



State of Oklahoma
Office of Management and Enterprise Services
Policies and Procedures
Complaint and Investigation Process

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Approved: Denise Northrup, OMES Director	Approval Date: 04/03/2018

Reference

Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. § 2000 et seq.; Merit Protection Commission Rules 455: 10-19-35(g), Merit Rule 260:25-3-22

Policy

The purpose of this policy is to prevent and correct discrimination, harassment and workplace violence within OMES by making a complaint and investigation procedure available. It is the policy of OMES to promptly investigate and resolve complaints and reports of discrimination, harassment or workplace violence. It is the policy of OMES to foster an environment where employees and applicants for employment may raise complaints without fear of reprisal. It is against state and federal civil rights laws and OMES policy to retaliate against any person for asserting his or her civil rights, which includes filing a claim of discrimination or participating as a witness in an investigation. Retaliation and reprisals are not tolerated by OMES.

Implementation

Role of the Human Resources Department (HR) of Human Capital Management (HCM) – to monitor and oversee OMES non-discrimination, anti-harassment and anti-workplace violence, and ethics obligations and policies. HR also has the responsibility for accepting and processing complaints and investigations. The services of an outside investigator may be obtained when circumstances so warrant such an arrangement. All persons who are designated to investigate complaints shall adhere to the provisions set forth in this internal procedure.

Any employee with OMES who believes he or she has been subjected to conduct which violates his or her civil rights based upon race, sex, sexual orientation, gender identity, color, religion,

age, national origin, creed, ancestry, disability, genetic information, political affiliation or any other reason prohibited by law is encouraged to promptly confer with a supervisor, manager or HCM.

Initiating a complaint – A person may report a complaint orally or in writing, to any of the following: a supervisor, manager or HCM. However, the complaint and investigation procedure is initiated by filing a complaint with HCM. The complaint form can be found at the following link: <https://www.ok.gov/OSF/documents/OMESFormHCM001.pdf>.

Time period for filing complaint – Prompt reporting of a complaint is strongly encouraged, as it allows for rapid response to and resolution of objectionable behavior. Complaints should be filed within twenty (20) days of the most recent incident of or within twenty (20) days of the date the employee becomes aware of or, with reasonable effort, should have become aware of the incident. This time period may be extended for good cause.

Review of complaint – HCM will review the complaint to determine if it demonstrates a showing of unacceptable conduct. If the complaint demonstrates unacceptable conduct, it will be accepted for investigation immediately. If the complaint does not demonstrate unacceptable conduct, HCM shall not accept it for investigation. HCM shall notify the complaining party within five (5) calendar days of receipt of the complaint whether it has been accepted for investigation. If the complaint is not accepted for investigation, the complaining party may, within five (5) days of the notice, ask the Director of OMES to review the matter. The Director of OMES may:

1. refer the matter to the appropriate decision maker; or
2. determine the complaint to be without merit and deny further consideration of the matter.

Investigation of other reports – HCM department may determine, on its own, to investigate allegations of harassment, discrimination or other alleged misconduct brought to its attention even when the individual subject to the alleged conduct is reluctant to pursue a complaint.

Purpose and scope of investigation – The purpose of the investigation is to gather facts relating to the alleged misconduct to determine whether it is more likely than not the accused party engaged in conduct in violation of OMES policies or federal or state law. Although the investigation procedure is not considered to be an adversarial process, a party may, at his or her own expense, seek the advice of personal attorneys and advisors throughout the process.

Investigative process – The investigator shall determine the scope of the investigation, formulate an investigation plan, notify the head of the department and proceed to interview witnesses. Investigations will include a private and confidential interview with the person(s) filing the complaint, the person or persons alleged to have committed the misconduct, and any witnesses with relevant information.

An investigator will contact the complaining party and explain OMES' procedure and discuss the complaining party's option to file with an external agency or proceed with the internal complaint procedure, or both.

The accused party or parties will be advised verbally by the investigator of all allegations contained in the complaint, and given the opportunity to respond to the allegations. Additionally, the accused party or parties will be advised of the requirement to not retaliate against the complaining party or anyone participating in the investigation.

Confidentiality – Confidentiality will be maintained to the extent reasonably possible. All individuals who are involved in the complaint reporting or investigation process are encouraged to maintain confidentiality of the proceedings. HCM will emphasize the importance of confidentiality in meetings with parties and witnesses. OMES will take reasonable measures to ensure the confidentiality of the investigation process; however, OMES cannot and does not guarantee that parties and witnesses will maintain confidentiality. Confidentiality does not mean the details of the complaint will be withheld from the accused party or parties, or that OMES is constrained from divulging details of the complaint or investigation in appropriate circumstances.

Requirement of cooperation – All OMES employees are required to cooperate during any official complaint investigation. Failure to cooperate may be grounds for disciplinary action up to and including termination. Any participant to an investigation, who intentionally misdirects the investigation, whether by falsehood or omissions, shall be subject to disciplinary action.

Interim action – OMES may take appropriate action during the pendency of the investigation, including administrative suspension with or without pay of the accused or complaining party.

Timeframe for investigation – Complaints will be investigated as quickly as possible. The investigation phase shall be concluded within forty-five (45) calendar days from the receipt of the complaint by the Human Resources department.

Investigation report – At the conclusion of the investigation, the investigator shall prepare a written report. The investigation report will explain the scope of the investigation and the methods used to conduct the investigation such as interviewing, reviewing documentation, and observing. The investigation report will also specify the nature of the allegation(s), state the investigator's factual findings, and state recommendations regarding corrective and disciplinary action, if any. The report shall be provided to the Director of OMES. The report is an internal personnel investigation and is not subject to an open records request. The complainant and the accused parties will be advised verbally upon the conclusion of the investigation.

Disposition – The Director of OMES shall render a final decision based upon review of the investigation report and related materials provided. The Director of OMES may either accept or modify the determination and recommendation(s) or request further investigation. Such modification of the determination shall not modify the facts as set forth in the investigation

report. The parties shall be notified of the final decision. If the Director of OMES determines that misconduct did not occur, the internal complaint procedure shall be concluded and the complaining party will be informed of his or her rights with regard to external avenues of complaint processing. If the Director of OMES determines the accused party engaged in misconduct, the Director of OMES will direct immediate and appropriate corrective action(s) to be taken, including discipline. Disciplinary actions will be proportional to the seriousness of the offense. Additionally, where appropriate, the Director of OMES may direct non-punitive, remedial measures designed to ensure the complaining party is not subject to repeated misconduct and to remedy the effects of any misconduct that may have occurred. If no determination can be made regarding whether the accused party or parties engaged in misconduct, the Director of OMES may direct preventive measures, such as training and monitoring.

Appeal – The complainant may file an appeal of the Director of OMES’s final decision with the Oklahoma Merit Protection Commission in accordance with the rules promulgated by the Merit Protection Commission and within twenty (20) calendar days of his or her receipt of the final decision.

Protection from retaliation – Federal and state law and this policy prohibit any form of retaliation against a person who files a complaint. Individuals who give information about a complaint or participate in an investigation are also protected from any workplace reprisals. Any employee who attempts to retaliate against another will be disciplined. Disciplinary action can range from a reprimand up to and including termination from employment.

Follow-up – HCM may take follow-up measures to ensure the action taken was effective in eliminating the misconduct and to ensure there has been no retaliation against the complaining employee.

Alternative Legal Remedies – Nothing in this policy shall prevent the complainant or the respondent from pursuing formal legal remedies or resolution through state or federal agencies or the courts. These agencies include the Equal Employment Opportunity Commission and the Oklahoma Attorney General’s Office (Office of Civil Rights Enforcement). Each agency has a specific period of time for filing a complaint. If a formal proceeding before a federal or state agency is instituted, HR will proceed in the manner it believes appropriate under the circumstances, including continuing with its own investigation.