



State of Oklahoma
Human Capital Management Division
Office of Management and Enterprise Services
Policies and Procedures
Grievance and Alternative Dispute Resolution

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Reference: 455:10-19 Sections 1 to 64

Policy

Problems, misunderstandings and frustrations may arise in the workplace. It is OMES's intent to be responsive to our employees and their concerns. This policy provides standards and guidelines for the prompt and equitable resolution of conflicts at the lowest possible level within OMES. This policy applies to all employees with the exception of conflict related to the application of Merit Rules, which applies to classified employees only.

Definitions

"Accept" means a determination by an agency grievance manager that the issue(s) meets jurisdictional requirements and has or will be forwarded to a decision-maker.

"Deny" means to refuse to grant a remedy requested, to determine an issue to be without merit or to end a grievance without further consideration.

"Grant" means to find an issue to have merit and to give an appropriate remedy.

"Grievance/Conflict" means a request for relief in an employment matter made by an employee, or a group of employees, which affects them and is subject to control of the appointing authority. For purposes of grievances/conflicts, an employee may be a probationary, permanent classified employee, or unclassified employee. Grievance Issues for classified employees may include, but are not limited to:

1. Discipline
2. Reduction in force
3. Work assignment
4. Withholding of work
5. Classification
6. Reclassification
7. Promotion
8. Leave
9. Performance appraisal
10. Length of service
11. Overtime
12. Compensatory time
13. Transfer
14. Alleged violation of the Oklahoma Personnel Act or Merit Rules

Grievance Issues for unclassified employees may include, but are not limited to:

1. Leave
2. Performance appraisal
3. Discrimination
4. Whistleblower

"Jurisdiction" means having the authority to decide an issue within the agency grievance procedure. The time limit to file a grievance, an employee's eligibility to use the agency grievance procedure and the issues raised are general factors in determining agency jurisdiction.

"Commission" means the Oklahoma Merit Protection Commission.

"Reject" means a determination by an agency grievance manager that a grievance or an issue does not meet agency jurisdictional requirements.

"Remedy" means the corrective action(s) sought by an employee or offered by a decision-maker or appointing authority.

"Toll" means to temporarily stop or suspend applicable time limits.

Procedures

OMES's internal conflict and alternative dispute resolution process shall be a two-step procedure.

Step One - informal discussion between the employee and the immediate supervisor.

The purpose of the informal discussion shall be to provide the employee and his or her supervisor an opportunity to address and resolve concerns and complaints at the lowest level possible.

An employee who has a conflict shall promptly bring the dispute to the attention of his or her supervisor. The employee and the supervisor shall strive to informally resolve the dispute.

If the supervisor is unable to resolve the dispute because it is not within his or her control or authority, the supervisor shall attempt to determine who can resolve the dispute and give that person an opportunity to resolve the dispute informally or advise the employee to proceed to Step 2.

Step Two – Shall be the formal grievance

If the dispute is not resolved informally, the employee may file a formal grievance within the time specified in OAC 455:10-19-42.

Formal grievances shall promptly and impartially be addressed and resolved at the lowest level possible.

A face-to-face meeting or telephone conversation is required between the resolution decision maker and the employee at this step.

Use of voluntary mediation

Employees, supervisors, appointing authorities and grievance managers may use the commission's Voluntary Mediation Program as a means of resolution at any step of the internal agency grievance procedure.

Applicable grievance time limits shall be tolled if a request for voluntary mediation services is received by the commission. The tolling time shall end:

- Once the commission determines the participants are not willing to use the voluntary mediation services; or
- Upon conclusion of the voluntary mediation session or at such time that any participant withdraws from participating in the voluntary mediation session.

The commission shall notify the agency grievance manager of the tolling time as soon as possible and practical.

Retaliation – prohibited

No employee shall be disciplined or otherwise prejudiced in his or her employment for exercising his or her rights under the internal agency grievance resolution procedure [74:840-6.2(C)].

Any employee who has reason to believe his or her employment has been directly affected by unfair treatment, unsafe working conditions or erroneous interpretation or application of agency policy, procedure, (merit rule / classified employees only) or law may file a petition for appeal with the Commission. The petition for appeal shall identify the name of the person alleged to have violated this section and shall be specific as to who did what, when, where, how and why.

Time

For purposes of this policy time shall be counted in terms of calendar days. If the last day of the count is a Saturday, Sunday or legal holiday as proclaimed by the Governor, the period shall continue to the next business day.

Appointing authority responsibility:

The appointing authority shall file a copy of any adopted resolution procedures, including revisions, with the Commission. Any adopted grievance resolution procedure shall include a general statement certifying that the procedure contains minimum requirements which:

1. Encourage resolution of disputes within the agency quickly, informally and at the lowest possible level;
2. Require prompt resolution of grievances within established time periods; and
3. Guarantee the employee the right to be represented by a person of his or her own choosing at each step of the procedure, except the initial informal discussion with his or her immediate supervisor;
4. Reflect the correct name, address and telephone.

The appointing authority shall:

1. Furnish to each employee a copy of the internal agency grievance resolution procedure, including revisions, used by the agency [74:840-6.2(B)].
2. Designate an employee or employees within the agency to receive and process formal grievances [74:840-6.2(G)]. If the appointing authority does not designate such employee(s), the appointing authority shall be the grievance manager;

3. Within 30 calendar days after such designation, provide the Commission with the name, address, telephone number and designation date of such employee(s); and
4. Ensure employee(s) designated to receive and process formal grievances are scheduled to attend and notified of required Commission training and shall make time available for employees to complete training [74:840-6.2(H)].

Supervisor responsibility

Each supervisor shall:

1. Inform their employees of the internal agency grievance resolution procedure;
2. Be aware and informed of the names of employee(s) designated by the appointing authority to receive and process formal grievances;
3. Ensure that applicable time limits pertaining to supervisory responsibility within the grievance procedure are met;
4. Informally discuss, address and resolve disputes brought to their attention at the lowest level possible.

Internal agency grievance manager responsibility

Any employee designated to receive and process formal grievances by their appointing authority shall:

1. Within 6 months after designation to serve in this capacity, successfully complete the initial training programs required by the Commission;
2. Maintain proficiency by successfully completing continuing training programs required by the Commission;
3. Provide advice, assistance and technical direction to the appointing authority, supervisors and employees on the internal agency grievance resolution procedure;
4. Review formal grievances and accept or reject them;
5. Ensure that time limits which apply to the processing and resolution of formal grievances are met;
6. Facilitate the prompt, equitable and timely resolution of grievances at the lowest possible level; and
7. Ensure the formal grievance is reviewed and addressed by a person within the employing agency with authority to resolve the dispute.

Employee responsibility

Any employee, who has reason to believe his or her employment has been directly affected by unfair treatment, unsafe working conditions or erroneous interpretation or application of agency policy, procedure, merit rule (classified employees only) or law, has a duty and responsibility to attempt to resolve the dispute informally. Thereafter, the employee has the right to file a formal grievance.

Any employee filing a formal grievance has a duty and responsibility to provide accurate, timely information to support his or her assertions and to make a good faith effort to resolve the dispute.

Employees should refrain from idle talk and should treat information about formal grievances with discretion.

Due to jurisdiction limitations, OMES employees cannot file a grievance against an employee that works at another agency.

Grievance preparation and processing

An employee may request approval from his or her supervisor for a necessary and reasonable absence from work to gather information in preparation to file and process a formal grievance. The request for the time needed should be made in advance. The supervisor may approve such absence if the time away will not cause undue hardship or upset any employee's work place operation. Any approved absence shall not result in a loss of pay or leave.

Leave and travel

An employee who has filed a formal grievance, or witnesses whose attendance is required, shall not be charged leave to attend meetings held to decide the grievance.

Approved travel and other expenses incurred to resolve a formal grievance shall be reimbursed by the employing agency in accordance with the State Travel Reimbursement Act.

Employee representation

An employee has the right to be represented by a person of his or her own choosing at each step of the internal agency grievance resolution procedure, except the initial informal discussion with his or her immediate supervisor.

The representative must be willing and available to serve and have authority to negotiate a settlement.

The employee is responsible for all costs and expenses of his or her representation. A representative who is a state employee shall be on approved leave or leave without pay while working on the grievance.

Group grievances

Employees may file a formal grievance as a group, when the grievance issues and personal relief sought are the same or similar for each. The group shall name a spokesperson who shall speak and act on behalf of the group. The spokesperson shall be one of the employees of the group filing a formal grievance. The group is entitled to a representative as outlined in OAC 455:10-19-39.

The appointing authority may consolidate formal grievances containing the same or similar issues filed by two or more employees when to do so will produce a more efficient, more economical or more timely processing and resolution of the grievances and will not adversely affect the interests of the employees filing the grievances.

The appointing authority may join formal grievances filed by an employee when to do so will produce a more efficient, more economical or timelier processing and resolution of the grievances and will not adversely affect the interests of the employee.

Other specific requirements for filing and resolving formal group grievances may be adopted in an appointing authority's internal agency grievance resolution procedure.

Filing time

A formal grievance shall be filed:

- Within 20 calendar days from the date of the act or incident; or
- Within 20 calendar days from the date the employee becomes aware of or, with reasonable effort, should have become aware of a grievable issue.

The appointing authority may extend the time limit for filing a formal grievance if the employee shows that he or she could not have otherwise timely filed.

Form

A formal grievance shall be filed with the agency grievance manager on the form prescribed by the Commission or a written statement which shall include, at a minimum:

1. The name, address and work telephone number of the employee;
2. The classification of the employee;
3. The work location, and division of the employee;
4. The name of the supervisor with whom the employee discussed the dispute and the date of the discussion;
5. The date of the alleged act or incident which is cause for the formal grievance or the date the employee became aware of the grievable issue;

6. A brief statement of the dispute citing such information as the reason for the grievance, persons involved, etc.
7. Any laws, merit rules, agency policy, practice or procedures the employee believes to have been violated;
8. A requested remedy which the employee believes to be appropriate;
9. The name, address and telephone number of the employee's representative, if any;
10. The name, address and telephone number of the spokesperson if the grievance is from a group;
11. The date and signature of the employee or the spokesperson; and
12. A list of the names of the employees if a group grievance.

Resolution time

A formal grievance shall be resolved by the employing agency within 45 calendar days after the filing of the grievance.

The appointing authority may extend the resolution time up to an additional 15 days for good cause. The extension shall be made in writing to the employee before the expiration of the 45 calendar day resolution time and include reasons for the extension.

The employee and the appointing authority may mutually extend the resolution time up to an additional 30 calendar days for good cause. Any extension shall be agreed to in writing and include reasons for the extension.

In no case shall the resolution time of a formal grievance exceed 90 calendar days.

Time limits for completion of resolution steps may be adopted in an appointing authority's internal agency grievance resolution procedure.

Resolution decision

Resolution decisions shall address the issues raised in the formal grievance.

Resolution decisions shall be made in writing to the employee filing the formal grievance or if a group grievance, to the spokesperson. Resolution decisions shall be delivered personally or by mail.

Filing an appeal after a formal grievance

After filing a formal grievance, an employee may file an appeal with the Commission within 20 calendar days after:

1. Expiration of the resolution time, including any extension and a resolution decision has not been received;
2. Receiving a resolution decision and the employee can provide evidence the resolution decision was not correct, did not address the issues of the grievance or that violations occurred during the processing of the formal grievance.

An employee may file an appeal before the agency grievance procedure is concluded if the employee can provide evidence that violations of the agency grievance procedure are occurring or if the employee can provide evidence that the alleged violations are continuing.

The issues of the appeal shall be limited to those raised in the formal grievance or discovered during the internal agency grievance process over which the Commission has jurisdiction.

Grievance and appeal - separate filings

The filing of formal grievances with the employing agency and appeals with the Commission are separate actions. Each is the responsibility of the employee. The filing of one does not substitute for the filing of the other. **OMES Grievance Manager Contact Information**

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