

**FOND DU LAC COUNTY
P O L I C Y & P R O C E D U R E G O V E R N I N G
D I S C I P L I N E & C O M P L A I N T P R O C E D U R E**

Effective October 1, 2011

PURPOSE

The County has established this Complaint Procedure in accordance with Wisconsin State Statute 66.0509 for an employee to utilize for matters concerning discipline, termination, or workplace safety. This procedure provides an employee with the individual opportunity to address concerns regarding discipline, termination or workplace safety matters, if necessary to have those matters reviewed by an Impartial Hearing Officer, and to appeal to the County Board of Supervisors.

The County expects its employees and management to exercise reasonable efforts to resolve any questions, problem or misunderstandings prior to utilizing the Complaint Procedure. An employee subject to the contractual grievance procedure of a collective bargaining agreement shall follow the contractual grievance procedure to the extent those procedures oversees the matters covered by the grievance procedures.

Nothing in this policy is intended to create a legally binding contract or to change the at-will nature of employment with Fond du Lac County, as the County reserves its management rights to exclusively manage its operations in the best interest of the taxpayers of the County.

Employment with Fond du Lac County is voluntarily entered into and employees are free to resign at any time with or without cause by providing a recommended two week notice. Similarly, the County may terminate the "at will" employment relationship at any time for any reason that is not capricious or arbitrary and provided that it does not violate any applicable federal, state or local law.

1. DEFINITIONS

"Employee" – is a Full Time or Regular Part Time employee with the County and is scheduled to work 20 or more hours per week. Employees not covered under this policy include: employees covered under a collective bargaining agreement with a grievance process; statutory/political appointees; limited term employees; seasonal employees; part time employees; and independent contractors. This policy shall not apply to County Department Heads appointed by the County Executive.

"Employee Discipline" – means an employment action that results in disciplinary suspension, demotion or termination of employment. Employment actions that are excluded from this policy include: administrative actions, layoffs or workforce reductions; plans of correction or performance improvement; performance evaluations, documentation of employee acts; oral or written counseling; administrative suspension with or without pay pending investigation of misconduct or nonperformance; non-disciplinary wage, benefit or salary adjustments; and change in work assignment or location.

"Termination" – means a separation from employment by the employer for disciplinary or quality of work reasons. Actions that may be excluded include: Layoffs; Furloughs; Workforce

reduction activities; Job transfers or demotions; Action taken as a result of an employee's failure to meet the qualifications of the position; Voluntary termination including, without limitation, quitting and resignation; Job abandonment; End of employment due to disability or medical separation; Retirement; Action taken pursuant to an ordinance created under s.19.59(1m); Death; or end of employment and/or completion of assignment of temporary, contract or part time employees.

"Workplace Safety" – includes but is not limited to: safety of the physical work environment, the safe operation of workplace equipment and tools, provision of protective equipment, training and warning requirements, workplace violence and accident risk. "Workplace Safety" does not include hours, overtime, sick, family, or medical leave, work schedules, breaks, termination, vacation, performance reviews or compensation.

"Impartial Hearing Examiner" (IHE) – is a person that is not employed by Fond du Lac County and is versed in employment/labor laws but does not need to be an attorney. This person will oversee the hearing and provide a written recommendation to the Fond du Lac County Executive who can accept or reject the recommendation. The IHE will record the hearing and take notes during the proceedings. The IHE will allow both parties to present evidence, witnesses with cross examination and facts. Discovery will not be permitted for these hearings. The burden of proof will be on the employee to show that the County actions were capricious and arbitrary on the preponderance of the evidence to discipline the employee.

2. DISCIPLINE

Wherever possible, it is in the best interests of the employees and Fond du Lac County to ensure fair treatment of all employees and in making certain that disciplinary actions are prompt, uniform and not capricious. The major purpose of any disciplinary action is to correct the problem, prevent recurrence and prepare the employee for satisfactory service in the future.

The County reserves the management right, in its sole discretion, to impose disciplinary action as it deems appropriate to the particular circumstances.

3. COMPLAINT PROCEDURE

- a. This procedure addresses issues concerning employee discipline and termination.
- b. Every reasonable effort should be made by supervisors and employees to resolve any questions, problems or misunderstandings that have arisen. Accordingly, employees should first discuss complaints or questions with their immediate supervisor.
- c. If the problem cannot be resolved with the employee's immediate supervisor, a written complaint form must be filed with the department head, or designee in the absence of the department head, no later than five (5) working days from the date that the employee first became aware, or should have reasonably been aware, of the condition or circumstance giving rise to the grievance. The department head, or designee, may schedule a meeting to review the matter within ten (10) working days of receiving the written complaint. The department head, or designee, will provide a written response within ten (10) working days of receiving the complaint or within ten (10) working days of the meeting, whichever is later. In the event that

the department head is also the immediate supervisor, the written complaint shall be filed with the Human Resources Director and the same time periods for response will apply.

- d. The written decision provided in paragraph 3 (c) above shall be final unless the employee files a written request with the Human Resources Director (HRD) no later than five (5) working days of the date of the response required by paragraph 3 (c). above. The HRD, or designee in the absence of the Director, may schedule a meeting to review the matter within ten (10) working days. The HRD, or designee, will provide a written response within ten (10) working days of receiving the grievance or within ten (10) working days of the meeting, whichever is later. In the event that the HRD has already reviewed the matter as required by paragraph 3 (c). above, the provisions of this paragraph do not apply and the next step is before an Impartial Hearing Examiner (IHE).
- e. The written decision shall be final unless the employee files a written request with the HRD no later than five (5) working days of the date of the response under paragraph 3 (d). above for a hearing before an IHE. The County will provide an examiner who shall not be a current Fond du Lac County employee. The employee may be represented at the hearing by an attorney at the employee's own expense. The hearing shall be conducted as soon as practicable and will be recorded. Witnesses may also present information but only in person and under oath or affirmation, and written documents may also be submitted. The appealing party carries the burden of production of evidence and the burden of proof which shall be a preponderance of the evidence. The sole issue before the examiner shall be: Based on the evidence presented, is the written decision of the HRD, or designee, arbitrary and capricious? The examiner may request oral or written closing arguments. The parties have the option to submit written briefs to the IHE within 14 days after the hearing. The examiner shall provide a written decision within 30 days of the briefs or closing arguments (whichever is later). The recommendation should contain finding of facts, analysis conclusions of law, recommendation and other information the IHE deems necessary. The IHE has 30 days from the hearing or date the brief were due (whichever is later) to present the written recommendation to the County Executive. The hearing may be open to the public. The County Executive shall have 15 working days to accept or reject the IHE's recommendations.
- f. The recommendation of the impartial hearing examiner shall be final unless rejected by the County Executive. If the employee objects they must file a written request within 15 days with the County Clerk stating the reason of the objection and that they wish to have the decision reviewed by the County Board or delegated Committee. The Board shall review the matter as soon as practicable and in accordance with its procedures for hearing disciplinary matters. The Board, in closed session, shall examine any records produced at the hearing before the IHE and determine whether a rational basis exists for the examiner's written recommendation. Findings of fact shall be upheld unless they are clearly erroneous. The Board shall not conduct a de novo hearing, nor substitute its judgment for that of the hearing examiner. A simple majority vote of the Board membership shall decide the appeal and shall be final.

- g. Failure to process a complaint by the grievant within the time limit, or agreed upon extensions, shall constitute termination of the complaint. Failure of a management representative to meet the time limits shall cause the grievance to move automatically to the next step in the procedure. Time limits may be extended by agreement in writing of the parties at any step of the procedure.
- h. The scope of a complaint that is subject to other Policy or Ordinance for formal or informal investigation or dispute resolution may not be brought under this Policy.

4. WORKPLACE SAFETY

Employees alleging a workplace safety violation may only file a complaint on their own behalf (i.e. no “class action” complaints). As part of the written complaint the employee must propose a remedy for the alleged violation. The IHE will only recommend a remedy and can’t require tax dollars to be spent on a remedy. The County Executive will accept or reject the recommendation of the IHE. The employee has the right to appeal to step 3 (f) above if they disagree with the remedy.

**FOND DU LAC COUNTY
EMPLOYEE COMPLAINT FORM**

In furtherance of Wisconsin Statute 66.0509 it is the purpose of the Discipline and Complaint Procedure to establish a method whereby complaints of employees will be resolved fairly and effectively. The filing of a complaint will in no way prejudice the status of the employee. Please see the Discipline & Complaint Policy for a full description of the procedure.

EMPLOYEE: _____ DATE: _____

DEPARTMENT: _____ JOB TITLE: _____

STATEMENT OF COMPLAINT (include who, what, where, when and why):

LISTING OF DOCUMENTS OR EVIDENCES SUPPORTING YOUR COMPLAINT:

REMEDY REQUESTED: _____

EMPLOYEE'S SIGNATURE: _____ DATE: _____

Date the Immediate Supervisor was notified: _____

(Please attach response)