

902 KAR 8:100. Disciplinary procedures applicable for local health department employees.

RELATES TO: KRS 211.090(3), 211.170(1), 211.1751, (2), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures of the personnel program for local health departments. This administrative regulation establishes separations and disciplinary procedures applicable to a local health department.

Section 1. Disciplinary Action. (1) An appointing authority may discipline an employee for:

- (a) Lack of good behavior; or
 - (b) Unsatisfactory performance of a job duty.
- (2) A situation that may warrant disciplinary action shall include:
- (a) Inefficiency or incompetency in the performance of a duty;
 - (b) Negligence in the performance of a duty;
 - (c) Careless, negligent, or improper use of local health department property or equipment;
 - (d) Excessive absenteeism;
 - (e) Habitual pattern of failure to report for duty at the assigned time and place;
 - (f) Failure to obtain or maintain a current license or certificate or other qualification required by law or rule as a condition of continued employment;
 - (g) Willful abuse or misappropriation of funds, property, or equipment;
 - (h) Falsification of an official document relating to or affecting employment;
 - (i) Disrupting, disturbing, or interfering with management of agency operation;
 - (j) Abusive behavior towards a patient, coworker, or the public in the performance of a duty;
 - (k) Insubordination;
 - (l) Reporting to work under the influence of alcohol or illegal drugs, or partaking of alcohol or illegal drugs on the job;
 - (m) Sleeping or failure to remain alert during working hours;
 - (n) Violation of confidential information policies of the agency or assigned program;
 - (o) Prohibited political activity;
 - (p) Unauthorized or unreported absence or absence for any period of working without notifying supervisor;
 - (q) Breach of state law, an agency rule, policy, or directive; and
 - (r) Performing an unauthorized duty, or performing a duty requiring special training, licensure, or certification, which the employee has not attained.

Section 2. Administering Disciplinary Actions. (1) A classified employee with regular status shall not be disciplined by the appointing authority except for cause.

(2) Except as provided by subsection (4) of this section, an appointing authority shall apply discipline in a progressive manner, with each disciplinary action more severe, in an effort to correct an employee's performance or behavior problem.

(3) Progressive discipline shall consist of the following actions:

- (a) Verbal admonishment;
- (b) Written admonishment or warning;
- (c) Demotion or suspension; and
- (d) Dismissal.

(4) One (1) or more of the disciplinary actions stated in subsection (3) of this section may be bypassed by the appointing authority based on the severity of the performance or behavior

problem.

Section 3. Predisciplinary Action Hearing. (1) Except as provided in Section 5(1) of this administrative regulation, prior to a demotion provided by 902 KAR 8:090, Section 3(1)(c), suspension, or dismissal, a classified regular employee with status shall be notified in writing of the intent of the agency to demote, suspend or dismiss the employee. The notice shall also include the following:

- (a) The specific reasons for the demotion, suspension, or dismissal including:
 - 1. The statutory, regulatory, or agency policy violation; and
 - 2. The specific action or activity on which the intent to demote, suspend, or dismiss is based;
- (b) The date, time, and place of the action or activity;
- (c) The name of each party involved; and
- (d) That the employee has the right to appear personally, or with counsel if the employee has retained counsel, to reply to the appointing authority regarding the intent to demote, suspend, or dismiss.

(2) A request in writing to appear to reply to the appointing authority shall be made within six (6) working days of receipt of the notice of intent to demote, suspend, or dismiss.

(3) The meeting shall be held within six (6) working days after receipt of the employee's request to appear before the appointing authority, excluding the day the request is received.

(4) No later than five (5) working days after the employee appears to reply to the intent to demote, suspend, or dismiss, the appointing authority shall determine whether to demote, suspend, or dismiss the employee or to alter, modify, or rescind the intent to demote, suspend, or dismiss. The appointing authority shall notify the employee in writing of the decision.

(5) If the appointing authority decides to demote, suspend, or dismiss, the employee shall be notified of the following, in writing:

- (a) The effective date of the demotion, suspension, or dismissal; and
- (b) The reason for the demotion, suspension, or dismissal, including the:
 - 1. Statutory, regulatory, or agency policy violation; and
 - 2. Specific action or activity on which the demotion, suspension, or dismissal is based;
- (c) The date, time, and place of the action or activity;
- (d) The name of each party or witness involved;
- (e) Of his right to appeal the demotion, suspension, or dismissal; and
- (f) That an appeal shall be:
 - 1. Prepared on a Form CH-41 Request for Appeal; and
 - 2. Filed with the Local Health Department Employment Personnel Council and submitted to the Administrative Hearings Branch within fifteen (15) calendar days of the effective date of the decision of the appointing authority. If an appeal is mailed to the council by certified mail, return receipt requested, it shall be considered filed on the date it is postmarked.

(6) The appointing authority shall provide the employee with the appeal request form.

Section 4. Conditions for Bypassing Progressive Discipline and the Issuance of a Notice of Intent for the Suspension or Dismissal of an employee. (1) An appointing authority may issue a notice of intent for the suspension or dismissal of an employee for a serious misconduct infraction.

(2) An example of a misconduct infraction that may be considered serious enough to merit an immediate intent of suspension or dismissal include the following:

- (a) Threatening, assaulting, fighting with, or harassing a supervisor, another employee, or anyone encountered during the normal course of business;

- (b) Stealing or deliberately damaging the property of:
 1. The agency;
 2. A client;
 3. A patient; or
 4. Another employee;
 - (c) Carrying a concealed, deadly weapon at work:
 1. Without a license; or
 2. In violation of a prohibition established by a local government unit pursuant to KRS 237.115(2);
 - (d) Reporting to work under the influence of alcohol, narcotics, or other drugs, unless the drug was prescribed by a physician;
 - (e) Taking unauthorized leave or failing to show up at work without notifying a supervisor for more than three (3) consecutive work days;
 - (f) Engaging in a fraudulent activity;
 - (g) Breach of the employee confidentiality agreement; or
 - (h) Performing a procedure on a patient or client for which the employee has neither been certified nor has the current credentials to perform.
- (3) The employee shall be notified by the appointing authority regarding the intent to suspend or dismiss.
- (4) If an employee wishes to reply to a notice he shall:
- (a) Request to appear personally before the appointing authority. The request shall be:
 1. In writing; and
 2. Made within six (6) working days of receipt of the notice; and
 - (b) File the request with the appointing authority. If a request is mailed by certified mail, return receipt requested, it shall be considered filed on the date it is postmarked.
- (5) An employee may be represented by counsel at an appearance before the appointing authority.
- (6) The meeting shall be held within six (6) working days after receipt of the employee's request to appear before the appointing authority, excluding the day the request is received.
- (7) Within five (5) working days after the employee appears to reply to the intent to suspend or dismiss, the appointing authority shall determine whether to modify, or rescind the intent to suspend or dismiss. The appointing authority shall notify the employee in writing of the decision.
- (8) If the appointing authority decides to suspend or dismiss immediately following the meeting, the employee shall be notified of the following, in writing:
- (a) The effective date of the suspension or dismissal;
 - (b) The reason for the suspension or dismissal, including the:
 1. Statutory, regulatory, or agency policy violation; and
 2. Specific action or activity on which the suspension or dismissal is based;
 - (c) The date, time, and place of the action or activity;
 - (d) The name of each party or witness involved;
 - (e) Of his right to appeal the suspension or dismissal; and
 - (f) That an appeal shall be:
 1. Prepared on a Form CH-41 Request for Appeal; and
 2. Filed with the Local Health Department Employment Personnel Council and submitted to the Administrative Hearings Branch within fifteen (15) calendar days of the effective date of the suspension or dismissal. If an appeal is mailed to the Council by certified mail, return receipt requested, it shall be considered filed on the date it is postmarked.

Section 5. Directive to Vacate Premises. (1) If an employee has committed a serious misconduct infraction and there is a need to diffuse a presently dangerous or disruptive situation, a supervisor may direct the offending employee to vacate the premises. The appointing authority shall, by the most immediate means, contact the department and relate the action taken.

(2) A pre-termination hearing shall be provided within three (3) working days after removal.

(3) The employee may be placed on leave using accumulated leave or on immediate suspension without pay.

Section 6. Incorporation by Reference. (1) "Form CH-41 Request for Appeal", 1/98, Cabinet for Health and Family Services, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (19 Ky.R. 2771; 20 Ky.R. 376; 517; eff. 9-3-1993; 21 Ky.R. 590; eff. 9-21-1994; 24 Ky.R. 2206; 25 Ky.R. 116; 575; eff. 8-19-1998; 27 Ky.R. 2261; 2815; eff. 9-4-2001; 37 Ky.R. 1787; 2175; eff. 4-1-2011.)