

Human Resource Guide #220

DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
PERSONNEL POLICIES AND PROCEDURES

Investigation Process:

Policy: The department is committed to providing employees with due process before a suspension, demotion or termination. In some cases, due process will occur when an employee responds to the employer's charges. However, in cases where the facts are unclear or disputed an investigation will be conducted by the department.

This is a guideline for procedures that may be used when investigating an allegation of employee misconduct. It outlines expectations for the agency, the investigator and the employee.

Facilities within DPHHS (Montana State Hospital, Montana Mental Health Nursing Care Center, Montana Chemical Dependency Center, Montana Developmental Center, Eastmont Human Services Center and the Montana Veteran's Center) may adopt different investigative procedures for handling internal allegations of employee misconduct or resident abuse.

In most cases confidentiality for the accused employee will be strictly adhered to by all parties to an investigation.

When will this be used:

1. In most instances of alleged employee wrongdoing including client abuse, sexual harassment, other policy violations and/or when deemed appropriate by a supervisor.
2. Particularly damaging or unusual allegations may also be turned over to law enforcement depending on the nature of the allegation and/or as required by law.
3. Instances of wrongdoing that are clear or that the employee admits to may also be investigated under this policy if deemed necessary.

Initial steps:

1. The supervisor will work with Human Resources and other management team members to determine if the allegations or situation merit investigation. The DPHHS disciplinary guide will be referred to during this process.

2. Human Resources, working with the supervisor will select a trained investigator to begin the investigation.
3. Whenever possible, the employee will be notified in person, by the supervisor, of the allegation and pending investigation. A bargaining unit member may request representation during this meeting. The employee may suggest witnesses or others who can defend his or her stance. The employee will also be advised of the allegations in writing within 24 ours of the meeting.
4. The supervisor and Human Resources will determine if the severity of the charge merits suspension with or without pay or if the employee may continue to work through the investigation. The bargaining unit contract, if applicable, will be used as a guide.
5. The employee will be assured – barring unforeseen circumstance – that the investigation will commence within five working days following the selection of the investigator.

Process:

1. The investigator will be briefed – in person or over the phone – about the allegations and other pertinent details. This briefing will be followed by a written statement, from human resources, detailing the allegations and a list of witnesses. Other necessary information, including contractual obligations, previous allegations or problems and supervisory information may also be included.
2. Time line extensions will be approved by the investigator, human resources and the supervisor. The employee will be notified about any changes.
3. The investigator will interview the accused employee to ensure that the list of the employee's witnesses is correct. This initial interview may be brief as additional information will be sought after all others are interviewed. An employee is entitled to representation at this meeting if requested.
5. The investigator will gather evidence by interviewing witnesses or others with relevant information. Interviews will not be tape recorded. The investigator will be responsible for keeping accurate, detailed notes. The investigator may request that a witness bring a written statement to the meeting. Witnesses will be interviewed

separately and preferably in-person although special circumstances may necessitate phone interviews.

6. To complete the investigation the investigator will interview the accused employee who will be allowed to respond to any allegations or statements made by witnesses.
7. The investigator should attempt to finish all interviews within five working days of starting the investigation. It is understood that circumstances may dictate otherwise and time extensions will be addressed as discussed previously.
8. The investigator is also responsible for securing all documentary evidence such as incident reports, time sheets, memos, reports and other necessary information. Human resources and the supervisor will assist in the gathering of this type of evidence.

Report:

1. The investigator will prepare, within five working days of the end of the investigation, a report regarding the allegations and the evidence. The report will address each allegation separately and will state whether the evidence supports or refutes the allegations based on the evidence gathered. The report will also address the validity of other allegations made during the investigation.
2. The investigator is prohibited from making guesses or presumptions.
3. As stated, the investigator is required to address the validity of each charge based on the evidence. A summary paragraph in the report should state if all, some or none of the allegations have merit. (A sample report will be given to each investigator).
4. The report will be forwarded to human resources, the supervisor and the management team, if appropriate, for review.
5. An outline of the allegations and the investigator's findings and supporting evidence will be forwarded to the accused employee and his or her representative. The employee or his or her representative will have five working days to respond, in writing, to the allegations and evidence. Any time line extension must be requested and approved by human resources and the supervisor.

Conclusion:

1. Human Resources, the supervisor and other necessary personnel will review the investigative findings and the employee's response. A decision regarding disciplinary action will be made using the investigator's findings, past actions or performance, the Montana Operations Manuel, department policies, collective bargaining agreements and any other information deemed necessary.
2. The employee will be notified of disciplinary action or of exoneration by the supervisor both verbally and in writing.
3. The investigation from initiation to completion should take no more than 20 working days. Unusual circumstances may dictate that the time lines are extended.
4. The investigator should be prepared to testify before an arbitrator or hearing's officer should the employee grieve any disciplinary action.
5. An employee who is disciplined is guaranteed access to a collective bargaining grievance procedure, if applicable, or the agency grievance procedure.

This guide provides an overview of options or steps that may be taken during investigations. Negotiated labor contracts that conflict with this guide will take precedence to the applicable extent.