

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Administration and Financial Management
(Amendment)

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

RELATES TO: KRS 211.090(3), 211.170(2)~~[(1)]~~, 211.1751, 212.170(4), 212.870, 237.109, 237.115(2)

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. 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; ~~or fund]~~
 - (r) Performing an unauthorized duty, or performing a duty requiring special training, licensure, or certification, that 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 Meeting.

(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 that resulted in the intent to demote, suspend, or dismiss;
- (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 to appear to reply to the appointing authority shall be:

- (a) In writing; and
- (b) Made within two (2) 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 in writing of ~~the following, in writing~~:

- (a) The effective date of the demotion, suspension, or dismissal;
- (b) The reason for the demotion, suspension, or dismissal, including the:
 - 1. Statutory, regulatory, or agency policy violation; and
 - 2. Specific action or activity that resulted in the demotion, suspension, or dismissal;
- (c) The date, time, and place of the action or activity, if known;
- (d) The name of each party or witness involved; and
- (e) The right to appeal the demotion, suspension, or dismissal in accordance with 902 KAR 8:110.

(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 includes~~[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) Reporting to work under the influence of alcohol, narcotics, or other drugs, unless the drug was prescribed by a physician;
 - (d) Taking unauthorized leave or failing to show up at work without notifying a supervisor for more than three (3) consecutive work days;
 - (e) Engaging in a fraudulent activity;
 - (f) Breach of the employee confidentiality agreement; or
 - (g) 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, the employee shall:
 - (a) Request to appear personally before the appointing authority. The request shall be:
 1. In writing; and
 2. Made within two (2) 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 in writing 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, if known;
 - (d) The name of each party or witness involved; and
 - (e) The right to appeal the suspension or dismissal in accordance with 902 KAR 8:110.

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, or the appointing authority intends to terminate the employee's employment, a director or designee 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.

STEVEN J. STACK, MD, MBA, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: April 27, 2022

FILED WITH LRC: May 4, 2022 at 12:30 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 25, 2022, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by July 18, 2022, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until July 31, 2022. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie Brooks or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes separations and disciplinary procedures applicable to employees of a local health department.

(b) The necessity of this administrative regulation:

KRS 194A.050 authorizes the secretary of the cabinet to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities of the cabinet. KRS 211.1755 authorizes the cabinet to administer a personnel program for local health departments.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation establishes disciplinary procedures to be followed by local health departments.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation ensures local health department employees are aware of applicable disciplinary and separation procedures. This administrative regulation also provides the employee an opportunity for a meeting prior to any disciplinary action.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

The amendment to this administrative regulation makes a technical correction to the situations that may warrant disciplinary action and makes other corrections for KRS Chapter 13A compliance.

(b) The necessity of the amendment to this administrative regulation:

The amendment to this administrative regulation is necessary to correctly identify the situations that may result in disciplinary action against an employee of a local health department.

(c) How the amendment conforms to the content of the authorizing statutes:

KRS 211.1755 authorizes the cabinet to establish policies and procedures for the personnel program through the promulgation of administrative regulations. The personnel policies for the governance of all agency employees shall include conditions of employment and conditions of termination.

(d) How the amendment will assist in the effective administration of the statutes:

The amendment to this administrative regulation will simplify the disciplinary action process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This administrative regulation will affect fifty-eight (58) local health departments and approximately 2,300 employees. The Lexington-Fayette County, Louisville Metro Public Health and Wellness, and Northern Kentucky District Health Departments are exempt from this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

Local health department employees and directors will need to be aware of the technical change and adjust the disciplinary processes accordingly.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

The amendment to this administrative regulation will not result in a costs to local health department employees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Local health department employees will have a clear and consistent understanding of the actions that can result in disciplinary action.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

This is an ongoing program, there will be no initial costs to the administrative body.

(b) On a continuing basis:

The amendment to this administrative regulation will not result in increased costs to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Current agency funds will be used to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

There are no fees associated with this administrative regulation. An increase in funding is not needed to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

. There are no fees established in this administrative regulation.

(9) TIERING: Is tiering applied?

Tiering is not applied as the amendment to this administrative regulation affects all regulated entities equally.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

Local health departments, district health departments, and the Local Health Department Personnel Branch within the Division of Administration and Financial Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 194A.050(1) and 211.1755.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

This administrative regulation does not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

This administrative regulation does not generate revenue.

(c) How much will it cost to administer this program for the first year?

This is an ongoing program, there will be no initial costs.

(d) How much will it cost to administer this program for subsequent years?

There will be no additional cost to administer this program.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

This administrative regulation will not generate costs savings for the regulated entities in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

This administrative regulation will not generate costs savings for the regulated entities in subsequent years.

(c) How much will it cost the regulated entities for the first year?

This administrative regulation will not result in increased costs for the regulated entities in the first year.

(d) How much will it cost the regulated entities for subsequent years?

This administrative regulation will not result in increased costs for the regulated entities in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-):No answer provided.

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below.

"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation does not have a major economic impact.