

EMPLOYMENT RELATED INVESTIGATIONS

Number 17.0

Effective Date: November 3, 2016

Supersedes: Policy 17.0, dated March 1, 1996

Subject: EMPLOYMENT RELATED INVESTIGATIONS

Applicable To: All classified, exempt, appointed, and temporary employees within the Executive Branch of the State of Vermont

Issued By: Department of Human Resources

Approved By: Trey Martin, Secretary of Administration

PURPOSE AND POLICY STATEMENT

The purpose of this policy is to establish the framework for Appointing Authorities to conduct employment related investigations. This policy does not apply to investigations authorized by specific statutes or regulations, such as Auditor's Office inquiries, DPS Internal Affairs Investigations, regulatory investigations conducted by State departments, etc.

DEFINITIONS

Subject - An employee who is alleged to have committed misconduct which is being investigated.

Complainant - A person making an allegation of misconduct.

Misconduct - Deliberate or negligent failure to comply with the requirements of the State workplace.

Notice of Right of Representation – Notification to an employee, who is covered by a collective bargaining agreement, of his or her right to request the presence of a union representative, and, upon such request, the union representative shall have the right to accompany the employee to any such meeting.

Investigator- A person conducting an official investigation, inquiry or fact-finding into alleged employee misconduct. This person may be a professional investigator, a member of management, or an HR professional.

RESPONSIBILITIES

A. Appointing Authorities (or designees), in coordination with the Department of Human Resources (DHR), shall:

- Notify and coordinate with DHR whenever they have reason to suspect an employee has engaged in, or is engaging in misconduct.
- Authorize investigations into allegations or suspicions of employee misconduct promptly, in order to establish facts necessary to make informed decisions regarding discipline or other remedial measures in the workplace.
- Determine the scope of misconduct investigations.
- Determine whether investigations will be carried out by professional State investigative units, managers, or human resources staff.
- Sign letters notifying employees that they will be witnesses or subjects in investigations, or delegate the authority to do so.
- Follow procedures outlined in Personnel Policy 3.3 when they receive allegations of illegal discrimination or harassment in employment, or otherwise become aware that illegal discrimination or harassment in employment may have occurred.
- Notify subject(s) when an investigation has concluded.

B. Investigators shall:

- Afford representation, if applicable, in accordance with statutes, regulations and applicable collective bargaining agreements.
- Impartially gather relevant facts using legal methods deemed suitable for the circumstances, such as in-person or telephonic recorded or unrecorded interviews, requests for sworn statements, requests for documents, review of State records including those contained on State devices such as phones, tablets or computers, or in email or other information systems, etc.
- Consult DHR legal counsel if witnesses or subjects request legal rights, such as *Garrity*, or assert legal privileges during the course of an interview or investigation.
- Provide appointing authorities with reports of investigation.
- Coordinate as necessary with law enforcement officials.
- Carry out digital forensic examinations or coordinate as necessary with external Digital Forensic Examiner.

C. DHR shall:

- Assist and advise Appointing Authorities and investigators in carrying out their responsibilities as described in this policy.

D. Employees shall:

- Cooperate with investigations, and provide truthful and complete information in accordance with State Personnel Policies and local Work Rules. Refusing to answer, answering incompletely, or answering untruthfully, questions relating to work is considered misconduct for which an employee may be disciplined up to and including dismissal from their employment with the State.
- Refrain from taking any action which may undermine the integrity of the investigation, including but not limited to threatening, coercing or harassing witnesses, or disclosing confidential information.

NOTIFICATION

A. Subjects. Notification of certain rights must be given to employees covered by a collective bargaining agreement who are the subjects of investigations, in accordance with applicable collective bargaining agreements.

- An investigator who wishes to interview an employee covered by a collective bargaining agreement who is suspected of wrongdoing must provide the employee with notice of the right to request Union representation at the interview. Such a request may not be refused except on advice of DHR legal counsel. A sample notification letter for an employee who is covered by a collective bargaining agreement and the subject of an employment investigation is Attachment A.
- An employee who is not covered by a collective bargaining agreement (such as temporary employees, most exempt employees, and classified managerial and confidential employees) and is the subject of an employment investigation does not have the right to representation during an investigative interview. However, such an employee **may** be permitted to have legal counsel present during an investigative interview if the counsel's attendance would not unduly delay or disrupt the interview. A sample notification letter for an employee who is not covered by a collective bargaining agreement and is the subject of an employment investigation is Attachment B.

B. Witnesses. When an investigator seeks to interview an employee who is a potential witness, and is not suspected of wrongdoing, notification of the right to representation is not required. A sample witness letter is Attachment C.

- If at any point an employee who is covered by a collective bargaining agreement is suspected of having engaged in misconduct, the employee must be notified of his/her right to request Union representation prior to being questioned about his/her conduct. Should this situation arise during a witness interview, the interview should be interrupted for the purpose of providing

notification, and appropriate allowance made for the employee to secure representation, if requested, before continuing the interview.

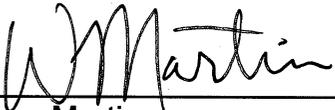
RECORDING

Whether or not investigative interviews are recorded is at the discretion of the State. If the State does not record an interview, no other recording will be permitted without the State's consent. However, if the State does record an investigative interview, it must allow the employee to also record the interview, using the same medium, and provide him or her with a duplicate copy upon the employee's request, and in accordance with applicable collective bargaining agreements.

INVESTIGATIVE REPORTS

Investigative reports are considered confidential personnel documents, and may be released only after coordination with DHR. Employees who are subjects of employment investigations may be entitled to reports and associated exhibits as required by due process.

Approved:



Trey Martin
Secretary of Administration

11/3/16

Date

Personnel Policy 17.0, Attachment A
Investigation Subject Notice Letter, Entitled to Representation

Dear {EMPLOYEE}:

{NAME} has been assigned to investigate allegations that you have engaged in misconduct, including but not limited to, {DESCRIPTION}. {NAME} will meet with you on {DATE} at {TIME} to discuss details of the allegations. The meeting will be held at {LOCATION}. You have the right to request union representation, or private counsel at your own expense, at this meeting. I have been asked by {UNION} to pass on to you that if you choose to use the services of {UNION} during this meeting that you contact them upon receipt of this notice. {UNION} can be reached at {CONTACT NUMBER}.

Duties Regarding Investigation: You are advised that Personnel Policy 17.0 provides: “State employees have an obligation to cooperate with their employer regarding employment investigations. It is part of the responsibility of an employee to answer truthfully and fully the work-related inquiries of the State.”

Refusing to answer, answering incompletely, or answering untruthfully, questions relating to work is considered misconduct for which an employee may be disciplined up to and including dismissal.

Do not take any action injurious to the integrity of the investigation, including but not limited to: (1) threatening or harassing any witness or complainant; (2) attempting to influence the recollection or testimony of any witness or complainant; (3) colluding with any individual to fabricate or misrepresent facts pertaining to the investigation; or (4) destroying or altering evidence pertaining to the investigation. Failure on your part to follow this directive may lead to disciplinary action being taken against you up to and including your dismissal.

Be advised if you choose to speak with other State employees or witnesses who are not Union Representatives or Stewards about the facts or allegations concerning the matters under investigation, we have the right to interview those individuals about those conversations and any information arising from those interviews could be considered by the appointing authority in imposing discipline.

No Retaliation: Do not retaliate against anyone whom you believe may have brought information to the attention of the employer, or whom you think may have cooperated with or participated in the investigation. Failure to comply with this instruction may result in appropriate discipline, up to and including dismissal.

Right of Representation. You are hereby notified that you have the right to request representation by a Union, or private counsel at your own expense, at any interview or resulting hearing connected with this inquiry.

Sincerely,
{APPOINTING AUTHORITY}

cc: DHR Investigations Unit

Personnel Policy 17.0, Attachment B
Investigation Subject Notice Letter, Not Entitled to Representation

Dear {EMPLOYEE}:

{NAME} has been assigned to investigate allegations that you have engaged in misconduct, including but not limited to, {DESCRIPTION}. {NAME} will meet with you on {DATE} at {TIME} to discuss details of the allegations. The meeting will be held at {LOCATION}.

Duties Regarding Investigation: You are also advised that Personnel Policy 17.0 provides: “State employees have an obligation to cooperate with their employer regarding employment investigations. It is part of the responsibility of an employee to answer truthfully and fully the work-related inquiries of the State.”

Refusing to answer, answering incompletely, or answering untruthfully, questions relating to work is considered misconduct for which an employee may be disciplined up to and including dismissal.

Do not take any action injurious to the integrity of the investigation, including but not limited to: (1) threatening or harassing any witness or complainant; (2) attempting to influence the recollection or testimony of any witness or complainant; (3) colluding with any individual to fabricate or misrepresent facts pertaining to the investigation; or (4) destroying or altering evidence pertaining to the investigation. Failure on your part to follow this directive may lead to disciplinary action being taken against you up to and including your dismissal.

Be advised if you choose to speak with other State employees or witnesses about the facts or allegations concerning the matters under investigation, we have the right to interview those individuals about those conversations and any information arising from those interviews could be considered by the appointing authority in imposing discipline.

No Retaliation: Do not retaliate against anyone whom you believe may have brought information to the attention of the employer, or whom you think may have cooperated with or participated in the investigation.

Failure to comply with the above instructions may result in appropriate discipline, up to and including dismissal.

Sincerely,

{APPOINTING AUTHORITY}

cc: DHR Investigations Unit

Personnel Policy 17.0, Attachment C Investigation Witness Notice Letter

Dear {EMPLOYEE}:

It is believed you may have information relative to a possible incident of workplace misconduct. You are not the subject of an investigation, and there is currently no information or reason to believe that you could be subject to disciplinary action in connection with this matter. Rather, you have merely been identified as a potential witness.

{NAME} has been assigned to investigate these allegations, and will contact you in the near future to arrange a meeting to discuss the matter. Please feel free to contact {POC} at {NUMBER} with any questions you may have.

Although it may be uncomfortable to be a witness, the operations of the State would be greatly hampered if employees did not participate fully in investigations of workplace conduct. Therefore, Personnel Policy 17.0 provides: "State employees have an obligation to cooperate with their employer regarding employment investigations. It is part of the responsibility of an employee to answer truthfully and fully the work-related inquiries of the State."

Maintaining the integrity of the investigation is also of paramount importance. Therefore I must also advise you not to take any action injurious to the integrity of the investigation, including but not limited to: threatening or harassing any witness or complainant; attempting to influence the recollection or testimony of any witness or complainant; colluding with any individual to fabricate or misrepresent facts pertaining to the investigation; or destroying or altering evidence pertaining to the investigation. Additionally, you may not retaliate against anyone whom you believe may have brought information to the attention of the employer, or whom you think may have cooperated with or participated in the investigation.

Failure on your part to follow the directive set forth above may lead to disciplinary action being taken against you.

If you choose to speak with other state employees or witnesses who are not VSEA representatives or Stewards about the facts or allegations concerning the matters under investigation, the State has the right to interview those individuals about those conversations and any information arising from those interviews could be considered by the {AGENCY/DEPT} in imposing discipline.

Thank you in advance for your cooperation in this matter.

Sincerely,

{APPOINTING AUTHORITY}

cc: DHR Investigations Unit