(5) a citation of the statute, policy, practice, or procedure violated;
- ~~(5)~~(6) grounds for ~~discharge~~ termination, including a summary statement of the act or incident that is the cause for the ~~discharge~~ termination;
- ~~(6)~~(7) a summary of prior discipline, or a statement the employee has no prior discipline;
- ~~(7)~~(8) the ~~consideration given the employee's response;~~
- ~~(8)~~(9) the pretermination hearing officer's ~~decision~~ recommendation; and
- ~~(9)~~ a notice of the employee's right to grieve the ~~discharge~~ in accordance with the OKDHS grievance regulations; and
- ~~(10)~~ a notice of the employee's right to file an appeal to the MPC;
- ~~(11)~~ the address of the MPC;

(12) the MPC filing time limit of 20-calendar days from date employee receives notice of the final action; and

(13) a copy of the MPC petition for appeal form.

~~(g)(h) Distribution. The local administrator provides a copy of the Notice of Proposed Termination to the:~~

(1) The local administrator provides a copy of the Notice of Proposed Termination to the notice of proposed discharge and response to the:

~~(A)(A)~~ employee;

~~(B)(2)(B)~~ Legal Division; and Services;

~~(C)(3)(C)~~ HRM corrective discipline manager; and

(4) HRM personnel analyst.

(2) If the employee submits a response to the Notice of Proposed Termination, the local administrator provides a copy of such response to the:

(A) Legal Services;

(B) HRM corrective discipline manager; and

(C) HRM personnel analyst.

~~(2)(3) final action of discharge~~ The local administrator provides a copy of the Final Action of Termination to the:

~~(A)(1)(A)~~ the employee;

~~(B)(2)(B)~~ Legal Division; Services;

~~(C)(3)(C)~~ HRM corrective discipline manager;

~~(D)(4)(D)~~ HRMD HRM personnel file analyst; and

~~(E)(5)(E)~~ HRM Talent Management; and;

~~(6)(F)~~ Finance Division, Services Payroll Unit.